IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2020-CA-00168-COA

JERRY G. HATTON **APPELLANT**

v.

LINDA B. HATTON **APPELLEE**

DATE OF JUDGMENT:	01/14/2020
TRIAL JUDGE:	HON. SHEILA HAVARD SMALLWOOD
COURT FROM WHICH APPEALED:	MARION COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	ALLEN FLOWERS
ATTORNEY FOR APPELLEE:	LINDA B. HATTON (PRO SE)
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
DISPOSITION:	AFFIRMED - 06/29/2021
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE BARNES, C.J., WESTBROOKS AND EMFINGER, JJ.

EMFINGER, J., FOR THE COURT:

FACTS

¶1. Jerry and Linda Hatton were married on or about August 2, 2007. At that time, Jerry was 69 years old, and Linda was 64 years old. Prior to the marriage, on July 12, 2007, Jerry and Linda executed an antenuptial contract (the "contract"), which provided that the parties' separate properties owned at the outset of the marriage would remain separate in the event of divorce. Most significantly, the contract provided that "any property subsequently acquired or titled between the parties hereto as joint tenants with the full rights of survivorship, shall pass to the surviving tenant" and that such property "shall remain titled as such, and neither party shall attempt at any time to sever such joint tenancy, unless

mutually agreed upon by the parties." Both Jerry and Linda appear to agree that the date of separation was on or about October 25, 2014. At the time of separation, the only notable marital asset was the marital home located at 113 Pine Ridge Road, Columbia, Mississippi, purchased subsequent to the marriage and titled to Jerry and Linda "as an estate by the entirety, with the full right of survivorship as between them, and not as tenants in common."

PROCEDURAL HISTORY

¶2. Jerry filed his complaint for divorce on September 6, 2016, for cause and, in the alternative, for irreconcilable differences, asking for sole ownership of the marital home along with other real property he owned prior to the marriage. Linda filed her answer and counter-complaint for divorce on December 7, 2016, likewise alleging cause and, in the alternative, irreconcilable differences. Linda amended her counter-complaint for divorce on September 14, 2018, seeking alimony, equitable distribution of the marital property, $150,000,[1] and most significantly, partition of the marital home. Jerry filed his answer to Linda's amended complaint on October 22, 2018, in the form of a general denial.

¶3. Eventually, due to advanced age and multiple health issues of both Jerry and Linda, on August 22, 2019, they filed a joint motion for the court to grant a divorce on the ground of irreconcilable differences, and for the court to decide certain issues via "trial on affidavits" (the "joint motion").[2] Exhibit A to the joint motion was a consent to divorce on the ground of irreconcilable differences reserving issues for the court's decision (the "consent"). Jerry

[1] This figure was allegedly her contribution to the purchase of the marital home.

[2] Numerous pleadings were filed by both parties in the interim, all of which were rendered moot by the joint motion.

and Linda voluntarily consented to a divorce on the ground of irreconcilable differences, and both agreed "to withdraw their alleged grounds for divorce found in the COMPLAINT FOR DIVORCE and COUNTER COMPLAINT FOR DIVORCE and in any other pleadings." The consent further provided that Jerry and Linda stipulated that the contract they executed on July 12, 2007, was "fully binding on the parties and neither interposes any contest thereto." The consent went on to designate certain issues for resolution by the chancery court via affidavit as follows:

A. Identity and division of all marital assets;
B. Identity and division of all marital debts;
C. Identity of any assets dissipated, expended, withdrawn, misused, confiscated or otherwise disposed of by either party, and equitable distribution or offset for any such assets;
D. Allocation of GAL fees between the parties; and
E. Attorney fees and costs, if any.

¶4. On August 22, 2019, the chancellor entered an order granting the joint motion. On October 22, 2019, the chancellor entered a scheduling order, agreed upon by counsel for both Jerry and Linda, setting forth the procedure for the trial by affidavit. The chancellor, in the scheduling order, explained that "the primary reason for this procedure is that Counsel represented to the Court that each party suffers health impairments that would likely be unduly disruptive to an orderly trial, that may prevent conclusion of a trial, and/or that may present an unacceptable risk to the health of a party if they are compelled to participate in trial."

¶5. Both Jerry and Linda filed their initial affidavits on November 5, 2019, in keeping with the scheduling order. They also both filed rebuttal affidavits on November 19, 2019.

The affidavits largely consist of general "he said, she said" statements. An affidavit from Linda's bank confirmed she contributed $150,000 to the marital home. Generally, Linda's affidavits argue for partition of the marital home so that she might realize her investment therein. Jerry vehemently opposed any partition based on the contract and further asked the court to consider what he alleged as a dissipation of his assets by Linda. On January 14, 2020, the chancellor entered her opinion and final judgment granting their joint motion for divorce on the statutory ground of irreconcilable differences. The chancellor went on to address those matters upon which Jerry and Linda could not agree; namely, the identification of separate and marital assets. Based on the disclosure statements filed by Jerry and Linda, the chancellor found only three assets to be marital: the marital home at Pine Ridge Road, certain insurance proceeds for roof damage to the home, and outdoor furniture of unknown value. Finding the contract enforceable, the chancellor declined to grant either party exclusive use of the marital home and awarded them their separate property as alleged in their disclosure statements. Further, since the marital home remained jointly titled, the chancellor found it "unnecessary to address or consider the equitable distribution factors set out in *Ferguson v. Ferguson* [, 639 So. 2d 921 (Miss. 1994)]." The court failed to consider Jerry's allegations of dissipation of assets. Aggrieved by this result, Jerry appealed, claiming that the "[j]udgment contains a crucial abuse of discretion in refusing to even consider the *Ferguson* factors that remain applicable regardless of disposition of the [marital home]" and that the chancellor failed to adjudicate all property rights raised in the pleadings. Linda failed to file a responsive brief. Finding no error in the chancellor's decision, we affirm.

STANDARD OF REVIEW

¶6. "When reviewing a decision of a chancellor, this Court applies a limited abuse of discretion standard of review." *Mabus v. Mabus*, 890 So. 2d 806, 810 (¶14) (Miss. 2003). An antenuptial agreement is a contract, and "contract interpretation is a question of law and is reviewed de novo." *Sanderson v. Sanderson*, 170 So. 3d 430, 434 (¶13) (Miss. 2014). However, whether a chancellor commits error in her decision to enforce an antenuptial agreement is reviewed under an abuse-of-discretion or manifest-error standard. *Mabus*, 890 So. 2d at 819 (¶53).

ANALYSIS

1. Failure of Appellee to File a Brief

¶7. Jerry filed his appellant's brief on October 27, 2020. Linda, the appellee, did not file a brief in response. In a circumstance such as this, the reasoning in *Jay Foster PLLC v. McNair*, 175 So. 3d 565, 571 (¶15) (Miss. Ct. App. 2015), controls:

> [T]his Court has two options. First, we may take the appellee's failure to file a brief as a confession of error and reverse. This option is favored when the record is complicated or of large volume and the case has been thoroughly briefed by the appellant with apt and applicable citation of authority so that the brief makes out an apparent case of error. However, if the record can be conveniently examined and such examination reveals a sound and unmistakable basis or ground upon which the judgment may be safely affirmed, we may disregard the appellee's error and affirm.

Having reviewed the record in this matter, we find that the appellee's failure to file a responsive brief should not be dispositive of this appeal. Instead, we find that the chancellor's decision can be safely affirmed based upon this record.

2. The Antenuptial Contract and the Marital Estate

¶8. Both Jerry and Linda concede that the contract is valid and enforceable. Linda claimed in her trial affidavit that the August 22, 2019 order granting their joint motion allowed for the division of the marital home. The chancellor disagreed. "[I]t is well settled that prenuptial agreements are enforceable like any other contract." *Sanderson v. Sanderson*, 170 So. 3d 430, 435 (¶14) (Miss. 2014). Here, there is no allegation that the contract was not voluntarily entered into or was otherwise unconscionable. The chancellor noted that both parties stipulated that the contract was binding and specifically pointed to paragraph E of the contract:

> *However, it is the intent of the parties that any property subsequently acquired or titled between the parties hereto as joint tenants with full rights of survivorship shall pass to the surviving joint tenant. It is further agreed by and between the parties that any property subsequently acquired or titled between the parties as joint tenants with full rights of survivorship shall remain titled as such, and neither party shall attempt at any time to sever such joint tenancy, unless mutually agreed upon between the parties*.

(Emphasis added).

¶9. The chancellor correctly concluded that absent any challenge to the validity of the contract, the court was bound to enforce the contract. Based upon the stipulation by the parties that the contract was valid and binding and based upon the financial information provided by the parties at trial, the chancellor gave effect to the contract and identified the separate estates of the parties. Further, based upon the contract and the financial information, the chancellor identified the marital estate to be the marital home, insurance proceeds for roof damage to the marital home, and certain outdoor furniture. Thus, the chancellor complied with *Boutwell v. Boutwell*, 829 So. 2d 1216, 1220 (¶19) (Miss. 2002) ("Prior to

dividing the assets of the divorcing party, the chancellor must first classify the parties' assets as marital or non-marital."). Further, based upon the contract, the chancellor found that the marital home must remain jointly titled and that the insurance proceeds must be applied to make the needed roof repair. Having found that the marital property disposition was controlled by the contract, the chancellor ruled that it was "unnecessary to address or consider the equitable distribution factors set out in *Ferguson v. Ferguson*." Because there was no other marital property or debt identified that would be subject to equitable distribution, we find that the chancellor did not err in this regard.[3]

3. Failure to Address Jerry's Allegations of Dissipation of Assets

¶10. Jerry's chief argument on appeal is that the chancellor erred in failing to consider his allegations that Linda had dissipated his assets during the marriage. More specifically, Jerry alleged that he liquidated most of his separate real properties during the marriage as a result of "constant pressure" from Linda. He claims to have itemized and calculated her dissipation of his assets "to a total of at least $124,654."[4] However, none of the property Jerry alleges to have been "dissipated" was marital property.[5] His "itemization" is merely a list of amounts he alleges were funds generated from his separate estate that were used to pay

[3] Jerry sought equitable division of a 2004 Envoy he alleged that Linda took at the time of separation. However, that vehicle is not listed on either parties' schedule of assets and according to Linda's rebuttal affidavit, the vehicle is titled to her daughter, Tammy Broom. Nothing in the record provided by Jerry refutes this evidence.

[4] The check Jerry includes as Exhibit 10 is not for $45,000 but for $4,587.84, which makes this totally unreliable.

[5] To the extent Jerry contends that proceeds from his separate estate were wrongfully converted and not given by him voluntarily, that would be a claim for a separate action.

Linda's debts. There is no evidence that any such funds were placed into a joint account or otherwise became marital property. Only marital property is subject to equitable distribution. *Messer v. Messer*, 850 So. 2d 161, 167 (¶24) (Miss. Ct. App. 2003). Having found that the marital home was the only significant marital asset and that it was subject to the contract and therefore indivisible, we cannot find the chancellor's findings to be manifestly wrong or clearly erroneous.

¶11. **AFFIRMED.**

BARNES, C.J., WILSON, P.J., GREENLEE, WESTBROOKS, McDONALD, LAWRENCE, McCARTY AND SMITH, JJ., CONCUR. CARLTON, P.J., NOT PARTICIPATING.