

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned On Briefs April 11, 2014

THERESA R. FRANCIS v. ROBERT A. FRANCIS, JR.

**Direct Appeal from the Circuit Court for Montgomery County
No. MCCCCVDN130179 Michael R. Jones, Judge**

No. M2013-01957-COA-R3-CV - Filed August 22, 2014

Wife appeals the trial court's division of property and denial of an award of alimony in this divorce action. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed and Remanded

DAVID R. FARMER, J., delivered the opinion of the Court, in which HOLLY M. KIRBY, J., and J. STEVEN STAFFORD, J., joined.

Theresa R. Francis, *Pro Se*

Robert A. Francis, Jr., *Pro Se*

MEMORANDUM OPINION¹

Robert A. Francis, Jr. ("Husband") and Theresa Rollison Francis ("Wife") were married in May 1999. Husband was approximately 41 years of age at the time of the marriage; Wife was approximately 44 years of age. The marriage was Husband's first marriage and Wife's second. No children were born of the marriage. Husband filed a complaint for legal separation in the Circuit Court for Montgomery County in January 2013, alleging the grounds of irreconcilable differences and inappropriate marital conduct. In his

¹Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

complaint, Husband stated that he was employed at Bridgestone Metalpha, USA, and asserted that he did not know whether Wife was employed. Acting *pro se*, Wife filed a petition for divorce in May 2013, praying for a divorce on the ground of irreconcilable differences. She filed an answer to Husband's petition in June 2013, generally denying Husband's requests for relief. Mediation in July 2013 resolved most issues between the parties. However, the division of the parties' marital home and unimproved real property in Clarksville, the division of credit card debt and educational debt, the division of retirement assets, alimony, and whether a divorce or legal separation would be granted were unresolved by mediation.

The matter was heard by the trial court on July 11, 2013. By order entered August 1, 2013, the trial court found that both parties had been unhappy in the marriage "for a long period of time" and determined that a divorce should be granted pursuant to statute.² The trial court found that, "after obtaining some additional education," Wife traveled to Texas in December 2012 to interview for a job; that she left the parties' marital home in January 2013; that she was employed in Texas and had medical insurance through her employer; and that she "did not expect nor want the husband to accompany her to Texas." The trial court further found that the parties agreed that Wife's income was \$3,986.67 per month and that Husband's income was \$6,333.34 per month. The trial court valued the parties' marital home in the amount of \$177,900, the amount established by the tax assessor; found that Husband made a down payment on the home in the amount of \$30,000 from his separate property; and that two mortgages totaling \$115,200.00 were owed on the home. The trial court found that, after subtracting Husband's separate property, the parties' marital equity in the home was \$32,700. It awarded this amount to Husband. The trial court found that the parties' unimproved real property was valued at \$39,000 and that there were no liens against the property. It awarded that property to Wife. The trial court found that Husband's retirement account was valued at \$238,000 and that \$33,000 of the fund was earned prior to the parties' marriage. It awarded Husband \$125,000 from the fund and awarded Wife \$80,000. The trial court found that Wife's retirement account was valued at \$37,000 and awarded it to Wife. The trial court stated that Wife testified that she needed alimony in case she lost her job. The trial court denied Wife's request for alimony, finding that the division of real property provided Wife with assets valued at more than \$30,000. The trial court ordered Husband to pay the parties' credit card debt in the amount of \$4,000, and ordered Wife to pay educational debt in the amount of \$6,865.00. Wife filed a timely notice of appeal to this Court.

Issues Presented

²Tennessee Code Annotated § 36-4-129 permits the trial court to declare the parties divorced rather than awarding a divorce to either party.

The issues presented for our review, as we perceive them, are:

- (1) Whether the trial court failed to divide the parties' property equitably.
- (2) Whether the trial court erred by denying Wife's request for alimony.

Standard of Review

We review the factual findings of a trial court sitting without a jury *de novo* upon the record, with a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *e.g.*, *Allstate Ins. Co. v. Tarrant*, 363 S.W.3d 508, 515 (Tenn. 2012). Our review of a trial court's conclusions of law, however, is *de novo* with no presumption of correctness. *E.g.*, *Rogers v. Louisville Land Co.*, 367 S.W.3d 196, 204 (Tenn. 2012).

Discussion

We begin our discussion by noting that the record transmitted to this Court contains neither a transcript nor a statement of the evidence nor any exhibits. "It is well settled that, in the absence of a transcript or statement of the evidence, there is a conclusive presumption that there was sufficient evidence before the trial court to support its judgment, and this Court must therefore affirm the judgment." *Outdoor Mgmt., LLC v. Thomas*, 249 S.W.3d 368, 377 (Tenn. Ct. App. 2007) (citation omitted). It is the appellant's burden to demonstrate that the evidence preponderates against the judgment of the trial court. *Id.* (citation omitted). The appellant also bears the burden to provide this Court with a transcript of the evidence or a statement of the evidence from which we may determine whether the evidence preponderates against the trial court's findings. *Id.* at 378 (citation omitted). In the absence of a transcript or statement of the evidence, we may reverse the trial court's judgment only if we find that the trial court committed an error of law based on the "technical record" transmitted to us. *Riedel v. Riedel*, No. M2011-01111-COA-R3-CV, 2013 WL 5948021, at *4 (Tenn. Ct. App. Nov. 4, 2013) (citations omitted). We additionally note that both parties are acting *pro se* on appeal.

Property Division

It is well-settled that the trial court must divide the marital estate equitably. Tenn. Code Ann. § 36-4-121(a)(1)(2010 and Supp. 2013); *Batson v. Batson*, 769 S.W.2d 849, 859 (Tenn. Ct. App. 1988). The factors to be considered by the trial court when dividing the marital estate are set forth in § 36-4-121(c) of the Tennessee Code. An equitable division of marital property does not require a precisely equal division of marital assets, but requires

a fair result. *Robertson v. Robertson*, 76 S.W.3d 337, 341 (Tenn. 2002); *Batson*, 769 S.W.2d at 859. We review a trial court's division of property in a divorce action under an abuse of discretion standard. *Sullivan v. Sullivan*, 107 S.W.3d 507, 512 (Tenn. Ct. App. 2002). An abuse of discretion occurs when the trial court applies an incorrect legal standard, reaches an illogical conclusion, bases its decision on an assessment of the evidence that is clearly erroneous, or uses reasoning that results in an injustice. *State v. Hester*, 24 S.W.3d 1, 35 (Tenn. 2010).

In her brief, Wife does not appear to argue that the trial court erred by awarding Husband his separate property. Her argument, as we understand it, is that the trial court's division of marital property is inequitable in light of Husband's separate property, that the trial court undervalued the parties' marital residence, that the trial court erred by not deducting her separate property from her retirement account assets, and that the trial court erred by not awarding any of Husband's "MFC [stock] Fund" to Wife.

Upon review of the record, we observe that the trial court did not award any part of Wife's retirement assets to Husband. Rather, Wife was awarded her retirement fund in its entirety. There is no evidence in the record transmitted to this Court to support Wife's assertion that the trial court erred in its classification of the parties' property. The trial court awarded Husband his separate property in the amount of approximately \$63,000.00 and found that the apparently disputed stock fund was his separate property. The trial court awarded Wife marital property in the amount of \$156,600, and awarded Husband marital property in the amount of \$157,700. The trial court ordered Husband to pay the parties' credit card debt in the amount of \$4,000, and ordered Wife to pay educational debt in the amount of \$6,865.00. It appears from the trial court's order that Wife incurred this debt prior to securing employment in Texas. We further observe that the parties agreed during mediation that Wife would receive the parties' 1998 Toyota Camry and 2008 Lexus, that Husband would receive the parties' 2006 Toyota Tacoma, and that most of the parties' personal property was divided by agreement. In light of the scant record transmitted on appeal, we cannot say that the trial court's division of property was inequitable or constituted an abuse of discretion in this case. We affirm on this issue.

Alimony

We likewise review the trial court's decision regarding an award of alimony under an abuse of discretion standard of review. *E.g., Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011)(citation omitted). An alimony award depends on the circumstances of each case, with financial need of the recipient spouse and the obligor spouse's ability to pay being the primary considerations. *Burlew v. Burlew*, 40 S.W.3d 465, 472 (Tenn. 2001). We note that Wife did not pray for an award of alimony in her in May 2013 petition for divorce. It

appears from the record that the issue of alimony was first discussed during mediation in July 2013 and the trial court found that “[W]ife testified that she wanted the court to award her alimony in case she lost her job.” As noted above, the record transmitted on appeal contains neither a transcript nor a statement of the evidence, and the technical record contains no evidence to preponderate against the trial court’s finding that Wife did not demonstrate a need for alimony. Discerning no abuse of discretion on the part of the trial court, we affirm on this issue.

Holding

In light of the foregoing, the judgment of the trial court is affirmed. Costs on appeal are taxed to the Appellant, Theresa R. Francis.

DAVID R. FARMER, JUDGE