



ORIGINAL

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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

IN RE THE MARRIAGE OF:)

CLAUDE W. HENDERSON,)

Petitioner/Appellee,)

vs.)

DEANNA I. HENDERSON,)

Respondent/Appellant.)

FEB 28 2025

JOHN D. HADDEN
CLERK

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Case No. 121,568

APPEAL FROM THE DISTRICT COURT OF
POTTAWATOMIE COUNTY, OKLAHOMA

HONORABLE TRACY McDANIEL, TRIAL JUDGE

REVERSED AND REMANDED WITH DIRECTIONS

Virginia Henson
VIRGINIA HENSON, PLLC
Norman, Oklahoma

For Petitioner/Appellee

Greg Wilson
WILSON LAW FIRM, PLLC
Shawnee, Oklahoma

For Respondent/Appellant

OPINION BY JANE P. WISEMAN, PRESIDING JUDGE:

In this divorce action, Deanna I. Henderson (Wife) appeals from the trial court decree dividing marital property. We are asked to review whether the trial

court abused its discretion in its property division. After review of the record and applicable law, we reverse and remand with directions.

FACTS AND PROCEDURAL BACKGROUND

Husband and Wife married on December 14, 1991. After 29 years of marriage, Husband filed a petition for dissolution of marriage on October 28, 2020, seeking an equitable division of marital property. Wife filed a response to the petition and a counterclaim also requesting equitable division of marital property as well as support alimony. The trial court awarded Wife temporary use and possession of the marital residence pending a trial on the merits.

Husband was excused from attending the trial because he was unable to physically appear in person as he was receiving full-time nursing home care.¹ His co-guardians appeared on his behalf. A trial was held on October 25, 2022, and the court on April 24, 2023, issued a memorandum of opinion determining:

[Husband] is awarded the following accounts in his name: Communication Federal, the Polaris Platinum III Variable Annuity, Crossfirst Bank, Thrift Savings Plan, First United Bank—both open and accounts he closed, the Chevy Suburban, Chevy Tahoe, Lincoln MKX, Travel Trailer, '09 Chevy HHR and '10 Chevy HHR, GMC truck and the Kubota tractor he sold.

[Wife] is awarded the following accounts in her name: Communication Federal Credit Union, Crossfirst

¹ On April 29, 2024, Husband's guardian filed a suggestion of death and motion to substitute party, stating her father had passed "during the pendency of this action." The trial court docket sheet shows the motion was set for hearing on May 6, 2024, but no disposition of the motion appears in the case file or on the docket sheet and appears to still be pending.

CD, Polaris Annuity; the Buick Encore, proceeds from the property she sold, cemetery plots. [Wife] is additionally awarded \$17,000 for alimony in lieu of property division—said amount may be paid out of the proceeds of the real property division set forth below.

The trial court also equally divided the retirement accounts by QDRO and ordered the marital residence at 22263 Coker Road, Tecumseh, OK “to be sold as-is with the parties to divide the proceeds after the payment of expenses.” It also stated that if Wife wants to remain in the marital home, she must notify Husband’s guardians within 30 days from the date of the memorandum (April 24, 2023) and 90 days from the date of the decree (August 7, 2023) “to get an appraisal from a licensed real estate appraiser (not a market analysis from a real estate agent/broker) and obtain financing to pay [Husband] ½ of the equity of the real property.” If Wife decides not to keep the home, she must list it for sale. This was also memorialized in the decree filed August 7, 2023.

Wife appeals the decree.

STANDARD OF REVIEW

“Proceedings for divorce or dissolution of marriage, including property division, are actions in equity.” *Fitzpatrick v. Fitzpatrick*, 2023 OK 81, ¶ 9, 533 P.3d 757. “We will not disturb a trial court’s judgment absent an abuse of discretion or unless the finding is clearly against the weight of the evidence.” *Id.* “The division of jointly acquired property and marital assets must be just and

reasonable.” *Id.* “The trial court has wide discretion in the division of marital property, and we will not grant relief on appeal unless the decision is clearly contrary to the weight of the evidence or an abuse of discretion.” *Id.*

ANALYSIS

Wife asserts three arguments on appeal: (1) the trial court failed to follow District Court Rule 27 requiring a decision within 60 days, (2) the trial court’s decree fails to equitably distribute marital property, and (3) the trial court failed to properly calculate alimony in lieu of property division.

I. District Court Rule 27

In the “Memorandum of Opinion,” the trial court stated: “After trial on the merits, review of the court file, taking the matter under advisement and being fully informed, the court finds as follow[s]” Because the trial court did not render its opinion until months after the trial, Wife argues it violated District Court Rule 27 governing “matters taken under advisement” entitling her to a new trial.

District Court Rule 27 states in relevant part as follows:

In any matter taken under advisement, a decision shall be rendered within sixty (60) days of the date on which the matter was taken under advisement or, if briefs are to be submitted, within sixty (60) days of the date of the filing of the final brief.

When a trial court takes a matter under advisement, the judge shall specify the date by which a decision shall be rendered. If briefs are to be submitted, the dates for filing such shall also be specified.

The Chief Justice may extend the deadline for a decision upon sworn application for an extension of time of the trial judge setting forth with specificity the reasons therefor.

District Court Rule 27, 12 O.S.2021, ch. 2, app. The statute provides no remedies for its violation.

Wife argues the trial court violated this Rule because the trial concluded on October 25, 2022, and it “did not file its memorandum opinion until April 24, 2023, which is approximately 181 days later” and well beyond the 60-day period outlined in Rule 27. Wife points out there is also no record of an extension given by the Chief Justice. She further suggests:

Such a delay is particularly concerning as it may diminish the efficacy of the judicial process and compromise the integrity of the decision rendered. Prolonged intervals between the hearing of testimonies and the issuance of a decision can result in faded memories and a degraded ability of the trial court to make a decision that accurately reflects the evidence and testimonies presented. This undermines the confidence in the judicial outcome and may potentially affect the fairness of the trial.

However, as urged by Husband, Wife neither objected to the trial court’s delay nor filed a motion requesting a decision from the trial court.

Husband further argues Wife failed to present how this delay harmed or prejudiced her case particularly when she continued to live in the marital home during the pendency of the action. In order to allow a new trial based on the trial

court's delayed decision, one must show the delay materially affected her substantial rights. *See Ely v. Bowman*, 1996 OK CIV APP 87, ¶ 11, 925 P.2d 567.

In *Ely*, this Court held:

Oklahoma's historical perspective, as well as the lack of any specified sanction for a violation of District Court Rule 27's time limitations, does not support [appellant's] argument that a dilatory court loses jurisdiction to render judgment.

District Court Rule 27 does impose a duty on the court to comply with the time limitations when taking a case under advisement. If the trial court violates this duty, there may be an irregularity in the proceedings. Nonetheless, all motions for new trial must meet the threshold test that the stated ground, such as irregularity in the proceedings, affects "materially the substantial rights of such party." 12 O.S.1991 § 651. The movant for a new trial must prove that the irregularity in the proceedings materially, not theoretically, affected a substantial, not minimal, right. In the case at bar, [appellant] did not produce evidence that the delay materially harmed a substantial right.

Id. ¶¶ 10-11 (footnote omitted).

Unlike the appellant in *Ely*, Wife in this case did not file a motion for new trial but yet requests one based on the trial court's violation of Rule 27. Wife has failed to show any prejudice to her rights attributable to the trial court's delayed decision. "In order for a party to receive a new trial based on this irregularity in the proceedings, it must prove it was harmed by the court's dilatory rendering of the judgment." *Id.* ¶ 7. Wife has not done so, and we see no reversible error.

II. *Division of Marital Property*

Wife next asserts the trial court's division of marital property was not equitable. Title 43 O.S.2021 § 121(B), in effect at the time of the divorce, governs the division of marital property and provides:

The court shall enter its decree confirming in each spouse the property owned by him or her before marriage and the undisposed-of property acquired after marriage by him or her in his or her own right. Either spouse may be allowed such alimony out of real and personal property of the other as the court shall think reasonable, having due regard to the value of such property at the time of the dissolution of marriage. Alimony may be allowed from real or personal property, or both, or in the form of money judgment, payable either in gross or in installments, as the court may deem just and equitable. As to such property, whether real or personal, which has been acquired by the parties jointly during their marriage, whether the title thereto be in either or both of said parties, the court shall, subject to a valid antenuptial contract in writing, make such division between the parties as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to be paid such sum as may be just and proper to effect a fair and just division thereof.

Citing *Brazil v. Brazil*, 2007 OK CIV APP 108, ¶ 9, 171 P.3d 325, the Court in *Fitzpatrick*, 2023 OK 81, ¶ 13, described a trial court's duties this way:

[G]enerally, in dividing marital property a court must (a) determine what property is subject to division, (b) determine its value, and (c) fairly, justly, and equitably divide it between parties.

However, the *Fitzpatrick* Court emphasized that especially when dividing pension benefits, “this general description is not a requirement.” *Id.*

“The words ‘just’ and ‘reasonable’ in [43 O.S. § 121] are equivalent to ‘equitable’ and not synonymous with ‘equal’.” *Childers v. Childers*, 2016 OK 95, ¶ 22, 382 P.3d 1020. “The division of a marital estate does not necessarily need to be equal in order to be just and reasonable.” *Id.*

Unfortunately, there is neither a total value assigned to each party’s assets nor values assigned to any of the items of marital property being divided in the decree. Without *any* marital property values assigned in the decree itself, we cannot determine whether the property division is equitable. *See Stevenson v. Stevenson*, 1984 OK CIV APP 10, ¶¶ 22-23, 680 P.2d 642 (reversing the trial court’s property division for failing to contain “findings of fact as to the values of all the property” so that the appellate court could determine the equitableness of the trial court’s order). The *Stevenson* Court remanded it to the trial court to “determine the value and character of the property and enter an equitable division.” *Id.* ¶ 23.

We adhere to the rule stated in *Bouma v. Bouma*, 1968 OK 35, 439 P.2d 198:

The usual rule is that in cases of equitable cognizance this Court may effect complete adjudication and disposition of the cause. The record in this case is insufficient to provide means for determining an equitable disposition of these parties’ affairs without risk of creating further inequity. For this reason that portion

of the judgment purporting to fix an equitable division of jointly acquired property must be reversed for further proceedings.

Id. ¶ 13. Without this fundamental fact-finding, we must reverse the trial court's property division and remand with directions to assign values based on the evidence presented to the items of marital assets and debts, if any, being awarded in the decree and to make an equitable division as required by 43 O.S.2021 § 121(B).

The trial court's property division in the decree is reversed and remanded to the trial court with directions to determine, as of the date of the decree, the values to be placed on the marital assets and debts, if any, awarded to each party and to make an equitable division. Although Husband attempts in his appellate brief to fill in the gaps in the decree by assigning certain values to a summary of the marital assets, the decree still fails to contain the trial court's necessary "findings of fact as to the values of all the property" so that we can decide the "equitable" question.

CONCLUSION

We reverse the trial court's decision regarding property division and remand with directions as set forth in this Opinion. Because this issue is dispositive and the property division is reversed, we are unable to address Wife's argument regarding the award of alimony in lieu of property division.

REVERSED AND REMANDED WITH DIRECTIONS.

FISCHER, J., concurs, and BLACKWELL, J., dissents.

BLACKWELL, J., dissenting:

I respectfully dissent. While I agree that it is generally the better practice for a trial court to assign values within its property division, the failure to do so is not reversible error in and of itself. Indeed, the appellant does not complain because that the court's division lacked specific values but that the court did not adopt her proposed division, or at least certain aspects of it. Based on the evidence, the trial court primarily accepted the husband's proposed property division, with some modifications. The husband provided in his answer brief a detailed accounting showing probable values for each item the court allocated, complete with pinpoint citations to the record supporting the value listed. *See Answer Brief, 7* ("Balance Sheet of Court's Ruling"). The wife, as appellant, had the opportunity to dispute the husband's accounting of the court's ruling in a reply brief but did not file one. She also had the duty, as appellant, to affirmatively show how the trial court's division was inequitable. *Fleck v. Fleck*, 2004 OK 39, ¶ 12, 99 P.3d 241 ("The appellant must affirmatively show the alleged error from the record on appeal."). In my view, the husband's *Balance Sheet of Court's Ruling* is sufficiently

supported by the record and represents an equitable division of the parties' marital property. Accordingly, I would affirm the decree.¹

February 28, 2025

¹ I find *Stevenson v. Stevenson*, 1984 OK CIV APP 10, 680 P.2d 642, inapplicable here. In that case, both parties appealed the property division “but neither party suggest[ed] what an equitable division might be.” *Id.* ¶ 21. Additionally, the trial court failed to account for all the parties’ property in its division. *Id.* ¶ 10. This case does not suffer from these infirmities.