RENDERED: April 3, 1998; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 96-CA-1066-MR

GARY FREDERICK BLOEMER — APPELLANT

v. — APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE EARL O'BANNON, JR., JUDGE
ACTION NO. 93-CI-004893

MARY ELIZABETH BLOEMER — APPELLEE

AND NO. 96-CA-1071-MR

MARY ELIZABETH BLOEMER — APPELLANT

v. — APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE EARL O'BANNON, JR., JUDGE
ACTION NO. 93-CI-004893

GARY FREDERICK BLOEMER — APPELLEE

OPINION
VACATING AND REMANDING

* * *

BEFORE: GUDGEL, CHIEF JUDGE, GARDNER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This opinion covers two separate appeals from a divorce case. We have combined the opinions even though the appeals were not consolidated. Both parties appealed those

portions of the judgment which relate to the trial proceedings, property division, maintenance, and child support. The second appeal also questions custody and arrearages.

The parties to this divorce, Gary Frederick Bloemer (Gary) and Mary Elizabeth Bloemer (Mary), were married on May 23, 1981, separated on July 23, 1993, and filed for dissolution of the marriage on December 4, 1993. Three children were born of the marriage, namely David Edward Bloemer, born November 5, 1985; Kyle Raymond Bloemer, born August 17, 1988; and Elizabeth Rose Bloemer, born May 21, 1990.

At the time of the parties' marriage, Gary had finished his third year in medical school and Mary had just finished her first year of nursing school. Gary is presently an orthopedic surgeon practicing medicine with two other physicians. After Mary received her associate degree in nursing, she worked as a nurse until mid-1987, shortly before the birth of their first child, at which time she became a full-time homemaker.

A limited decree of dissolution was entered by the court on August 2, 1994, reserving all outstanding issues, including the determination of living arrangements for the parties' three infant children (the decree reflects the parties' agreement to permanently share joint custody and control of their children); the establishment of child support obligations for both parties; the assignment of the parties' non-marital property; the valuation and equitable division of the parties' marital estate; and the determination of Mary's entitlement, if

any, to maintenance. Mary made a motion for pendente lite maintenance and child support which was heard by the Domestic Relations Commissioner on September 20, 1994, and his recommendation of $8,200.00 a month was upheld by the court's order of October 27, 1994, without a breakdown between support and maintenance. Both sides filed exceptions which were disposed of in the final order of January 4, 1996. Both parties filed CR 59.02 motions. A hearing was held on March 1, 1996 and a final order was entered on March 15, 1996, which disposed of some of the property.

In his appeal (96-CA-1066), Gary argues that the trial court failed to conduct the proceedings in a coherent manner which deprived both parties of a fair adjudication of the issues presented. More specifically, Gary complains that the court would only allow a two- or three-hour hearing at a time on issues and that most of the case was tried during motion hour because the court would not schedule necessary hearings. Mary disagrees that the piecemeal hearings worked to Gary's disadvantage but agrees it was unfair as to her issues. In general, the scheduling of trials, hearings, and motions is within the trial court's discretion and will not be set aside unless there is an abuse of discretion. CR 40; CR 42.02; CR 43.03; and Gould v. Charlton Co., Inc., Ky., 929 S.W.2d 734 (1996). To show an abuse of discretion, the parties need to point out specific errors in rulings, which comprises the remainder of Gary's brief and is what Mary argues in her appeal (96-CA-1071).

First, Gary contends the trial court abused its discretion by failing to dispose of the parties' personal property pursuant to KRS 403.190. Mary agrees but contends the major error is in the cost of finishing the basement in the marital residence. In Mary's appeal, she contends the court failed to restore non-marital property and erred in valuing the medical practice. The court's findings state that the parties agreed upon an equal division of property and that an agreement was to be made. There never was a complete division although there were an appraisal and some set-offs in the area of property division relating to the marital residence, Barren County property, and the medical practice, reserving the right to equalize the distribution by picking assets. The March 15, 1996 order did subsequently divide some more assets. We agree with the parties that this is not a complete division of property contemplated by KRS 403.190. While an agreed settlement under KRS 403.180 may be more desirable, many times, as here, the parties cannot agree as to a complete division and the court must step in and take the inventory list, characterize the assets as marital or nonmarital property, assign the nonmarital, and divide the marital. Granted, the division of marital property may be indirectly influenced by, or may directly influence, the award of child support and maintenance, but a specific complete division must be made. The March 15, 1996 division is a start, but not complete. Newman v. Newman, Ky., 597 S.W.2d 137 (1980).

Gary's next argument is that the court's decision in awarding maintenance was in error for failure to follow KRS 403.200. Mary contends the award was inadequate. Maintenance was decided in the January order, while a partial property distribution was decided later in March. Under KRS 403.200, maintenance can only be awarded if the court finds that the spouse lacks sufficient property to provide for her reasonable needs. Here the cart is before the horse, and the maintenance issue must be remanded to consider the property disposition. Low v. Low, Ky., 777 S.W.2d 936 (1989); Gentry v. Gentry, Ky., 798 S.W.2d 928 (1990); Dotson v. Dotson, Ky., 864 S.W.2d 900 (1993); and Beckner v. Beckner, Ky. App., 903 S.W.2d 528 (1995).

Gary's final argument is that the trial court failed to consider the actual needs and expenses of the children in setting child support. Mary maintains the support and arrearages are inadequate. KRS 403.211(3)(e) allows a court to award a reasonable amount that is necessary for support, including the standard of living enjoyed during the marriage where the parties' income exceeds the guidelines. Redmon v. Redmon, Ky. App., 823 S.W.2d 463 (1992). Under KRS 403.212, there are child support guidelines which serve as a rebuttable presumption for the establishment of child support.

The court found Gary's gross monthly income was $31,500, including interest and dividends. The court noted that after a division of property, some of the interest and dividend income may go directly to the wife. The court contemplated

"imputed" income to Mary but felt the end result would not change. See Keplinger v. Keplinger, Ky. App., 839 S.W.2d 566 (1992). After noting the chart stopped at $15,000, the court was hesitant to simply double the figure. After reciting evidence before it, the court set child support at $4,000 per month for three children.

The guidelines under KRS 403.212 establish a beginning point by creating a presumption. For the first $15,000 of combined monthly adjusted gross income, support for three children amounts to $2,305, as a base. Under KRS 403.212(5), the court may use its judicial discretion in determining child support for the amount of parental income that exceeds $15,000 per month. Again, we have a problem with the lack of findings for calculation of support. The trial court reviewed the commissioner's combined support and maintenance of $8,200 and confessed that it didn't know how that figure was reached. The court rounded off and split $4,000 for maintenance and $4,000 for support as a solution. However, this doesn't give us findings that we can review. Later, the court made a division of some property by its March 15, 1996 order, recognizing this could change income allocation but made no attempt to adjust support. Everything except custody, in the parties' appeals, returns us to a complete division of assets.

Mary also appeals the award of joint custody. Gary wants joint custody but Mary says it won't work. The marriage counselor seemed to think joint custody should work. Both

parties cite Mennemeyer v. Mennemeyer, Ky. App., 887 S.W.2d 555 (1994) for the proposition that a court can change joint custody to sole custody where one party is acting in bad faith. Since this issue can be brought up post decree, the parties and the court may want to revisit the issue in light of the time it has taken to complete a trial and appeal.

It is clear to this Court that the judgment needs to be vacated and sent back for further consideration, beginning with the division of property. Realizing that the trial judge has retired, we suggest that on remand, the trial court review the entire record and then set a pretrial conference to discuss what more, if anything, the court needs in order to make a decision. In light of the time that has passed in litigation, the parties are advised to consider the status quo and possibly an agreed judgment, at least as to the property division and child cutody.

For the foregoing reasons, the judgment of the Jefferson Circuit Court, except for the limited decree of dissolution, is hereby vacated and remanded for further proceedings.

GUDGEL, CHIEF JUDGE, CONCURS.

GARDNER, JUDGE, CONCURS IN RESULT ONLY.

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