

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000638-MR

PHILLIP DALE JARVIS

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 94-CI-00839

DORETHA LYNNE JARVIS

APPELLEE

CROSS-APPEAL NO. 2000-CA-000709-MR

DORETHA LYNN JARVIS AND
GORDON J. DILL

CROSS-APPELLANTS

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 94-CI-00839

PHILLIP DALE JARVIS

CROSS-APPELLEE

OPINION

AFFIRMING APPEAL NO. 2000-CA-000638-MR AND
CROSS-APPEAL NO. 2000-CA-000709-MR

** ** * * *

BEFORE: EMBERTON, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: Phillip Dale Jarvis brings this appeal and Doretha Lynne Jarvis brings this cross-appeal from a February 14, 2000, order of the Boyd Circuit Court. We affirm.

The parties were divorced by decree of dissolution entered December 2, 1994, by the Boyd Circuit Court. A settlement agreement was incorporated into the decree. The settlement agreement provided that Phillip was to perform certain work upon the marital residence. Exhibit D to the settlement agreement outlined the work to be performed by Phillip upon the residence. It appears that Phillip is a contractor who originally built the home.

On October 14, 1997, Doretha filed a motion in the circuit court. Therein she contended that Phillip failed to complete the required work upon the residence. The matter was referred to a domestic relations commissioner and testimony was taken. The commissioner entered her report and recommendations on September 20, 1999. Relevant to this appeal, the commissioner determined that Phillip indeed failed to perform the work required by the settlement agreement and awarded Doretha the sum of \$55,560.97, the cost for material and labor to complete the repairs. Phillip filed exceptions to the commissioner's report. Said exceptions were overruled and the report was adopted by the circuit court. CR 56. This appeal follows.

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Phillip's sole contention of error is:

THE JUDGMENT IN THE AMOUNT OF \$64,531.72
GREATLY EXCEEDS ANY AMOUNT OF MONEY
REALISTICALLY NECESSARY TO PERFORM THE REPAIR

WORK CALLED FOR UNDER EXHIBIT "D" OF THE
PARTIES (sic) SEPARATION AGREEMENT.

We must first point out that the circuit court only awarded the sum of \$55,560.97 for work and supplies necessary to complete the repairs to the home. Phillip refers to the sum of \$64,531.72. As is evident from the circuit court's specific conclusions, Phillip was required to reimburse Doretha for credit card debt, pay \$500.00 in attorney fees, and costs of the action. In any case, the order is clear that Phillip was to pay \$55,560.97 for work and supplies necessary to complete repairs upon the home.

Phillip argues that the circuit court's award was inflated and not supported by sufficient evidence. Specifically, Phillip contends the circuit court should have disregarded the testimony of Doretha's witness, one Randy Lothar. Phillip maintains that Lothar's testimony should have been stricken because his estimate of repair included items that were not listed in the settlement agreement. Phillip also maintains the court erroneously disregarded his testimony concerning repairs completed since entry of the decree.

We are of the opinion the credibility and weight of evidence is solely within the province of the fact finder. The circuit court as fact finder may weigh the evidence offered by Phillip and Doretha, and determine the appropriate cost of repair to the residence under the settlement agreement. Moreover, we believe it was within the discretion of the circuit court to consider the estimate of Lothar and to award monies for additional repairs not provided for by the settlement agreement. Because Phillip failed to timely repair the residence, there was

evidence that additional damage was caused to the home thus requiring added repairs. As such, we cannot say that the circuit court committed reversible error in awarding Doretha the sum of \$55,560.97 for work and supplies necessary to repair the home pursuant to the terms of the settlement agreement.

CROSS-APPEAL NO. 2000-CA-000709-MR

Doretha filed with this Court a brief entitled "Combined Brief for Appellee/Cross-Appellant." We have scoured the brief and have failed to find an argument advanced by Doretha upon cross-appeal. As such, we summarily affirm upon cross-appeal.

For the foregoing reasons, the order of the Boyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT/CROSS-
APPELLEE:

William R. Palmer, Jr.
Greenup, Kentucky

BRIEF FOR APPELLEE/CROSS-
APPELLANT:

Gordon J. Dill
Ashland, Kentucky