

RENDERED: AUGUST 30, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000843-MR

MOFED KADER

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE PAULA SHERLOCK, JUDGE
ACTION NO. 10-CI-500834

NAJAT KADER

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: NICKELL, THOMPSON, AND VANMETER, JUDGES.

VANMETER, JUDGE: Mofed Kader appeals from the April 23, 2012, order of the Jefferson Circuit Court denying his motion to vacate the court's March 26, 2012, order dividing the marital property and debt in the dissolution action between Mofed and Najat Kader. We affirm.

Mofed filed a petition for dissolution in 2010. Filed concurrent to the petition were several other documents, including a property settlement agreement

signed by both parties. A decree of dissolution was entered on July 13, 2010, which incorporated the agreement by reference. In 2011, after securing legal counsel, Najat moved to set aside the agreement as unconscionable. The motion was granted and the trial court ordered that the parties attempt to mediate an equitable division of their marital properties and debts. The mediation efforts were unsuccessful and Najat filed a motion on January 17, 2012, to schedule a trial date. The next day, on January 18, 2012, counsel for Mofed filed a motion to withdraw as counsel of record. The trial court heard both motions on January 23, 2012. Mofed, although aware of the two pending motions, chose not to attend the motion hour. Both motions were granted and on January 24, 2012, a trial order was entered setting the date of trial as March 23, 2012.

The trial took place on the scheduled date without Mofed in attendance. Thereafter, the trial court issued its March 26, 2012, findings of fact and conclusions of law regarding the division of property and debt. One week later, on April 2, 2012, Mofed filed a *pro se* motion to redocket, indicating that he had not been provided notice of the March 23, 2012, trial. Mofed's motion was denied and this appeal followed.

Mofed's motion to redocket was essentially a motion to alter, amend, or vacate, pursuant to Kentucky Rules of Civil Procedure (CR) 59.05. We review a trial court's judgment on such a motion for an abuse of discretion. *Bowling v.*

Kentucky Dept. of Corrections, 301 S.W.3d 478 (Ky. 2009). Mofed's sole argument on appeal is that the trial court committed palpable error and abused its discretion when it failed to set aside its March 26, 2012, judgment. He maintains that the judgment should have been set aside because he was denied due process as a result of not having notice of the March 23, 2012, trial. We disagree.

The record shows that Mofed was provided notice of the trial and simply failed to appear. The January 24, 2012, order states at its conclusion "cc: Mofed Kader, Petitioner, Pro Se[.]" indicating that Mofed received a copy of the order setting the trial date for March 23, 2012. Mofed, by his admission, was aware he was involved in a dissolution proceeding and that Najat had moved for a trial date after unsuccessful mediation attempts. Two months passed from the time Najat's motion for a trial date was heard and the date of the actual trial, during which time Mofed failed to ascertain the ruling of the motion. Additionally, Najat filed a pretrial compliance on March 6, 2012, and certified that a copy was sent to Mofed. If, as Mofed claims, he did not know about the trial date, this failure was due to his apathy and not to any error of the trial court or Najat. Accordingly, we hold that the trial court did not abuse its discretion when it denied Mofed's motion to alter, amend, or vacate the March 26, 2012, order.

For the foregoing reasons, the March 26, 2012, and April 23, 2012, orders of the Jefferson Circuit Court are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

Gerry Ellis
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