

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-003187-MR

DIANA KAY LEE

APPELLANT

v.

APPEAL FROM ADAIR CIRCUIT COURT  
HONORABLE PAUL JONES, JUDGE  
ACTION NO. 94-CI-00179

DILLARD LEE

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: EMBERTON, GARDNER, AND MILLER, JUDGES.

MILLER, JUDGE: Diana Kay Lee (Diana) appeals from the Adair Circuit Court's November 7, 1997, amended findings of fact, conclusions of law and decree of dissolution of marriage. We affirm.

The parties were married in 1983 and separated in 1994. In October 1994, Diana filed a petition for dissolution of marriage from her husband, Dillard Lee (Dillard). She requested equal division of the parties' marital property, custody of the parties' one child, and an award of child support. During pendency of the proceeding, Diana submitted two depositions and Dillard submitted one, all of which included various tax

documents in addition to other documents. In June 1997, the case was submitted to the trial court for decision.

On July 10, 1997, the trial court entered a decree of dissolution with findings of fact and conclusions of law. The court found that the parties jointly owned divers marital property including a 3.85 acre tract of land, a 12 acre tract of land, a mobile home, several vehicles, and several pieces of construction equipment and tools that Dillard used in his work. The trial court awarded Diana the realty, the mobile home, and a tractor; Dillard was awarded the equipment and tools. The court also found that the parties had accumulated marital debt on the realty and the equipment. The court assigned the \$8,000 mortgage debt on the realty to Diana, and assigned the equipment debt to Dillard. Neither party sought maintenance.

On July 21, 1997, Diana filed a motion to alter, amend or vacate the decree of dissolution. She objected to the trial court's failure to assign specific values to the marital property and failure to award her maintenance. Diana also requested that Dillard be required to pay the realty indebtedness because the mortgage proceeds had been used in his business. Dillard filed a response arguing that the record supported the trial court's judgment.

On November 7, 1997, the trial court issued an amended findings of fact, conclusions of law and decree of dissolution of marriage. The court indicated that it did not list specific values because the parties failed to provide explicit valuations for much of the property and because Diana stated in her

deposition that a realty and mobile home award would offset an equipment award. The trial court amended the decree by providing more explanation for several of the factual findings but did not alter the decree's substantive aspects. This appeal followed.

Diana argues that the trial court erred by failing to assign specific monetary values to each item of marital property and by failing to consider awarding her maintenance. Diana contends that the trial court was required to make specific valuation assessments of each item of property in order to divide the assets appropriately. We disagree.

Kentucky Revised Statute (KRS) 403.190(3) creates a presumption that all property acquired after the marriage and before a decree of legal separation is marital. See also Stallings v. Stallings, Ky., 606 S.W.2d 163 (1980). Subsection (1) states that the trial court shall divide the marital property "in just proportions" considering all relevant factors including the contribution of each spouse to acquisition of the property, the value of the property set apart to each spouse, the duration of the marriage, and the economic circumstances of each spouse. KRS 403.190(1)(a)-(d). This statutory standard does not require an absolute equal division of marital assets. Russell v. Russell, Ky. App., 878 S.W.2d 24 (1994), and Quiggins v. Quiggins, Ky. App., 637 S.W.2d 666 (1982). The trial court has wide discretion in the division of marital property. See Cochran v. Cochran, Ky. App., 746 S.W.2d 568 (1988), and Johnson v. Johnson, Ky. App., 564 S.W.2d 221 (1978). This Court reviews the

trial court's decision on property division only for an abuse of discretion. Herron v. Herron, Ky., 573 S.W.2d 342 (1978).

In the case at bar, the trial court found that one 3.85 acre tract of land given to Diana by her grandfather was her nonmarital property. All other property was found to be marital property. The court awarded Diana 15.85 acres of realty, the mobile home located thereon, and a tractor; it awarded Dillard various tools, a dump truck, a 1964 Chevy truck, and a trailer. The court assigned an \$8,000 debt on the realty to Diana; to Dillard it assigned \$12,000 in debts associated with the other items. Diana indicated in her deposition that if the court awarded her the realty, mobile home, and tractor, "[t]hat would probably offset somewhat what Dillard owns in Western Kentucky and all of his equipment." Diana failed to provide a monetary value for the realty. After review of the record, we cannot say that the trial court abused its discretion in dividing the marital property.

In addition, Diana's reliance on Brandenburg v. Brandenburg, Ky. App., 617 S.W.2d 871 (1981), is misplaced. Brandenburg set forth a formula for determining apportionment between marital and nonmarital property. The case did not purport to deal with distribution of solely marital property, as is the case at hand. Therefore, it is not applicable to the situation involving valuation of marital assets without a nonmarital component.

Diana also complains about the absence of an award of maintenance. Maintenance determinations are within the sound

discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. See Clark v. Clark, Ky. App., 782 S.W.2d 56 (1990), and Calloway v. Calloway, Ky. App., 832 S.W.2d 890 (1992). The record reflects that Diana sought temporary maintenance, but the trial court denied the request and ordered Dillard to pay \$250 per month on the mortgage debt during pendency of the divorce. In Diana's motion to alter, amend or vacate the trial court's original dissolution order, which granted no maintenance, she merely requested that Dillard be required to continue paying on the mortgage debt. Diana failed to adequately seek or support a request for permanent maintenance. Consequently, the trial court did not abuse its discretion by not awarding same.

For the foregoing reasons, the decree of the Adair Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO APPELLEE BRIEF

David F. Smith  
Russell Springs, Kentucky