

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Linda Spiers,

Appellant/Respondent,

v.

Frederick D. Ballou, Jeanne
Spiers Bernardy, and William B.
Perkins, Personal
Representatives of the Estate of
Paul H. Spiers, Jr.,

Respondents/Appellants.

Appeal From Charleston County
Frances P. Segars-Andrews, Family Court Judge

Unpublished Opinion No. 2002-UP-661
Heard October 9, 2002 – Filed October 28, 2002

AFFIRMED

Roberta L. Diamond, of Charleston; and Susan Sweat White, of
Conway, for appellant-respondent.

Conrad Falkiewicz, John Robert Ungaro, III and Gregory Samuel
Forman, all of Charleston, for respondents-appellants.

PER CURIAM: This domestic cross-appeal concerns the family court's award of equitable distribution and attorney fees and costs. Linda Spiers (the wife) appeals the family court's order that she pay \$50,000 toward attorney fees incurred by Paul H. Spiers (the husband) in connection with this action.¹ She also appeals the family court's valuation of her equity in certain property, as well as the award of fifty per cent of the increased value of certain property to the husband. Fredrick Ballou, Jeanne Spiers, and William Perkins, in their capacity as personal representatives of the husband's estate, also appeal the family court's award of attorney fees, asserting error in limiting the husband award to less than one half of the total amount of his fees and costs. The husband's representatives further appeal the award of equitable distribution, asserting the husband should have received a greater than one-half share of the marital estate. We affirm.

FACTS/PROCEDURAL HISTORY

The husband and wife were married in March 1985 after a six-week courtship. It was a second marriage for both parties. At the time of the marriage, the husband was fifty-nine years old and the wife was forty-four years old. The parties had no children together although they both had children from previous marriages. When the parties married, the husband was employed at New England Telephone Company, though only months away from retirement, and in possession of significant assets, including two homes and a considerable amount of money that he inherited from his deceased first-wife. The wife was well educated, having graduated from Connecticut College in 1962 with a degree in Classics, and was employed as an office manager. Her premarital assets included a home in Arlington, Virginia, and a trust fund valued at approximately \$100,000. She continued to work on a full-time basis for several years after the marriage. Thereafter, she obtained work sporadically at temporary positions until December 1990, when she ceased working outside the home.

¹ The husband died after this case had been tried to conclusion and after the family court had signed the divorce decree.

The parties lived in several locations during the marriage, including Belmont, Massachusetts; Cairo, Egypt; and Southampton, New York. In 1997, they purchased a home in Charleston, South Carolina, for \$436,000. In order to accomplish the purchase, the wife borrowed \$225,000 from the husband and took out a bridge loan. Upon the sale of the wife's home in Southampton, New York, which was a gift to her from her mother, the wife repaid the husband the \$225,000 loan, satisfied the bridge loan, deposited \$225,000 in her trust account, and deposited the remaining funds, approximately \$100,000, in the parties' joint checking account.

The parties separated in October 1998 when, while the husband was hospitalized for injuries he sustained in a fall, the wife commenced this action seeking, among other things, an order of separate maintenance and support. The wife also sought in her pleadings an ex parte restraining order preventing the husband from returning to the parties' marital home alleging that, as a result of drinking alcohol, he was a danger to both himself and to her. The husband was served with the resulting restraining order while he was still hospitalized and recuperating from hip replacement surgery. After his release from the hospital, the husband moved to Arizona to live with his sister, then relocated to Albuquerque, New Mexico.

The husband timely answered the wife's complaint and counterclaimed, seeking, among other relief, equitable distribution of the marital property and debts and an award of attorney fees and costs.

At a temporary hearing on January 9, 1999, the husband agreed to pay the wife \$2,000 per month in temporary alimony for four months. In May 2000, the wife unsuccessfully moved for a continuation of the husband's alimony obligation.

In October 1999, the husband filed three motions seeking orders compelling the wife to comply with discovery requests. These motions were resolved substantially in favor of the husband.

On October 26, 1999, the husband amended his answer and counterclaim to include a plea for divorce on the ground of one year's continuous separation. In an order dated December 1, 1999, the family

court granted the husband a divorce, but reserved all financial issues for later adjudication.

The family court held a hearing on the remaining issues on October 27 and 28, 1999, resulting in a final order dated February 4, 2000. The husband died December 26, 1999, after the final hearing but before the family court issued its final order. As a result, on February 22, 2000, the family court issued a supplemental consent order substituting personal representatives for the husband as defendants in the action.

In its February 4, 2000, order, the family court found, among other things, that the husband was entitled to a one-half share in the marital estate, with the exception of the marital home. In recognition of the wife's contribution of the entire purchase price of the home from nonmarital funds (\$436,000), the family court awarded her all but one half of the \$84,000 increased value of the home. The family court determined the husband was entitled to a one-half interest in the increased value of the home (\$42,000) due to the contributions he made to its maintenance during the marriage. Furthermore, the family court ordered the wife to pay \$50,000 toward the husband's attorney fees and costs, which, at the time of the order, were in excess of \$100,000.

Both parties moved to alter or amend the February 4, 2000, order. By order dated May 3, 2000, the family court denied both motions. This appeal followed.

LAW/ANALYSIS

1. On appeal, the wife asserts the family court erred in ordering her to contribute \$50,000 toward the husband's attorney fees and costs. The husband asserts the family court should have ordered a larger contribution from the wife. We affirm the award.

An award of attorney fees is within the sound discretion of the family court and will not be overturned absent a showing of an abuse of that

discretion.² In awarding attorney fees, the family court should consider the parties' abilities to pay their own fees, the beneficial results obtained by the attorney, the parties' respective financial conditions, and the effect of the fee on each party's standard of living.³ In determining the amount of attorney's fees to award, the family court should consider: (1) the nature, extent, and difficulty of the services rendered; (2) the time necessarily devoted to the case; (3) counsel's professional standing; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services.⁴

In arriving at an award of \$50,000 in attorney fees and costs for the husband, the family court expressly considered the factors relevant to making such a determination. In an extensive explanation of the award, the family court specifically found: (1) the wife's acquisition of the ex parte restraining order preventing the husband from returning to the marital home after his release from the hospital was unnecessary and mean-spirited and resulted from the wife's desire not to take care of him rather than any legitimate fear of him; (2) the wife's insistence that the husband's drinking caused the breakdown of the marriage was unnecessarily time-consuming and expensive, particularly in light of the wife's own admission that she shared in the fault; (3) the wife's position as to alimony was unreasonable and untenable in light of the facts and circumstances of the case, particularly her ability to meet her own financial needs, the husband's declining health and mounting medical liabilities, and her knowledge that she would receive over \$1,000 per month as a survivor beneficiary under the husband's pension plan; (4) the wife's position that the husband should not be granted any interest whatsoever in the marital home was unreasonable; and (5) the wife's refusal to fully cooperate in discovery and failure to comply with pretrial orders regarding discovery contributed significantly to the husband's attorney fees.

² Stevenson v. Stevenson, 295 S.C. 412, 368 S.E.2d 901 (1988).

³ E.D.M. v. T.A.M., 307 S.C. 471, 415 S.E.2d 812 (1992).

⁴ Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991).

Having reviewed the record on appeal in light of the applicable factors, we are inclined to agree with the family court that the wife's conduct warranted an award of attorney fees and costs to the husband. Moreover, the beneficial results obtained by the husband's counsel, particularly in light of the positions the wife took regarding alimony and equitable distribution, weighed in favor of the award.

We reject, however, the husband's assertion that the award should have been greater. Particularly in light of the husband's substantial nonmarital assets, we discern no error in the family court's determination as to the proper amount of the attorney fee award.

2. The wife argues the family court erred in awarding the husband a one-half interest in the increased value of the marital home, arguing his contributions to the acquisition and maintenance of the home were negligible. The husband also appeals the award of equitable distribution, arguing that, because his direct contributions to the acquisition of the marital estate was far greater than that of the wife, he should have received more than one-half interest in the marital estate. We find no error in the award of equitable distribution.

The apportionment of marital property is within the family court's discretion.⁵ South Carolina Code section 20-7-472 lists fifteen factors for the family court to consider in making an equitable apportionment of the marital estate.⁶ The statute vests in the family court, not this court, the discretion to decide what weight should be assigned to the various factors. Even if the appealed order fails to specifically address each of the factors set forth in the apportionment statute, the award will be upheld if it can be determined that the order sufficiently addressed the factors such that an appellate court could conclude the family court was cognizant of the required factors in that particular case.⁷ On review, this court looks to the overall fairness of the

⁵ Bungener v. Bungener, 291 S.C. 247, 353 S.E.2d 147 (Ct. App. 1987).

⁶ S.C. Code Ann. § 20-7-472 (Supp. 2001).

⁷ Walker v. Walker, 295 S.C. 286, 368 S.E.2d 89 (Ct. App. 1988).

apportionment, and, if the end result is equitable, the possibility that this court might have weighed specific factors differently than did the family court is irrelevant.⁸

Here, the family court engaged in an extensive, detailed application of all the applicable statutory factors governing equitable apportionment, including the direct and indirect contributions of each of the parties. Having reviewed the order and noting the particularity with which the family court addressed the individual factors, we can discern no abuse of discretion in the allocation of the marital assets.

In particular, we note the record amply supports the family court's finding that the husband made significant contributions to the maintenance of the marital home by consistently paying the day-to-day bills associated with its upkeep. The wife's argument that she alone paid for all improvements to the home resulting in its increased value amounts to a challenge to the family court's findings as to witness credibility. Given the family court's superior position to ascertain the credibility of witnesses, we defer to its assessment of the actual contributions made by each party.⁹ Moreover, even if the wife paid the costs of renovations to the home with her own funds, the husband's contribution of his separate funds to provide for the parties' day-to-day needs enabled the wife to direct her funds to those renovations.

Although we may have reached a different decision as to equitable distribution, we find no abuse of discretion in the family court adjudication of this issue. Accordingly, we affirm the equitable distribution award.

AFFIRMED.

HEARN, C.J., and GOOLSBY and HOWARD, JJ., concur.

⁸ Johnson v. Johnson, 296 S.C. 289, 372 S.E.2d 107 (Ct. App. 1988).

⁹ See Cherry v. Thomasson, 276 S.C. 524, 280 S.E.2d 541 (1981) (stating this court is not required to ignore the fact that the trial judge, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony).