

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

IN RE

CHALLICE ALEXANDER HARSSON, JR.,
Debtor.

Case No. 96-28675-whb
Chapter 7

MEMORANDUM OPINION AND ORDER ON DIVISION OF MARITAL PROPERTY
AND ORDER EXTENDING TIME TO APPEAL

APPEARANCES:

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The Court has entered prior opinions and orders in the dispute between the former spouses, Challice Alexander Harsson, Jr. and Elizabeth Upchurch, who were divorced while this bankruptcy case has been administered by the Chapter 7 trustee. In the March 26 and June 18, 1998 orders, a further evidentiary hearing was required, in order to produce further proof concerning an appropriate division of marital property between these parties. Subsequently, the parties agreed to submit written proof as to an appropriate division of marital property pursuant to Tennessee Code Annotated § 36-4-121, and counsel for the parties have made closing arguments to the Court concerning their views of the proof.

Other events have occurred since the entry of the March 26 and June 18 orders:

- A stipulation has been entered into between the Chapter 7 trustee, the debtor and Elizabeth Upchurch concerning the effect of capital gains taxes on this Chapter 7 estate, resulting from the sale of real estate owned by the debtor and Ms. Upchurch.
- An adversary proceeding between the debtor and Tennessee Farmers Mutual Insurance Company has been settled, contributing to an understanding of the amount of money remaining in this estate.
- The unsecured creditors, other than Ms. Upchurch, have now been paid in full, including interest on their claims.
- The administrative expenses of this estate have been approved and paid.
- The trustee has filed a report on October 26, 1998, of the amount of money on hand and the amount of an expected tax refund, leaving \$86,992.79 available for distribution between the debtor and Ms. Upchurch. In addition, the report indicates that the estate's income tax liability would be further reduced by 20% of any amount ordered paid to Ms. Upchurch, who then would be responsible for paying the taxes on any resulting gain to her.

Except for the resolution of the dispute between these former spouses, therefore, this estate has been administered fully. This Opinion and Order contains the Court's findings and conclusions concerning the division of money between the spouses, after the Court's consideration of the proof offered by the parties. Although there could be debate as to whether this is a core proceeding, the parties have consented to this Court deciding the issues, rather than returning to the Chancery Court of Tipton County, Tennessee, but subject to appeal to the United States District Court. The parties

had filed a joint motion to extend their time to appeal from the March 26 Order, and the Court will grant that motion, so that the parties may appeal the March 26 Order in conjunction with this Order, if they determine that an appeal is necessary.

In the March 26 Order, the Court observed that the spouses, and the trustee of this estate, entered into a consensual Marital Dissolution Agreement (MDA) in the Tipton County Court, containing an agreement that the wife would receive 55% of the net marital property and that the husband and his bankruptcy estate would receive 45% of that property. The marital property has now been liquidated, or abandoned, by the trustee. Ms. Upchurch's counsel argued that this Court should now "implement" the MDA by ensuring that their client receive her 55%, while the debtor's counsel argued that a true 55-45% split would yield Mr. Harsson a larger share of the cash remaining. Both former spouses ask this Court to consider the factors found in Tennessee Code Annotated § 36-4-121 in making an appropriate division of marital property, and the Court has done so; however, such a consideration does not restrict the Court to the MDA's percentages. The Court has divided the remaining money based, in part, upon what the parties have actually received to date, rather than upon the MDA's anticipated distributions. The Court has relied upon all of the pleadings, including the trustee's October 26 Report, with its attached cash receipts and disbursements record.

Each of the former spouses has some of that statute's factors in their favor, and this Court has weighed each of the factors in its decision. The parties, ages 49 and 50, each have had medical problems, but the proof establishes that Mr. Harsson has disabling diseases that render him incapable of substantial employment for the foreseeable future. He has disability income and lives with his elderly mother. Ms. Upchurch has long-term employment that is not expected to terminate. Both parties are college-educated. The parties were married for 17 years, during which time both parties contributed to their farming and ginning businesses. They came into their marriage with some farm-related assets, some cash, and little debt. Each of the parties has benefitted or will benefit from inheritances from other family members; however, the Court finds that these inheritances only demonstrate that each of the parties have potential sources of income for their future support, but which is not necessary now for current support. There is no question but that Ms. Upchurch presently is more healthy, both physically and economically, than is Mr. Harsson.

An examination of what the parties have actually received and benefitted from, as a result of prior divisions of marital property and administration of this bankruptcy estate, is as follows:

Benefit Received by Mr. Harsson		Benefit Received by Ms. Upchurch	
Kemper IRA	\$5,000	Kemper IRA	\$5,000
Arkansas Cabin	\$4,000	401K Retirement	\$42,000
Homestead Exemption	\$5,000	Real Property (free of mortgage)	\$91,250
Bank Account	\$20	Attorney's Fees	\$6,900
Distribution to Creditors	\$131,441.60	Insurance Premium Reimburse	\$5,500
Administrative Expenses	\$43,046.03	Bank Accounts	\$900
		Credit Union Account	\$4,000
		Two Vehicles	\$4,000
Sub-total	\$188,507.63	Subtotal	\$159,550.00
Plus ½ of joint benefit	<u>85,838.35</u>	Plus ½ of joint benefit	
TOTAL	\$274,346.98	<u>85,838.35</u>	
		TOTAL	\$245,388.35

The parties equally benefitted from the trustee's sale of real estate that satisfied the jointly obligated mortgage to Munford Union Bank, in the amount of \$133,653.39. The real property and its sale required administrative expenses for insurance, survey, and appraisal, totalling \$8,940.75, that jointly benefitted these parties. Moreover, the parties jointly benefitted from the trustee's payment of capital gains taxes on the real property sales, and those net taxes have been \$29,082.57.¹ The

¹ The trustee made an estimated tax payment of \$54,000, as a result of the estate's income, which has been predominately the realty sales. He has received a refund of \$19,602.43 and expects another \$5,315.00 refund, resulting in a net tax that has benefitted each party in the amount of \$29,082.57. The additional tax refund expected as a result of the cash distribution to

result is a total joint real property sales' benefit of \$171,676.71, or \$85,838.35 each, as reflected in the above chart.

In the MDA and its Exhibit, it was anticipated that Mr. Harsson would receive cash value from his life insurance and an Arkansas time share property, but both lapsed with no return to him. That exhibit also shows Mr. Harsson receiving "Trustee Money" of \$25,000.00, but it was actually \$13,800.00, according to the trustee's report, and it did not stay in Mr. Harsson's hands; rather, it went to the Chapter 7 trustee for distribution to creditors. Since there are excess funds after payment of creditors, this \$13,800.00 is part of the money still in the hands of the trustee.

An analysis of all of the relevant documents shows that the actual marital estate consists of the following:

Trustee's Receipts, exclusive of interest earned or tax refunds	\$448,262.05
Property to Mr. Harsson that did not pass through the trustee	9,020.00
Property to Ms. Upchurch that did not pass through the trustee	<u>147,150.00</u>
TOTAL ESTATE	\$604,432.05

Mr. Harsson's pleadings and argument overlook the fact that his distribution of marital property includes the amounts disbursed by the Chapter 7 trustee to his unsecured creditors and for administrative expenses of this estate. According to the trustee's reports, unsecured creditors, including Tennessee Farmers Mutual Insurance Company, received \$131,441.60, and the administrative expenses paid on Mr. Harsson's behalf have been \$43,046.03. The total direct benefit from this estate, to date and exclusive of jointly obligated mortgage, administrative and tax debts, to Mr. Harsson, therefore, has been \$188,507.63. To date, therefore, exclusive of mortgage debts, Mr. Harsson individually has received approximately 31% of the marital estate. If the joint benefits, as described above, are equally divided, Mr. Harsson has received, directly and in benefits, 45% of the marital estate.

Ms. Upchurch, as previously stated, has benefitted from this bankruptcy estate's liquidation of the real property, in that her mortgage obligations, and substantial capital gains taxes,

Ms. Upchurch is not included in these figures but is taken into account in the Court's division of the cash on hand.

have been satisfied, and she received acreage worth \$91,250 debt-free. The direct distribution, so far, to Ms. Upchurch has been \$159,550.00, approximately 26% of the marital estate. If the joint benefits, as described above, are equally divided, Ms. Upchurch has received directly and in benefits 41% of the marital estate.

The Court finds that an appropriate division of the \$86,992.79, representing 14% of the marital estate and remaining in the trustee's hands, would be:

To Ms. Upchurch: \$68,000.00, which added to the amounts and benefits received by her would total \$313,388.35 (an amount well above her expectations as shown in the Exhibit to the MDA), and this would constitute approximately 52% of the total marital estate.

To Mr. Harsson: \$18,992.79, plus the additional refund of capital gains taxes paid by the estate on the \$68,000.00 to be paid to Ms. Upchurch. Added to the \$274,346.98 benefit already received by Mr. Harsson, this would approximate 48% of the total estate. If the tax refund is \$13,600.00, the total distribution from funds on hand to Mr. Harsson would be \$32,592.79, and this would, of course, slightly increase his percentage while reducing Ms. Upchurch's percentage distribution.

The Court also recognizes that this allocation of the funds on hand and refund expected will alter the ultimate percentages from the MDA's 55-45% statement; however, after weighing the factors of Tennessee Code Annotated § 36-4-121, the Court finds that a small variation is required.

IT IS THEREFORE ORDERED that

1. The funds remaining in the trustee's hands shall be divided between these parties by payment to Elizabeth Upchurch \$68,000.00 and to Challice Alexander Harsson, Jr. \$18,992.79 (or the actual amount that shall be remaining after the distribution to Ms. Upchurch). In addition, the parties shall cooperate with the Chapter 7 trustee in seeking a tax refund as a result of the \$68,000.00 paid to Elizabeth Upchurch. Should the trustee, his counsel or his accountant incur more administrative expense in obtaining tax refunds or otherwise completing administration of this estate, such fees shall be subject to court approval but shall be paid from the tax refund, with the

balance of such tax refund paid to Mr. Harsson. Any additional miscellaneous funds up to \$1,000.00, which may be paid to the trustee, shall be paid to Challice Alexander Harsson, Jr.

2. The parties' joint motion to extend their time to appeal the March 26 Order is **GRANTED**, and that Order may be appealed in conjunction with this Order.

3. The Chapter 7 trustee shall be authorized to make these payments and to promptly complete administration of this estate so that the case may be closed.

SO ORDERED this October 30, 1998.

WILLIAM HOUSTON BROWN
UNITED STATES BANKRUPTCY JUDGE