

COURT OF APPEALS OF VIRGINIA

Present: Judges Baker, Bray and Overton  
Argued at Norfolk, Virginia

CHARLES HENRY CRENNEL

v. Record No. 2629-94-1

MILDRED L. HENDERSON CRENNEL

MEMORANDUM OPINION\* BY  
JUDGE RICHARD S. BRAY  
SEPTEMBER 19, 1995

FROM THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH  
L. Cleaves Manning, Judge

B. Thomas Reed for appellant.

(Donald G. Wise, on brief), for appellee. Appellee  
submitting on brief.

Charles Henry Crennel (husband) and Mildred L. Henderson Crennel (wife) were divorced by decree of the trial court entered on November 14, 1994. Husband complains on appeal that the court erroneously classified as marital property certain "retirement incentive pay" received by him and awarded wife a related "lump sum payment." However, because of deficiencies in the record, we are unable to properly consider this issue and affirm the decree.

Following an ore tenus hearing before a commissioner in chancery, the commissioner reported to the trial court that the disputed "separation pay" was "in lieu of wages," an "inducement" for husband to "take early retirement," and, therefore, husband's separate property. Wife's exception to this finding was argued by counsel before the trial court and, "[u]pon consideration of the . . . report and recommendations, the evidence and argument . . .," the trial judge concluded that the payment constituted "marital

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\*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

property . . . to be divided between the parties." No transcript or written statement of these proceedings is before this Court.

See Rule 5A:8.

It is well established that an equitable distribution award will not be reversed on appeal

[u]nless it appears from the record that the chancellor has abused his discretion, that he has not considered or has misapplied one of the statutory mandates, or that the evidence fails to support the findings of fact underlying his resolution of the conflict in the equities . . . .

Robinette v. Robinette, 10 Va. App. 480, 486, 393 S.E.2d 629, 633 (1990) (citations omitted). The ruling of the trial court is "presumed to be correct and the burden is on the appellant to present to us a sufficient record from which we can determine whether the . . . court . . . erred . . . . [Otherwise,] the judgment will be affirmed." Justis v. Young, 202 Va. 631, 632, 119 S.E.2d 255, 256-57 (1961) (citations omitted); Smith v. Commonwealth, 16 Va. App. 630, 635, 432 S.E.2d 2, 6 (1993).

Here, the record reflects that the trial court sustained wife's exceptions to the commissioner's report and attendant recommendations following an ore tenus hearing. This ruling is presumably correct and, with no record of the related hearing, we are unable to properly review the decree for error.<sup>1</sup>

Accordingly, the judgment of the trial court is affirmed.

Affirmed.

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<sup>1</sup>Husband's appellate counsel first appeared of record following entry of the decree in contention.