

Commonwealth Of Kentucky

Court Of Appeals

NO. 1996-CA-003497-MR

RAY SIMONS, II

CROSS-APPELLANT

v. CROSS-APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE REBECCA OVERSTREET, JUDGE
ACTION NO. 94-CI-01799

LINNYA SIMONS

CROSS-APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: BUCKINGHAM, COMBS, and MCANULTY, Judges.

BUCKINGHAM, JUDGE. Ray Simons, II (Ray) cross-appeals from findings of fact, conclusions of law, and a decree of dissolution of marriage entered by the Fayette Circuit Court. The appeal by Linnya Simons (Linnya) has been previously dismissed. Having reviewed the record, we affirm.

Ray and Linnya were married in 1990, and Linnya filed a petition for dissolution of marriage in the Fayette Circuit Court in June 1994. Findings of fact and conclusions of law were entered by a domestic relations commissioner (DRC) on October 22, 1996. The findings and conclusions of the DRC relative to this

appeal involve the disposition of marital and nonmarital property and the division of the debts. On October 31, 1996, a decree of dissolution proposed by the DRC was entered into the record. Both the October 22 DRC report and the October 31 decree were signed by the DRC and the trial judge, although there is no indication as to when the trial judge signed those documents.¹

On November 1, 1996, Ray filed exceptions to the DRC's October 22 findings of fact and conclusions of law. The sole subject of Ray's exceptions is the custody of the parties' minor child. On November 6, 1996, Ray filed a response to Linnya's exceptions to the DRC's October 22 report. The trial court apparently held a hearing on the parties' exceptions on November 8, 1996, and entered an order on November 20, 1996, overruling all exceptions. Linnya then filed a direct appeal which has been dismissed, and Ray then filed a cross-appeal. Ray's appeal raised issues concerning the restoration of nonmarital property, the division and assignment of marital debts, and the award of attorney's fees.

Ray did not file exceptions to the DRC's recommendations concerning property or debt division; thus, he is

¹ We assume that the trial judge did not sign the documents until after those dates, as the trial judge is required by Kentucky Rule of Civil Procedure (CR) 53.06(2) to wait ten days after the report is served on the parties before adopting the report so as to give the parties an opportunity to file written objections or exceptions to the report. The procedure of having the trial judge adopt the DRC report by signing that document is a flawed procedure. A separate document, adopting a DRC's report, should be prepared for the judge's signature. As the DRC report and the judge's adoption of the report usually occur on different days, a single document cannot be used to reflect both actions.

precluded from raising these issues before this court. In Eiland v. Ferrell, Ky., 937 S.W.2d 713, 716 (1997), the Kentucky Supreme Court stated that "[i]n general, a party who desires to object to a report [of a commissioner] must do so as provided in CR 53.06 (2) or be precluded from questioning on appeal the action of the circuit court in confirming the commissioner's report." Ray's failure to file exceptions concerning the aforementioned issues precludes him from raising those issues before this court.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Michael Davidson
Lexington, KY

BRIEF FOR APPELLEE:

Charles W. Arnold
Lexington, KY