

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-000951-MR

JAMES GRAY

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. MERRILL, JUDGE
ACTION NO. 95-FC-004045

SHARON GRAY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

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

SCHRODER, JUDGE: In this domestic relations case, James Gray (James) disputes the division of proceeds from the sale of the marital residence he shared with appellee, Sharon Gray (Sharon). After considering James' argument, the record, and the law, we affirm the trial court's order.

The parties' decree of dissolution was entered on October 7, 1996. On January 12, 1996, James executed a construction contract and purchase agreement with Welch Builders Inc. to build a house. The contract price was \$181,500.00, and a \$10,000.00 deposit was required. Specifically, James was to pay \$1,000.00 immediately as a good faith deposit; \$2,000.00 after

the foundation was poured; \$2,000.00 after the rough framing was complete; and \$5,000.00 after the closing of the marital residence or at the closing of the contract, whichever came first.

In the trial order of January 18, 1996, the court stated that the parties had agreed to sell the marital residence and split the net proceeds equally. The court ordered James to pay any child support arrearage out of his half of the net proceeds, before distribution. These sentiments were echoed in the October 7, 1996 Findings of Fact, Conclusions of Law, and Decree of Dissolution, which further stated that the parties had agreed to value their marital home at \$150,000.00. The decree also stated in relevant part:

(14) The Respondent withdrew \$15,000.00 from the Ford money market account on March 4, 1996 which he claims was used to pay Court ordered child support and maintenance. However, the Court finds this distribution was necessitated due to his \$10,000.00 down payment made January 12, 1996 on a construction contract. See Petitioner's Exhibit 5. The Court further finds his obligations to pay support and maintenance were to be out of his weekly income and not from accumulated marital assets and this distribution constitutes a dissipation of marital assets. The Court awards the Petitioner \$7,500.00 out of his share of the net proceeds from the house sale. Robinette v. Robinette, Ky. Ct. App., 736 S.W.2d 351 (1987).

(15) The Respondent's purchase of the property known as Lot 348, Indian Springs Subdivision on January 12, 1996 was after the parties['] separation using marital assets as a down payment (See paragraph 14). This is the acquisition of an asset during the marriage and the Petitioner is awarded half of the equity in this property as of the date of this opinion. KRS 403.190; Stallings v.

Stallings, Ky., 606 S.W.2d 163 (1980); Newman v. Newman, Ky., 597 S.W.2d 137 (1980).

Raising six alleged errors, James filed a CR 59.05 motion to set aside the judgment. In denying the motion, the court amended paragraph 15 above to reflect that the equity in the purchased property was to be determined after the deduction of James' \$10,000.00 down payment.

James argues that the court redivided his share of the sale of the marital residence, without doing the same to Sharon's. He reasons that in fairness, the court should have awarded him half of the assets Sharon received from the sale of the marital home. James asserts that Sharon did not contribute to the Indian Springs property.

There does not seem to be any question that James dissipated marital funds. Dissipated property is that which is spent "(1) during a period when there is a separation or dissolution impending, and (2) where there is a clear showing of intent to deprive one's spouse of his or her proportionate share of the marital property." Robinette v. Robinette, Ky. App., 736 S.W.2d 351, 354 (1987) (citing Barriger v. Barriger, Ky., 514 S.W.2d 114, 115 (1974)). James must account for improvidently spent marital property. Barriger, supra. Because James used marital funds to make the down payment, the new property is also marital. Property acquired after an actual, but not a legal, separation but before the dissolution, is marital property. Stallings v. Stallings, Ky., 606 S.W.2d 163 (1980). Therefore, the court's order that James repay Sharon for half of the money he spent on the property, and for half the equity in the

property, as of the date of the decree, after the down payment is deducted, is correct.

We hasten to add that James' characterization of the court's redivision of marital property as contrary to the parties' agreement is inaccurate. The marital property was first divided according to the agreement. Thereafter, Sharon effectively had a lien on the new property previously purchased by James with marital property.

James also alludes to contentions regarding maintenance and his payment of health insurance premiums. These arguments are not only obtuse but also have not been preserved for appeal. Hence, we decline to address them. CR 76.03 (7); Skaggs v. Assad ex rel. Assad, Ky., 712 S.W.2d 947 (1986).

For the foregoing reasons, the orders of the Jefferson Family Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Michael L. Boylan
Louisville, Kentucky

BRIEF FOR APPELLEE:

Victoria Ann Ogden
Louisville, Kentucky