

RENDERED: MARCH 25, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002335-MR

ANNE HAYES LAMBERT;
DAVID L. YEWELL; AND
THE LAW FIRM OF
KAMUF, YEWELL AND PACE

APPELLANTS

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, JUDGE
CIVIL ACTION NO. 99-CI-01507

STEVEN WILSON LAMBERT

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER AND VANMETER, JUDGES; AND HUDDLESTON, SENIOR JUDGE.¹

HUDDLESTON, SENIOR JUDGE: David L. Yewell and the law firm of Kamuf, Yewell and Pace appeal from a series of orders and a decree of dissolution in which Daviess Circuit Court denied his former client's request for attorney's fees and costs stemming

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

from an action for dissolution of marriage. Kentucky Revised Statutes (KRS) 403.220 provides that a court may award attorney's fees in a dissolution action after considering the financial resources of both parties. Because the circuit court did not abuse its discretion in refusing to award attorney's fees in this case, we affirm.

Anne Hayes Lambert ("Hayes") and Steven Wilson Lambert ("Steve") were married in 1986. On December 17, 1999, Steve filed a petition to dissolve the marriage. Hayes retained attorney David L. Yewell to represent her in the dissolution action. According to Yewell, the only payment he received for his services was \$2,500.00 lent to Hayes by her mother.

On January 14, 2000, Hayes moved the court to require Steve to place a reasonable amount into an escrow account to pay toward her attorney's fees and other litigation expenses. Following a hearing on May 3, 2000, the court's Domestic Relations Commissioner recommended that Steve be ordered to advance \$1,000.00 to Hayes for litigation expenses and attorney's fees. Yewell claims that this sum went directly to the virtually destitute Hayes to cover her necessary living expenses, and that he did not receive any of it. On August 11, 2000, the court ordered Steve to pay Hayes \$527.90 to cover the cost of two depositions. Her request for attorney's fees was

denied "at this point in the case." No further award of attorney's fees or litigation expenses was made.

The main point of contention in the dissolution action was the valuation and disposition of the marital estate that consisted primarily of numerous heavily mortgaged rental properties with a value, according to one much-disputed financial statement, of over \$1.5 million, and two businesses owned by Steve -- Lamco Properties, Inc., a holding company for the rental properties, and Steve Lambert Remodeling, Inc.

From the outset of the dissolution proceedings, Steve urged that the properties should not be appraised but immediately sold, the mortgages and debts of the marriage paid, and the net proceeds divided equally. Hayes, on the other hand, argued that appraisals were necessary because Steve was planning to repurchase the properties through friends and family at a reduced price. Although the court gave Hayes leave to have the properties appraised, the appraisal was never performed. The dissolution proceedings were lengthy due to these disputes over the disposition of the estate, and also to the fact that Hayes was unable to participate at certain hearings because she is allegedly an alcoholic. There is also evidence in the record that Hayes had recurring disputes with Yewell.

Ultimately, Steve failed to meet the mortgage payments on the properties due to a high number of rental vacancies and,

according to Yewell, his refusal to use non-marital property to satisfy the debts. As a result, foreclosure actions took some of the properties, and the remainder were sold by order of the court with the result that there were no significant proceeds of the marital estate. A decree of dissolution was entered on July 25, 2001. On the issue of attorney's fees, the court ruled that:

Each party shall pay his or her own attorney fees and costs from the division of proceeds herein. The time each party spent and/or devoted to this action varied by his or her decision as to how they wanted to present this case. With the division of the marital property equally between the parties, it is only equitable that each party bear their own costs and attorney fees from their share of the proceeds.

An order finalizing the decree was entered on September 19, 2001.

Three appeals were filed in this case. The first, filed on October 16, 2001, named Hayes, Yewell and his law firm as appellants, while the two subsequent appeals named Hayes only. The appeals were consolidated on July 7, 2003. Yewell was replaced as Hayes' attorney of record on April 1, 2004. The only brief filed in these consolidated appeals is one on behalf of Yewell and his law firm in 2001-CA-002335-MR. The remaining

appeals, 2003-CA-000556-MR and 2003-CA-001226-MR, will be dismissed by separate order. The sole issue on appeal, therefore, is whether the circuit court erred in refusing to award attorney's fees.

KRS 403.220 permits a court to award attorney's fees in a dissolution action. The statute authorizes the court from time to time after considering the financial resources of both parties [to] order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment.

A circuit court may, therefore, "order one party to a divorce action to pay a 'reasonable amount' for the attorney's fees of the other party, but only if there exists a disparity in the relative financial resources of the parties in favor of the payor."²

Yewell argues that the "huge financial disparity" between Hayes and Steve made the court's order unfair and unreasonable. He maintains that it is unrealistic to expect or require that one spouse be required to litigate against the

² Sexton v. Sexton, 125 S.W.3d 258, 272 (Ky. 2004), quoting Neidlinger v. Neidlinger, 52 S.W.3d 513, 519 (Ky. 2001).

other in a dissolution action without comparative financial means.

Although Kentucky case law supports an award of fees if there is a gross imbalance or significant inequality in the financial resources of the parties,³ the ultimate determination remains within the broad discretion of the circuit court.

[E]ven if a disparity exists, whether to make such an assignment and, if so, the amount to be assigned is within the discretion of the trial judge. There is nothing mandatory about it. Thus, a trial court's ruling on attorney fees is subject to review only for an abuse of discretion. The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.⁴

In this case, the circuit court justified its decision not to award attorney's fees on the ground that it had divided the proceeds of the estate evenly. The court also alluded to the fact that the strategy adopted by the parties had to some extent determined the length and cost of the divorce action. Such strategic decisions which may "multipl[y] the record and the proceedings" are proper considerations "justify[ing] both

³ See, e.g., *id.* at 273; *Beckner v. Beckner*, 903 S.W.2d 528, 530 (Ky. App. 1995).

⁴ *Sexton*, *supra*, note 2, at 272 (internal quotation marks and citations omitted).

the fact and the amount of the award.”⁵ The equitable solution arrived at by the court in this case cannot be deemed an abuse of discretion. Furthermore, there is insufficient evidence in the record to support the view that there was such a significant disparity in the financial resources of the parties to warrant reversal of the circuit court’s refusal to award attorney’s fees.

Based on the record before us, we conclude that the circuit court’s refusal to award attorney’s fees was reasonable and fair. Thus, that portion of the decree challenged in this appeal is affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
APPELLANTS DAVID L. YEWELL
and THE LAW FIRM OF
KAMUF, YEWELL AND PACE

David L. Yewell
Owensboro, Kentucky

NO BRIEF FOR APPELLANT
ANNE HAYES LAMBERT

BRIEF AND ORAL ARGUMENT FOR
APPELLEE:

Candy Yarbray Englebert
Owensboro, Kentucky

⁵ Id. at 273, quoting Gentry v. Gentry, 798 S.W.2d 928, 938 (Ky. 1990).