

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-000016-MR

MARY SUE PIERCE

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE WILLIAM T. CAIN, JUDGE  
ACTION NO. 96-CI-00185

BRUCE PIERCE

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: BARBER, HUDDLESTON AND JOHNSON, JUDGES.

BARBER, JUDGE: The appellant, Mary Sue Pierce, and appellee, Bruce Pierce, were married on June 24, 1978. The parties separated on February 15, 1996. Three children were born of the marriage. One of the children reached majority prior to the dissolution of the marriage. Both parties are employed, Bruce as a farmer and Mary with the Pulaski County Board of Education. Both parties provided the trial court with tax returns showing their 1997 income to be approximately the same. The parties agreed to joint custody of their two minor children, with the son staying with Bruce, and the daughter staying with Mary. The

parties also entered into property division stipulations. Mary received funds from the division of marital property in the sum of \$184,473.08.

Appellant objects to the following findings in the Decree of Dissolution:

1. DIVISION OF MARITAL PROPERTY: Chief among Mary's objections is the trial court's holding that seventy-five percent (75%) of the real property owned by the parties was non-marital. Prior to the marriage, Bruce was deeded two tracts of land. The trial court found the value of the two tracts to be \$94,000.00. Bruce submitted copies of checks purporting to be for the purchase price of the property. These checks were drawn on Bruce's private bank account, and were paid prior to the parties' marriage. Mary claims that the funds for these properties were funds borrowed prior to the marriage, but paid back during the marriage. Bruce asserts that the purchase price of the property was paid with funds he had prior to the parties' marriage, and funds which were a gift from his father. Mary did not introduce evidence showing that Bruce did not have such funds available to him prior to the parties' marriage. Such a showing is necessary prior to any finding that the payments made were made from marital funds. Culver v. Culver, Ky. App., 572 S.W.2d 617 (1978).

The record in this case reveals that Bruce made five payments to his father by checks from the parties' joint account, during the marriage. The sum of these payments equals \$81,500.00. An additional payment of \$12,000.00 was made by

Bruce prior to the marriage, on June 13, 1978. This \$12,000.00 was borrowed from Citizens Bank. The sum of these payments is \$93,500.00. No evidence was submitted by either party as to whether these funds were related in any way to the purchase of the real property.

Various improvements were made to the real property and the marital residence during the marriage. Evidence regarding the value of these improvements was submitted to the trial court, which found that the improvements increased the value of the real property by twenty-five percent (25%).

Mary claims that the trial court erred when it found that seventy-five percent (75%) of the real property was non-marital, and belonged to Bruce. The trial court awarded Mary fifty percent (50%) of the value of the improvements to real property. Mary asserts that as Bruce could not prove that the funds used to purchase the property was non-marital, or that the purchase was completed prior to the parties' marriage, the property was improperly classified as non-marital.

Kentucky law mandates a finding that property is marital only where it can be proven that the funds used to purchase or improve the property were marital or co-mingled funds. Bischoff v. Bischoff, Ky. App., 987 S.W.2d 798, 800 (1999). The evidence before the trial court only proved that the improvements to the real property were made during the marriage, or with funds obtained during the marriage. That evidence, coupled with the finding that the property was purchased prior to

the marriage, requires a finding that only the improvements are marital property, subject to division.

2. DIVISION OF FARM RELATED INCOME OR BENEFITS: Mary objected to the trial court's ruling with regard to various items of property not discussed in the Findings of Fact, Conclusions of Law and Decree of Dissolution. She asked that the trial court divide the value of various farm-related income and expenses, including the value of grain in storage at the time of the parties' separation, tax deductions based on farm equipment depreciation, a farm operation tax credit, agriculture support payments made to Bruce, and tax refunds for the years 1996 and 1997.

Mary asserts that she should have been permitted to "use" one-half (1/2) of the farm equipment depreciation on her 1996 and 1997 taxes. Both parties filed separate tax returns during the years 1996 and 1997. The record shows that this farm equipment was part of the property awarded to Bruce and related solely to his employment as a farmer. The parties entered into a stipulation dividing the value of the farm equipment prior to the dissolution of the marriage. The record reflects that Mary was provided with a marital share of the value of such equipment. Under such circumstances, she was not entitled to a portion of this deduction.

Mary also asserts that she should have been awarded a portion of the Farm Operation Tax Credit. The record is devoid of any evidence tending to show the value of the credit, if any, or whether it should be found marital property subject to

division. For this reason, the Court affirms the trial court and holds that this Farm Operation Tax Credit was not subject to division.

The crops which were sold by Bruce during 1996 were not grown or harvested until after the parties' separation. Mary did not contribute to the sowing, raising or harvesting of these crops, and should not rightfully be entitled to a share in any profit made thereon.

Additionally, Mary claims that she should have been entitled to one-half (1/2) of the tax refund received by Bruce for the years 1996 and 1997. The evidence before the trial court showed that the parties filed separate refunds for those years. Based upon such a showing, we believe that the trial court was correct in refusing to apportion the individual refunds obtained by either party.

3. TREATMENT OF THE BANK ACCOUNTS IN THE NAMES OF THE MINOR CHILDREN: The trial court found that during the course of the parties' marriage, they and their family members made financial gifts to the three children of the marriage with the advice of a C.P.A. The trial court stated that these gifts were set up in compliance with the Uniform Gifts to Minors Act of Kentucky, and put into accounts in the names of the three children. The trial court held that these accounts were not subject to division. Mary objects to this finding, and claims that the funds were not gifts to the children, but were simply a college education fund, which should be divided between the parties if the children do not choose to go to college.

The trial court relied on the testimony of the C.P.A. and the parties in holding that these accounts were the sole property of the children. Mary has failed to present any evidence showing otherwise. The record shows that all three children pay individual income taxes on the accounts, and that the accounts have always been held in the names of each minor child. Under such circumstances, it would be error to divide these funds among the parties. This Court affirms the trial court's finding that these accounts belong solely to the children.

4. FAILURE TO AWARD APPELLANT MAINTENANCE: Mary objects to the failure of the trial court to award her maintenance. The trial court found that Mary was employed on a "full-time" basis. Mary disputes this contention, and states that she will be required to deplete her assets to maintain her standard of living. Mary states that such an inequitable result should not be condoned by this Court, and relies upon Wood v. Wood, Ky. App., 720 S.W.2d 934 (1986), as support for this contention.

Kentucky law requires that a spouse must establish that she lacks sufficient property to provide for her reasonable needs and is unable to support herself through reasonable employment prior to being awarded maintenance. Dotson v. Dotson, Ky., 864 S.W.2d 900 (1993). Although Mary asserts in her brief that she lacks sufficient property to maintain her standard of living, the record is devoid of evidence on that issue. The record shows that she owns a home, real property, and substantial cash assets.

Additionally, her tax records show an annual income of approximately \$20,000.00. Based on the extremely limited evidence in the record, the trial court found that each party's assets were sufficient to maintain the standard of living enjoyed during the marriage. Mary has failed to establish that the trial court's finding was clearly erroneous. For this reason, the trial court's decision must be affirmed.

5. CHILD SUPPORT: Mary asserts, without citation to supporting evidence, that her income is far less than that of the Bruce, and that he should pay increased child support as a result. The only evidence as to income in the record in this action is the parties' tax returns, which show approximately equal income for the most recent year, 1997. Additionally, the report submitted by the Domestic Relations Commissioner, who conducted a hearing as to child support, found that based upon the parties' income, Bruce should pay \$109.00 a month in child support. The trial court so ordered. Absent any evidence to the contrary, this Court must affirm that finding.

The appellate court is constrained from overturning the findings of the trial court unless they are clearly erroneous, especially in domestic relations cases. Aton v. Aton, Ky. App., 911 S.W.2d 612 (1995). The trial court's findings in the present case have not been shown to be clearly erroneous, and appear to be supported by the evidence contained in the record. Mary fails to cite to specific portions of the record on appeal showing otherwise. For the foregoing reasons, the decision of the trial court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert E. Gillum  
Somerset, Kentucky

BRIEF FOR APPELLEE:

Paul F. Henderson  
Somerset, Kentucky