MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ELIZABETH ANN JANET

RESPONDENT,

v.

ROBERT MICHAEL JANET

APPELLANT.

DOCKET NUMBER WD84412

DATE: November 30, 2021

Appeal From:

Jackson County Circuit Court
The Honorable Kevin D. Harrell, Judge

Appellate Judges:

Division Three: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge and Edward R. Ardini, Jr., Judge

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Attorneys:

Alan E. Freed, St. Louis, MO, for respondent.

Theodore C. Beckett III, Kansas City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ELIZABETH ANN JANET, RESPONDENT,
v.
ROBERT MICHAEL JANET, APPELLANT.

WD84412 Jackson County

Before Division Three Judges: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge, and Edward R. Ardini, Jr., Judge

Robert Janet ("Husband") appeals from the judgment of the Circuit Court of Jackson County, Missouri ("trial court"), dissolving the marriage between he and Elizabeth Janet ("Wife"). On appeal, Husband argues that the trial court erred in: (1) awarding non-modifiable maintenance of "no less than $28,476 per month" for eighty-four months, because Wife was not entitled to maintenance; (2) making the maintenance award non-modifiable, because future events pertinent to maintenance are uncertain; (3) including Husband's K1 income in the award of maintenance because inclusion of K1 income in maintenance constitutes "double dipping" as Wife was awarded a portion of the value of the stock of the company that employs Husband; (4) using December 31, 2019, as the valuation date of the parties' marital assets and debts, because those values were stale at the time of distribution; and (5) determining the value of the marital assets and debts, because the judgment contained "numerous mathematical errors and other substantial errors" that resulted in an inequitable division of marital property. Wife filed a motion to strike Husband's brief and dismiss this appeal.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

Division Three holds:

The trial court did not err in awarding wife maintenance. Wife presented evidence of her reasonable needs in the form of an income and expense statement and in the form of her own testimony. Wife also presented evidence that she had not worked in twenty-eight years, that she had numerous, progressive, health conditions that would prevent her from finding gainful employment sufficient to allow her to support herself, and that Husband had the ability to pay maintenance.

The trial court did err in making the maintenance award non-modifiable and in terminating it after eighty-four months. "Absent substantial evidence of an impending change in the spouse's financial condition, 'the trial court must award maintenance for an unlimited duration with the award being subject to modification when and if the spouse's financial condition improves.'" *Haynes v. Almuttar*, 25 S.W.3d 667, 673 (Mo. App. W.D. 2000). Here there was no evidence that

Wife's situation was likely to improve after eighty-four months. The maintenance award should have been modifiable as to amount and duration.

The trial court also erred in this case in tying Wife's maintenance award to a percentage of Husband's K1 and W2 income instead of to Wife's reasonable needs. Although this Court expresses no opinion on whether maintenance awards might be appropriately tied to a percentage of spouse's income in some circumstances, in this case the trial court's minimum monthly maintenance award of $28,476 exceeded even Wife's highest estimate of her reasonable monthly needs.

The trial court did not err in using December 31, 2019, rather than April of 2020 for the valuation date of the Janets' marital assets and debts. The trial court has broad discretion as to the valuation of marital assets, and the valuation of the marital assets and debts was within the range of conflicting evidence. Also, the trial court considered the probably temporary volatile nature of the economic circumstances in April of 2020, which was right in the beginning of the Covid-19 pandemic. The values were within the range of the conflicting evidence offered at trial.

Finally, although Husband's fifth point is multifarious, we use our discretion to review several of the alleged errors in the judgment. The trial court erred to the extent that it included a Ford F-150 in the marital property because all of the evidence was that the truck was owned by the company that employed Husband and the parties owned, and the assets of the company were used in valuing the Janets' stock of the company. Also, the trial court erred in finding that the Janets' interest in a commercial building was two-thirds, when all of the evidence was that the Janets owned a one-half interest in the building. These adjustments may or may not affect the division of property award of the judgment, considering all of the circumstances but must be considered by the trial court on remand.

For all of the above-stated reasons, the judgment of the trial court is affirmed in part and reversed in part and remanded for further proceedings. On remand, the trial court is instructed to re-calculate the values of marital property considering the F-150 truck as part of the assets of the company and the building where the company is located as fifty percent belonging to Husband and Wife and fifty percent as belonging to Wife's brother and determine what, if any, modifications are appropriate to the distribution of marital assets based on those changes. The trial court is also directed to recalculate Wife's award of maintenance in an amount not to exceed her reasonable needs as supported by the evidence and to make the amount and duration of the award modifiable.

Opinion by: Gary D. Witt, Judge November 30, 2021

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