

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000871-MR

JOYCE A. WALKER

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 96-CI-01459

JOHN H. WALKER, MANUEL MULLINS,
AND VIRGINIA MULLINS

APPELLEES

AND 1999-CA-000872-MR

JOYCE A. WALKER

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 94-CI-01868

JOHN H. WALKER

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: BUCKINGHAM, KNOPF, AND SCHRODER, JUDGES.

KNOPF, JUDGE: Joyce Walker appeals from an order of the Kenton Circuit Court denying her motion to reopen the decree dissolving her marriage to John Walker to divide their interest in certain real property according to the provisions of an Illinois decree. She also appeals from a separate judgment by the same court

dismissing her claims involving the same real property against John Walker, Manuel Mullins, and Virginia Mullins for unjust enrichment, trespass, and conversion. With regard to the former order, we find that the trial court was not obligated to accord full faith and credit to the Illinois decree insofar as it purported to dispose of real property in Kentucky over which the trial court has previously exercised in rem jurisdiction. With regard to the latter judgment, we agree with the trial court that Joyce failed to state facts establishing viable claims for unjust enrichment, trespass, and conversion. Hence, we affirm the trial court's order and judgment in both appeals.

Given the various issues involved, an extensive discussion of the facts and procedural history of both cases is necessary. Joyce and John were married in 1985 and separated in October 1994. During their marriage, the couple maintained two residences, one in O'Fallon, Illinois, and another in Lakeside Park, Kentucky. Joyce was employed as a teacher and stayed primarily in Illinois; she came to Kentucky on several weekends and during the summer. Meanwhile, John worked and lived primarily in Kentucky with occasional stays in the parties' residence in Illinois. The couple jointly owned the Kentucky residence with a mortgage procured through a Kentucky bank.

On November 10, 1994, John filed a petition for dissolution of marriage in the Kenton Circuit Court. Service of process was attempted through certified mail to Joyce in Illinois on November 12, 18, and 27, but it was not effectuated because she refused to accept service. On November 30, 1994, Joyce filed

a divorce petition in the Circuit Court of St. Clair County, Illinois. Service of process in the Illinois divorce action was effectuated on John when he personally accepted service by a detective in Kentucky on December 1, 1994. John subsequently filed a response to the petition in the Illinois court. On December 1 and 10, 1994, Joyce met with John at the Lakeside residence and attempted to persuade him to dismiss the Kentucky lawsuit. Following an altercation which occurred during the December 10 meeting, Joyce filed a petition for a Domestic Violence Order in the Kenton District Court. In that petition, she averred that she had been a resident of Kentucky for six years.

On December 16, 1994, the Kenton Circuit Court appointed a warning order attorney for Joyce based on an affidavit filed by John. See CR 4.06 and CR 4.07. On December 20, 1994, the warning order attorney sent a certified letter to Joyce at the parties' Illinois residence explaining the divorce petition along with the court documents filed in the case. On January 11, 1994, Joyce's attorney, who is licensed in Kentucky, contacted the warning order attorney by letter challenging the Kentucky proceeding and stating a divorce action had been filed by Joyce in Illinois. On January 18, 1994, the letter sent by the warning order attorney to Joyce was returned as unclaimed. On February 2, 1995, the warning order attorney filed a report with the Kenton Circuit Court questioning whether the court had personal jurisdiction over Joyce, but stating her belief that Joyce had received notice of the Kentucky action. See CR 4.07.

On January 23, 1995, the trial court conducted a hearing on John's motion to set a trial date. Joyce's attorney appeared at the hearing for the limited purpose of denying that the Kentucky court had personal jurisdiction over Joyce. At that time, the court delayed setting a trial date and asked the parties to file memoranda on the issue of the court's jurisdiction over Joyce. On April 20, 1995, the trial court entered a memorandum and order holding that it had jurisdiction to dissolve the marriage and to decide issues relating to the division of property located within this state. The court stated that Joyce had been adequately served pursuant to CR 4.06 to invoke its jurisdiction.

On June 13, 1995, the trial court conducted a final dissolution hearing to determine property distribution. Joyce was not present, but her attorney appeared and participated on a limited basis. At the beginning of the hearing, Joyce's attorney objected to the court's assertion of jurisdiction and noted that the Illinois court had issued a preliminary injunction prohibiting John from proceeding in the Kentucky court and from transferring, encumbering, or otherwise disposing of the Kentucky realty. Joyce's counsel argued that the Illinois court was the proper forum to handle the divorce action because it had personal jurisdiction over both parties. The court delayed further action in order to facilitate Joyce's collection of future social security benefits.

Following the June hearing, John sought a buyer for the couple's Kentucky residence. On July 9, 1995, in response to

John's advertisement, Manuel and Virginia Mullins signed a contract to purchase the Kentucky property. John told the Mullinses that he had authority to act on behalf of Joyce and that she would eventually sign the documents necessary to transfer ownership to them. At that time, John did not tell them that he was involved in a contested divorce action and had been ordered not to sell the property by the Illinois court. The Mullinses had already arranged to sell their prior residence, so John allowed them to move into the Kentucky house in September 1995 under an agreement whereby they were to pay \$800.00 per month in rent to be applied toward the purchase price.

On August 8, 1995, the Kenton Circuit Court held a final hearing solely on the issues pertaining to dissolution of the marriage and division of the Kentucky real-property asset. Joyce was not present but her attorney appeared and challenged John's offer of proof. During the hearing, John testified that the balance of the mortgage was approximately \$91,000.00, that his mother had contributed \$25,000.00 toward the down payment, that the realty was appraised at approximately \$160,000.00, and that the monthly mortgage payment was \$1,039.48. The court excluded all evidence concerning property located outside of Kentucky.

On September 8, 1995, the Kenton Circuit Court entered a decree of dissolution and judgment containing findings of fact and conclusions of law. The court awarded John ownership of various personal items and a truck located in Kentucky as his nonmarital property. It also assigned John a \$25,000.00 equity

interest in the house, finding that the loan from John's mother was a nonmarital contribution to the purchase of the house. The court ordered the sale of the Kentucky residence and payment of the mortgage from the proceeds with the division of any remaining equity to be determined at a later date pending assignment of other debts and assets by the Illinois court. The trial court declined to address Joyce's alleged personal debts due to its lack of personal jurisdiction over her. On September 18, 1995, Joyce filed a CR 59.01 motion for a new trial on the ground that John had failed to prove his claimed \$25,000.00 non-marital interest in the Kentucky realty.

On September 21, 1995, following entry of the circuit court's judgment, John and the Mullinses executed a new contract, for the sale of the house for \$159,500. On September 27, 1995, John moved for an order requiring Joyce to sign the purchase contract. Later, John moved for an order allowing sale of the house by the Master Commissioner.

On November 6, 1995, the court held a hearing on John's motions during which his attorney asked the court to reconsider its decision that the court had only limited jurisdiction. The court denied the motion to reconsider stating that it did not believe it had personal jurisdiction over Joyce but that it could exercise in rem jurisdiction with respect to the realty in Kentucky. On November 15, 1995, the court ordered the sale of the realty by the Master Commissioner, with the proceeds to be held in escrow. On November 20, 1995, Joyce moved for an order granting her possession of the Kentucky realty on the ground that

she had been making the mortgage payments. At the same time, Joyce moved pursuant to CR 60.02 for relief from the order of sale. On December 4, 1995, the court granted this latter motion and temporarily postponed the forced sale of the property. At a hearing on December 18, 1995, the trial court indicated that it would allow the sale of the house and asked the attorneys to submit an appropriate order. While the court waited for the attorneys to respond, the Illinois court, on January 4, 1996, issued an order enjoining either party from selling the Kentucky realty, allowing Joyce to make an offer to purchase the property, and requiring John to account for and turn over to Joyce all rental payments made by the Mullinses.

On January 19, 1996, the trial court entered an order denying Joyce's September 18, 1995, motion for a new trial. The court also agreed to withhold entry of an order of the sale pending further proceedings in Illinois. On February 9, 1996, Joyce filed a notice of appeal of the court's September 8, 1995, divorce decree. However, Joyce did not post a supersedeas bond to stay enforcement of the circuit court judgment.

On August 1, 1996, Joyce filed a civil action against John and the Mullinses based on unjust enrichment, conversion, and trespass. Joyce alleged that the rental payments paid by the Mullinses were unreasonably low and that she had asked them to vacate the premises as early as October 1995. The Mullinses filed an answer, a cross-claim against John, and a counter-claim against Joyce stating that their occupancy of the house was pursuant to permission from John and a belief that Joyce would

consent to the sale. John filed an answer to the complaint, an answer to the cross-claim, and a counter-claim alleging that Joyce had led him to believe she would permit the sale to the Mullinses. Following a hearing,¹ on September 10, 1996, the court ordered John to pay the insurance, taxes, and monthly mortgage payments and denied Joyce's motion for immediate possession of the house. Shortly thereafter, the Mullinses asked the court to exercise its equitable power to order a sale of the house to them.

On December 16, 1996, the Illinois court entered a judgment of dissolution of marriage, which, inter alia, ordered sale of the Kentucky residence with Joyce having the right to purchase the home. That court also ordered that the equity in the house be divided equally; that John pay the entire bill of the Kentucky Master Commissioner of \$3,352.30 (later amended to \$2,066.30); that John bear sole responsibility for the \$25,000.00 loan from his mother; and that the Mullinses' rent payments which were being held in escrow in the amount of \$12,000.00 be awarded to Joyce. On April 2, 1997, the Illinois court issued an amended dissolution judgment dividing equally the \$12,000.00 escrowed rental payments, and ordered that Joyce be reimbursed in the amount of \$15,592.20 for mortgage payments and \$1,111.05 in tax payments. On April 28, 1997, the Illinois court entered an order clarifying the previous judgment by awarding Joyce an additional

¹During the hearing, Joyce's attorney stated he did not challenge the court's authority to exercise in rem jurisdiction and that the appeal of the dissolution judgment in Case No. 94-CI-1868 was based on forum non conveniens.

\$6,000.00 from the escrowed rental payments as a sanction for John's failure to divide the funds as directed earlier.² Joyce appealed the Illinois court judgment, but as with the Kentucky appeal, she did not post a supersedeas bond. On September 29, 1997, the Kenton Circuit Court entered an order abating further action on both the dissolution action (No. 94-CI-1868) and the civil suit (No. 96-CI-1459) until resolution of the then pending appeals in both Kentucky and Illinois.

In October 1997, Joyce moved to dismiss her appeal of the Illinois judgment. The Illinois Appellate Court granted the motion to dismiss on October 15, 1997, and that dismissal became final as of November 10, 1997. On November 13, 1997, Joyce filed in the Kenton Circuit Court a notice of entry of final foreign judgment seeking recognition of the Illinois judgment by the Kentucky court under Article IV, Section 1 of the United States Constitution, (the Full Faith and Credit Clause), and the Uniform Enforcement of Foreign Judgments Act, KRS 426.950 et seq.

In December 1997, Joyce filed a pro se motion to dismiss her Kentucky appeal stating it had become moot given the finality of the Illinois circuit court judgment, and the principles of full faith and credit, and KRS 426.955. On January 14, 1998, this Court granted the motion and dismissed the Kentucky appeal.

²The court also found that the parties had approximately \$86,000.00 in equity in the Kentucky property. The ultimate distribution resulted in Joyce being entitled to \$63,103.25 and John being entitled to \$10,396.75.

On February 20, 1998, John filed a motion to strike the notice of entry of a final foreign judgment, arguing the Illinois judgment was not entitled to full faith and credit because the Kentucky divorce action had been filed first. On January 22, 1999, the Kenton Circuit Court entered a judgment with findings of fact and conclusions of law holding that it was not required to defer to the Illinois court. The court noted that it had attempted to coordinate its actions with the Illinois court but that the judge had refused to cooperate. The court ordered sale of the Kentucky residence giving Joyce the right to purchase it within 60 days, and ordered reimbursement to the parties of various tax and insurance payments made by each. The court also held that John had a \$25,000.00 nonmarital interest and that both the amount of the rental payments held in escrow and the costs of the Master Commissioner were to be shared equally. The court awarded Joyce 70% and John 30% of all remaining equity from the sale of the property.

On February 2, 1999, John filed a motion to amend the judgment in the dissolution action pursuant to CR 52.02 and CR 59.05 in which he sought revision of the court's finding on the reimbursement of insurance payments made by each of the parties. On March 11, 1999, the circuit court granted John's motion to amend the January 22, 1999, judgment. On March 12, 1999, Joyce filed a motion for relief from the judgment pursuant to CR 60.02(d) alleging John had committed fraud in the proceedings by testifying falsely concerning his alleged \$25,000.00 nonmarital interest in the Kentucky residence. Following a response by

John, the court denied the CR 60.02 motion on March 24, 1999, based on a lack of proof to support the allegations in the motion. On April 12, 1999, Joyce filed an appeal from the circuit court's amended January 22, 1999, judgment.

Meanwhile, on June 3, 1998, the Kenton Circuit Court conducted a bench trial on Joyce's civil complaint against John and the Mullinses. The witnesses included Joyce, John, the Mullinses, and Joyce's expert on the rental value of the Kentucky realty. On November 25, 1998, the trial court entered a judgment holding that Joyce had no direct cause of action against the Mullinses and that John had acted fraudulently in his dealings with the Mullinses. The court dismissed Joyce's complaint against the Mullinses and awarded them a total of \$6,800.00 in compensatory and punitive damages against John.³ Joyce filed motions pursuant to CR 52.02 and CR 59.05 to alter, amend, or vacate the judgment.

On January 26, 1999, the trial court issued an amended judgment in the civil action finding that Joyce could not establish the elements of trespass or conversion. The court indicated that any claim for damages by Joyce was solely against John and not the Mullinses. On March 11, 1999, the trial court entered a second amended judgment with amended findings of fact and conclusions of law. This judgment reaffirmed the prior holdings that Joyce had no valid cause of action against the Mullinses, nor a basis for claims of trespass or conversion

³John has not appealed the circuit court's judgment.

against John. On April 12, 1999, Joyce filed an appeal from the final judgment.

Thus we arrive at the two appeals now before us: one from the January 22, 1999, order denying Joyce's motion to reopen the dissolution decree; and one from the March 11, 1999, amended judgment dismissing her claims for damages against John and the Mullinses. Although these two proceedings are distinct, the issues they raise are intertwined, as will be seen below. The trial court relied on the interplay between the two actions in its judgment in the civil action with respect to resolving the equities between Joyce and John.

First, however, we consider Joyce's motion to reopen the decree. The principal issue raised by Joyce in the appeal of the dissolution action is whether the trial court erred in failing to give full faith and credit to the judgments of the Illinois court. She contends that Illinois was the proper forum for resolving all of the dissolution issues because only that court had in personam jurisdiction over both parties. She maintains that because the Illinois court entered a final judgment with personal jurisdiction over both parties, the Kentucky court was required to accord it full faith and credit and res judicata effect. She states that the Kenton Circuit Court could not proceed without obtaining personal service over Joyce and that the finality and registration of the Illinois judgment absolutely foreclosed any decision on the dissolution matters in Kentucky.

Joyce's position relies in large part on the alleged absence of personal service on her. The trial court appointed a warning order attorney pursuant to CR 4.05 and CR 4.06. Service through a warning order attorney constitutes constructive service. While constructive service is not sufficient for in personam jurisdiction, see KRS 454.165, it is sufficient to confer in rem or quasi in rem jurisdiction. See Fields v. Evans, Ky. App., 675 S.W.2d 3, 5 (1983); Gayle v. Gayle, 301 Ky. 613, 192 S.W.2d 821 (1946). Throughout the proceedings, the trial court acted under the belief that it had in rem jurisdiction to grant the divorce and to deal with Joyce's and John's interest in the residence or realty in Kentucky. In fact, Joyce's attorney conceded throughout the proceeding that the Kentucky court had in rem jurisdiction. Joyce had actual notice of the Kentucky action and her attorney participated at every stage, albeit for a limited purpose without conceding personal jurisdiction. Joyce's argument before this Court is premised on the requirements for the exercise of in personam jurisdiction. Since the trial court dealt solely with the couple's interest in the Kentucky realty under the exercise of its in rem or quasi in rem jurisdiction, Joyce's complaint that the court did not obtain jurisdiction because of the lack of personal service is without merit.⁴

⁴We note that Joyce has not argued that she did not have sufficient minimum contacts to justify quasi in rem jurisdiction. See Shaffer v. Heitner, 433 U.S. 186, 97 S. Ct. 2569, 53 L. Ed.2d 683 (1977). Nevertheless, we believe that Joyce's purchase of realty, use of the Kentucky courts to obtain a domestic violence order, and cohabitation with John in Kentucky over several years constituted sufficient minimum contacts to satisfy due process.

Moreover, the trial court was not obligated to extend full faith and credit to the Illinois court judgment. It is well-established that the Full Faith and Credit Clause does not require a state court to apply a judgment from a sister state that affects the title to land in the former state. Fall v. Eastin, 215 U.S. 1, 30 S. Ct. 3, 54 L.Ed. 65 (1909); Gaskins v. Gaskins, 311 Ky. 59, 223 S.W.2d 374 (1949); Arthur v. Arthur, Ky. App., 625 S.W.2d 592, 594 (1981). A judgment from a court without jurisdiction is not entitled to full faith and credit. Williams v. North Carolina, 325 U.S. 226, 65 S. Ct. 1092, 89 L. Ed.2d 1577 (1945); Hanshew v. Mullins, Ky., 385 S.W.2d 186, 188 (1964); Sunrise Turquoise, Inc. v. Chemical Design, Ky. App., 899 S.W.2d 856 (1995). While the Illinois court had jurisdiction to issue orders to John concerning the Kentucky realty, see Fall v. Eastin, supra, the Kentucky court was not obligated to recognize the Illinois injunctions. See Brooks Erection Co. v. William R. Montgomery & Associates, Inc., Ky. App., 576 S.W.2d 273 (1979); Meenach v. General Motors, Ky., 891 S.W.2d 398, 402 (1995) ("when an action in law is pending in a Kentucky court, neither Full Faith and Credit Clause nor rules of comity require compulsory recognition of an injunction issued in another jurisdiction"). The Illinois judgment was in the nature of an in rem judgment because it ordered the sale of the Kentucky property. Because the Illinois court did not have in rem jurisdiction over the Kentucky realty, the trial court was not required to give the Illinois judgment full faith and credit or recognition under

comity to the extent that it attempted to affect the title to the Kentucky realty. See Arthur, supra.

Joyce's res judicata argument also fails on similar grounds. Res judicata bars relitigation of matters finally decided by a court of competent jurisdiction in the same or any other judicial tribunal of concurrent jurisdiction. See Yeoman v. Commonwealth Health Policy Bd., 983 S.W.2d 459, 464 (1998). Likewise, collateral estoppel or issue preclusion requires a final judgment involving an issue decided on the merits. Moore v. Commonwealth, Ky., 954 S.W.2d 317, 319 (1997). "Finality of decision is a prerequisite to the defense of res judicata and collateral estoppel." Cartnell v. Urban Renewal and Community Dev. Agency, Ky., 419 S.W.2d 719, 721 (1967).

In the current case, the trial court entered its order finding that it had jurisdiction in April 1995. The court subsequently entered a judgment determining the couple's rights in the Kentucky realty and ordering sale of the property in September 1995, and it denied Joyce's new trial motion on January 19, 1996. Although the Illinois court issued its first injunction in May 1995, it did not render a judgment on the merits assessing the couple's equities and ordering sale of the Kentucky realty until December 1996 with subsequent amendments in April 1997. Joyce argues that the Illinois judgment became final before the Kentucky judgment did because of the effect of the appeals in both cases. The pendency of an appeal, however, does not affect the finality of a judgment for purposes of res judicata or collateral estoppel. See Roberts v. Wilcox, Ky.

App., 805 S.W.2d 152, 153 (1991); Stemler v. City of Florence, 126 F.3d 856, 871 (6th Cir. 1997).

The trial court's judgment of September 1995 became final for purposes of res judicata in January 1996, prior to the Illinois judgment. The circuit court's January 1999 judgment was merely an enforcement of the prior judgment. See, e.g., Restatement (Second) of Judgments § 13 cmt. b (1982). We note that Joyce alone appealed the judgments in both the Kentucky and Illinois actions and voluntarily moved to dismiss the Kentucky appeal only after her motion to dismiss the Illinois appeal had been granted. The Illinois judgment was not entitled to preclusive effect based on res judicata because the Illinois court did not have jurisdiction over the Kentucky realty and because its judgment was not final prior to the rendition of the Kentucky judgment.

Joyce's challenges to the trial court's dismissal of her civil action are more easily resolved. The trial court held that the Mullinses were not liable for trespass because they took possession of the residence with the permission of John Walker. KRS 381.231 sets forth certain requirements for trespass. It states:

- (1) A "trespasser" means any person who enters or goes upon the real estate of another without any right, lawful authority or invitation, either expressed or implied, but does not include persons who come within the scope of the "attractive nuisance" doctrine.
- (2) An owner of real estate means any person who possesses any interest in

real estate or any lawful occupant of
real estate. (Emphasis added).

Trespass is a tort involving an intentional or willful entry onto the owner's land without consent or privilege. Every trespass is presumed to be willful with the trespasser bearing the burden of proving it was innocent. Lebow v. Cameron, Ky., 394 S.W.2d 773 (1965). As the court stated in Church and Mullins Corp. v. Bethlehem Minerals Co., Ky., 887 S.W.2d 321 (1992), cert. denied, 514 U.S. 1110, 115 S. Ct. 1962, 131 L. Ed. 2d 853 (1995):

The test of willfulness is whether a trespass

was perpetrated in a spirit of wrongdoing, with the knowledge that it was wrong, or whether it was done under a bona fide dispute, as where the circumstances were calculated to induce or justify the reasonably prudent man, acting with the proper sense of the rights of others, to go in and to continue along the way.

Id. at 323 (quoting Swiss Oil Corp. v. Hupp, 253 Ky. 552, 69 S.W.2d 1037, 1041 (1934)). Whether a trespass was willful or innocent is a question of fact. Id. at 324. The appropriate standard of review is whether the trial court's finding was clearly erroneous or an abuse of discretion. Id. at 323.

In the current case, the trial court found that the Mullinses took possession of the residence with the consent of John Walker under an agreement to pay monthly rent. It also found that they continued in possession in contemplation of purchasing the residence and with the assurances of John that Joyce would eventually agree to the sale. The Mullinses placed the rental payments in a separate bank account intending to apply the money to the purchase price. As a joint owner of the

property, John had at least the apparent authority to consent to the Mullinses' possession despite Joyce's notification to them of her objections. Given these circumstances, the trial court's findings that the Mullinses' actions were innocent were not clearly erroneous or an abuse of discretion. Thus, the court did not err in holding that Joyce failed to establish an action for trespass.

As for the conversion claim, this is a tort cause of action applicable only to personal property. See, e.g., 18 Am. Jur. 2d § 19 (2d ed. 1985); Weinberg v. Wallace, 314 S.C. 183, 442 S.E.2d 211 (1994) (no claim for conversion of good will of business); Rowe v. Burrup, 95 Idaho 747, 518 P.2d 1386 (1974). See also Batson v. Clark, Ky. App., 980 S.W.2d 566 (1998). The tort of conversion is in effect the counterpart of trespass with respect to personal property in that it concerns the exercise of dominion and control over personal property of another. State Auto Mut. Ins. Co. v. Chrysler, Ky. App., 792 S.W.2d 626, 627 (1990). Joyce attempts to transform her complaint into one involving personal property by arguing that the defendants converted the key to the residence. This attempt fails, however, because the gravamen of Joyce's complaint remains the alleged interference with her possession of the house. The key to the residence has no intrinsic value apart from its relationship to the realty. We find Joyce's argument unpersuasive and hold that the trial court properly rejected her claim for conversion.

Joyce also asserted a claim for unjust enrichment against John and the Mullinses. Unjust enrichment is an

equitable doctrine that creates an implied contract entitling a party to recover restitution for a benefit received by a person under circumstances that make it inequitable for that person to retain the benefit. Haeberle v. St. Paul Fire and Marine Ins. Co., Ky. App., 769 S.W.2d 64, 67 (1989). The elements of an unjust enrichment claim include: (1) a benefit conferred upon the defendant at the plaintiff's expense; (2) a resulting appreciation of the benefit by the defendant; and (3) an inequitable retention of the benefit without payment for its value. Id.

Joyce contends John reaped the benefit of receiving the rental money paid by the Mullinses without sharing it with her and that he enjoyed the use of the realty without having to make the mortgage and tax payments. She also contends the Mullinses enjoyed the benefits of renting a house for \$800.00 per month when the fair market rental value was \$1,400.00. The trial court, Joyce complains, failed to adequately address this issue in its March 11, 1999, amended judgment, stating only that this issue was between John and Joyce, rather than Joyce and the Mullinses.

While we agree with Joyce that the trial court's findings in its judgment in the civil action with respect to this claim are lacking, the reason for the sparse findings, we believe, is that the court had already addressed this issue in its judgment in the dissolution action. There the court found that both John and Joyce were responsible for the delay in selling the residence. In fact, the court ordered that Joyce receive

reimbursement for the payments she made on the taxes and insurance on the Kentucky house, that she receive an equal share of the rental payments made by the Mullinses, and that Joyce receive 70% of the remaining equity in the house after distribution of certain debts. In addition, the Mullinses made the rental payments pursuant to their oral agreement with John, for an amount which was recognized and approved of by the court. In other words, the trial court had already adjusted the equities between Joyce and John with respect to the rental of their Kentucky residence. The trial court did not clearly err, therefore, by ruling that neither the Mullinses nor John had been unjustly enriched. In these circumstances, we conclude that the trial court's findings on these issues were adequate.

In conclusion, the trial court was not obligated to extend full faith and credit or give preclusive effect because of res judicata to the Illinois judgment with respect to the real property located in Kentucky. In addition, the court did not err in dismissing Joyce's causes of action for trespass, conversion, and unjust enrichment.

For the foregoing reasons, we affirm the judgments of the Kenton Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Donald J. Ruberg
Covington, Kentucky

BRIEF FOR APPELLEE
JOHN H. WALKER:

Deanna L. Dennison
Covington, Kentucky

BRIEF FOR APPELLEES
MANUEL E. MULLINS AND
VIRGINIA L. MULLINS:

Leonard G. Rowekamp
Covington, Kentucky