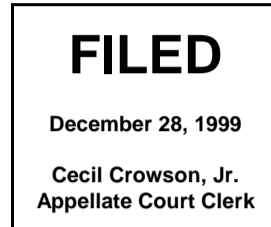


IN THE COURT OF APPEALS
AT KNOXVILLE



WILLIAM STEPHEN JONES,
Plaintiff/Appellant,
v.
SHEARER JOY ELLIS JONES,
Defendant/Appellee.

) E1999-01980-COA-R3-CV
) KNOX COUNTY
) 03A01-9903-CH-00079
)
)
)
) HON. JOHN F. WEAVER
) JUDGE
)
)
) AFFIRMED AND REMANDED

JOHN D. LOCKRIDGE and SCARLETT A. BEATY, Lockridge, Valone & Beaty, PLLC, Knoxville, for Appellant

CHARLES H. CHILD, O'Connor, Petty, Child & Boswell, Knoxville, for Appellee

O P I N I O N

Goddard, P.J.

This appeal arises from an entry of a divorce decree in Knox County Chancery Court between Dr. William Stephen Jones, the Plaintiff/Appellant, and Shearer Joy Ellis Jones, the Defendant/Appellee. The Chancery Court awarded Dr. Jones approximately \$208,000 in marital property, and awarded Mrs. Jones approximately \$180,000 in marital property. The Court also

awarded Mrs. Jones sole custody and control of the parties' two minor children, \$3,445.12 per month in child support, and \$1,200 per month for five years in rehabilitative alimony.

Dr. Jones presents four issues, which we restate, for our consideration on appeal:

1. The Trial Court erred in awarding the amount of rehabilitative alimony and in making such alimony a claim against the estate of Dr. Jones.

2. The Trial Court erred in its division of the marital estate and in not requiring Mrs. Jones to refinance or sell the marital residence.

3. The Trial Court erred in requiring Dr. Jones to pay \$18,237.37 from the children's trust accounts to Mrs. Jones as part of the division of the marital estate.

4. The Trial Court erred in requiring Dr. Jones to pay all uncovered medical and dental expenses of the parties' minor children.

Mrs. Jones raises on appeal the issue of Dr. Jones's payment of her attorney's fees. We affirm the judgment of the Trial Court in all respects.

Dr. Jones, a Knoxville dentist, and Mrs. Jones were married on September 20, 1986, and two children were born of the marriage: Jordan and Jessica, ages seven and three, respectively, at the time of the divorce.

Dr. Jones, who graduated from the University of Tennessee College of Dentistry in 1977, has practiced dentistry since his graduation. Mrs. Jones graduated in 1977 from the University of Tennessee with a Bachelor of Science degree in textiles and clothing.

Before the marriage, Mrs. Jones was employed as a buyer for Proffitt's Department store and later as a sales representative for Monet Jewelers. Approximately six months before the couple wed, Mrs. Jones began working in Dr. Jones' dental practice and worked in the practice for much of the parties' twelve-year marriage. Mrs. Jones hired and trained staff, kept the practice's books, and occasionally worked as a dental assistant.

The parties separated for approximately three and one-half months in 1994, but then reconciled. The final separation occurred on June 27, 1997.

In his first issue, Dr. Jones argues that the Trial Court erred in awarding the amount of rehabilitative alimony and in making such alimony a claim against the estate of Dr. Jones. Dr. Jones contends that Mrs. Jones can earn anywhere from \$25,000 to \$30,000 a year, and with the \$3,445.12 in tax-free child

support that she receives, should be able to meet her monthly expenses. He insists that Mrs. Jones could obtain employment because she holds a Bachelor of Science degree in fashion merchandising and has previous experience as the office manager in his dental office.

Mrs. Jones, however, insists that the Trial Court properly ordered rehabilitative alimony and properly made such alimony a claim against Dr. Jones's estate. Among Mrs. Jones's arguments for rehabilitative alimony is that Dr. Jones's earning capacity is substantially greater than hers. Dr. Jones's is a dentist with over twenty years in practice, whereas Mrs. Jones has limited work experience in the area of textiles and clothing. She maintains that she cannot obtain a position in another dental office earning what she did while working for Dr. Jones. Mrs. Jones further argues that her health and her custody of the parties' two minor children further limit her employment options. She contends that swollen and stiff joints along with allergies and colon problems limit her ability to perform clerical functions in an office, and with two small children, she requires a position that would be flexible with respect to her children's schedules and that did not require extensive hours or overnight travel.

Tennessee Code Annotated § 36-5-101(d)(2) provides for an award of rehabilitative support:

An award of rehabilitative, temporary support and maintenance shall remain in the court's control for the duration of such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of substantial and material change in circumstances. Rehabilitative support and maintenance shall terminate upon the death of the recipient. Such support and maintenance shall also terminate upon the death of the payor unless otherwise specifically stated. The recipient of the support and maintenance shall have the burden of proving that all reasonable efforts at rehabilitation have been made and have been unsuccessful.

The Trial Court has the discretion to award alimony in a divorce. Lyon v. Lyon, 765 S.W.2d 759, 762 (Tenn. Ct. App. 1988). This Court does not interfere except upon a clear showing of abuse of such discretion. Lyon, 765 S.W.2d at 763.

We find nothing in the record to indicate that the Trial Court abused its discretion in awarding rehabilitative alimony or in specifying that such alimony be a claim against Dr. Jones's estate. Therefore, this issue is without merit.

In his second issue, Dr. Jones argues that the division of the marital estate was inequitable and that the Trial Court erred by not ordering Mrs. Jones to refinance or sell the marital

residence. Dr. Jones contends that the award of rehabilitative alimony of \$1,200 per month for five years has "added an additional \$72,000 to the Wife's portion of the marital estate and has reduced the Husband's equitable distribution by that same amount." Furthermore, he maintains that Mrs. Jones has a history of gainful employment, so there is no justification for the alimony. Moreover, Dr. Jones argues that the Trial Court failed to have his name removed from the mortgage on the marital residence. He contends that should Mrs. Jones default on the mortgage, he would be responsible for the mortgage debt although he has no equitable interest in the house. Therefore, he requests that this Court require Mrs. Jones to refinance the house or sell it.

Mrs. Jones asserts that the Trial Court's division of the marital property was equitable and that it correctly did not require her to refinance or sell the marital residence. Mrs. Jones argues that her earning capacity is significantly less than Dr. Jones's. He received the dental practice in the division of the marital estate, so his ability to earn a substantial income will continue. Furthermore, she maintains that her contributions to the dental practice over the years helped it "grow to the success that it is today." With respect to the mortgage of the marital residence, Mrs. Jones contends that "it is pure supposition that a default will occur and if the same

were to happen, Dr. Jones always has the right to seek an appropriate legal remedy against Mrs. Jones."

Tennessee Code Annotated § 36-4-121(c) provides the factors the Trial Court is to consider in making an equitable division of the parties' marital property:

- (1) The duration of the marriage;
- (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;
- (3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;
- (4) The relative ability of each party for future acquisitions of capital assets and income;
- (5) The contribution of each party to the acquisition, preservation, appreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;
- (6) The value of the separate property of each party;
- (7) The estate of each party at the time of the marriage;
- (8) The economic circumstances of each party at the time the division of property is to become effective;
- (9) The tax consequences to each party; and
- (10) Such other factors as are necessary to consider the equities between the parties.

Pursuant to Rule 13(d) of the Tennessee Rules of Appellate Procedure, this Court reviews the record of the Trial

Court's findings of fact de novo with a presumption of correctness, unless the evidence preponderates otherwise. Watters v. Watters, 959 S.W.2d 585, 588 (Tenn. Ct. App. 1997).

The record shows that Mrs. Jones contributed significantly to the growth of Dr. Jones's dental practice. She trained personnel, oversaw office matters, and kept the practice's books, among other duties. Furthermore, Dr. Jones's earning capacity remains high, whereas Mrs. Jones's earning capacity is significantly less than Dr. Jones's. After a review of the record, we conclude that the Trial Court did not err in its division of the marital estate. In light of the amount of equity in the marital residence, we do not consider Dr. Jones significantly at risk for the obligation on the marital residence.

In his third issue, Dr. Jones argues that the Trial Court erred by requiring him to pay \$18,237.37 from the children's trust accounts to Mrs. Jones as part of the division of the marital estate. Dr. Jones maintains that although this money had been held in the parties' joint account, the parties had always intended this money to be transferred to the children's trust accounts. Dr. Jones insists that taking this money from the children's accounts is unjustified in light of the substantial child support and marital property that Mrs. Jones received.

Mrs. Jones argues that the Trial Court properly required Dr. Jones to pay \$18,237.37 from the children's trust accounts as part of the marital estate. She explains that the Trial Court found that the funds in the amount of \$18,237.37 were marital property. Furthermore, Mrs. Jones stated that Dr. Jones's mother had given \$9,500 to each family member each year for several years. Mrs. Jones maintains that the money given to her from her mother-in-law was placed in the parties' joint checking account, and when the parties separated, Dr. Jones removed the money from the joint account and placed it in the children's accounts. Therefore, Mrs. Jones insists that the trial court did not abuse its discretion in classifying the asset as marital property and awarding it to her.

Because Trial Courts have wide discretion with respect to classifying and dividing property, these decisions are accorded great weight on appeal. Wilson v. Moore, 929 S.W.2d 367, 372 (Tenn. Ct. App. 1996). The record shows that the funds were held in the parties' joint account and that Mrs. Jones was unaware that Dr. Jones had removed the funds and placed them in the children's trust accounts. We conclude that the Trial Court did not err in classifying the funds as marital property or in awarding them to Mrs. Jones. Therefore, this issue is without merit.

In his final issue, Dr. Jones asserts that the Trial Court erred in requiring him to pay all uncovered medical and dental expenses of the parties' children. He insists that the parties should equally divide the uncovered expenses because otherwise, Mrs. Jones "has no incentive to exercise due diligence in using the providers under the medical insurance plan or to avoid unnecessary expenditures." Dr. Jones requests that in the alternative, Mrs. Jones should pay a pro rata share of the uncovered medical and dental expenses of the children.

Mrs. Jones asserts that the Trial Court did not err in requiring Dr. Jones to pay all uncovered medical and dental expenses of the parties' children. Mrs. Jones contends that under Tennessee Code Annotated § 36-5-101(f)(1) the Trial Court "may order either party to pay all . . . the health care costs not paid by insurance proceeds." Thus, the Trial Court did not abuse its discretion by ordering Dr. Jones to be responsible for the children's medical costs.

The Trial Court was within its discretion to require Dr. Jones to pay all the medical and dental expenses of both minor children. Therefore, this issue is without merit.

Lastly, Mrs. Jones argues that the Trial Court erred by not requiring Dr. Jones to pay her attorney's fees. She maintains that she does not have the resources to pay her attorney's fees because she has high monthly expenses and was forced to acquire a sizeable credit card debt during the parties' separation. Furthermore, she insists that because Dr. Jones sought the divorce, he should be required to pay her attorney's fees.

In light of the substantial award Mrs. Jones received from the division of the marital estate, we conclude that she is capable of paying her own attorney's fees.

Based on the foregoing, the judgment of the Trial Court is affirmed and the case remanded to the Trial Court for such further proceedings, if any, as may be necessary and collection of costs below. Costs of appeal are adjudged against Dr. Jones and his surety.

Houston M. Goddard, P.J.

CONCUR:

Herschel P. Franks, J.

D. Michael Swiney, J.