

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-000592-MR

DENA K. FUDOLD

APPELLANT

V. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE THOMAS B. MERRILL, JUDGE  
ACTION NO. 94-FC-2499

WALLACE A. FUDOLD

APPELLEE

### OPINION AFFIRMING

\* \* \* \* \*

BEFORE: GUDGEL, Chief Judge; GUIDUGLI and SCHRODER, Judges.

GUDGEL, CHIEF JUDGE: This is an appeal from a judgment entered by the Jefferson Circuit Court in a dissolution proceeding.

Appellant contends that the trial court erred or abused its discretion (1) in regard to appellee's obligation to make certain lease payments, (2) by allegedly awarding open-ended maintenance limited to a term of years, (3) in regard to his appointment of an appraiser and the division of related costs, and (4) by failing to require appellee to name appellant as a beneficiary of his life insurance policy. We disagree with each of appellant's contentions. Hence, we affirm.

The parties married in 1985 and divorced in 1996. In August 1996, after appellee presented his proof at a trial, the parties, their attorneys, and the trial judge met in chambers to resolve the parties' differences. The terms of the parties' newly-negotiated settlement agreement were then read into the record. Subsequently, each party tendered a written settlement agreement, and a hearing was conducted in January 1997 regarding appellant's objections to certain provisions of appellee's tendered agreement. After making certain modifications, the court adopted the agreement tendered by appellee. This appeal followed.

First, appellant contends that the trial court erred by failing to find that the parties agreed that appellee would pay appellant the equivalent of the lease payments on her vehicle for a minimum of fourteen months, rather than simply paying her the amount due until the existing lease expired. We disagree.

It is undisputed that during the August 1996 hearing, the parties indicated that they believed the vehicle lease would not expire for another fourteen to twenty months. They not only agreed that appellee would pay appellant the equivalent of the lease payments for the duration of the lease, but they also agreed with the court's statement that such payments would be treated as a division of property rather than as maintenance.

As it turned out, only four months remained to be paid on the lease at the time of the August hearing. Appellant therefore asserted during the January 1997 hearing that she had

not received the value of the parties' agreement, and that appellee was obligated to pay her the equivalent of ten more lease payments regardless of the lease's actual expiration date. The court disagreed, however, and refused to find that appellee was obligated to make lease payments or their equivalent beyond the expiration of the lease which existed in August 1996.

Our review of the videotaped record confirms that during the August 1996 settlement hearing, the judge noted and the parties agreed that appellee would be obligated to pay appellant the amount of the monthly lease payments to the end of the existing lease period. Contrary to appellant's assertion, however, the record does not compel a finding that the parties agreed in any way that appellee's obligation extended beyond the end of the existing lease period, or that appellant was entitled to receive the value of at least fourteen lease payments regardless of when the lease terminated. Moreover, there were no allegations of fraud, and the record contains nothing to indicate that the parties assigned a specific value to this portion of the agreement during the August 1996 hearing. That being so, we cannot say that the trial court erred by failing to find either that the parties' agreement was not accurately reflected in the agreement tendered by appellee, or that appellant was entitled to receive the value of at least fourteen lease payments.

Next, appellant contends that the trial court erred by allegedly awarding open-ended maintenance which was limited to a term of years. We disagree.

Each party submitted to the trial court a proposed property settlement agreement which required appellee to pay appellant \$1,612.53 per month as "an open-ended award of maintenance for two (2) years." That obligation was to "remain subject to further Court order, as to termination only, after two (2) years." Contrary to appellant's assertion, the court's reservation of jurisdiction to modify the award prevented the award from being one for either a lump sum payment or a fixed amount of maintenance payable over a definite term of years. See 16 Louise E. Graham and James E. Keller, Kentucky Practice, §16.22 (1997). Thus, even if we assume that appellant's objections were adequately preserved by her arguments during the August 1996 hearing, we are not persuaded that the trial court erred or abused its discretion by adopting the language in question.

Next, appellant contends that the trial court abused its discretion by appointing a Kentucky appraiser to value personal property located both in Kentucky and in Minnesota, and by requiring appellant to pay half of the appraiser's costs and charges. The trial court clearly was vested with broad discretion in this regard, however, and it was in the best position to observe whether the parties engaged in conduct and tactics which wasted the time of their attorneys and the court. See Gentry v. Gentry, Ky., 798 S.W.2d 928 (1990). Moreover, it stands to reason that consistency of results might be obtained more readily from a single appraiser than from several different

appraisers. Further, we note that appellee's acceptance of liability for the bulk of the substantial marital debts greatly reduced the discrepancies in the funds available to the parties for the payment of such costs. In light of these considerations, we cannot say that the trial court abused its considerable discretion by directing that all of the personal property in question, whether located in Kentucky or in Minnesota, should be valued by a single appraiser, and that the associated costs should be divided evenly between the parties.

Finally, appellant contends that the trial court abused its discretion by failing to require appellee to name her as a beneficiary on his life insurance policy. Contrary to appellant's contention, however, the trial court was not obligated to address this issue and modify the settlement agreement in January 1997 merely because the parties noted during the August 1996 hearing that they may have forgotten to address some issues. Indeed, nothing in the record suggests that the policy in question had a cash value which was divisible as marital property, and we cannot say that the court abused its discretion by declining to direct appellee to make payments on the policy for the benefit of appellant.

The court's judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

William Yesowitch  
Louisville, KY

BRIEF FOR APPELLEE:

Irvin D. Foley  
Christian L. Juckett  
Louisville, KY

