RENDERED: FEBRUARY 26, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000197-MR

PAUL MULLINS — APPELLANT

v.

APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT, III, JUDGE
ACTION NO. 06-CI-00200

LINDA MULLINS — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; DIXON, JUDGE; BUCKINGHAM,[1] SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: Paul Mullins appeals from a final decree of the Letcher Circuit Court following the dissolution of his marriage to Linda

[1] Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Mullins. Paul contends that the court erred in its disposition of the property. We affirm.

Paul and Linda were married on August 5, 1987. On May 2, 2007, the trial court entered a partial decree of dissolution ending their marriage. On January 20, 2009, the court entered a final decree disposing of the property. Within that decree, the court required Paul to pay Linda $17,000 in connection with the marital residence and further determined that a portion of the proceeds received by Linda during the marriage as a settlement for a personal injury claim was marital property. Paul raises two arguments in this appeal in connection with those two determinations.

The marital residence was originally purchased for $8,800 on June 2, 1995. The parties made improvements to the home, including vinyl siding, a tin roof, vinyl windows, a remodeling of the bathroom and kitchen, replacement of doors, and other items. Linda provided $2,500 for new storm windows from nonmarital funds coming from the sale of a residence she had owned prior to the marriage.[2]

Although neither party hired an expert to appraise the fair market value of the residence, the court found that the residence had improved in value during the marriage "due to renovations and upkeep" and that its fair market value was $35,000 "at the least." In doing so, the court noted an earlier mortgage on the property that had listed an insurable value of $40,200. Further the court found that

[2] Paul has not challenged this finding on appeal.

$32,000 of the mortgage proceeds was disbursed to the creditors and parties to fund the home improvements. There was no indebtedness on the property at the time of the dissolution.

The trial court awarded the property to Paul but required him to pay Linda $17,000 which included restoration of her $2,500 nonmarital funds used to improve the property. Citing *Robinson v. Robinson,* 569 S.W.2d 178 (Ky. App. 1978), *overruled on other grounds by Brandenburg v. Brandenburg*, 617 S.W.2d 871 (Ky. App. 1981), Paul contends that the court erred in directing him to pay Linda $17,000 for her share of the marital residence. He erroneously states that the court ordered such payment for Linda's contributions to the improvements of the residence. He further asserts that there was written proof of home improvements totaling only $14,482.78, increasing the value of the residence to only $23,282.78, which is over $11,000 less than the court's determination that the residence had a fair market value of $35,000. In addition, he maintains that the court erred in allowing testimony from Linda that the property had a fair market value of $35,000 because she was not qualified to give such testimony.

This court held in the *Robinson* case that before an owner of property may testify as to its value, the owner must be properly qualified to give an opinion and "[t]he mere fact of ownership does not of itself qualify the parties to give a value." *Id*. at 179-80. Further, the *Robinson* court stated that unless attorneys practicing domestic relations law "give the court adequate tools with which to

work, they can hardly complain of inequitable results." *Id*. at 180. The *Robinson* court also stated

> If the parties come to the end of their proof with grossly insufficient evidence on the value of the property involved, the trial court should either order this proof to be obtained, appoint his own experts to furnish this value, at the cost of the parties, or direct that the property be sold.

Id.

First, it would have assisted the trial court's determination and our appellate review had there been an expert witness to appraise the property's fair market value. Second, Linda's qualifications to testify as to the property's value, if she had any, were apparently not presented to the court. She does not cite any such qualifications in her brief. Therefore, we conclude she was not qualified to give an opinion as to the property's fair market value.

Nevertheless, there was evidence that the residence had an insurable value of $40,200 as well as evidence of $32,000 disbursed in connection with the improvements. Further, Paul conceded in his testimony that the parties would not have been able to obtain a loan for over $32,000 if the property hadn't been worth at least that much.

While the evidence of the property's fair market value was certainly lacking to a degree, we cannot say that it was "grossly insufficient" as was the case in *Robinson.* Considering the amount spent on improvements to the property and Paul's admission that the property should have been worth at least $32,000 or else

the parties would not have been able to borrow that amount of money, we conclude that the trial court's determination that the property's fair market value was at least $35,000 was not clearly erroneous.

As we noted previously, Paul has stated in his brief that the court's order that Paul pay Linda $17,000 for her share of the residence was based on the court's finding that Linda had contributed that amount to the improvements. That is not the case at all. Rather, the court ordered Paul to pay Linda $17,000, which amount, the court stated, "includes the restoration to Respondent of non-marital assets contributed by the Respondent," which the court had found to be $2,500.

In fact, if it was the court's intention to restore Linda a $2,500 nonmarital interest in the residence and then divide the fair market value on an equal basis, it would have ordered Paul to pay Linda $18,750, not $17,000.[3] Rather, the court apportioned Linda only $14,500 and apportioned Paul $18,000 of the marital interest, and it restored Linda's nonmarital interest of $2,500. We cannot say that this was error.

Paul's second argument relates to $85,000 in settlement proceeds that Linda received as a result of injuries that she suffered in an automobile accident on May 15, 2005. Paul contends that he was entitled to a share of the settlement proceeds since the court determined that at least some of the proceeds were marital property. Linda testified, and the trial court apparently found, that $29,000 of the

[3] Assuming the fair market value of the property is $35,000 and subtracting Linda's $2,500 nonmarital interest, the remaining $32,500 would be divided $16,250 to Paul and $16,250 to Linda.

proceeds went to attorney fees and costs, leaving $56,000. Linda further testified that $34,000 was used to pay medical bills. Thus, Linda apparently was left with approximately $23,000.

As a result of the accident, Linda was absent from her employment and was not paid for approximately 15 weeks. Although the settlement did not specify any particular amount for lost wages, the trial court determined that some amount of the settlement was for lost wages and was therefore marital property. *See Weakley v. Weakley,* 731 S.W.2d 243, 245 (Ky. 1987). However, the trial court made no finding as to what that amount was and made no specific award in that regard.[4]

Paul argues that the trial court erred and should have applied the holding of *Reeves v. Reeves,* 753 S.W.2d 301 (Ky. App. 1988). In that case, the court held that the injury award was presumed to be entirely marital because the award did not indicate what portion had been applied to earning capacity and what portion had been allocated to pain and suffering. *Id*. at 301-02. Therefore, Paul reasons that since Linda's injury settlement likewise did not indicate what portion was allocated to lost wages, impairment of power to earn money, and pain and suffering, all proceeds are presumed to be marital. KRS 403.190(3).

In response to Paul's argument, Linda states that her testimony at trial that the proceeds she received were "completely spent" during the marriage was

[4] Linda says in her brief that the trial court "implicitly found that the marital estate of the settlement was $10.61 x 40 x 15 = $6,366." She reasons, therefore, that "the trial court determined the remaining amount to be for her personal pain and suffering, or other non-marital asset under *Weakly* [sic]."

not contradicted. She thus maintains that there was nothing to allocate to the parties. While Paul had the opportunity to refute this by filing a reply brief, he did not do so. In the face of such uncontradicted testimony and the lack of any findings by the court that such proceeds still existed, we find no error.

The judgment and orders of the Letcher Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James W. Craft, II
Whitesburg, Kentucky

BRIEF FOR APPELLEE:

Frank R. Riley, III
Whitesburg, Kentucky