

(2) ordering three years of additional maintenance; (3) misvaluing the parties' horses; and (4) ordering him to pay an additional \$7,500.00 in attorney's fees. On cross-appeal, Lara argues the trial court erred by: (1) limiting the award of child support to \$700.00 per month; (2) removing Lara's previous designation as primary residential parent and ruling that Gregory shall have the primary input regarding their children's education; (3) ordering the marital real estate to be reappraised post-decree. We affirm in part, reverse in part, and remand.

Greg and Lara were married in 1998. There are two minor children born of the marriage. Greg is employed as a pilot and manager for UPS. During the marriage, Lara worked as a full-time stay-at-home mother and tended to the parties' horse breeding operation. At the time of trial, Lara was involved in a program to obtain a master of arts degree in teaching. The marital residence was located on 28 acres in Oldham County. At the time of trial, the property was valued at over \$700,000.00. Greg filed a petition for dissolution of marriage in 2006. On July 20, 2007, the trial court entered an interlocutory decree dissolving the marriage. After taking the evidence, the trial court, on March 26, 2009, entered findings of fact, conclusions of law, and an order dividing the marital property, awarding maintenance to Lara, and granting joint custody of the children. Both parties filed motions to alter, amend, or vacate, which the trial court granted in part and entered an amended order on September 3, 2009. This appeal followed.

Greg first argues that the trial court erred by determining that all the equity in the marital residence was marital and that the deed was dispositive of the

issue. Greg purchased the property three years before the marriage, although the parties cohabitated there before marriage. A new house was constructed on the property and Greg made numerous improvements to the property and made mortgage payments. Other improvements to the property were made throughout the marriage. On July 31, 2001, Greg conveyed the property to himself and Lara, in joint survivorship. Lara's name was added to the deed in consideration of love and affection.

In *Sexton v. Sexton*, 125 S.W.3d 258, 264 (Ky. 2004), the Supreme Court of Kentucky stated:

The disposition of parties' property in a dissolution-of-marriage action is governed by KRS 403.190, and neither record title nor the form in which it is held, e.g., partnership, corporation, or sole proprietorship, is controlling or determinative.

The court goes on to state, however, discussing the holding of *O'Neil v. O'Neil*, 600 S.W.2d 493 (Ky.App. 1980), that:

even though title is not determinative, nevertheless it is evidence for the court to consider. Clearly, the donor's intent is the primary factor in determining whether a transfer of property is a gift....The donor's testimony is highly relevant of the donor's intent; however, the intention of the donor may not only be "expressed in words, actions, or a combination thereof," but "may be inferred from the surrounding facts and circumstances, including the relationship of the parties, as well as the conduct of the parties."

Id. at 268-269.

In its March 26, 2009 order, following an evidentiary hearing, the trial court found that:

The consideration was a gift, i.e., “the love and affection of Gregory J. Schoettmer for his wife, Lara M. Schoettmer.” The parties took the steps to “memorialize” the manner in which they both shared and contributed to the acquisition, maintenance, and support the twenty eight acre farm since March of 1995. That Deed was evidence of the parties’ intention that Lara would be an equal “partner” and one-half owner of the premises in all respects. It was always understood by the parties that the farm was “ours.” Lara’s input was sought by Greg on the location of the property to purchase. As (the builder) built the house on the property, Lara picked out the carpet, wallpaper, bathroom tile and paint.

Further, the deed itself contained a “consideration certificate” which specifically states that the parties understand that “the property herein conveyed is transferred by gift and without consideration.” Both parties acknowledged this section of the deed instrument with their signatures.

Subsequently, following the parties’ motions to alter, amend or vacate the March order, on September 4, 2009, the trial court amended its prior legal conclusion regarding the property to determine that the transfer was not a gift. The court stated that love and affection are deemed valuable consideration for the transfer of a deed and therefore, it could not be considered a gift. When transferred for valuable consideration, it “lost its non-marital character.”

Regardless of the legal conclusion the trial court made as to the nature of this transfer, the critical point in this analysis is that the trial court found that it was Greg’s intent to give Lara an undivided one-half interest in the real estate. That finding was supported by the evidence and will not be disturbed on appeal absent a determination that it was clearly erroneous. *Lane v. Lane*, 202 S.W.3d

577, 581 (Ky. 2006). In reviewing factual findings, due regard is granted to the family court in viewing and weighing the credibility of the evidence. *Ironton Fire Brick Company v. Burchett*, 288 S.W.2d 47, 50 (Ky. 1956).

Although this was a gift from Greg to Lara, the nature of the gift, being an undivided one-half interest in real estate, converted any non-marital interest Greg may have had in this property into marital property. The trial court also found that any increased value in the property subsequent to the transfer was due to the joint efforts of the parties, and, therefore, marital property.

The trial court found that the value of the property at the date of the dissolution decree was \$722,500.00 and that the marital interest was \$623,213.00. (Fair market value minus a mortgage debt of \$99,287.00.) In the amended order, the trial court determined that the property should be reappraised at the current market value with an even division between the parties. The court found that equity demanded a new appraisal. Lara argues that the trial court erred by ordering the marital residence to be reappraised and valued at the time of the amended order rather than at the time of the decree of dissolution. We disagree. In *Culver v Culver*, 572 S.W.2d 617, 623 (Ky.App. 1978), the Court states:

if marital property has appreciated in value after the separation or decree dissolving the marriage because of general economic conditions rather than the efforts of only one of the parties, then such appreciation in value should be considered in the division of the marital property.

Applying that theory consistently would require the court to also recognize and consider in its division of property the decrease in value due to general economic

conditions post-decree. The trial court, in considering all factors, properly ordered the reappraisal.

Next, Greg argues that the trial court abused its discretion in awarding Lara maintenance in the amount of \$3,000.00 per month for a total period of four and one-half years.

“Maintenance determinations are within the sound discretion of the trial court.” *Platt v. Platt*, 728 S.W.2d 542, 543 (Ky.App. 1987). Also, “[t]he determination of whether to award maintenance is highly discretionary with the trial court after its consideration of the dictates of KRS 403.200.” *Beckner v. Beckner*, 903 S.W.2d 528, 530 (Ky.App. 1995). KRS 403.200(2) requires trial courts to consider all relevant factors, including several that are enumerated in the statute, in setting maintenance awards.

The trial court fully considered the KRS 403.200 factors in awarding maintenance to Lara. We disagree with Greg that the award is patently unfair or unreasonable. We cannot conclude that trial court abused its discretion.

Next, Greg argues that the trial court erred by valuing the parties’ two remaining horses at \$4,000.00 each. In its order, the trial court made specific findings as to the values of the horses, Mariah and Paprika. The trial court did not make specific findings regarding the values of Patriot and Fudge, however the court assigned them values of \$4,000.00 each in the property equalization chart. Because Greg did not move the trial court for more specific findings as required by

CR 52.04, this issue is waived. *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982).

Finally, Greg argues the trial court erred by awarding Lara an additional \$7,500.00 in attorney's fees. The award of attorney's fees under KRS 403.220 is entirely within the discretion of the trial court. *Neidlinger v. Neidlinger*, 52 S.W.3d 513, 519 (Ky. 2001). The trial court considered the applicable statute. There is a significant disparity in the parties' earning capacities. Greg has not demonstrated that the award of an additional \$7,500.00 was an abuse of discretion.

On cross-appeal, Lara argues that the trial court erred by limiting the child support award to \$700.00 per month.

In *Downing v. Downing*, 45 S.W.3d 449, 454 (Ky.App. 2001), this Court stated:

Kentucky trial courts have been given broad discretion in considering a parent's assets and setting correspondingly appropriate child support. A reviewing court should defer to the lower court's discretion in child support matters whenever possible. As long as the trial court's discretion comports with the guidelines, or any deviation is adequately justified in writing, this Court will not disturb the trial court's ruling in this regard. However, a trial court's discretion is not unlimited. The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.

(Footnotes omitted).

The trial court gave no indication whether it was applying the child support guidelines contained in KRS 403.211 or whether it had deviated from the guidelines as permitted by KRS 403.212(5). The trial court imputed a yearly

income of \$36,500.00 to Lara. Beyond this imputation there are no factual findings or conclusions of law supporting its award of \$700.00 per month. Lara addressed this issue in her motion to alter, amend or vacate the judgment. The trial court's order as it stands leaves us nothing to review. Therefore, we reverse and remand for the trial court to make specific findings of fact and conclusions of law on the issue of child support.

Lara next argues that the trial court erred by providing Greg with the primary input regarding the children's education. The standard of review regarding child custody issues is whether the trial court's decision was clearly erroneous and constituted an abuse of discretion. *Eviston v. Eviston*, 507 S.W.2d 153 (Ky. 1974). The appellate court will only reverse a family court's child custody decision if the findings of fact are clearly erroneous or the decision reflects a clear abuse of the considerable discretion granted family courts in custody matters. *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986).

Lara has not cited to any authority demonstrating that the trial court erred in this regard. Given the deference owed to the trial court in these matters, we cannot conclude that the trial court abused its discretion.

Accordingly, the order of the Oldham Circuit Court is affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT/
CROSS-APPELLEE:

Delores Pregliasco
Louisville, Kentucky

BRIEF FOR APPELLEE/CROSS-
APPELLANT:

James L. Theiss
LaGrange, Kentucky