

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-000941-MR

JAMES POOLE

APPELLANT

v. APPEAL FROM SIMPSON CIRCUIT COURT
HONORABLE JANET J. CROCKER, JUDGE
ACTION NO. 07-CI-00185

MAI JEWELL RATCLIFFE

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, THOMPSON, AND VANMETER, JUDGES.

VANMETER, JUDGE: James Poole appeals from the judgment of the Simpson Circuit Court which disposed of property upon the dissolution of the marriage between James and Mai Jewell Ratcliffe. For the following reasons, we affirm.

James and Mai were married on January 19, 2007. Mai filed for divorce on May 23, 2007. Between June 2007 and September 2007, Mai executed four deeds, each of which conveyed a parcel of real property to James and Mai as joint tenants

with rights of survivorship. During the marriage, Mai also purchased a motorcycle for James. The parties were divorced on February 25, 2008, by decree of dissolution, which reserved all issues pertaining to disposition of property and maintenance for a final bench trial.

At the April 2, 2008, trial, James moved for a continuance on the basis that he retained new counsel on the eve of trial, which would require additional time for counsel to review the facts and legal issues. The trial court denied the motion, heard James' testimony, and then recessed the trial until April 9, 2008, to better accommodate James' counsel's schedule. At the conclusion of the trial, the court designated the four properties to be Mai's nonmarital property and awarded James the motorcycle, including any debt associated with it. This appeal followed.

First, James argues the trial court abused its discretion by denying his motion for a continuance because it failed to consider factors required under Kentucky law. We disagree.

Our review of a trial court's denial of a motion for continuance is for an abuse of discretion. *Guffey v. Guffey*, 323 S.W.3d 369, 371 (Ky.App. 2010) (citation omitted). The trial court abuses its discretion if its "decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Miller v. Eldridge*, 146 S.W.3d 909, 914 (Ky. 2004) (citation omitted). We note, however, that the trial court has broad discretion to grant or deny a motion for continuance, and this court will not interfere in the exercise of that discretion

unless a clear abuse occurred. *N.L. v. Commonwealth*, 323 S.W.3d 732, 737 (Ky.App. 2009) (citations omitted).

When reviewing the denial of a motion for continuance, the trial court should consider all relevant facts and circumstances, including:

- 1) length of delay;
- 2) previous continuances;
- 3) inconveniences to litigants, witnesses, counsel, and the court;
- 4) whether the delay is purposeful or is caused by the accused;
- 5) availability of other competent counsel;
- 6) complexity of the case; and
- 7) whether denying the continuance will lead to identifiable prejudice.

Guffey, 323 S.W.3d at 371 (citing *Snodgrass v. Commonwealth*, 814 S.W.2d 579, 581 (Ky. 1991) (*overruled on other grounds by Lawson v. Commonwealth*, 53 S.W. 3d 534 (Ky. 2001))).¹

Turning to the present case, we find the trial court did not abuse its discretion by denying James' motion for a continuance. Since James was present at the February 25, proceeding when the bench trial for April 2 was scheduled, the court found that James' dismissal of his counsel and hiring of new counsel on the eve of trial was a delay tactic. Additionally, the trial court found that the issues to be presented at the bench trial regarding property division and maintenance were

¹ In *Guffey*, this court held it to be "wholly appropriate to apply these factors to analyze a civil motion for a continuance.

not highly complex so as to justify a continuance. Thus, James' contention that the trial court failed to consider the necessary factors before dismissing his motion is without merit. Moreover, we note that the only evidence taken on April 2 was James' testimony; the remainder of the trial was conducted on April 9. Based on the circumstances in this case, we are unable to find that the trial court abused its discretion by denying James' motion for continuance.

Next, James maintains that the trial court erred by designating the four properties as Mai's nonmarital property because the properties were deeded to him as a joint tenant with right of survivorship. We disagree.

A trial court's findings of fact are reviewed under a clearly erroneous standard. *Gosney v. Glenn*, 163 S.W.3d 894, 898 (Ky.App. 2005) (citations omitted). Such findings are not clearly erroneous if supported by substantial evidence. *Id.* (citations omitted). Substantial evidence is evidence that "has sufficient probative value to induce conviction in the mind of a reasonable person." *Id.* (citations omitted). The trial court's conclusions of law are reviewed *de novo*. *Id.* (citations omitted).

In accordance with KRS² 403.190, upon the dissolution of marriage, a trial court must characterize each asset owned by the parties as either marital or nonmarital, assign each party's nonmarital property to that party, and divide the marital property in just proportions. *Hunter v. Hunter*, 127 S.W.3d 656, 659-60 (Ky.App. 2003) (citation omitted). Marital property is defined, in relevant part, as

² Kentucky Revised Statutes.

property acquired by either spouse subsequent to the marriage except “[p]roperty acquired by gift[.]” KRS 403.190(2)(a).

In this case, the trial court engaged in an analysis to determine whether the property should be treated as a gift under *O’Neill v. O’Neill*, 600 S.W.2d 493 (Ky.App. 1980) and KRS 403.190(2)(a).³ However, the analysis under *O’Neill* and KRS 403.190(2)(a) is used to determine when property acquired subsequent to the marriage should be considered nonmarital property because it was a gift to a spouse. Thus, we find an analysis under *O’Neill* to determine whether the properties were a gift to James to be inappropriate in this case, since James maintains the properties became marital property upon Mai deeding the property to the parties as joint tenants with rights of survivorship. James does not provide any authority, and this court is unaware of any such authority, justifying the application of the gift analysis to the present situation.

Rather, we believe the proper analysis only involves a determination of when the property was acquired. The record reveals that each property in question was acquired by Mai prior to the marriage. No evidence was presented to show that James contributed to the acquisition of the properties in any way. Further, James’ status as a joint tenant with right of survivorship is immaterial in classifying the properties. *See Hunter*, 127 S.W.3d at 660 (holding that “[w]hether title is held individually or in some form of co-ownership, such as joint tenancy . . .

³ KRS 403.190 excepts from marital property assets which are acquired by gift. To determine if an asset constitutes a gift, courts should consider “the source of the money with which the ‘gift’ was purchased, the intent of the donor at that time as to intended use of the property, status of the marriage relationship at the time of the transfer, and whether there was any valid agreement that the transferred property was to be excluded from the marital property.” *O’Neill*, 600 S.W.2d at 495.

is not determinative in classifying property as marital or nonmarital[.]” (citing KRS 403.190(3)). Thus, the trial court did not err by designating the four properties as Mai’s nonmarital property.

Finally, James argues the trial court erred by assigning him the debt associated with the motorcycle, since Mai was the only signatory to the purchasing contract. We disagree.

As previously stated, a trial court is required to divide the marital property in just proportions. KRS 403.190. James testified that Mai purchased the motorcycle during the marriage and he was not a signatory to the contract assuming the debt. Despite James’ insistence that he was not a party to the contract, the record reveals the motorcycle was only used by James during the marriage and was only in James’ possession during the marriage. By awarding the motorcycle to James upon dissolution, the trial court properly found him to be responsible for the remaining debt. James has failed to prove this was an unjust division of the marital assets.

The judgment of the Simpson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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