

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Frances Dennis,

Appellant,

v.

Rembert Coney Dennis, Jr., Natalie B. Dennis and the  
Estate of Rembert Coney Dennis, Sr.,

Respondents.

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COURT OF APPEALS  
COLUMBIA, SOUTH CAROLINA

Appeal From Berkeley County  
Robert R. Mallard, Family Court Judge

Unpublished Opinion No. 2002-UP-392  
Heard April 10, 2002 - Filed May 30, 2002

**AFFIRMED AS MODIFIED**

Gregory S. Forman, of Charleston; and David L.  
Devane, of North Charleston, for appellant.

George B. Bishop, Jr., of Moncks Corner, for  
respondents.

**PER CURIAM:** Frances Dennis (Wife) appeals from the final order and decree of divorce ending her marriage to Rembert Dennis (Husband). She contends the family court did not award her enough alimony or attorney fees and erred in not awarding her an equitable interest in the marital home. We affirm as modified.

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## FACTS

The parties married on August 7, 1982. Wife suffered a head injury in an automobile accident in 1987. After the accident, Wife could not work and began receiving social security disability benefits. Beginning in 1989, Husband worked as a real estate agent with varying financial results from year to year. During the marriage, the parties maintained a modest lifestyle, living rent free for the last ten years in a gatehouse owned by Husband's family.

On March 22, 2000, Wife filed for separate maintenance and support. A temporary hearing was held, and the family court awarded Wife temporary alimony of \$1,000 per month. Wife later filed an amended complaint joining Husband's parents as parties and requesting a divorce.

After a final hearing, the family court issued an order awarding Wife \$700 per month in alimony and \$2,000 in attorney fees but determining that the gatehouse where the parties lived was not marital property.

## STANDARD OF REVIEW

In appeals from the family court, we may find facts according to our own view of the preponderance of the evidence. Rutherford v. Rutherford, 307 S.C. 199, 204, 414 S.E.2d 157, 160 (1992). Nevertheless, this broad scope of review does not require us to disregard the findings of the family court. Stevenson v. Stevenson, 276 S.C. 475, 477, 279 S.E.2d 616, 617 (1981). Nor do we ignore the fact that the trial court, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996).

## DISCUSSION

### I. Alimony

On appeal, Wife asserts the family court erred in awarding her only \$700 a month in alimony. We agree.

An award of alimony rests within the sound discretion of the family court and will not be disturbed on appeal absent an abuse of that discretion. Williams v. Williams, 297 S.C. 208, 210, 375 S.E.2d 349, 350 (Ct. App. 1988). "An abuse of discretion occurs when the court is controlled by some error of law

or where the order, based upon findings of fact, is without evidentiary support.” Sharps v. Sharps, 342 S.C. 71, 79, 535 S.E.2d 913, 917 (2000) (citations omitted).

“Alimony is a substitute for the support which is normally incident to the marital relationship.” Johnson v. Johnson, 296 S.C. 289, 300, 372 S.E.2d 107, 113 (Ct. App. 1988). The goal of alimony is to place the supported spouse in the same position he or she enjoyed during the marriage as nearly as is practical. Id. It is the family court’s duty to make an alimony award “that is fit equitable, and just if the claim is well-founded.” Woodward v. Woodward, 294 S.C. 210, 217, 363 S.E.2d 413, 417 (Ct. App. 1987).

In making an alimony award, the family court must consider the following factors: (1) duration of the marriage; (2) the parties’ physical and emotional health; (3) the parties’ educational background; (4) employment history and earning potential of the parties; (5) standard of living during the marriage; (6) current and reasonably anticipated earnings of the parties; (7) current and reasonably anticipated expenses of the parties; (8) equitable apportionment; (9) custody of any children; (10) marital misconduct or fault; (11) tax consequences; and (12) prior support obligations. S.C. Code Ann. § 20-3-130(C) (1976 & Supp. 2001). However, no one factor is dispositive. Lide v. Lide, 277 S.C. 155, 283 S.E.2d 832 (1981).

At the time of trial, Husband enjoyed good health and gainful employment as a real estate agent. He reported income of \$44,029 in 1998, \$89,661.26 in 1999, and \$39,870 through the first ten months of 2000. The family court concluded Husband’s monthly earning capacity totaled \$3,987, based on Husband’s current reported income, its view that Husband’s income in 1999 was an aberration, and Husband’s average income over the last six years. Wife, on the other hand, has been disabled since 1987 and receives \$603.50 a month in social security benefits as her sole source of income.

In her financial declaration, Wife indicated she spent \$500 on rent, \$45.50 on medicare co-payments, \$250 for food and household supplies, \$300 for utilities, and \$770 for medical and dental expenses. In contrast, Husband’s financial declaration reported he spent \$600 per month in food and household expenses, \$125 for utilities, and \$270 in medical and dental expenses. Additionally, Husband was leasing an automobile for \$706.48 per month<sup>1</sup> and had no housing expense. We also note that Husband’s standard of living seems

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<sup>1</sup>Husband testified to this amount which exceeds the \$466 figure given in his financial declaration.

to have improved. For example, he has taken two trips to Montana and purchased new clothes, furniture, and other personal property since 1999.

We find the family court's alimony award should be adjusted upward to \$1,500 per month. The amount of the original award is woefully insufficient given the length of the marriage, Husband's adultery, the great disparity in the parties' incomes, the lifestyle the parties maintained during the marriage, and the shortfall between the wife's gross monthly income and her monthly expenses. In the opinion of this court, \$1,500 would allow Wife to enjoy substantially the same standard of living she had while married without reducing Husband's ability to sustain his standard of living at the marital level.

## II. Identification of Marital Property

Wife asserts the family court erred in failing to identify the home where the parties lived while married as marital property. We disagree.

During the marriage, the parties resided in a gatehouse on Lewisfield Plantation Road. Title to the house and underlying property belonged to a trust created by Husband's father's will and controlled by Husband's mother. Husband has never owned the gatehouse nor does he have any vested interest in it. He and his mother testified that the parties moved to the gatehouse to help her maintain the estate. The parties never paid taxes, a mortgage, or any insurance premiums on the property. Husband's mother testified that she did not intend to transfer ownership of the property to Husband and Wife. Accordingly, the property was not a marital asset.

In certain circumstances, nonmarital property may be transmuted into marital property. This occurs when: (1) the property becomes so commingled with marital property as to be untraceable; (2) the property is jointly titled; or (3) the property is used by the parties in support of the marriage or otherwise evidencing an intent by the parties to make it marital property. Pool v. Pool, 321 S.C. 84, 88, 467 S.E.2d 753, 756 (Ct. App. 1996). "Transmutation is a matter of intent to be gleaned from the facts of each case. The spouse claiming transmutation must produce objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage." Id.

We find no evidence in the record to support the wife's argument that the gatehouse was transmuted. As such, we find the family court correctly excluded the gatehouse from the marital estate.

### III. Attorney Fees

The wife also asserts the family court erred in awarding her only some of the fees she actually incurred. We agree.

In determining whether to award attorney fees, the family court should consider the parties' ability 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. E.D.M. v. T.A.M., 307 S.C. 471, 476-77, 415 S.E.2d 812, 816 (1992). In determining the amount of attorney fees to award, the court should consider the nature, extent, and difficulty of the services rendered, the time necessarily devoted to the case, counsel's professional standing, the contingency of compensation, the beneficial results obtained, and the customary fees for similar services. Glasscock v. Glasscock, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

We have reviewed the family court's attorney fee award considering these factors. Under the facts and circumstances of this case, particularly Wife's limited financial resources and the beneficial results obtained by her attorney, we find the wife was entitled to full amount of her attorney fees. Accordingly, we increase the award to \$3,910.

For the foregoing reasons, the decision of the family court is

**AFFIRMED AS MODIFIED.**