ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION I

CA06-1090

October 3, 2007

JOHN HENRY MONTROY APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, TWELFTH DIVISION [EDR-05-181]
V.	HONORABLE ALICE S. GRAY, JUDGE
TANNA CHARLENE MONTROY APPELLEE	AFFIRMED

This case involves the post-divorce-decree division of a monetary settlement that appellant, John Montroy, received in a federal law suit. Appellant appeals from the June 23, 2006 order that denied his motion for reconsideration. As his sole point of appeal,[1] appellant contends that the trial court erred in "awarding the appellee, Tanna Montroy, all of the proceeds derived from the appellant's personal-injury lawsuit." We affirm.

On June 22, 2005, the parties' divorce decree was entered. It contains two pertinent provisions: 1) "Any award to plaintiff in his federal law suit against Quality

[1]Appellant mentions as a second point on page 1 of his argument that the trial court erred in allowing appellee to garnish a bank account that was funded by his social-security benefits. However, he never pursues this argument. Therefore, we do not address it.

Foods, Inc., and Performance Food Group ... is marital property except for any portion of the award that is for permanent disability or for future medical expenses," 2) "Defendant is awarded one-half of any award to plaintiff in his federal law suit against Quality Foods, Inc. and Performance Food Group ... except for any portion of the award that is for permanent disability or for future medical expenses." The appeal from this decree was dismissed for failure to timely lodge the record.

On November 10, 2005, the parties in the federal law suit executed a settlement agreement in the amount of $20,000. The second paragraph of the settlement agreement describes the "federal law suit" as one "generally alleging age discrimination, disability discrimination, violation of ERISA and various state law claims related to Plaintiff's employment with Defendant." In the settlement agreement, the parties stipulated that "[t]he proceeds payable to Plaintiff are stipulated to be for alleged disability discrimination and a claim for future medical payments for the alleged violation of ERISA" and that "settlement proceeds are to be apportioned to non-wage compensatory damages on account of his disability, future medical payments and attorney's fees."

On January 23, 2006, appellant filed a motion for a protective order. Paragraph four of the motion requests: "This court should enter an order directing Plaintiff to provide a copy of the Agreement to the court for examination by the court in camera. After reviewing the Agreement, the court should determine whether any portion of the settlement is marital property and make an appropriate order." Paragraph five of the motion requests: "The court should also determine whether the Agreement or any portion

thereof should be provided to Defendant, or her attorney and if so, under what conditions." On March 7, 2006, appellee filed a petition for allocation of funds.

On April 10, 2006, a hearing was held to address appellant's motion and appellee's petition. Appellant's counsel was present at the hearing, but appellant was not. By order entered April 21, 2006, the trial court denied appellant's motion for a protective order and determined that appellee was entitled to one-half of the $20,000 settlement amount from the federal law suit.

On May 2, 2006, appellant filed a motion for reconsideration. Paragraphs six and seven, in particular, contend that the trial court's ruling was incorrect because appellant's attorneys in the federal law suit collectively received $10,000, making appellant's portion of the settlement amount $10,000, not $20,000. A telephonic conference on the motion for reconsideration was held on May 23, 2006, and by order entered on June 23, 2006, the trial court denied the motion. In short, the trial court found that appellant was not entitled to a new trial under Rules 59 and 60 of the Arkansas Rules of Civil Procedure; that the settlement agreement was not clear regarding the recipients of the settlement money; and that appellant should have been at the hearing to testify. This appeal then followed.

In arguing that the trial court erred in awarding appellee "all" of the proceeds derived from appellant's "personal-injury" lawsuit, appellant first asserts that the April 10, 2006 hearing "didn't address the issues that [appellant] thought would be addressed." He then quotes at length from the transcript of the hearing. Moreover, on page six of his argument, appellant contends:

> that the trial court erred two different ways in regards to the division of the personal injury settlement. First, that she incorrectly found that John had settled his claim for $20,000, not $10,000 as the Settlement Agreement reflects. If there was some confusion about how much money John received the trial court abused her discretion by going beyond the issues that were to be presented at the hearing on John's motion for a protective order. The trial judge also abused her discretion when she ruled that John had not presented evidence regarding what percentage of his settlement was for future medical and permanent disability.

However, the problem with his "argument" is that paragraphs four and five of his motion for protective order specifically requested the court to determine whether any portion of the settlement agreement is marital property and whether any portion thereof should be provided to appellee or her attorney, and if so, under what conditions. The trial court may not have decided those issues in the order and manner appellant would have preferred, but appellant did make the requests. In addition, appellee's petition for allocation of funds was also before the trial court at the April 10 hearing. With both motions pending, appellant chose not to attend the April 10 hearing; neither did his counsel seek a continuance. In short, appellant sought relief in his motion, making specific requests for findings from the court, and then did not show up at the hearing to put on any evidence other than the settlement agreement itself offered by his counsel, which he was not there to explain.

Appellant also now contends that the trial court ignored "the testimony given back at the time the divorce was first heard" when appellant "testified what his medical problems were." Yet, there was no effort to incorporate that testimony into the April 2006 hearing.

Appellant next asserts that the trial court did not state "its basis and reasons for not dividing marital property equally between the parties." The settlement was for $20,000, with three checks disbursing that total amount, two to attorneys and one to attorneys and appellant. As earlier stated, appellant was not present at the hearing to explain anything. Under this scenario, the court was not provided with any evidence other than the settlement agreement itself and argument of counsel to prove what, if any, portion of the $20,000 was attributable to personal injury and to explain the allocation of attorneys' fees. The fact that the parties in the federal law suit made a stipulation in their settlement agreement is not dispositive of the issue in the instant case. One-half of $20,000 is $10,000, which is the amount the court awarded to appellee.

Appellant addresses Rule 59 and 60 for the first time near the end of his argument. The three subsections of Rule 59 that were mentioned in his motion to reconsider were (a)(5) (error in the assessment of the amount of recovery, whether too large or too small); (a)(6) (the verdict or decision is clearly contrary to the preponderance of the evidence or is contrary to the law); and (a)(8) (error of law occurring at the trial and objected to by the party making the application). For all of the reasons previously discussed, we find no error in the trial court's decision.

Affirmed.

VAUGHT and HEFFLEY, JJ., agree.