

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001967-MR

CECIL ALLEN KEIBLER

APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE JEFFREY L. PRESTON, JUDGE
ACTION NO. 14-CI-00200

LYNNE ALLISON KEIBLER

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, NICKELL, AND THOMPSON, JUDGES.

CLAYTON, JUDGE: Cecil Allen Keibler appeals the September 18, 2014 findings of fact, conclusions of law, and dissolution of marriage decree and the November 4, 2014 order denying his motion to alter, amend, or vacate and for specific findings. Cecil maintains that the family court erred in awarding Lynne

Allison Keibler the entirety of her pension and in its division of marital debt. After careful consideration, we affirm.

Cecil and Lynne were married on August 14, 1993, and had two children, one of whom was a minor at the time of the filing of the dissolution petition. Cecil works part-time as a route driver for the Portsmouth Daily Times and earns about \$15,000.00 per year. Lynne is employed as a certified pharmacy technician and earns approximately \$30,000.00 annually.

After the entry of the dissolution order, Cecil filed a motion to alter it, which was denied. He now appeals from both orders. In his appeal, he only contests two issues. First, he maintains that the family court should have awarded him one-half of Lynne's pension. Instead, the family court determined that because of Lynne's contribution to the pension and her payment of the debt incurred on the pension, it should be awarded to her. In doing so, the family court required that she pay all debts associated with the pension. The family court also noted that this decision was based on Cecil's work history and contribution to the household during the marriage. Both his work history and contributions to the marriage were attenuated. The pension was valued at \$9,667.66 as of August 31, 2014; however, Cecil acknowledged that a \$2,300.00 loan was procured from the pension to pay marital debt and offset the value of the pension.

Cecil's second issue involves the division of the remaining marital debt. Besides the aforementioned \$2,300.00 pension debt, the marital debts are \$17,250.00 in past rent and \$2,100.00 in a personal loan, both owed to Terry Fyffe,

who is Cecil's brother-in-law; Cecil's medical bills; Lynne's medical bills; and, a child's medical bills. Regarding the personal loan from Terry, the family court observed in the findings that only a portion of the loan was made during the parties' marriage. The outstanding rent, which was on a lease agreement with Terry, wherein the parties were to pay \$250.00 rent per month, had not been paid for many years.

The family court ordered that the parties each pay one-half of the child's medical debt and pay their own medical debt. And the family court required Cecil to be responsible for any debts owed to his brother-in-law including the personal loan and the rent on the lease agreement. Cecil argues that Kentucky Revised Statutes (KRS) 403.190 mandates that he should have been awarded one-half the pension, less the outstanding debt, or one-half of \$7,367.66. Moreover, he maintains that the family court did not make a specific finding to support its reasoning for awarding Lynne the entire pension. Therefore, Cecil claims that the family court abused its discretion.

Lynne counters that testimony. She provided evidence at the hearing that the parties accumulated few assets during the marriage and that Cecil had a very limited work history. The loans from Lynne's pension were for the benefit of the family while Cecil remained, for the most part, unemployed or underemployed. Given that Lynne made all the contributions to the pension, paid the debt on funds borrowed from the pension for the family, and Cecil's limited work history, she

contends that the family court properly awarded the pension, with its attached debt, to her.

Indeed, the disposition of parties' property in a dissolution-of-marriage action is governed by KRS 403.190. After a determination of whether the property is marital or nonmarital and assigning a party the nonmarital property, the family court equitably divides the marital property between the parties. *Sexton v. Sexton*, 125 S.W.3d 258, 264-65 (Ky. 2004). Guidance is provided in KRS 403.190(1) wherein the pertinent sections note that a court "shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including: (a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker; (b) Value of the property set apart to each spouse; (c) Duration of the marriage; and (d) Economic circumstances of each spouse when the division of property is to become effective. . . . KRS 403.190(1).

Our review of a family court's findings is governed by Kentucky Rules of Civil Procedure (CR) 52.01, which provides, in pertinent part, that "[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

As pointed out by Cecil, the family court found, based on the KRS 403.190(1) factors, that Lynne made the contribution and the payments of debts on the pension and that throughout the marriage she was the primary breadwinner.

Further, Cecil sporadically worked at part-time jobs and never used his accounting degree. We conclude that the family court did make sufficient findings regarding Lynne's pension and the attendant contributions to it and appropriately awarded it to her. Furthermore, we are foreclosed from vacating a trial court's findings in a divorce proceeding unless they are found to be "clearly contrary to the weight of evidence." *Clark v. Clark*, 782 S.W.2d 56, 58 (Ky. App. 1990).

In addressing Cecil's second issue that the family court abused its discretion in dividing the marital debt, we note that in dividing marital debt, the family court is also guided by KRS 403.190(1), which requires that division be accomplished in "just proportions." *Lawson v. Lawson*, 228 S.W.3d 18, 21 (Ky. App. 2007). But dividing property in "just proportions" does not mean that property must be divided equally. *See Russell v. Russell*, 878 S.W.2d 24 (Ky. App. 1994). Rather, the division should be accomplished without regard to marital misconduct and in "just proportions" considering all relevant factors. *Brosick v. Brosick*, 974 S.W.2d 498, 503 (Ky. App. 1998).

Issues pertaining to the assignment of debts incurred during the marriage are reviewed under an abuse of discretion standard. *Neidlinger v. Neidlinger*, 52 S.W.3d 513, 523 (Ky. 2001). The family court divided the marital debt for medical expenses by having each party be responsible for their own medical bills and split the child's medical bills between them. It made Lynne responsible for the pension debt. And finally, the family court held that Cecil should be responsible for the loans from his brother-in-law and the rent on his

brother-in-law's property. Since the brother-in-law made no effort to collect the sixty-nine (69) months of back rent during the marriage, it is reasonable to permit Cecil and Terry, who have a family relationship, to ascertain the mechanism to extinguish that debt.

Lynne characterizes the loan as an "in-kind" gift. However, the trial court does not make that characterization; instead, the court, based upon sufficient evidence, found that it was equitable to have Cecil make any payment if collection is ever sought. We conclude that the assignment of the debts to Cecil and Lynne was equitable, and thus, not an abuse of discretion.

Accordingly, the judgment of the Greenup Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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