

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001070-MR

JAMES ALLEN HAYES

APPELLANT

v.

APPEAL FROM CASEY CIRCUIT COURT
HONORABLE PAUL JONES, JUDGE
ACTION NO. 96-CI-00089

JUDY ANN ROUSEY HAYES

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, EMBERTON AND GUIDUGLI, JUDGES.

BARBER, JUDGE: The issue on appeal is whether the trial court erred in its division of the proceeds from the sale of the parties' marital real estate. Finding no error, we affirm.

In its Findings of Fact, Conclusions of Law, and Decree of Dissolution of Marriage, entered April 9, 1999, the trial court found:

10. The issue to be decided is the correct division of \$31,282.51, plus interest now being held by the Clerk of this Court. . . The parties sold personal property and divided the monies equally. The parties sold real estate and paid mortgage indebtedness owed and the balance is now being held by the Clerk. The Respondent wants the money to be divided equally between the parties. The

Petitioner wants \$2,500 for one-half (1/2) the value of a motor vehicle and the balance of the funds to be paid on other debts.

11. This Court finds that since the parties separation in 1996 (although the Petitioner claims the parties were together on one occasion in 1997), the Petitioner had exclusive control over the parties' property, including livestock, tobacco, equipment and land. The Petitioner sold livestock and received a substantial sum of money; he sold tobacco for three (3) years for a substantial sum of money. He is a big tobacco raiser. He made no accounting of the funds. The Petitioner's eighteen (18) year old son owns part of the real estate and personal property that was sold. It is obvious and this Court finds that the Petitioner has for the past three (3) years been doing business in his son's name. This appears to be avoiding paying anything to the Respondent.

12. There is no presumption under the law that these debts are marital. The debts which the Petitioner now wants paid are debts that were incurred for the operation of the Petitioner's farming operation. The Petitioner should be responsible for those debts since he received all of the proceeds from the sale of the livestock and tobacco.

The trial court concluded that the property rights of the parties shall be settled according to the findings of fact. On appeal, the appellant, James Allen Hayes (James) contends that he was entitled to his share of a 1991 Chevrolet Lumina, kept by the appellee, Judy Ann Rousey Hayes (Judy), for which she received up to \$5,000.00 trade-in value. James also claims that there were six outstanding debts that should have been considered marital debts and divided accordingly, because they were incurred before the parties' separation. The debts were for farm supplies and equipment and a tractor lease.

Appellant's argument is predicated, in part, upon an incorrect characterization of the trial court's findings. James contends that the trial court found that the parties had cohabited at least until December 1996. The trial court actually found that the parties had been "separated since April

30, 1996. The parties attempted to make a reconciliation and may have co-habituated [sic] on a few occasions but, they did not co-habitat [sic] any after December, 1996."

James concedes that debts incurred after final separation of the parties should be considered non-marital. He also concedes that a spouse can be held liable for the bulk of the parties' debts where that spouse is awarded the bulk of the assets, citing Russell v. Russell, Ky. App., 878 S.W.2d 24, (1994). Russell also holds that there is no presumption or requirement that marital property be equally divided in a dissolution of marriage. Marital property must be distributed in accordance with KRS 403.190, "in just proportions." The standard of review on appeal is whether the trial court abused its discretion. Id., at 25. KRS 403.190 vests the trial court with wide discretion in the division of marital property. This Court cannot disturb the findings of the trial court in a case involving dissolution of marriage, unless the findings are clearly erroneous. Johnson v. Johnson, Ky. App., 564 S.W.2d 221 (1978).

The record reflects that Judy testified she and James had lived apart since April 30, 1996. An attempted reconciliation was not successful. James testified that he sold the 1996 tobacco crop, but did not know how much it brought, only that he "probably" had 60, 70, 80 acres that year. James testified that he and another man had owned about two hundred purebred black cows, and that they sold about a hundred calves a year. James testified he did not know how much money he received

from the sale of the cattle. He admitted that Judy did not receive any of the money from the sale of the tobacco or livestock. James claimed that the bank got all of the money. At the time of his September 1998 deposition, James did not have a tobacco crop, but his 18 year old son, with whom he lived, had 44 acres. James did not have a vehicle, but his son had a Nissan, a 90 Chevrolet, and an old '68 GMC, a 4000 tractor and two wagons. According to James, there was nothing left in his name other than an old truck which had been sold, and "three electric bills."

The trial court's findings have a substantial evidentiary foundation, and are not clearly erroneous. The judgment of the trial court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Samuel Todd Spalding
Lebanon, Kentucky