

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-000845-MR

DEBBIE WHISMAN

APPELLANT

v. APPEAL FROM WOLFE CIRCUIT COURT  
HONORABLE FRANK ALLEN FLETCHER, JUDGE  
ACTION NO. 05-CI-00179

FRANK WHISMAN

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: DIXON, STUMBO, AND VANMETER, JUDGES.

VANMETER, JUDGE: Debra Whisman appeals from the order of the Wolfe Circuit Court which confirmed the recommendations of the Domestic Relations Commissioner (“DRC”) that the real property and mobile home at issue were marital property. For the following reasons, we vacate the order and remand.

In 2005, Frank Whisman filed a petition for dissolution of the marriage between Debra and him. Subsequently, Debra deeded to her mother, Allene, a

piece of real property and mobile home that had been conveyed solely to Debra during her marriage to Frank. The deed conveying the property to Allene did not bear Frank's signature.

While the divorce action was pending, Frank filed a complaint in the Wolfe Circuit Court requesting that the property be sold and the proceeds distributed. The court ordered the property to be sold by the master commissioner; the proceeds were to be placed in escrow pending a determination of Frank's, Debra's, and Allene's respective interests in the property. The master commissioner's order of sale was confirmed by the court, which distributed the proceeds of the sale proportionately amongst the owners, with Frank and Allene receiving an equal share in 75 percent of the proceeds.<sup>1</sup> The court further found that Debra, having deeded her interest in the property to Allene, no longer had an ownership interest in the property and thus was not awarded a share of the proceeds.

Debra appealed, contending that Frank was not entitled to share in the proceeds from the sale of the property since he had only an inchoate expectant interest in the property that would not vest until Debra's death, and further, that the court erred by awarding Frank one-half of the interest in the property conveyed by Debra to Allene. A panel of this court found that Frank did not have an ownership interest in the property, but that whether or not he had a marital interest in the

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<sup>1</sup> The remaining 25 percent of the proceeds were distributed to the additional owners, Gloria Everidge, Joyce Blair, James Adkins, and Heather Caldwell.

property was to be determined by the trial court presiding over the divorce proceeding.<sup>2</sup>

Thereafter, in the underlying divorce action, the trial court entered a notice for final hearing before the DRC. A hearing before the DRC evidently took place, since the record shows that Debra filed exceptions to the DRC's report; however, the report is not contained in the record before us. Following Debra's filing of exceptions and Frank's response thereto, the court entered an order, from which Debra now appeals, confirming the recommendations of the DRC that the property at issue was marital property.

On appeal, Debra argues that the report of the DRC is not a matter of record, and that without it, the trial court's order confirming the DRC's recommendations was an abuse of its discretion. We agree.

In Kentucky, trial courts often rely on the recommendations of a DRC. *Eiland v. Ferrell*, 937 S.W.2d 713, 716 (Ky. 1997). The trial court "has the broadest possible discretion with respect to the use it makes of reports of domestic relations commissioners." *Id.* (citing *Haley v. Haley*, 573 S.W.2d 354 (Ky.App. 1978)).

In this case, the video record of the hearing conducted by the trial court, prior to entry of the order from which Debra now appeals, shows that the court considered the report of the DRC and confirmed its recommendations. Thus, the parties and the court reviewed the report of the DRC. While normally the rule is

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<sup>2</sup> *Whisman v. Whisman*, 2007-CA-002534-MR (Ky.App., Sept. 18, 2009).

“when the complete record is not before the appellate court, that court must assume that the omitted record supports the decision of the trial court[,]” in this instance, Debra raises the issue of distribution of proceeds, which is not of record. *Hatfield v. Commonwealth*, 250 S.W.3d 590, 601 (Ky. 2008) (quoting *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985)). Specifically, no findings are of record as to the extent and nature of Frank’s marital interest in the property, if any. Accordingly, remand is appropriate in order for the trial court to make or set forth the necessary findings of fact and conclusions of law with respect to this issue.

The order of the Wolfe Circuit Court is vacated and this case is hereby remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Richard Kenniston  
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BRIEF FOR APPELLEE:

Melissa C. Howard  
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