

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000842-MR

ANTHONY GERRARD REYNOLDS

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT
HONORABLE ALLAN RAY BERTRAM, JUDGE
ACTION NO. 01-CI-00277

CHARLOTTE ANN REYNOLDS

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE AND MOORE, JUDGES; BUCKINGHAM,¹ SENIOR
JUDGE.

BUCKINGHAM, SENIOR JUDGE: Anthony Gerrard Reynolds appeals from the
findings of fact, conclusions of law, and decree of dissolution of marriage entered

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.

by the Taylor Circuit Court on April 17, 2006, dissolving his marriage to Charlotte Ann Reynolds. We affirm.

Anthony and Charlotte were married on July 14, 1988. They separated on October 10, 2000. During their marriage they had one child, Jessie Talbert Reynolds. They also raised Anthony's child from a previous relationship, Brian Anthony Reynolds.

On September 17, 2001, Charlotte filed a petition for dissolution of marriage and a petition for custody of Brian. The following month, Charlotte was awarded the temporary custody of both children, and Anthony was ordered to pay child support and maintenance. Anthony ran a lawn care business, and Charlotte was a homemaker and also did accounting for the business.

A final hearing was held before the court on October 4, 2002. Between the final hearing and the entry of the final decree, both Anthony and Charlotte faced criminal indictments. On July 21, 2005, Charlotte tendered proposed findings of fact and conclusions of law as well as an affidavit updating the court on changes in the parties' financial situation from the date of the final hearing until that date. Anthony was given an extension of time by the trial court to tender his own proposed findings of fact and conclusions of law, but he did not do so.

On April 17, 2006, the circuit court entered its findings of fact, conclusions of law, and decree of dissolution of marriage. Following the decree, Anthony made a motion to alter, amend, or vacate, which stated no specific

grounds in support thereof. Anthony then appealed the decree to this court, but a panel of this court dismissed the appeal by order of August 29, 2008, determining that the appeal was from an interlocutory order.

On March 30, 2009, the circuit court entered an order denying Anthony's motion. This appeal followed.

Within twenty days of filing a notice of appeal, the party must file a prehearing statement setting forth a "brief statement of the facts and issues proposed to be raised on appeal[.]" Kentucky Rules of Civil Procedure (CR) 76.03(4)(h). "A party shall be limited on appeal to issues in the prehearing statement except that when good cause is shown the appellate court may permit additional issues to be submitted upon timely motion." CR 76.03(8). Here, Anthony's prehearing statement listed the following three issues:

1. Whether four-year lapse of time between divorce trial and issuance of decree, during which time many changes in circumstances occurred, required the taking of additional proof;
2. Whether the division of property was correct under applicable statutes;
3. Whether the custody order was correct under applicable statutes.

Anthony's brief, however, raises only two new issues, neither of which was mentioned in the prehearing statement. Those issues are: 1) whether the trial court made independent findings of fact; and 2) whether Charlotte was entitled to equitable relief despite alleged "unclean hands." Because neither of

those issues was addressed in the prehearing statement, neither is now properly before this court.² *Sallee v. Sallee*, 142 S.W.3d 697, 698 (Ky. App. 2004).

Even had the issues been properly preserved for our review, Anthony's arguments still were without merit.

Anthony first argues that the trial judge merely utilized Charlotte's proposed findings and conclusions as its own. CR 52.01 provides in part that "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusion of law thereon and render an appropriate judgment[.]" In *Bingham v. Bingham*, 628 S.W.2d 628 (Ky. 1982), the court held that "the delegation of the clerical task of drafting proposed findings of fact and conclusions of law under the proper circumstances does not violate the trial court's responsibility." *Id.* at 629. In that case, the court noted that "the [trial] court was thoroughly familiar with the proceedings and the facts of the case." *Id.* Further, the court stated that "[t]he record indicates the trial judge prudently examined the proposed findings and conclusions and made several additions and corrections to reflect his decision in this case." *Id.* Finally, the court in *Bingham* upheld the findings and conclusions of the trial court, stating that "[t]here has been no showing that the decision-making process was not under the control of the trial judge, nor that these findings and conclusions were not the product of the deliberations of the trial judge's mind." *Id.* at 629-30.

² Anthony did not file a reply brief to challenge Charlotte's argument in this regard.

In this case, both sides were provided the opportunity to submit proposed findings to the trial court; Charlotte did, but Anthony did not. Further, although the majority of the proposed findings and conclusions tendered by Charlotte were adopted by the court, the 22-page findings of fact and conclusions of law entered by the court differed to an extent from the 35-page findings of fact and conclusions of law tendered by Charlotte. Some items requested by Charlotte were rejected by the court; others were redacted. We conclude that the court clearly maintained independent control in its findings of fact and conclusions of law and that these findings and conclusions were the “product of the deliberations of the trial judge’s mind.” *Id.*

Anthony’s other argument is that Charlotte was erroneously provided equitable relief in the disposition of the property even though she also had “unclean hands.” Anthony states in his brief that “[m]arital infidelity, stealing, lying both to each other and the Court were all attached to both Charlotte and Anthony at various times during these proceedings.” He does not, however, cite to any portion of the record to support his assertion as required by CR 76.12(4)(c)(v). As a panel of this court stated in *Smith v. Smith*, 235 S.W.3d 1, 4 (Ky. App. 2006), it is not our responsibility to search the record to find support for a party’s arguments.

Based on the evidence before it, the court reduced Anthony’s equity in the marital estate by \$163,724.62 due to his dissipation of marital property, taking marital property, and repairs and expenses made by Charlotte. The court then

awarded Charlotte the title to the parties' various real properties "to recoup a portion of her share of the marital equity dissipated by Anthony."

"Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." CR 52.01. Anthony has not persuaded us that the court made a clearly erroneous finding regarding dissipation of assets or that the court abused its discretion in dividing the property as it did.

The judgment of the Taylor Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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