RENDERED: May 8, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NOS. 96-CA-2932-MR and 97-CA-0044-MR

STEVEN H. KEENEY APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN K. MERSHON, JUDGE
ACTION NO. 95-CI-1876

WYNN EVERETT (formerly Keeney) APPELLEE

OPINION

AFFIRMING

** ** ** **

BEFORE: BUCKINGHAM, KNOX, and MILLER, Judges.

MILLER, JUDGE: Steven H. Keeney brings these appeals from October 16, 1996 and a December 9, 1996 orders of the Jefferson Circuit Court. We affirm.

These appeals stem from a dissolution of marriage action in the Jefferson Circuit Court. On August 30, 1995, the marriage of appellant and Wynn Everett (appellee) was dissolved by a decree of dissolution. All other issues were reserved for later adjudication. On October 16, 1996, and December 9, 1996,

the circuit court disposed of the remaining property and maintenance issues, thus precipitating this appeal.

Appellant contends that the circuit court violated KRS 403.190. Specifically, appellant asserts that it was error for the circuit court to transfer his "nonmarital property to Wynn." Apparently, the court determined that appellant's nonmarital interest in the parties' current home of $22,541.00 should be given to appellee "in order to achieve an equitable distribution of the marital estate." Appellant maintains that KRS 403.190 strictly mandates the restoration of the parties' nonmarital property. We believe it within the court's discretion to assign a nonmarital asset of one spouse to another spouse in order to achieve an equitable distribution of the marital estate. It is no different from the court ordering appellant to pay appellee the sum of $22,541.00; the net effect is the same. Thus, we perceive no error.

Appellant also argues that "this is not a type of marriage where a 50/50 division is appropriate" and that the "trial court's presumption of equal division" violated KRS 403.190. First, we cannot say that the circuit court's division of marital property upon a 50/50 basis constituted an abuse of discretion. Second, upon review of the circuit court's orders, we do not believe it engaged in any impermissible presumption of equal division. The court specifically stated that it was not required to divide marital property equally but believed such was mandated.

Next, appellant contends:

> It is a fundamentally unfair, and therefore, cannot be a division in just proportions under KRS 403.190 and controlling law, to transfer all of one party's home equity in cash to the other party and then saddle the penniless party with tens of thousands of dollars of debt.

Upon a review of the trial court's orders and other documentary evidence, we are of the opinion that the allocation of the parties' debts was equitable and just. Our reviewe is not based upon what we would have done but upon whether the Chancellor's action was an abuse of discretion. Cf. Cherry v. Cherry, Ky., 634 S.W.2d 423 (1982). We perceive no abuse.

Appellant maintains that the circuit court committed reversible error in its valuation of his law practice. First, appellant believes that the practice should not be marital property. We disagree. It is clear that appellant entered the practice during the marital relationship and that before such did not have a successful practice. Indeed, in June 1993, appellant was disbarred from the practice of law. Appellant also believes that the court abused its discretion in valuing his law practice. The court accepted the valuation of one Diane Medley, a certified public accountant. Medley utilized the "adjusted net asset method" and included no good will therein. Medley determined that appellant's interest in the law firm was worth $133,795.00. We are of the opinion that the circuit court's decision in fixing the value of the practice was based upon sufficiently credible

and probative evidence. As such, we will not disturb same. See Underwood v. Underwood, Ky. App., 836 S.W. 439 (1992).

Next, appellant asserts that the court erred by adopting one Robert Montgomery's valuation of the parties' interest in the marital home. Specifically, appellant contends that Montgomery incorrectly determined:

> (A) 40,000 home equity;
> (B) Improvements; and
> (C) Brandenburg application when interest only mortgage is involved.

Appellant thinks Montgomery was incompetent because he requested instructions from the court upon some issues. We disagree. We do not believe such is dispositive of Montgomery's alleged incompetence. Upon the whole, we are of the opinion that the circuit court did not err in its valuation of the parties' marital and nonmarital contribution to their home. Moreover, we cannot say that the circuit court committed reversible error by utilizing Brandenburg formula. Brandenburg v. Brandenburg, Ky. App., 617 S.W.2d 871 (1981). We believe equity in a home is the direct result of a reduction of mortgage principal by the use of marital and nonmarital funds. Payment of interest only cannot result in a reduction of principal which would yield home equity.

Appellant also asserts that some $35,000.00 worth of jewelry was an investment instead of a gift to appellee. The court found that appellant gave the jewelry to appellee as a gift. Upon the whole, we cannot say that such finding was clearly erroneous.

Last, appellant maintains that the $20,000.00 award of attorney fees to appellee was improper and excessive. We agree with the circuit court that the imbalance of resources between the parties justifies an award of attorney fees to appellee. See Lampton v. Lampton, Ky. App., 721 S.W.2d 736 (1986). Additionally, we do not think such award excessively and approvingly note the circuit court's assessment thereof:

> . . . [Appellee] has incurred over $45,000.00 in attorney's fees in this action. At first glance this seems an incredible sum particularly when no issues regarding children were involved in this dissolution litigation. However, this is more understandable when one realizes that the Court's file is four volumes thick and stands almost two feet tall.

For the foregoing reasons, the orders of the circuit court are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

Eugene L. Mosley
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