

RENDERED: DECEMBER 2, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001975-MR

DONALD RAY HALL

APPELLANT

v. APPEAL FROM FAYETTE (FAMILY) CIRCUIT COURT
HONORABLE TIMOTHY NEIL PHILPOT, JUDGE
ACTION NO. 10-CI-00907

DEBORAH L. HALL

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, STUMBO, AND THOMPSON, JUDGES.

CLAYTON, JUDGE: This is an appeal of a property distribution entered by the Fayette Family Court. Based upon the foregoing, we find the court did not abuse its discretion and, therefore, affirm the decision.

BACKGROUND INFORMATION

The Appellant, Donald R. Hall, and the Appellee, Deborah L. Hall, were married on February 19, 1970, and their marriage was dissolved on August 12, 2010. Deborah was awarded all of the property with the exception of the Dodge Caravan, various household furnishings, and two missing diamond rings. She was also assigned the debts accumulated during the marriage. Donald now brings an appeal of the distribution arguing that the family court abused its discretion in awarding the marital residence and appliances to Deborah; that it erred in “assigning large emphasis on debt” that Deborah assumed; that it erred in not allowing Donald time to “gather and present convincing and factual proof of marital contribution.”

STANDARD OF REVIEW

Kentucky Rules of Civil Procedure (CR) 52.01 provides that “[f]indings 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.”

Findings are considered to be clearly erroneous if they are manifestly against the weight of the evidence. *Frances v. Frances*, 266 S.W.3d 754, 756 (Ky. 2008); *Wells v. Wells*, 412 S.W.2d 568, 571 (Ky. 1967).

In reviewing a court’s division of property in a divorce action, an appellate court must defer to the discretion of the trial court. *Herron v. Herron*, 573 S.W.2d 342 (Ky. 1978). The test for abuse of discretion is “whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal

principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). With these standards in mind, we examine the issues brought before us in this action.

DISCUSSION

Donald first asserts that the trial court’s award of the marital residence to Deborah was an abuse of discretion. The parties owned a residence at 325 Shoresville Drive in Lexington. The property was valued at \$179,000 with a mortgage of \$114,625.19. Thus, the equity in the home was \$64,374.81. In *Lawson v. Lawson*, 228 S.W.3d 18, 21 (Ky. App. 2007), our court held that “[i]n dividing marital property, including debts, appurtenant to a divorce, the trial court is guided by Kentucky Revised Statute (KRS) 403.190(1), which requires that division be accomplished in ‘just proportions.’” KRS 403.190(1) sets forth the following factors for a court to consider in dividing marital property:

- (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, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

During the hearing, Deborah testified that her income was \$45,000 per year for her job as a registered nurse. Donald, however, showed no income for the year 2009 and averaged between \$9,000 and \$12,000 per year as a home inspector.

As set forth above, the trial court also assigned all the debts of the marriage to Deborah. Given these factors, we find that the distribution of the marital residence to Deborah was not an abuse of discretion. The trial court clearly weighed the relevant factors set forth in KRS 403.190(1).

Donald next argues that the trial court erred in assigning a large emphasis on the debt of the parties toward the division of marital property. As set forth in *Lawson*, 228 S.W.3d at 21, the debts are a part of the value of the property. In assigning the debts to Deborah, the trial court offset the amount of property she received. While Donald contends that some debts, such as the \$10,000 credit card balance, were not valid debts, he did not provide evidence to the trial court of his assertions. Thus, we find the emphasis placed upon the debts assigned to Deborah were not an abuse of discretion by the trial court.

Finally, Donald asserts that the trial court erred in not providing him time to gather and present evidence of his financial contributions to the marriage and to dispute claims by Deborah. At trial, Donald was represented by counsel. Through testimony and other evidence, it was established that he earned income as an independent contractor doing home inspection of around \$10,000 per year, on average. It was also established that Donald had no income for the year of 2009. Donald did not dispute the fact that Deborah earned \$45,000 per year as a registered nurse. Deborah tendered a Disclosure Statement listing assets and debts. While Donald made allegations of stolen identity, there was no proof at trial of such.

Deborah filed for divorce in February of 2010, and the divorce was granted in August of that same year. As set forth above, Donald was provided with counsel. He has not set forth any facts which would indicate he could not comply with deadlines regarding disclosure of assets and debts. He has also not shown that he did not have time to present evidence in contradiction to Deborah's disclosures. Thus, we find the trial court did not err in going forward with the proof in this action.

Based upon the above, we affirm the decision of the Fayette Family Court in its distribution of property in this action.

STUMBO, JUDGE, CONCURS.

THOMPSON, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

THOMPSON, JUDGE, DISSENTING: I respectfully dissent. The parties were married for forty-one years during which time they accumulated a modest marital estate, specifically, \$63,374.81 equity in the residence and household furniture valued at \$5,000. Deborah was awarded the entire interest in the residence and the furniture. Exclusive of the debt on the automobile and the residence awarded to her, Deborah was assigned less than \$11,000 debt. In contrast, Donald was awarded only personal property with minimal, if any, value. After forty-one years of marriage, the only significant property awarded to Donald

consisted of jewelry which cannot be located. Under the circumstances, I believe that the family court abused its discretion.

In *Lawson v. Lawson*, 228 S.W.3d 18, 21 (Ky. App. 2007), the Court reiterated the law applicable to the division of marital property:

In dividing marital property, including debts, appurtenant to a divorce, the trial court is guided by Kentucky Revised Statute (KRS) 403.190(1), which requires that division be accomplished in “just proportions.” This does not mean, however, that property must be divided equally. *Russell v. Russell*, 878 S.W.2d 24 (Ky.App. 1994); *Wood v. Wood*, 720 S.W.2d 934 (Ky.App. 1986). It means only that the division should be accomplished without regard to marital misconduct and in “just proportions” considering all relevant factors. *Brosick v. Brosick*, 974 S.W.2d 498 (Ky.App. 1998).

Despite the disparity between the property awarded to each party, the family court gave no explanation as to whether the division was in “just proportions” without regard to fault. Indeed, it appears that its property division was made in direct contradiction to the stated law and that Donald’s recent incarceration for stalking Deborah motivated the family court to award Deborah the entire marital estate. Although Donald’s conduct must not be condoned, neither should the court deprive him of his interest in the marital estate.

Because the marital property was not divided in “just proportions,” I would reverse and remand the case to the trial court for division of the marital property and marital debts in conformity with KRS 403.190.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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