

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001667-MR

MONICA JADE MOORE-STUMP

APPELLANT

APPEAL FROM HARDIN CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 08-CI-01872

TROY MICHAEL STUMP

APPELLEE

OPINION
VACATING AND REMANDING
WITH DIRECTIONS

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; STUMBO, JUDGE; SHAKE,¹ SENIOR JUDGE.

TAYLOR, CHIEF JUDGE: Monica Jade Moore-Stump brings this appeal from an August 20, 2009, judgment and decree of the Hardin Circuit Court dissolving the parties' marriage and which provided that property issues had been resolved.

¹ Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Monica contests the resolution of the division of marital property in this appeal.²

We vacate and remand with directions.

Monica and Troy were married January 6, 2007, in California.

Shortly thereafter, Monica and Troy moved to Hardin County, Kentucky, as Troy was stationed at Fort Knox while servicing in the United States Army. No children were born of the parties' marriage.

Some seventeen months after the parties' married, Troy filed a petition for dissolution of marriage in the Hardin Circuit Court, Family Court Division. Monica, who was visiting family in California when the petition was filed, was served via Kentucky Secretary of State on September 5, 2008. Monica remained in California and proceeded *pro se* in this action. During the proceedings, the family court routinely permitted Monica to appear telephonically. However, just two days before the final hearing, the family court denied Monica's motion to appear telephonically.³

The record reveals that Monica did not appear at the final hearing. Nevertheless, the family court rendered judgment on August 6, 2009, as amended on August 20, 2009. Therein, the family court dissolved the parties' marriage, restored Monica to her maiden name, and found "[t]hat the parties have divided all real and personal property to [Troy's] satisfaction in that [Monica] was not present

² The original judgment and decree was entered August 6, 2009. A timely motion pursuant to Kentucky Rules of Civil Procedure 59 was filed resulting in the final judgment being entered on August 20, 2009.

³ At the hearing on her motion to appear telephonically, Monica Jade Moore-Stump repeatedly stated she was indigent and was without funds to hire an attorney or to travel to Kentucky for the final hearing. Monica's financial situation was exacerbated by being ordered to pay Troy Michael Stump's attorney \$500 in attorney's fees before the final hearing.

at the final hearing, there being nothing remaining within the jurisdiction of the court or requiring the court to decide.” This appeal follows.

Monica initially contends that the family court erred by failing to divide the parties’ marital property in accordance with KRS 403.190. Monica specifically argues that the family court merely acquiesced with Troy’s division of marital property to “his satisfaction” and the court failed to equitably divide the marital property pursuant to KRS 403.190.

KRS 403.190(1) provides, in relevant part, that the family court:

[S]hall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including:

- (a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;
- (b) Value of the property set apart to each spouse;
- (c) Duration of the marriage; and
- (d) Economic circumstances of each spouse when the division of property is to become effective

KRS 403.190(1) clearly states that the court “shall” divide the marital property.

There is no provision which allows the court to acquiesce in the division made by one party and not engage in an independent division of property. Subsection (3) further provides there is a presumption that all property acquired during the marriage is marital property. KRS 403.190. The presumption may only be overcome by a showing that property acquired during the marriage is nonmarital.

Id. Additionally, the family court is required to make findings of fact and

conclusions of law to support its division of the marital property, including the assignment of any nonmarital property. Kentucky Rules of Civil Procedure (CR) 52.01.

In the case *sub judice*, the family court did not equitably divide the parties' marital property. Instead, the court merely concluded that the marital property had been divided to Troy's satisfaction. Particularly troublesome is Monica's assertion that the family court ignored her claim that the parties purchased a vehicle during the marriage with \$5,500 borrowed from Monica's mother. In contravention of a court order not to dispose of any assets, Troy sold the vehicle after the parties separated. Troy did not divide the proceeds with Monica nor did he pay any portion of the debt associated with the vehicle. Despite Monica's repeated assertions that certain items of marital property had not been equitably divided, the family court merely acquiesced with Troy's division of the marital property and entered an order to that effect.

The family court is not permitted to abdicate its duty to equitably divide the marital property to one of the parties. Similarly, the family court must resolve any issues regarding marital debts. *See Smith v. Smith*, 235 S.W.3d 1 (Ky. App. 2006). Thus, we believe the family court erred as a matter of law by failing to exercise its statutory duty to equitably divide the parties' marital property under KRS 403.190. As such, we vacate the family court's division of marital property and remand for a hearing upon the division of the parties' marital property and allocation of marital debt in accordance with KRS 403.190.

As we are vacating the family court's division of marital property, we also observe that under the circumstances of this case it may have been an abuse of discretion for the family court to deny Monica's motion to appear telephonically at the final hearing. Monica clearly stated to the court that she was financially unable to hire an attorney or to travel from California to Kentucky for the final hearing. Upon remand, we advise the family court to reconsider its ruling regarding Monica's motion to appear telephonically, given the unique facts of this case.

Monica's remaining contentions are either moot or without merit.

For the foregoing reasons, the judgment of the Hardin Circuit Court, Family Court Division, is vacated and this cause is remanded with directions for proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Monica Jade Moore-Stump, *Pro Se*
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BRIEF FOR APPELLEE:

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