

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 14, 2008 Session

LINDA ALEXANDER OWENS v. JAMES EMERY OWENS

**Appeal from the Circuit Court for Davidson County
No. 03D-535 Muriel Robinson, Judge**

No. M2008-00900-COA-R3-CV - Filed November 14, 2008

In this post-divorce dispute, Wife asserts that the trial court erred in denying her motion for a hearing to refer the matter to a special master in order to effectuate this court's previous opinion. We have concluded that the trial court did not abuse its discretion in denying Wife's motion.

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

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., J., and WALTER C. KURTZ, SP.J., joined.

Robert A. Anderson, Nashville, Tennessee, for the appellant, Linda Alexander Owens.

Roger A. Maness, Clarksville, Tennessee, for the appellee, James Emery Owens.

OPINION

This is the second appeal in this divorce action. The original divorce complaint was filed by Linda Owens ("Wife") against James Owens ("Husband") in March 2003. The trial court entered a final decree of divorce on November 18, 2004, declaring the parties divorced on grounds of irreconcilable differences.

For purposes of this appeal, we need describe only a few aspects of the trial court's division of marital property. The marital assets included two partnerships: the Owens-Pruett partnership, in which the Owenses owned a one-half interest, and the Raghianti-Owens partnership, in which the Owenses also owned a one-half interest. Both partnerships involved residential rental properties or land. The trial court valued the Owenses' interest in the Owens-Pruett partnership at \$268,500 and divided this interest equally between Husband and Wife as tenants in common. The trial court awarded the Owenses' interest in the Raghianti-Owens partnership, valued at \$167,450, to Husband. The trial court classified a home in Boca Raton, Florida, as marital property, valued the Owenses' one-half interest in the property at \$20,000, and awarded the property to Husband. The parties also owned six life insurance policies. The trial court awarded two policies with a total value

of \$27,592 to Wife and awarded four policies with a total value of \$32,366 to Husband. After the division of all of the marital assets and debts, Husband received net marital assets worth \$408,705, and Wife received net marital assets worth \$404,368. The trial court also awarded Wife rehabilitative alimony in the amount of \$2,500 per month for the first three years and \$1,500 per month for the next three years.

The trial court's judgment was appealed to this court, and we affirmed in part and modified in part the trial court's decision. *Owens v. Owens*, 241 S.W.3d 478 (Tenn. Ct. App. 2007) (Tenn. R. App. P. 11 application denied Sept. 17, 2007). This court made adjustments to the overall division of the marital estate. As to the Boca Raton home, we determined that the trial court erred in its valuation of this marital asset and that the home should have been valued at \$97,000. *Id.* at 487. We further concluded that the parties' interest in the Ragghianti-Owens partnership should be awarded to Wife and that the parties' interest in the Pruett-Owens partnership should be awarded to Husband. *Id.* at 492. Thus, this court essentially switched the partnership awards made by the trial court.¹ We made no change with respect to the trial court's division of the insurance policies. Further, we increased the amount and length of the rehabilitative alimony awarded to Wife and awarded her attorney fees at the trial level.² *Id.* at 495. The case was remanded for "further proceedings consistent with this opinion." *Id.* at 498.

On remand, Wife filed a Motion to Set and to Enter Opinion of Court of Appeals, which is the subject of this appeal. This motion states, in pertinent part, as follows:

[Wife] moves this Honorable Court to set this matter for further hearing to enter the opinion of the Court of Appeals as the Final Decree of Divorce in this cause *nunc pro tunc* and to refer this matter to a special master, preferably an accountant, for the special master to review all records necessary from both parties to enable the special master to do all accounting and set-offs necessary to effectuate the decision of the Court of Appeals.

The motion went on to give examples of "financial events" that had occurred since the trial court's original decree that allegedly necessitated the appointment of "a specialist able to make the proper financial allocation" in order to make this court's decision effective as of the date of the original decree. Wife asserted that, due to the switch in partnership interests made by this court, the parties would need to file amended tax returns for the years since the original divorce decree and that this would require an examination of loan transactions related to the Ragghianti-Owens partnership as well as other partnership records. Wife further asserted that she had not transferred title to one of the life insurance policies awarded to Husband in the original divorce decree pending the appeal, that she should be reimbursed for the premiums she had paid in the interim, and that Husband would be

¹This adjustment regarding the partnership interests prevented Husband and Wife from having to remain in business together. *Owens*, 241 S.W.3d at 491.

²On Wife's petition to rehear, this court made revisions to a table showing the division of marital assets. These changes are not pertinent in the current appeal. *Owens*, 241 S.W.3d at 498.

entitled to a setoff for policy loans Wife may have made during that time period. Husband filed a response in opposition to Wife's motion.

In response, Wife filed additional arguments and attached two letters from Wife's counsel to Husband's counsel detailing requested documentation. These letters illustrate the types of inquiries Wife sought to put before the special master. In a January 11, 2008 letter, Wife included the following list of missing items and unresolved issues:

[For 2004] It is impossible to calculate the paid mortgage interest from the records submitted. Your client's name is on the loan; my client's name is not. Therefore she has no access to the loan records that would clear up this issue.

It is impossible to know if the multiple "expenses" listed as miscellaneous are accurately listed as being deductible without ever seeing the checks.

It cannot be determined why a check to Woodmont Realty is appropriately a deduction.

It cannot be determined if the NSF charges were either justified or should have been deducted. (As you know, no partnership return of K-1(s) were filed for the Ragghianti partnership.[.])

It cannot be determined if the principal on the note for the first mortgage has appropriately dropped or if there was something else that happened.

You should also note that the bank records do not reconcile with the information provided.

....

[For 2005] It is impossible to determine if the principal on the note for the first mortgage has appropriately dropped or if something else has happened. . . .

What the loan fee from 1/24/05 is for is not clear from the records submitted.

The bank records submitted [do] not reconcile correctly.

....

[For 2006] It is, again, impossible to calculate the paid mortgage interest from the records provided.

There is no explanation for the NSF charges (as to why they were incurred) and what the January and June debits (in miscellaneous) were.

....

[For 2007] The same problems concerning the mortgage interest paid and any reductions of principal; if any, [t]hat were noted in the three preceding years.

There is at least one instance where a copy of the check was not included (see Miscellaneous).

There is no explanation for payments to James Raghianti (and not to James Owens) in miscellaneous, too.

In a January 14, 2008 letter, Wife's attorney further requested explanations concerning two "uncharacteristic" deposits made in January and March 2004, two deposits in February and March 2006, and two deposits in January 2007. Wife's attorney left open the possibility that Wife might need additional information or explanations and stated that "I believe all of this demonstrates how getting someone 'neutral' to unwind what has occurred since the original Final Decree of Divorce is appropriate."

On February 1, 2008, the trial court entered an amended final decree incorporating the amendments mandated by this court. There was a hearing on Wife's Motion to Set and Enter Opinion of the Court of Appeals on April 4, 2008. On April 16, 2008, the trial court entered an order stating that, "The revised Final Decree of Divorce having already been entered the Court is of the opinion that the balance of the Motion should be and hereby is denied." This appeal followed.

On appeal, Wife argues that the trial court erred in denying her motion, which she describes as a motion "to hold a hearing and/or refer this case to a Master to determine if a further hearing was necessary." Wife also argues that she is entitled to her reasonable attorney fees for this appeal.

ANALYSIS

To begin with, we cannot agree with Wife's characterization of her motion as a motion to hold a hearing and/or to refer the case to a special master to determine the need for further proceedings. The motion itself clearly states that Wife moves the court "to set this matter for further hearing to enter the opinion of the Court of Appeals as the Final Decree of Divorce in this cause *nunc pro tunc* and to refer this matter to a special master . . . to review all records necessary from both parties to enable the special master to do all accounting and set-offs necessary to effectuate the decision of the Court of Appeals." Thus, Wife requested a hearing in order to accomplish two actions: entry of the opinion of the Court of Appeals and referral of the case to a special master. After the entry of the amended final decree and after a hearing, the trial court denied Wife's motion to refer the case to a special master.

Tenn. R. Civ. P. 53.01 provides: "The court in which any action is pending *may* appoint a Special Master therein." (Emphasis added). We have previously held that, under this rule, "the decision to appoint a special master is within the discretion of the trial court." *94th Aero Squadron*

of Memphis, Inc. v. Memphis-Shelby County Airport Auth., 169 S.W.3d 627, 640 (Tenn. Ct. App. 2004). Thus, we review the trial court’s decision not to appoint a special master under the abuse of discretion standard. There has been an abuse of discretion “when the trial court reaches a decision against logic that causes a harm to the complaining party or when the trial court applies an incorrect legal standard.” *Riley v. Whybrew*, 185 S.W.3d 393, 399 (Tenn. Ct. App. 2005). The trial court’s decision will be upheld “so long as reasonable minds can disagree as to the propriety of the [trial court’s] decision.” *Id.* at 399 (quoting *State v. Scott*, 33 S.W.3d 746, 751 (Tenn. 2000)).

In arguing that a special master should have been appointed, Wife points to financial issues resulting from the exchange in ownership of the two partnership interests between Wife and Husband, including the income and tax consequences and the effect of financial transactions made by the Owens-Ragghianti partnership during the period between the trial court decree and the decision of this court. The parties do not agree as to whether Husband has provided Wife with sufficient records to resolve these issues. Further, Wife asserts, the parties disagree as to whether Wife is entitled to a set-off for life insurance premiums she paid during the same interim period. Thus, Wife argues, she made a “prima facie” showing of the need for further proceedings to effectuate the mandate from this court and the trial court erred in refusing to appoint a special master to at least consider the need for further court action.

Under the circumstances of this case, however, we conclude that the trial court did not abuse its discretion in denying Wife’s motion for the appointment of a special master. The motion itself and Wife’s supporting arguments at the trial court level contemplate a broad and detailed inquiry into partnership financial affairs. This inquiry would likely involve and potentially affect all of the partners, not just Husband and Wife. As pointed out by Husband, the Revised Uniform Partnership Act, Tenn. Code Ann. § 61-1-101 *et seq.*, provides remedies for Wife as a transferee of a partnership interest. *See* Tenn. Code Ann. §§ 61-1-504, 61-1-801. The trial court may well have concluded that this was the more appropriate avenue for examining the partnership finances and making a determination as to whether Wife desired to dissolve and wind up the business of the Owens-Ragghianti partnership. Given the wide range of issues involved, the trial court had reason for concern that referral to a special master would open the door to continued litigation of the divorce. Moreover, Wife could file a petition to address the life insurance policy issues.

In light of the broad nature of the proceedings sought by Wife in her motion, we believe that the trial court properly exercised its discretion in denying the motion. We therefore affirm the decision of the trial court. In addition, we deny Wife’s request for her attorney fees on appeal.

Costs of appeal are assessed against the appellant, for which execution may issue if necessary.

ANDY D. BENNETT, JUDGE

