

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000894-MR

RENEE M. JEFFREYS

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE CHRISTOPHER J. MEHLING, JUDGE
ACTION NO. 08-CI-01631

MARK S. JEFFREYS

APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

** ** * ** * ** *

BEFORE: CLAYTON, COMBS, AND WINE, JUDGES.

CLAYTON, JUDGE: Appellant, Renee Jeffreys, appeals a decision of the Kenton Family/Circuit Court. She contends that the award she received for maintenance and division of marital debts was an abuse of discretion by the trial court. For the reasons that follow, we affirm in part, reverse in part and remand for further conclusions of law.

FACTUAL BACKGROUND

The parties were married on April 12, 1997, in Washington, D.C. They had two children during the marriage, KAJ born August, 29, 2001, and VEJ born May 31, 2003. At the time of their divorce, the parties owned a residence located at 218 Wallace Avenue in Covington, Kentucky. The house was valued at \$385,000, but they owed approximately \$400,260.30 on first and second mortgages. The house needed repairs and Appellee, Mark Jeffreys, had received an insurance check for repairs. Appellant, Renee Jeffreys, filed for Chapter 7 Bankruptcy protection and had some debts discharged.

In addition to the amount owed on their residence, as of the date of separation, the parties owed the following on credit cards:

Bank of America	\$48,230.78
Chase	8,579.30
Cong. Fed Cr. Union	147.17
American Express	23,844.00
Bank of America	14,800.00
Bank of America	639.00
Wa Mu	28,387.00
Delta American Exp	17,848.25
Total	142,485.25

The trial court found that of the total debt, approximately \$118,000 was in Mark's name while the remaining \$24,000 was in Renee's.

Mark had a retirement account with his employer, Procter and Gamble with an estimated value of \$52,844 and was earning \$129,000 plus bonuses each year. Renee had earnings of \$25,000 each year. Each party had IRA accounts with Smith Barney. Mark's was valued at \$14,595.10 and Renee's at \$10,289. Renee also had a Roth IRA valued at \$4,100. Finally, Mark had P&G stock options which would vest in September of 2009.

The trial court did not award maintenance to either party and held that the second mortgage debt owed to Renee's mother, Diana Minges, to "be nondischargeable pursuant to 11[United States Code] U.S.C. § 523(a)(15) Section 523 of the Bankruptcy Code"

The trial court also divided the marital debt between the parties as follows:

13. Husband shall assume all debt currently in his name and shall hold Wife harmless from this marital debt. Wife shall assume all debt currently in her name and shall hold Husband harmless from this marital debt. The Court notes that Wife has filed for bankruptcy and therefore the debts she is to assume under this order of the Court, aside from that of the debt owed to Ms. Minges, may be discharged. Therefore, the following shall indicate the debt(s) each party shall be responsible for under this Order of the Court:

. . . .

14. As the aforementioned tables describe, Husband shall be responsible for \$118,002.25 of the marital debt, while Wife shall be responsible for \$24, 483.00 of the marital debt. This amount is

in addition to the \$110,269.30 marital debt Husband and Wife owe to Ms. Minges. The Court notes that the amount of debt to be assumed by Husband is a total of \$93,519.25 more than the amount for which Wife shall be responsible. Any debt incurred post separation not already designated shall be the responsibility of the party who incurred it.

Findings of Fact and Conclusions of Law of Court at 8-9.

Renee now contends that the trial court made incorrect findings of fact, conclusions of law regarding maintenance, debt division and the dischargeability of the second mortgage held by her mother, and appeals.

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 the opportunity of the trial court to judge the credibility of 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.” *Com. v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

DISCUSSION

Renee first contends that the trial court erred in failing to award her maintenance.

Kentucky Revised Statutes (KRS) 403.200 provides, in part:

(1) In a proceeding for dissolution of marriage or legal separation . . . the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs[.]

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:

(a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently[.]

.....

(c) The standard of living established during the marriage;

(d) The duration of the marriage;

(e) The age, and the physical and emotional condition of the spouse seeking maintenance; and

(f) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

“Under this statute, the trial court has dual responsibilities: one, to make relevant findings of fact; and two, to exercise its discretion in making a determination on maintenance in light of those facts.” *Perrine v. Christine*, 833 S.W.2d 825, 826 (Ky. 1992).

In *McKinney v. McKinney*, 257 S.W.3d 130, 134 (Ky. App. 2008), the court held that “a final judgment shall not be set aside because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless the failure is brought to the attention of the trial court by a written motion pursuant to CR 52.02.” In the present case, Renee did not file a motion to amend or clarify the findings of fact set forth by the trial court. Thus, the findings must be upheld.

Renee also contends that the trial court erred in dividing the debts between the parties. Specifically, she argues that the trial court erred when it ruled that she could not discharge the debt owed to her mother, Diana Minges, as a second mortgage on their real estate. 11 U.S.C. § 523(a)(15) of the Bankruptcy Code provides, in pertinent part, as follows:

(a) A discharge under section 727, 1141, 1228(a), 1228(b) or 1328(b) of this title does not discharge an individual debtor from any debt...

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made

in accordance with State or territorial law by a government unit[.]

We agree with Renee's argument that federal courts maintain exclusive jurisdiction in determining whether a debt is dischargeable in bankruptcy. *In re Smither*, 194 B.R. 102, 106 (Bkrtcy W.D. Ky. 1996). *See also Holbrook v. Holbrook*, 151 S.W.3d 825, 828 (Ky. App. 2004). Thus, the trial court committed error in making a conclusion of law that the debt to Diana was not dischargeable.

Finally, Renee contends that the trial court erred in dividing the marital debts. Specifically, she contends that the Bank of American debt of \$14,800 and the Wa Mu debt in the amount of \$28,397 were in Mark's name. In fact, she contends, these debts were discharged in her bankruptcy proceeding. As set forth previously, Renee did not bring to the attention of the trial court through motion that additional findings needed to be made. Thus, we find the issue is not preserved.

We therefore, affirm in part, reverse in part the decision of the trial court, and remand this action for further conclusions of law regarding the issues of maintenance and the dischargeability of the debt to Diana Minges.

ALL CONCUR.

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