

RENDERED: August 13, 1999; 10:00 a.m.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court Of Appeals**  
NO. 1997-CA-002179-MR

ROBERT T. DENNIS

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT  
HONORABLE THOMAS MERRILL, JUDGE  
CIVIL ACTION NO. 97-FC-00630

CAROL J. DENNIS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GUDGEL, Chief Judge; HUDDLESTON and KNOFF, Judges.

HUDDLESTON, Judge. Robert T. Dennis appeals from a Jefferson Circuit Court order that resolved issues concerning the disposition of marital property. We find no error, and affirm.

On May 30, 1980, Robert and Carol J. Dennis were married. They are the parents of two children: Nicole Dennis, born June 30, 1986; and Bryan Dennis, born November 24, 1987. The parties separated on August 15, 1996. Carol was awarded the sole custody of Nicole and Bryan, and Robert was ordered to pay \$150.00 per week as child support.

In May 1997, Carol's employment with the Naval Ordnance Station was terminated, and she was transferred to the Naval Ordnance Station in Huntsville, Alabama. Carol's annual income is \$51,128.00. Robert is a self-employed carpet installer with an imputed annual income of \$30,000.00.

A hearing was held on July 23, 1997. Robert did not appear, nor did he request a continuance,<sup>1</sup> and the family court ordered Robert's response to Carol's petition for dissolution stricken from the record. Based on evidence presented at the hearing, the family court made findings of fact, reached conclusions of law and entered a decree of dissolution of marriage. This appeal followed.

The sole issue Robert argues on appeal is that the family court erred in dividing the marital property. He insists that the family court did not divide the marital property in "just proportions" as required by Ky. Rev. Stat. (KRS) 403.190. He argues that the family court abused its discretion by giving more weight to his lack of contribution to the marriage rather than other factors listed in KRS 403.190(1), such as the value of the property and the duration of the marriage.

Carol insists that we need not address the merits of Robert's argument because he failed to preserve this issue for review. Carol argues that Robert's failure to file a Ky. R. Civ. Proc. (CR) 52.02 motion seeking reconsideration or additional findings to support its decree waived his right to attack the findings of facts made by the family court. We disagree. CR 52.04 provides that a trial court's failure to make a finding of fact is not a ground for reversing or remanding the decree unless the failure was brought to the court's attention by a written request for a finding or by appropriate motion. Where the trial court has considered an issue and made findings, however, CR 52.04 does not require the adversely affected party to object to or to request reconsideration of those findings as a precondition of appellate review. Cf. CR 52.03. As discussed more fully below, the family court made findings with respect to the division of marital

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<sup>1</sup> Robert's counsel's motion to withdraw was granted on July 15, 1997.

property. These findings, and the consequent division of the marital estate, are thus subject to review despite Robert's absence from the hearing or his failure to move the trial court to reconsider or to clarify its ruling. Review being appropriate, we turn to the substance of Robert's appeal.

KRS 403.190 only requires that the distribution of marital property be just; there is no requirement that marital property be equally divided. Russell v. Russell, Ky. App., 878 S.W.2d 24 (1994). Relevant factors to the division include the contribution of each spouse to the acquisition of the property, the value of the property given to each spouse, the duration of the marriage, and the economic circumstances of each spouse. KRS 403.190.<sup>2</sup>

The family court awarded Carol two-thirds of the equity in the marital home (\$15,180.00) after it was sold, a 1997 Dodge (\$19,500.00 less \$18,000.00 in debt), her CSRS government pension (\$30,488.00), and ordered her to pay her Capital One credit card debt (\$2,000.00). The remaining assets, the one-third of the equity in the marital home (\$7,590.00) after it was sold, a 1978 Ford (\$500.00), a 1970 tractor

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<sup>2</sup> KRS 403.190 provides, in relevant part, that the court is to assign each spouse's non-marital property to the respective spouse and to divide the remainder in just proportions considering all relevant factors including:

(a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;

(b) Value of the property set apart to each spouse;

(c) Duration of the marriage; and

(d) Economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

(\$3,500.00), a 1972 Subaru (\$500.00), and a 1982 Ford van (\$1,500.00) were awarded to Robert.

In making this allocation, the family court considered all relevant factors listed in KRS 403.190. Based on Carol's testimony, the family court found that Robert had made little or no contribution to the children, either during the marriage or after the separation; and since the separation, he had failed to pay child support or make contributions to the marital residence, including mortgage payments, taxes, insurance or maintenance. The family court accepted Carol's testimony as to the character and fair market value of the property. The family court found that the marriage lasted 17 years. Further, the family court considered other factors, such as Carol having custody of the children and the resulting economic impact of the custody award. In short, the family court considered all relevant factors in making its decision.

Robert relies on Dotson v. Dotson, Ky., 864 S.W.2d 900 (1993), to support his argument that it is reversible error for the court to put more weight on the factor of "contribution of each spouse to the acquisition of marital property" over the other statutory factors. In Dotson, the Supreme Court said:

We agree that upon remand the trial court should make a reapportionment of marital property, giving the factor of "contribution of each spouse to acquisition of the marital property" only such weight as is fairly reflected by the evidence in this specific case, while also giving appropriate weight to the other statutory factors.

Dotson, 864 S.W.2d at 902. As indicated above, the family court made appropriate findings of fact and considered each of the relevant factors set out in KRS 403.190(1). Thus, this argument is without merit.

The division of marital property is within the discretion of the trial court. Herron v. Herron, Ky., 573 S.W.2d 342, 344 (1978). KRS 403.190 vests the trial court with broad discretion in the division of marital property. Johnson v. Johnson, Ky. App., 564 S.W.2d 221 (1978). The trial court is the finder of fact and its decree may not be reversed unless it is based upon findings that are clearly erroneous or unless it results otherwise from an abuse of discretion. Reichle v. Reichle, Ky., 719 S.W.2d 442 (1986); Borjesson v. Borjesson, Ky., 437 S.W.2d 191, 193 (1969); Smith v. Smith, Ky., 429 S.W.2d 387, 391 (1968). The decree from which Robert appeals is not clearly erroneous nor a result of an abuse of discretion.

The decree is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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