

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002339-MR

BILLY JOE WILLIAMS

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE RON JOHNSON, JUDGE
ACTION NO. 96-CI-00678

KATHY VOLEEN WILLIAMS

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: EMBERTON, GUIDUGLI AND JOHNSON, JUDGES.

GUIDUGLI, JUDGE. Billy Joe Williams ("Billy") appeals from an order of the Harlan Circuit Court denying his motion seeking a right of redemption to a parcel of real property. We affirm.

The facts are simple and uncontroverted. On April 19, 1999, Billy and Kathy Voleen Williams ("Kathy") were divorced by way of a judgment and decree of the Harlan Circuit Court. The same day, the court rendered a separate order confirming the report of the domestic relations commissioner and ordering the parties' marital residence to be sold. The order provided that

the proceeds of the sale would be used first to extinguish the parties' marital debt, with the remainder to be split equally between the parties as marital property.

On May 17, 1999, the property (consisting of a mobile home situated on a parcel of real property) was sold for \$35,000. It had previously been appraised for \$68,000. The sale was confirmed by the court on June 7, 1999. Thereafter, Billy filed a motion seeking to have the court recognize a right of redemption to the property. He also moved for a ruling that the mobile home was not part of the sale. Upon considering the matter, the court opined that Billy was not entitled to a right of redemption because the property has been ordered sold not to extinguish debt but rather because it was an indivisible marital asset. The motion relating to the mobile home was also denied, and this appeal followed.

Billy now argues that the circuit court erred as a matter of law in failing to find that he had a right to redeem the property. Specifically, he directs our attention to KRS 426.530, which provides for a right of redemption in a court-ordered sale when the property is sold for less than 2/3 of its appraised value. He claims that since the parcel was appraised for \$68,000 and sold for \$35,000, that he has a statutory entitlement to redeem the parcel.

We have closely examined this issue and find no error. KRS 426.530(1) states

If real property sold in pursuance of a judgment or order of a court, other than an execution, does not bring two-thirds of its appraised value, the defendant and his representatives may redeem it within a year

from the day of sale, by paying the original purchase money and ten percent (10%) per annum interest thereon.

On its face, KRS 426.530 would seem to support Billy's contention that he is entitled to redeem the parcel. This statute, however, was enacted solely for the purpose of redeeming land sold for debt, and we have previously so held. See generally, Maynard v. Boggs, Ky. App., 735 S.W.2d 342 (1987). Stated differently, KRS 436.530 does not apply to land sold merely because it is indivisible. Id. In the matter at bar, the circuit judge stated in clear and unambiguous terms that the parcel was being sold because it was indivisible and could not be split between the parties. While a portion of the proceeds was used to extinguish marital debt, it was not ordered sold for that purpose. As such, Billy is not entitled to a statutory right of redemption, and the circuit court properly so found.

Billy also argues that the circuit court erred as a matter of law in finding the mobile home to be part of the realty. He maintains that the mobile home was a separate piece of personal property which required a separate title and sale. As such, he seeks to have the matter reversed and remanded for a separate sale of the mobile home.

We find no error on this issue. The dispositive question is whether the mobile home was so integral to the realty that the two may be regarded as one. See generally, Tarter v. Turpin, Ky. App., 291 S.W.2d 547 (1956). We believe the record supports the circuit court's conclusion that the mobile home was properly regarded as affixed to and part of the realty. The mobile home is physically attached to the realty; it has no

separate title or lienholder; the mobile home and realty together formed the marital residence; and, perhaps most importantly, the intent of the parties as demonstrated by their words and actions indicates that they believed the mobile home and realty to be a single entity. The trial court is presumptively correct in its rulings, City of Louisville v. Allen, Ky., 385 S.W.2d 179 (1964), and we find no basis for concluding that Billy has overcome that presumption. As such, we find no error.

For the foregoing reasons, we affirm the order of the Harlan Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Rodney E. Buttermore
Harlan, KY

BRIEF FOR APPELLEE:

Otis Doan, Jr.
Harlan, KY