



11/23/88 LUCY A. MAYS v. BARRY L. MAYS

552 A.2d 858 (1988) | Cited 5 times | Supreme Court of Delaware | November 23, 1988

Andrew D. Christie, Chief Justice

ORDER

This 23rd day of November, 1988, after considering the parties' briefs and the record, the Court concludes that:

- (1) This is an appeal from a Family Court decision dividing the marital assets of a divorced couple. Appellant, Lucy A. Mays (Wife), was married to appellee, Barry L. Mays (Husband), for over twenty years. They had four children, two of whom are still minors.
- (2) Wife left the marital home on November 20, 1984. Husband filed for divorce on November 27, 1984, alleging incompatibility. Wife answered the divorce petition on February 4, 1985, admitting incompatibility. However, when Husband sought to obtain the uncontested divorce in May of 1985, Wife attempted to file an amended answer denying incompatibility. When she was not permitted to amend her answer, she filed for a review de novo of the divorce proceeding. Only after receiving a notice for deposition did Wife dismiss her request for a review de novo. The parties were divorced as of July 11, 1985. Since the divorce there has also been extensive litigation over custody of the two minor children, which eventually resulted in custody being granted to the Husband.
- (3) Husband filed his joint asset report on August 13, 1985. Wife filed her joint asset report on October 15, 1986. The Wife says that her report had been delayed in part because of her precarious mental health. On June 17, 1987, a hearing was held in Family Court in regard to child support, permanent alimony, and division of marital property. The Family Court also considered the allocation of attorney's fees.
- (4) On September 24, 1987, the trial Judge issued a very comprehensive twenty-three page opinion and order. He awarded Wife sixty-five percent of the marital property and a percentage of Husband's pension. The Husband who had custody of the two minor children was permitted to remain in possession of the marital home (subject to paying Wife for her equity in the house). The value of the house was fixed as of the date of the divorce.
- (5) After balancing Husband's obligation to pay alimony against Wife's obligation to pay child support, the trial Judge awarded Wife \$225 per month in permanent alimony. He also ordered Wife to pay Husband \$3,000 as part payment of his counsel fees.



11/23/88 LUCY A. MAYS v. BARRY L. MAYS

552 A.2d 858 (1988) | Cited 5 times | Supreme Court of Delaware | November 23, 1988

(6) Wife appeals from the Family Court's order, raising four contentions. She contends that the trial Judge: (1) abused his discretion by using the date of divorce rather than at the date of property division to value the marital home; (2) erred in denying Wife's application for attorney's fees and in granting Husband's application for attorney's fees; (3) improperly considered settlement negotiations when allocating the marital property; and (4) erred in failing to recuse himself or stay proceedings sua sponte, until Wife was well enough to proceed.

(7) Husband raised a separate point in cross-appeal. He alleges that the trial Judge erred in awarding Wife a Qualified Domestic Relations Order with survivorship rights because he contends that there was no evidence presented that Husband possessed a pension. We find no merit in any of these contentions and affirm all the rulings of the trial court.

(8) Wife's first contention is that the Family Court abused its discretion by valuing the marital home at the date of divorce rather than at the date of the division of property hearing. We find this argument to be without merit. The trial Judge has broad discretion in respect to valuations. The Judge may exercise his discretion to value the marital property as of the time of the divorce, the time of the separation, or the time of the division of property hearing. *Bachtle v. Bachtle*, Del. Supr., 494 A.2d 1253, 1256 (1985) (en banc). Although the date selected for the valuation was advantageous to Husband, the overall division cannot be said to be inequitable under all the circumstances.

(9) The trial Judge has broad discretion in fixing the percent of the marital assets to award to each spouse under 13 Del.C. § 1513. *J. D. P. v. F. J. H.*, Del. Supr., 399 A.2d 207, 210 (1979) (en banc). In this case, the trial Judge may seem to have favored the Wife by awarding her sixty-five percent of the marital assets, including the marital abode. On the other hand, he valued the house as of the date of divorce. The wide scope of the discretion of the trial Judge is illustrated by the fact that he could have reached a similar end result by valuing the marital abode at the date of the division of property hearing, thus including its appreciation as a marital asset, and then awarding the Wife less than sixty-five percent of the marital assets. The trial Judge apparently considered all the various salient facts and balancing factors in the case before making his determination to value the marital home at the date of divorce and give the Wife sixty-five percent of all marital assets. In view of the fact that his discretion has such a wide scope and the end result is not inequitable, we rule that the trial Judge did not abuse his discretion.

(10) Wife also contends that the trial Judge abused his discretion in granting Husband part of his attorney fees. The trial Judge ordered Wife to pay \$3,000 (twenty-nine percent) of Husband's attorney's fees. The trial court stated that it was giving the attorney's award because Wife's litigation posture of excessively pursuing issues of little or no merit.

(11) The trial Judge has broad discretion in determining whether to award attorney's fees under 13 Del.C. § 1515. *Gray v. Gray*, Del. Supr., 503 A.2d 198, 204 (1986). The underlying purpose of the statute is to provide a financially disadvantaged spouse with the financial resources to prosecute or defend



11/23/88 LUCY A. MAYS v. BARRY L. MAYS

552 A.2d 858 (1988) | Cited 5 times | Supreme Court of Delaware | November 23, 1988

an action. Id. at 204. It is clear, however, that a party does not have to be totally without assets or income to receive an award of attorney's fees. G. S. G. v. P. S. G., Del. Supr., 412 A.2d 319, 324 (1980).

(12) In this case, the trial court found that the excessively litigious conduct of Wife had an adverse financial effect upon Husband. Under all the circumstances, we find no abuse of discretion in the award of attorney's fees.

(13) There is also no reason to believe Wife's contention that the trial Judge improperly considered "fault, settlement negotiations and other factors outside the statutes when dividing the marital property." The trial Judge had before him child support and alimony matters, as well as the division of property. Most of the facts he mentioned in his opinion were appropriate facts for him to consider or were part of the history of the case. Furthermore, the mere mention of various facts does not indicate that they played an improper role in the trial Judge's decision.

(14) In her opening brief, Wife contends that the trial Judge erred in failing to recuse himself from the property division hearing. During the hearing Wife never made a motion to have the Judge recuse himself. Nor does she now cite any cases in support of her proposition that he should have recused himself. There is nothing in the record to establish the trial Judge had any reason to recuse himself. We rule that the trial Judge did not err in hearing this case.

(15) Similarly, we find no abuse of discretion in the trial Judge's refusing to delay the proceedings any further. The litigation in this case had been protracted. The property hearing did not take place until almost two years after the parties had been divorced. At no time during the hearing did Wife or her counsel suggest that Wife was not well enough to proceed.

(16) Finally, as to Husband's counter-appeal, we rule that the trial Judge did not abuse his discretion in awarding Wife a Qualified Domestic Relations Order with a right of survivorship in that portion of Husband's pension earned during the marriage utilizing a fifty percent multiplier. There was evidence before the trial court to indicate that Husband had pension rights from his job at the DuPont Company. There is no claim that Husband did not possess pension rights, or that the rights should not have been considered had their existence been more formally established on the record. Under these circumstances, we find no abuse of discretion in the Qualified Domestic Relations Order pension award.

