

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 22, 2008 Session

CYNTHIA DAWN JOHNSTON CLURE v. TREVIS DREW CLURE

**Appeal from the General Sessions Court for Roane County
No. 7843A Dennis W. Humphrey, Judge**

No. E2008-00157-COA-R3-CV - FILED SEPTEMBER 30, 2008

In this divorce case, the sole issue raised on appeal is whether the trial court made a mathematical error in the final divorce decree dividing the property, resulting in an overpayment to the husband. After carefully reviewing and considering the trial court's divorce decree and its memorandum of findings of fact and conclusions of law, we remand to the trial court to clarify whether its intention in the final decree was to award, in its division of the equity in the marital estate, the Husband \$38,000 more than the Wife instead of \$19,000 more, or whether the trial court modified its findings and conclusions in its final divorce decree to correctly reflect its intention that Husband receive \$38,000 more. In the event that the trial court finds it appropriate to amend its final judgment to correct the alleged mathematical error, the trial court's judgment is affirmed as modified. If the trial court determines that the divorce decree correctly effectuates its judgment that Husband should receive \$38,000 more of the equity in the marital residence, the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the General Sessions Court Affirmed;
Case Remanded**

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

James S. Smith, Jr., Rockwood, Tennessee, for the Appellant, Cynthia Dawn Johnston Clure.

R. D. Hash, Maryville, Tennessee, for the Appellee, Trevis Drew Clure.

OPINION

I. Background

Cynthia Dawn Johnston Clure ("Wife") and Trevis Drew Clure ("Husband") were divorced by order of the General Sessions Court for Roane County entered March 14, 2007. The

case was tried before the trial court on October 13 and 16, 2006. The trial court's final divorce decree recounts the events following the trial as follows:

[T]he Court took this case under advisement and then filed Written Findings of Fact and Conclusions of Law dated November 8, 2006, and that are attached hereto as **Exhibit A**; [and] this case came to be further argued before the Court on January 12, 2007, at which time the Court took this case under further advisement and then rendered oral Findings of Fact and Conclusions of Law modifying those previously made by the Court[.]

The trial court then listed numerous findings of fact and conclusions of law, some of which differed significantly from its earlier findings and conclusions as set forth in the trial court's memorandum.

The trial court's divorce decree granted each party a divorce from the other, adopted and incorporated a permanent parenting plan providing for their two children and setting Husband's child support obligation, and divided the parties' property. The property division of only one marital asset is at issue here: the equity in the marital residence. The trial court's memorandum of its factual findings and legal conclusions states as follows:

In making an equal distribution of the marital assets, the Court finds the marital residence . . . to have a value of \$140,000, and there is a mortgage on the residence with a balance of approximately \$72,764. Therefore, the divisible equity is \$67,236. The Court further finds [Husband's] interest therein to be \$19,000 greater than [Wife's], such resulting from [Husband's] use of the proceeds from the sale of his previous residence as the down payment and for improvements to the marital residence. [Wife], who currently resides in the home with the children, is awarded the marital residence, [she] being ordered to be solely responsible for the indebtedness thereon and to execute the necessary documents to hold [Husband] harmless on such.

As already noted, however, the trial court's final divorce decree differed significantly in its findings and conclusions. In addition to awarding the marital residence to Husband instead of Wife, the final decree states the following in pertinent part:

[T]he marital residence is valued at [\$140,000], that the first mortgage and home equity line of credit owed on this residence leaves divisible marital equity of . . . \$50,515 of which . . . \$44,257.00 is awarded to the [Husband] and . . . \$6,258.00 is awarded to the [Wife]; that the marital residence should be awarded to the [Husband] who shall assume sole responsibility for paying the indebtedness owed thereon and shall pay the [Wife] for her share of the equity therein[.]

Prior to the trial court's entry of the final decree, Wife filed a motion "for correction of arithmetical error and clarification" which argued that the trial court had made a mathematical error in its property division of the marital residence's equity, asserting as follows:

The Court . . . reiterated its finding, previously announced, that [Husband] should have \$19,000 more equity in the home than [Wife], but then went on to set her equity at \$6,258.00 and his at \$44,257.00. This represents a difference, not of \$19,000 but of \$38,000, which counsel suggests resulted when the Court took the \$19,000 difference from separate funds instead of joint funds, resulting in doubling the disparity.

The trial court overruled the motion, leaving unchanged its division of the equity in the amounts of \$44,257 to Husband and \$6,258 to Wife.

II. Issue Presented

Wife appeals, raising the sole issue, as quoted from her brief, of "whether the Honorable Trial Court erred, as a result of mathematical error, in its apportionment of the equity in the marital home between the parties."

III. Analysis

We review this non-jury case *de novo* upon the record of the proceedings below, with a presumption of correctness as to the trial court's findings of fact "unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d); *see also Hass v. Knighton*, 676 S.W.2d 554 (Tenn. 1984). There is no presumption of correctness with regard to the trial court's conclusions of law. *Campbell v. Fla. Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993).

The record on appeal does not contain a transcript or a statement of the evidence and is comprised of the complaint and answer, Wife's motion for correction of arithmetical error, and the trial court's entered orders. Wife's appellate brief contains no citation to legal authority and is based solely on a mathematical argument, which Wife states as follows:

The erroneous logic which led to the [Husband] receiving \$9,500.00 more than he should have, and the [Wife] receiving \$9,500.00 less than she should have, is illustrated in the figures and calculations submitted by the [Wife]. If the total equity of \$50,515 is simply divided in half, each side would receive \$25,257.50. If, then, \$19,000 is deducted from one and added to the other, this results in the figures cited by the Trial Court in its Final Decree of Divorce If the Trial Court had taken the \$19,000 from the total equity amount, set it aside, and then divided the remainder between the parties and then added the \$19,000 to the [Husband's] one-half equity amount, the correct figures would have been

arrived at as shown by the algebraic calculation in [Wife's] Motion for Correction of Arithmetical Error and Clarification. The resulting correct figures are \$15,757.57 to [Wife] and \$34,757.50 to [Husband]. The error, easily made, lay in the deducting the \$19,000 difference in equity after the total equity had been divided, rather than before it had been divided.

(Emphasis in original). It is obvious that the trial court's division of the equity in the marital estate resulted in Husband receiving \$38,000 more than Wife, rather than \$19,000 more. But Wife's argument on appeal rests on the assumption that the trial court *intended* to award Husband only \$19,000 more than Wife in its final divorce decree, and this assumption is not clearly borne out by the record.

Although the trial court made reference to its earlier memorandum of findings of fact and conclusions of law and included it as an exhibit to its final decree, the court did not specifically state that it was incorporating the memorandum in its final decree. The differences between the findings and conclusions in the memorandum and the final decree are significant, reflecting the obvious conclusion that the trial court changed its mind on a number of issues before entering final judgment. For instance, the trial court awarded the marital residence to Husband in the final decree, rather than to Wife as in the memorandum; the divisible equity in the residence was correctly modified downward to reflect a home equity line of credit on the house in addition to the mortgage; and the trial court in the final decree awarded each party one-half of the total amount of the parties' combined retirement plans, rather than awarding each party his or her own separate retirement plan as in the memorandum.

Further, the trial court specifically stated in the final decree that it had "rendered oral Findings of Fact and Conclusions of Law *modifying those previously made by the Court,*" and listing the modifications in the decree. It is possible that one of the modifications intended by the trial court was an increase in the amount of equity in the marital residence awarded to Husband.

However, there are also some factors here lending credence to the possibility that the trial court actually intended to award Husband only \$19,000 more than Wife, including the trial court's statement in the memorandum that "[i]n making an equal distribution of the martial assets . . . [t]he Court further finds [Husband's] interest therein [in the equity of the residence] to be \$19,000 greater than [Wife's]." It is also arguable that Husband expected to receive \$19,000 more, as is evidenced by his filed handwritten notes and calculations that state "equity is to be divided w/me receiving \$19,000 more." It seems an unlikely coincidence that the \$38,000 difference just happened to be exactly double the \$19,000 figure contained in the trial court's memorandum. Finally, we note that awarding Wife \$19,000 less rather than \$38,000 less would result in a total division of marital property more closely approximating an equal division, although it is well-established in Tennessee law that an "equitable" division is not necessarily always an equal division. *Cf. Robertson v. Robertson*, 76 S.W.3d 337, 341 (Tenn. 2002); *Ellis v. Ellis*, 748 S.W.2d 424, 427 (Tenn. 1988). Given the meager state of the record and the narrow scope of the issue raised on appeal, we are in no position to pass judgment on whether the trial court erred in its overall property division.

The only issue here is whether the trial court's order actually effectuated its judgment, or whether a mathematical error resulted in Husband inadvertently receiving twice the \$19,000 difference intended by the trial court, as argued by Wife.

In other words, what was the intention of the trial court? The answer to this question is easily provided by the trial court itself on remand.

IV. Conclusion

On remand, the trial court is instructed to review the record in this case and determine and clarify whether the intent of its final decree was that Husband should be awarded \$38,000 more than Wife in the equity of the marital residence rather than \$19,000. In the event that the trial court determines a mathematical error was made that did not effectuate its actual judgment, the trial court is authorized and directed to enter an order correcting the divorce decree, and the judgment is affirmed as modified. In the event that the trial court determines that the final decree provides for a property division that was intended by the trial court, nothing further need be done and the judgment is affirmed. Costs on appeal are assessed to the Appellant, Cynthia Dawn Johnston Clure.

SHARON G. LEE, JUDGE