

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000757-MR

WESLEY M. JAMES

APPELLANT

APPEAL FROM OLDHAM CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NOS. 12-CI-00400

JENNIFER RENE JAMES

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, DIXON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Wesley M. James brings this appeal from Findings of Fact, Conclusions of Law, and Final Decree entered in the Oldham Circuit Court, Family Court Division, on January 15, 2014, dividing marital property and awarding maintenance. We affirm.

Wesley M. James and Jennifer Rene James were married on May 17, 2003. One child, a daughter, M.L.J., was born on October 30, 2003. The parties separated on November 27, 2011, following an incident of domestic violence. Jennifer was granted an emergency protective order and ultimately a domestic violence order was issued against Wesley. Jennifer filed a petition for dissolution of marriage in the family court on May 16, 2012. Following an evidentiary hearing, the family court entered its Findings of Fact, Conclusions of Law, and Final Decree on January 15, 2014.¹ This appeal follows.

We begin by observing that Wesley's brief is in contravention of Kentucky Rules of Civil Procedure (CR) 76.12(4)(c)(v). Wesley fails to cite to the record in the 22-page "Statement of Facts" in his brief, fails to cite any legal authority to support his legal arguments, and fails to reference where the issues he raises on appeal were properly preserved for appellate review below. *See* CR 76.12(4)(c)(v). Rather, Wesley's arguments are cursory at best and lack even a basic legal analysis. It is not the role or duty of this Court to search the record below to find evidence or support for Wesley's arguments on appeal. *Smith v. Smith*, 235 S.W.3d 1 (Ky. App. 2006). Pursuant to CR 76.12(8), we could strike his brief for this omission and proceed with our review accordingly. However, given that the parties' minor child is also affected by the family court's ruling, to avert a manifest injustice, we have not stricken Wesley's brief and have attempted

¹ Because the family court conducted an evidentiary hearing, our initial standard of review is governed by Kentucky Rules of Civil Procedure (CR) 52.01, *et seq.*

to identify Wesley's assertion of error on appeal and address the same. *See Elwell v. Stone*, 799 S.W.2d 46 (Ky. App. 1990).

In that regard, our review of the roughly two-page argument set forth on pages 22-24 of Wesley's brief, reflects that Wesley has raised two issues on appeal. We have boiled these issues down to the allocation of the parties' retirement accounts and award of maintenance.²

First, Wesley asserts that the family court erred in its division of the parties' retirement accounts, specifically alleging the family court abused its discretion by ordering each party to retain their respective accounts. Kentucky Revised Statutes (KRS) 403.190(1) governs the division of marital property and provides that a family court must divide marital property in just proportions after considering all relevant factors. 15 Louise E. Graham & James E. Keller, *Kentucky Practice—Domestic Relations Law* § 15.4 (2015). It should be noted that an equitable division is not necessarily an equal division. *Russell v. Russell*, 878 S.W.2d 24 (Ky. App. 1994). The family court possesses wide discretion in its division of marital property, and its decision will not be disturbed on appeal absent an abuse of that discretion. *Id.* An abuse of discretion occurs where “the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by the sound legal principles.” *Downing v. Downing*, 45 S.W.3d 449, 454 (Ky. App. 2001).

² This is a most liberal interpretation of appellant's argument in his brief and his prehearing statement, whereupon our review on appeal is limited to the issues set out therein. CR 76.03(8). *See Wright v. House of Imports*, 381 S.W.3d 209, 212 (Ky. 2012).

In this case, it is undisputed that Jennifer was 38 years old and had worked at Starbucks for 12 years. She worked 25 to 35 hours per week and earned \$10.17 per hour. Jennifer's retirement accounts totaled approximately \$39,234. Wesley, on the other hand, was 35 years old and had worked as an operations manager for a lawn care business for approximately eight years. His gross pay was approximately \$3,400 per month. His retirement account contained approximately \$13,408. In assigning the parties their respective accounts as part of the division of marital property, the family court found it was equitable because Jennifer was older than James, and she would be unable to contribute funds to her retirement while attending college.³ Considering these unique facts, the family court's division of the marital retirement accounts was in just proportions per KRS 403.190(1). Thus, we do not believe the division was an abuse of discretion as the decision was not arbitrary and was supported by sound legal reasoning.

Wesley's second argument on appeal is that the family court erred by awarding Jennifer maintenance of \$400 per month for thirty months. In support thereof, Wesley asserts that the family court did not consider his "child support of \$600 per month, utilities, food, clothing, and shelter . . . attorney's fees [and] uncovered medical cost." Wesley's Brief at 23.

It is axiomatic that the amount and duration of a maintenance award are within the sound discretion of the circuit court. *Gentry v. Gentry*, 798 S.W.2d

³ Jennifer Rene James has an Associate Degree and at the time of the hearing, was enrolled at the University of Louisville seeking a degree in pre-engineering with hopes of later obtaining an engineering degree.

928 (Ky. 1990). An award of maintenance may only be reversed where there has been a clear abuse of discretion. *Combs v. Combs*, 622 S.W.2d 679 (Ky. App. 1981). And, of course, the family court's findings of fact on this issue are conclusive if supported by substantial evidence of a probative value. *Spurlin v. Spurlin*, 456 S.W.2d 683 (Ky. 1970); CR 52.01.

The criteria for awarding maintenance is set forth in KRS 403.200(1) which provides that a family court may award maintenance if the spouse seeking the award lacks sufficient property to provide for her reasonable needs and is unable to support herself through appropriate employment. *Drake v. Drake*, 721 S.W.2d 728 (Ky. App. 1986). If the criteria for awarding maintenance is satisfied the family court must then determine the amount and duration of the award. KRS 403.200(2) governs the amount and duration of a maintenance award and provides that the court must consider the following factors: (a) financial resources of the parties, (b) time needed to acquire education or training to enable party to obtain employment, (c) standard of living established during the marriage, (d) duration of the marriage, (e) age, physical condition, and emotional condition, and (f) ability of payor spouse to pay maintenance while meeting his needs.

In the case *sub judice*, it does not appear that Wesley is challenging the court's decision to award Jennifer maintenance. Rather, Wesley seems to argue that the family court erred as to the amount and duration of the maintenance award. Pursuant to KRS 403.200(2), our review finds that the family court thoroughly considered the factors relevant to the amount and duration of the

maintenance award. The family court's award of rehabilitative maintenance was intended to assist Jennifer while she was attending college to obtain a four-year degree. And, the family court enumerated the following relevant factors: Wesley has a significantly higher income, Jennifer was acquiring an education to enable her to obtain better employment, the parties had been married eight years, and Wesley had the ability to pay Jennifer maintenance while still meeting his needs. Based upon these findings, we do not believe the family court abused its discretion by awarding Jennifer maintenance of \$400 per month for thirty months.

To the extent Wesley has asserted any other errors by the family court below, we find such claims to be without merit or otherwise harmless.

For the foregoing reasons, the order of the Oldham Circuit Court, Family Court Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mark Hyatt Gaston
Louisville, Kentucky

BRIEF FOR APPELLEE:

Eugene L. Mosley
Louisville, Kentucky