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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001934-MR

DONNA J. BARKER

APPELLANT

v. APPEAL FROM LAWRENCE CIRCUIT COURT
HONORABLE MARC I. ROSEN, JUDGE
ACTION NO. 91-CI-00007

EDSEL D. SPARKS

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: CLAYTON, KELLER AND MOORE, JUDGES.

KELLER, JUDGE: Donna J. Barker (Barker) appeals, *pro se*, from an order of the Lawrence Circuit Court entered on September 22, 2010, releasing a lien note on certain real property belonging to Edsel D. Sparks (Sparks). For the following reasons, we reverse and remand.

FACTUAL BACKGROUND

Having reviewed the record, we adopt the following facts as stated in this Court's opinion (the 2004 Opinion) on Barker's direct appeal from the Lawrence Circuit Court order entered on April 28, 2003 (the 2003 Order):¹

Barker and Sparks were married on July 5, 1967, in Louisa, Lawrence County, Kentucky. On January 14, 1991, Sparks filed a petition for dissolution of marriage in Lawrence Circuit Court. On April 23, 1991, Sparks filed an amended petition with the trial court, seeking a decree of legal separation. This amended petition was accompanied by the couple's purported property settlement agreement.

Approximately two months later, on June 16, 1991, the trial court entered a decree of legal separation with respect to the marriage between Sparks and Barker. Pursuant to the couple's property settlement agreement, the trial court, *inter alia*, divided the couple's property.

For purposes of this appeal, the parties agreed to the following in their settlement agreement:

1. Sparks was awarded the marital residence in exchange for his promise to pay Barker a total sum of \$72,000.00. The first \$55,000.00 was to be paid up front, with the remaining \$17,000.00 to be paid in monthly installments of \$250.00 each. The remaining \$17,000.00 was subject to an interest rate of 7%. As part of this arrangement, Sparks signed a promissory note granting Barker a lien on the marital home.

2. Sparks agreed to furnish Barker medical insurance until May 1, 1992, regardless of whether it was through Sparks's employer or via an individual policy. After May 1, 1992, Sparks was to provide Barker with insurance for as long as he was employed with Ashland

¹ *Barker v. Sparks*, 2003-CA-001362-MR, 2004 WL 690824 (Ky. App. Apr. 2, 2004) (footnotes omitted).

Oil, and as long as Barker was eligible for coverage under Sparks's policy at his place of employment.

On October 14, 1993, Sparks filed a petition for dissolution of marriage On July 8, 1994, the trial court entered a decree dissolving the marriage between Sparks and Barker. As part of the divorce decree, the trial court ordered that the dividends from a life insurance policy be divided equally between Sparks and Barker, which resolved a matter that had apparently been overlooked in the couple's property settlement agreement.

. . . .

Throughout 1999 and 2000, both parties filed numerous motions and accompanying documents concerning Sparks's payment obligations. A hearing was held before the Domestic Relations Commissioner on February 28, 2001. Per our review of the Commissioner's report filed on June 28, 2002, we find that the Commissioner made the following recommendations that are relevant to this appeal:

1. That Sparks owed Barker \$8,000.00, plus 7% interest, on his original \$17,000.00 lien obligation, and that after July 25, 2002, any remaining balance on this obligation should accrue interest at a rate of 12% [compounded annually]. The Commissioner recommended that Sparks be given credit for any payments made up until that point.
2. That Sparks owed Barker \$3,202.84 for the reimbursement of Barker's medical expenses, and that after July 30, 2002, any remaining balance on this obligation should accrue interest at a rate of 12% [compounded annually]. The Commissioner recommended that Sparks be given credit for any payments made up until that point.
3. That Sparks owed Barker an additional \$1,054.00, which represented Barker's one-half interest in the dividends of the life insurance policy, and that after July

30, 2002, any remaining balance on this obligation should accrue interest at a rate of 12% [compounded annually]. The Commissioner recommended that Sparks be given credit for any payments made up until that point.

On April 28, 2003, the trial court, after amending the Commissioner's recommendations in part, entered an order addressing Sparks's payment obligations. The trial court found that Sparks had submitted proof of payments totaling \$5,960.32, which covered the various obligations, and it amended the Commissioner's recommendations in part to reflect that fact. Subsequent to this order, Barker filed a motion to alter or amend, arguing that "the money totals" in the trial court's order were "inaccurate." On June 9, 2003, the trial court denied Barker's motion to alter or amend

Barker appealed from the 2003 Order. On appeal, this Court concluded the following:

After finding that Sparks had submitted proof of payments totaling \$5,960.32, the trial court reduced the amount Sparks owed on his lien obligation from \$8,000.00 to \$2,525.00. Hence, the trial court allocated \$5,475.00 of the recognized payments toward the satisfaction of Sparks's lien obligation. Our review of the record shows that these payments made by Sparks took into account the 7% interest rate which was applicable to his lien obligation. Furthermore, the trial court's order merely amended the total amount owed on Sparks's lien obligation; it did not relieve Sparks of his obligation to pay off the lien subject to the applicable interest rate

The trial court's order simply amended the total amount owed on the \$3,202.84 obligation, to reflect its finding that Sparks had made a payment of \$45.00 toward the satisfaction of that obligation. The trial court's order did not relieve Sparks of his obligation to pay the remaining balance subject to the applicable interest rate

The Commissioner recommended that Sparks should pay Barker \$1,054.00, which represented her one-half interest in the life insurance dividends, but recommended that Sparks should be given credit for any payments already made on that obligation. As we mentioned above, the trial court found that Sparks had submitted proof of payments totaling \$5,960.32. Of this amount, \$5,475.00 was allocated toward the satisfaction of Sparks's lien obligation, and \$45.00 was allocated toward Sparks's obligation to reimburse Barker for certain medical expenses. Hence, the trial court allocated the remaining \$440.32 toward Sparks's obligation to pay Barker one-half of the life insurance dividends.

However, in its order reducing the total amount that Sparks owed on this obligation, the trial court stated that the \$1,054.00 obligation "shall be reduced *to* \$440.32" (emphasis added). Clearly, this was a clerical error on the part of the trial court. The trial court's order should have stated that Sparks's \$1,054.00 obligation would be reduced *by* \$440.32, which would have resulted in a total amount owed of \$613.68. Accordingly, we vacate that portion of the trial court's order, and remand with instructions to correct this clerical error.

Thus, based on the preceding, this Court concluded that Sparks owed Barker \$6,296.52 (\$2,525.00 plus \$3,157.84² plus \$613.68), and that this obligation should accrue interest at a rate of 12% compounded annually. We note that, despite this Court's instructions, it does not appear that a subsequent order was entered to correct the 2003 Order to reflect that Sparks owed Barker \$613.68 for her one-half interest in the life insurance dividends.

From July 2004 until 2010,³ both parties filed numerous motions regarding Sparks's payment obligations. Sparks contended that Barker's lien on his property

² \$3,202.84 minus \$45.00.

³ It is unclear from the record why this matter was pending for six years.

should be released because he paid her the entire amount she was due. Barker argued to the contrary and asserted that she only received \$3,451.97 of the \$6,296.52 that this Court concluded that Sparks still owed her. The trial court held a hearing on July 15, 2010, and entered an order on September 22, 2010.

As set forth in more detail below, in its order, the trial court concluded that Sparks owed Barker \$242.00 plus \$29.04 in interest. The trial court further noted that, on the day of the hearing, Sparks went to the clerk's office and paid \$242.00 plus \$29.04 in interest into the clerk's interest bearing account for payment in full. Thus, the trial court concluded that Sparks met his obligations and paid Barker in full. Accordingly, the trial court ordered Barker's lien note on Sparks's real property to be released. This appeal followed.

ANALYSIS

On appeal, Barker contends that the trial court erred in concluding that Sparks only owed her \$242.00 plus interest. Specifically, Barker contends that the trial court failed to rely on the numbers as set forth in this Court's 2004 Opinion. We agree.

In determining the amount Sparks still owed Barker, the trial court relied on numbers that were set forth in its 2003 Order. The trial court noted that, in 2003, Sparks owed Barker \$8,000.00 for the lien on the property; \$311.17 for the medical reimbursement; and \$1,054.00 for the life insurance premium payoff, for a total amount of \$9,365.17. Because Sparks paid Barker \$5,960.32, the trial court

determined that, as of 2003, Sparks owed Barker \$3,404.85 (\$9,365.17 minus \$5,960.32).

Having reviewed the 2003 Order, we note that the numbers reflected in separate portions of the order appear to be inconsistent. However, despite this inconsistency, this Court addressed the 2003 Order in its 2004 Opinion and concluded that, as of 2003, Sparks still owed Barker \$2,525.00 for the lien on the property; \$3,157.84 for the medical reimbursement; and \$613.68 for the life insurance premium payoff, for a total amount of \$6,296.52 plus interest. Because that opinion became final on May 24, 2004, the amounts set forth in the 2004 Opinion became the law of the case. *See* Kentucky Rule of Civil Procedure (CR) 76.30. Accordingly, we conclude that the trial court erred when it failed to use \$6,296.52 as the starting point in its analysis.

With the preceding in mind, we address whether the trial court was correct in releasing Barker's lien note on Sparks's property. As correctly noted by the trial court, the parties conceded that, on May 5, 2003, while Barker's appeal from the 2003 Order was still pending in this Court, Sparks made a payment to Barker in the amount of \$3,451.97. Thus, we conclude that as of 2003, Sparks owed Barker \$2,844.55 (\$6,296.52 minus \$3,451.97) plus interest at a rate of 12% compounded annually. Thus, the trial court incorrectly concluded that Sparks only owed Barker \$242.00 plus interest at the time of the July 15, 2010, hearing. Accordingly, the trial court erred in concluding that the payment of \$242.00 plus \$29.04 in interest⁴

⁴ We note that the 12% interest rate is to be compounded annually. While, \$29.04 is 12% of \$242.00, that amount does not reflect interest that is compounded annually.

that Sparks paid into the clerk's interest bearing account on the day of the July 15, 2010, hearing, relieved Sparks of his obligations to Barker. Therefore, the trial court incorrectly released Barker's lien note on Sparks's property.

CONCLUSION

For the foregoing reasons, we reverse and remand the September 22, 2010, order of the Lawrence Circuit Court releasing Barker's lien note on Sparks's real property. On remand, the trial court shall enter an order stating the amount Sparks owes Barker. In doing so, the trial court shall apply the May 5, 2003, payment of \$3,451.97 to reduce the \$6,296.52 debt to \$2,844.55. The trial court must also determine how much of the \$3,451.97 payment is to be allocated to the lien on the property, the medical reimbursement, and the life insurance dividends. In making such a determination, the trial court may consider how previous allocations were made. Finally, the trial court shall calculate the amount of interest due based on a rate of 12% compounded annually.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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Louisa, Kentucky

BRIEF FOR APPELLEE:

Edsel D. Sparks, *pro se*
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