

RENDERED: October 8, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2003-CA-000374-MR

ROB E. HUDSON

APPELLANT

V. APPEAL FROM CLARK CIRCUIT COURT
HONORABLE JEAN CHENAULT LOGUE, JUDGE
CIVIL ACTION NO. 98-CI-00211

VICKIE E. HUDSON

APPELLEE

OPINION
VACATING AND REMANDING WITH DIRECTIONS

** ** * * * * *

BEFORE: GUIDUGLI, McANULTY, AND MINTON, JUDGES.

MINTON, JUDGE: Equitable assignments of debt are routinely made as a matter of common law in divorce proceedings. In Rob and Vickie Hudson's divorce, there was a debt to Rob's father which the trial court was obligated to assign in order to resolve completely the issues between Rob and Vickie. Because we conclude that the trial court failed to make this assignment, we vacate and remand for assignment of the debt between Rob and Vickie.

The Hudsons' dissolution of marriage case was assigned to the trial court's Domestic Relations Commissioner (DRC) for

hearing and recommendations. On September 1, 1999, the DRC filed his report recommending the following:

The marital debts should be borne equally by the parties. Each party should assume the debt on individual items assigned to him or her. There is a \$10,000.00 debt to Clyde Hudson which should be paid one-half by each party. (Emphasis added.)

Rob filed exceptions to the DRC's report unrelated to the Clyde Hudson debt. On September 27, 1999, the circuit court entered an order addressing Rob's exceptions; however, the order neither adopted, modified, nor rejected the DRC's recommendation relating to the Clyde Hudson debt.

On October 14, 1999, the circuit court entered a decree of dissolution disposing of various property issues. The decree did not address the Clyde Hudson debt and stated that "all remaining issues are reserved pending further orders of this Court." On June 9, 2000, the circuit court entered an amended decree of dissolution addressing various child custody, child support, and visitation issues. Again, the Clyde Hudson debt was not specifically addressed.

On September 7, 2000, a second amended decree was entered correcting minor errors in the amended decree; and on February 27, 2001, an agreed order was entered addressing various issues relating to the parties' children. Neither the

second amended decree nor the agreed order addressed the Clyde Hudson debt.

On January 23, 2003, the family court entered an order addressing the remaining outstanding issues in the divorce proceedings, including the Clyde Hudson debt. With regard to the Clyde Hudson debt, the order stated as follows:

5. **Issue: Does [Vickie] owe any portion of the debt to Clyde Hudson?** As part of the property distribution in the parties' divorce, [Vickie] was assigned one-half of a debt owed to [Rob's] father, Clyde Hudson.¹ This Court cannot determine the validity of this debt. Clyde Hudson is not a party to this action but has the right to enforce any debts owed to him and should do so in a separate action.

Rob argues that:

The issue of the Clyde Hudson debt was fully adjudicated by the Domestic Relations Commissioner, no exceptions were taken regarding the debt and by operation of law the report was subsumed in the decree of dissolution.

. . . .

The matter of the division of the Clyde Hudson marital debt having been finally adjudicated in 1999, it was error for the trial court to revisit the issue in 2003 and rule differentially than the court had previously.

¹ As noted in our review of the procedural history of the case, the circuit court never entered an order assigning the debt to either of the parties. So Rob's statement here would appear to be inaccurate.

CR² 53.06(2) provides that the circuit court may adopt, modify, or reject the DRC's report at its discretion. The September 27, 1999, order addressing Rob's exceptions to the DRC's report neither adopted, modified, nor rejected the DRC's recommendation concerning the Clyde Hudson debt, nor can we conclude that there was an implied adoption of the recommendation.³

The October 14, 1999, decree did not address the Clyde Hudson debt. In fact, the decree specifically reserved any issues not addressed in it which, we discern, reserved the unresolved issue of the Clyde Hudson debt. Later orders and amendments to the decree, likewise, did not address the debt. It was not until the January 23, 2003, order that the family court finally addressed the Clyde Hudson debt. We, accordingly, disagree with Rob that the DRC's recommendation regarding this issue had been previously adopted or that the issue had been decided by the trial court.

There is no statutory authority for assigning debts in an action for dissolution of marriage. But in Neidlinger v. Neidlinger,⁴ our Supreme Court recognized that trial courts make

² Kentucky Rules of Civil Procedure.

³ Even if the circuit court had explicitly adopted the Commissioner's recommendation regarding the debt, the order was interlocutory, not final and appealable, and not a bar to the circuit court's later reconsideration of the issue.

⁴ Ky., 52 S.W.3d 513, 522 (2001).

such assignments routinely as a matter of common law in all divorce actions.

The task of the trial court in this divorce proceeding was to assign or apportion the Clyde Hudson debt between the parties, not to determine the validity of the debt. This is axiomatic in that the creditor, Clyde Hudson, was not before the court. Nor, for that matter, had either Rob or Vickie asserted that the debt was unenforceable.

The trial court's inability to determine the validity of the debt was not a basis for avoiding the assignment of the debt to one or both of the parties. To be clear: such an assignment of debt in a divorce case does not amount to an adjudication of the validity of the debt and will not result in a judgment enforceable by Clyde Hudson against Rob and/or Vickie. Nevertheless, to effect a full and complete adjudication of the issues as between Rob and Vickie, assignment of all property and debt is required.⁵

For the foregoing reasons, the January 23, 2003, order of the family court is vacated and remanded with directions to assign the Clyde Hudson debt in accordance with the criteria as set forth in Neidlinger v. Neidlinger.

ALL CONCUR.

⁵ *Id.*

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