

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000399-MR

RICK A. BALL

APPELLANT

v. APPEAL FROM HARRISON CIRCUIT COURT
HONORABLE BARBARA L. PAUL, JUDGE
ACTION NO. 09-CI-00156

MARION J. MARTUS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, DIXON AND KELLER, JUDGES.

DIXON, JUDGE: Rick A. Ball appeals from a judgment and decree of dissolution of marriage rendered by the Harrison Circuit Court. Specifically, Rick contests the court's distribution of marital property to his former wife, Marion J. Martus. We affirm.

Following eight years of marriage, Rick filed a petition for dissolution of marriage in May 2009. The parties had no children together, and their assets

included marital retirement accounts and equity in the marital residence. At the final hearing in January 2010, the court heard testimony from both Rick and Marion (who appeared *pro se*) regarding the division of property and debts. The testimony indicated that, a few months prior to their marriage, Rick and Marion moved to Cynthiana, Kentucky, for Rick's job. At that time, Rick purchased a house and acreage, and after they married, they purchased additional acreage adjoining the property. Marion testified that she contributed \$14,000.00 toward the purchase of the property, although Rick disputed Marion's testimony. Rick testified that, at the time of the hearing, he was unemployed, having been laid off from his job as an engineer with Lexmark. Marion testified that she had moved to Pennsylvania to live with family and was working as a substitute teacher. Rick testified that he had a Lexmark 401K, a Toyota 401K, and a Toyota pension, while Marion had a Kentucky Teachers' Retirement Account. Rick also admitted he withdrew \$11,000.00 from the Lexmark 401K at the time he lost his job.

The court rendered findings of facts and conclusions of law awarding Marion her KTRS account, 23% of the equity in the marital residence (\$6,000.00 after an offset for Rick's attorney's fees), half the value of Rick's Toyota 401K (approximately \$20,000.00), and half of the Lexmark 401K (to be used to pay the balance of a joint automobile loan). Rick was awarded his Toyota pension and the marital residence and acreage. Rick now seeks review of the court's division of property.

We review the court's findings of fact regarding the division of marital property for an abuse of discretion. *Neidlinger v. Neidlinger*, 52 S.W.3d 513, 523 (Ky. 2001). Kentucky Revised Statutes 403.190(1) states:

In a proceeding for dissolution of the marriage . . . the court shall assign each spouse's property to him. It also shall 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

Although characterized as two separate arguments in his brief, Rick essentially contends the trial court failed to consider and apply the statutory factors, which resulted in an unfair allocation of assets to Marion. However, Rick failed to preserve this issue for appellate review, as he did not request that the family court make additional or more specific findings of fact. CR 52.04; *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982).

We briefly note the trial court was in the best position to assess the credibility of the testimony and evidence presented at the hearing. CR 52.01. Having reviewed the hearing, it is apparent that the trial court considered the issues raised by both parties in rendering its findings and conclusions. We are mindful that “[t]he property may very well have been divided or valued differently;

however, how it actually was divided and valued was within the sound discretion of the trial court.” *Cochran v. Cochran*, 746 S.W.2d 568, 570 (Ky. App. 1988).

We conclude the court’s findings were supported by substantial evidence; consequently, the court did not abuse its discretion in dividing the marital property.

For the reasons stated herein, we affirm the judgment of the Harrison Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Lucy B. Richardson
Frankfort, Kentucky

BRIEF FOR APPELLEE:

No Brief for Appellee