

RENDERED: January 16, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-1470-MR

JAMES PRESTON

APPELLANT

V. APPEAL FROM LINCOLN CIRCUIT COURT
HONORABLE WILLIAM T. CAIN, JUDGE
ACTION NO. 88-CI-0164

SHIRLEY PRESTON and
J. THOMAS HENSLEY
(MASTER COMMISSIONER-BOYLE
CIRCUIT COURT)

APPELLEES

OPINION
AFFIRMING

* * * * *

BEFORE: ABRAMSON, GARDNER and MILLER, Judges.

GARDNER, JUDGE: James Preston (James) appeals from an order of the Lincoln Circuit Court disposing of a parcel of marital property. We affirm.

James and Shirley Preston (Shirley) were divorced by order of the Lincoln Circuit Court on September 16, 1988. All issues relating to property disposition were reserved for later adjudication. In August 1994, Shirley filed a motion to complete the property division.

An evidentiary hearing on the motion was held on September 14, 1994, and briefs were tendered. The sole issue now

on appeal relates to the division of a parcel of real property located in Boyle County, Kentucky. The property was purchased during the marriage, and the parties have stipulated that it is marital property. After dissolution, only James made mortgage payments on the parcel. James argued that Shirley was entitled to one-half of the value of the parcel as of the date of dissolution minus any credit for mortgage payments made by James since the date of dissolution. Shirley argued that she was entitled to one-half of the proceeds from the parcel, irrespective of James's mortgage contributions after the date of dissolution. On December 1, 1994, the court ordered that the parcel be sold, with James receiving credit for all mortgage payments made after dissolution, and the remainder to be divided equally between the parties.

The parcel was sold on April 16, 1995 for \$64,000. On August 15, 1996, James filed a motion requesting the court to determine the amounts to be distributed to each party. James was directed to obtain an affidavit from the mortgage holder reflecting the amount paid by James between the dissolution and time of sale. The mortgage holder indicated that more than \$25,000 had been paid by James during this period.

On October 3, 1995, the court ordered that the proceeds of the sale be divided equally between the parties. James objected, in that the order failed to account for the mortgage payments he made after dissolution. A corrected order was entered on November 3, 1995, which ordered that the proceeds be divided

equally after James was credited for the mortgage payments made after dissolution.

Shortly thereafter, Shirley tendered an order to the court which credited James with payments made to the mortgage principal after dissolution but failed to credit him with payments made to the mortgage interest. Over James's objection, the order was adopted by the court and entered on January 22, 1996. This appeal followed.

James now argues that the January 22, 1996 order is erroneous because it credits him with mortgage principal payments but fails to credit him with payments made to interest. He points out that two prior orders of the court, neither which were challenged by Shirley, ordered "[c]redit for all payments made . . ." not merely payments made to principal. Since the final order is not consistent with the prior orders, James maintains that the original ruling should be reinstated.

We have closely examined James's claim of error, and find no basis for tampering with the order from which he appeals. The corpus of James's claim is that the January 22, 1996 order is inconsistent with the court's prior orders. Our examination of the orders does not reveal a patent inconsistency. The prior orders refer to a credit for "all payments" made by James during the period in question. While the words "all payments" may refer to payments including principal and interest, the phrase could also be interpreted to mean only payments to principal. Irrespective of this ambiguity, the trial court retains jurisdiction over the final

disposition of all property and may amend its prior orders until jurisdiction is lost. The dispositive question is whether the division of the proceeds comports with the requirements of the marital property statute, Kentucky Revised Statute (KRS) 403.190. That statute provides in relevant part that marital property be divided "in just proportion." Id. KRS 403.190 vests with the trial court wide discretion in the division of marital property. Johnson v. Johnson, Ky. App., 564 S.W.2d 221 (1978). Such division will not be disturbed unless it is clearly erroneous. Poe v. Poe, Ky. App., 711 S.W.2d 849 (1986). We cannot conclude that the order from which James appeals is clearly erroneous. Whether the division of the property in question is couched in terms of "principal" or "interest," the court is actually dividing "equity." Payments toward accrued interest have no effect on increasing equity. While the terms "principal" and "equity" are not interchangeable, a division of the equity in the parcel based on James's contribution to the mortgage principal appears to be a division "in just proportions." Nothing more is required. Finally, we are compelled to note that James has cited no caselaw or statutory authority to support his claim of error. The burden is on the appellant to produce such authority, and having failed to meet this burden, James's claim of error must fail. See generally Kentucky Rule of Civil Procedure (CR) 76.12(4)(c)(iv).

For the foregoing reasons, the order of the Lincoln Circuit Court is affirmed.

MILLER, JUDGE, CONCURS.

ABRAMSON, JUDGES, CONCURS WITH RESULT.

BRIEF FOR APPELLANT:

Jeffrey W. Jones
Danville, Kentucky

BRIEF FOR APPELLEE:

Cabell D. Francis
Stanford, Kentucky