

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA09-1110

PATRICIA A. RHODES

APPELLANT

V.

KELVIN E. RHODES

APPELLEE

Opinion Delivered September 8, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. DR-08-3543]

HONORABLE MARY SPENCER
McGOWAN, JUDGE

REVERSED AND REMANDED

JOSEPHINE LINKER HART, Judge

Patricia A. Rhodes appeals the division of property in her divorce from appellee Kelvin E. Rhodes. She argues that the trial court erred when it awarded her ex-husband certain items of personal property that she had acquired prior to their marriage. We agree that the trial court erred in failing to satisfy the statutory requirements of Arkansas Code Annotated section 9-12-315 (Repl. 2009) for the division of personal property with respect to at least some of the items in question, and we reverse and remand.

At the final hearing, the trial court ordered the parties to submit lists of personal property that needed to be divided. The trial judge issued a ruling that distributed the disputed items. Patricia disagreed with the allocation and timely filed a motion in accordance with Rule 59 of the Arkansas Rules of Civil Procedure to reconsider the ruling. In her motion, she asserted that some of her nonmarital property was awarded to Kelvin. She listed

the following items: file cabinet; fax machine; large entertainment center in living room; 27-inch TV; couch and love seat; three end tables; dinette set with four chairs; stair stepper; large AC unit; La-Z-Boy recliner; grandfather clock; and patio table with six chairs. All, with the possible exception of the patio furniture, an air conditioner, and a 27-inch television, were listed by Kelvin as Patricia's premarital possessions. Nonetheless, the trial court denied that motion and Patricia timely appealed.

We review traditional equity cases de novo, but a trial court's division of marital property will not be reversed unless it is clearly erroneous. *Wright v. Wright*, 2010 Ark. App. 250, 377 S.W.3d 369. A trial court's finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Id.* In our review, we defer to the trial court's superior position to determine the credibility of witnesses and the weight to be accorded to their testimony. *Id.*

While a trial court has broad powers to distribute property in order to achieve an equitable distribution, its decision must be guided by Arkansas Code Annotated section 9-12-315. It states in pertinent part:

(a) At the time a divorce decree is entered:

(1)(A) All marital property shall be distributed one-half ($\frac{1}{2}$) to each party unless the court finds such a division to be inequitable. In that event the court shall make some other division that the court deems equitable taking into consideration:

(i) The length of the marriage;

- (ii) Age, health, and station in life of the parties;
- (iii) Occupation of the parties;
- (iv) Amount and sources of income;
- (v) Vocational skills;
- (vi) Employability;
- (vii) Estate, liabilities, and needs of each party and opportunity of each for further acquisition of capital assets and income;
- (viii) Contribution of each party in acquisition, preservation, or appreciation of marital property, including services as a homemaker; and
- (ix) The federal income tax consequences of the court's division of property.

(B) When property is divided pursuant to the foregoing considerations the court must state its basis and reasons for not dividing the marital property equally between the parties, and the basis and reasons should be recited in the order entered in the matter.

(2) All other property shall be returned to the party who owned it prior to the marriage unless the court shall make some other division that the court deems equitable taking into consideration those factors enumerated in subdivision (a)(1) of this section, in which event the court must state in writing its basis and reasons for not returning the property to the party who owned it at the time of the marriage.

Patricia argues that the trial court erred because it failed to follow section 9-12-315(a)(2) in that it awarded several items of her premarital personal property to Kelvin. She notes that in the list that Kelvin submitted to the trial court, he acknowledged that those items belonged to her prior to the marriage. The record bears this out. As noted previously, most, if not all of the disputed personal property was acknowledged by Kelvin to be Patricia's premarital property. We are mindful that in certain circumstances it may be permissible for a trial

Cite as 2010 Ark. App. 578

court to award nonmarital property to one of the parties; however, it is settled law that the trial court must state its reason for such a division. *Whitehead v. Whitehead*, 2009 Ark. App. 593. Here, the trial court made no such findings. Accordingly, we reverse and remand to the trial court so that, in accordance with the requirement of section 9-12-315(a)(2), it may either order the return of the premarital property to Patricia or articulate the reasons why it should be distributed to Kelvin. *Id.*

Reversed and remanded.

GLOVER and HENRY, JJ., agree.