

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001225-MR

LISA G. HOWARD

APPELLANT

v. APPEAL FROM LIVINGSTON CIRCUIT COURT
HONORABLE CLARENCE A. WOODALL III, JUDGE
ACTION NO. 13-CI-00163

STACEY A. HOWARD

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, NICKELL, AND VANMETER, JUDGES.

COMBS, JUDGE: Lisa Howard appeals the dissolution judgment of the Livingston Circuit Court granting dissolution of marriage. After our review, we affirm.

Lisa and Stacey Howard were married on March 11, 1995. Lisa worked throughout the marriage, performing mainly clerical work, until 2012. Stacey

provided their primary income through his jobs as an agricultural products salesman and a manager of an agricultural products store. Lisa filed a petition for dissolution of her marriage to Stacey Howard on November 14, 2013.

The court held a bench trial on May 1, 2014. On June 24, 2014, it entered its findings of fact and conclusions of law. Pertinent to this appeal, the court found that incentives and bonuses that Stacey received from his employer were part of his earned income rather than separate assets. It found that Stacey had a nonmarital interest in a portion of a retirement account, and it divided the parties' interest in a farm. On appeal, Lisa contends those three findings were erroneous.

We cannot address any of Lisa's arguments because they are not preserved for our review. Kentucky Rule[s] of Civil Procedure (CR) 76.12(4)(c)(v) provides that "at the beginning of the argument a statement with reference to the record showing whether the issue was properly reserved for review and, if so, in what manner."

The purpose of the rule of preservation is to show this court where the trial court had been given the "opportunity to correct its own error before the reviewing court considers the error itself." *Hallis v. Hallis*, 328 S.W.3d 694, 696-97 (Ky. App. 2010). Our Supreme Court has emphasized the importance of preservation: "[i]t goes without saying that errors to be considered for appellate review **must** be precisely preserved and identified in the lower court." *Skaggs v. Assad, ex rel.*, 712 S.W.2d 947, 950 (Ky. 1986). (Emphasis added). The preservation rule is designed to promote judicial efficiency by sparing the

reviewing court a lengthy search of the record. *Mullins v. Ashland Oil, Inc.*, 389 S.W.3d 149, 153 (Ky. App. 2012).

In the case before us, Lisa's brief does not point to how any of her claims of error were preserved for review. However, the briefing error on its own is not necessarily fatal to the appeal; we are permitted to ignore it and continue with review. *Hallis, supra*. We have elected to search the record on our own. However, our review has not revealed any preservation of error.

The trial court listed two of Lisa's alleged errors as stipulations in its final order. The first was that the parties did not dispute that \$6000 of one of Stacey's retirement accounts is nonmarital. Secondly, it provided figures for the division of interest in a farm. There is no indication in the record that Lisa objected to the stipulations.

In her brief, Lisa contends that she "specifically disputed" the nonmarital interest in the retirement account. We examined her citation to the video record, which consisted of her counsel's recitation of the stipulations reached between the parties. The stipulation stated by Lisa's counsel was that retirement accounts should be equally distributed except for any portion that Stacey proved was nonmarital.

During the trial, Stacey testified that he had placed \$6000 into the account prior to the marriage. Lisa did not introduce evidence which proved otherwise. Her counsel stated to the court that she questioned Stacey about his withdrawals from the account in order to cast doubt on his assertion of a nonmarital interest.

Following the trial, the parties agreed to submit their arguments and proposed findings in writing. Although the trial court referred to Lisa's proposed findings of May 13, 2014, they are not in the record. They are listed in the Table of Contents between pages 289 and 290. Furthermore, the record does not include any post-judgment motions asking the court to correct the stipulations.

Finally, Lisa objects to the characterization of Stacey's bonuses and incentive pay as income. Lisa testified that she felt that they were assets partially owned by her. However, there is again nothing in the record which indicates that she objected to the court's finding and that she furnished it with legal authority in support of her claim. Although she provides extensive case law to us, a new theory of error may not be introduced in an appeal. *Henderson v. Commonwealth*, 438 S.W.3d 335, 343 (Ky. 2014).

There is simply nothing in the record to indicate that Lisa gave arguments, information, legal authority, or any other basis to enable the trial court to correct the errors which she now alleges. It had no opportunity to address the alleged errors. Therefore, we are unable to address the merits of Lisa's appeal, and we are compelled to affirm the Livingston Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Rebecca J. Johnson
Marion, Kentucky

BRIEF FOR APPELLEE:

Jill L. Giordano
Princeton, Kentucky