

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-003035-MR

JAMES COY BROWN

APPELLANT

v. APPEAL FROM CASEY CIRCUIT COURT
HONORABLE DANIEL J. VENTERS, SPECIAL JUDGE
ACTION NO. 95-CI-00046 & 95-CI-00207

JANICE KAY BROWN
THOMAS MARION TRUE; AND
VELTHA TRUE (NOW DECEASED)

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: DYCHE, EMBERTON, AND HUDDLESTON, JUDGES.

DYCHE, JUDGE: James Coy Brown appeals the order of the Casey Circuit Court rendered in his dissolution of marriage action. Having reviewed the record and applicable law, we affirm.

James Brown (J.C.) and Kay Brown (Kay) were married on November 15, 1969. The parties separated on March 9, 1995. Thereafter, they reconciled for a brief period of time only to separate once again on October 29, 1995. A second and final reconciliation was attempted in July 1996, which ultimately failed in May 1997.

The trial court entered its findings of fact, conclusions of law, and decree of dissolution on April 19, 1999.

Therein the court determined that J.C. had concealed marital assets, dissipated marital funds, and untruthfully asserted the existence of large, unsecured loans allegedly extended to him by his cousin. The court further ascertained that J.C. had removed numerous items of property from the marital residence only to later deny his possession of same, deny the existence of same, or to have titled them over to other family members either under the guise of collateral for the fictitious loans or as gifts. Likewise, J.C. was found to have withdrawn nearly all monies from both the personal and business accounts, taking credit card cash advances and bank loans totaling \$45,643, which funds he either concealed or dissipated; he was also found to have failed to account for receipts from the business prior to his being banned therefrom. The court considered all the aforementioned conduct as having been undertaken in anticipation of and because of divorce. Both parties requested the court reconsider its valuation of property, which motions were denied. This appeal ensued.

Before this Court, J.C. argues that the trial court erred in failing to make specific findings regarding the parties' reconciliation agreement. Specifically, he suggests that the parties entered into a "solemn agreement" to liquidate marital assets in effort to reduce their marital credit debt. We disagree.

First, the record is devoid of any evidence of a "solemn agreement" which would be legally enforceable. Rather, it appears that upon the parties' second attempt at

reconciliation they casually agreed that each one would make an effort toward reducing their credit debt. The parties' respective testimony gives rise to no indication that there was any sort of acknowledgment regarding the liquidation of assets or property to accomplish this goal. Conversely, it appears that the parties merely determined to apply whatever individual contributions that they could muster.

Moreover, the trial court found that, of the credit card cash withdrawals dissipated by J.C., he had paid off or settled \$16,543 of these debts. Similarly, the court determined that Kay had paid \$19,100 toward the debt amount. As such, the court clearly made findings with regard to the parties' prior agreement to make an effort to reduce their consumer debt. However, as stated above, the court found that J.C. had dissipated marital funds through, among other things, obtaining several substantial cash advances from the credit companies. The record reflects that J.C. was either unable or unwilling to account for these monies. It was appropriate that the trial court assign the sum of these debts to him while simultaneously assigning the associated assets. Bratcher v. Bratcher, Ky. App., 26 S.W.3d 797 (2000).

J.C. further contends the trial court erred in determining that he had failed to account for receipts from the business jointly owned by the parties and Kay's parents during the periods of 1994 and 1995. He further posits that the court was without authority to direct that a portion of his proceeds from the sale of the marital residence be advanced to Kay to

permit her to reimburse her father those unaccounted for sums. We disagree with J.C.'s arguments.

Rather, the record reflects that Kay's father, Thomas True, provided conflicting testimony with regard to whether he and J.C. had ever settled the accounts for the years 1994 and 1995. The trial court, sitting in the best position to judge the credibility of the witnesses, ascertained that those portions of Mr. True's testimony recalling that no settlements had been forthcoming were the most credible. Therefore, we deem no error on this point and will not disturb the lower court's decision. CR 52.01.

Additionally, the matter of James Coy Brown v. Janice Kay Brown, Thomas Marion True and Veltha True, 95-CI-00207, was consolidated with this dissolution proceeding by the Casey Circuit Court on February 23, 1998. As such, the court retained jurisdiction to decide matters raised therein (i.e., repayment of business receipts owed Thomas True) in concert with the dissolution matter.

Lastly, J.C. argues that the court erred in failing to make specific findings of fact regarding the funds received and the profits derived therefrom in the parties' business between mid-1995 and mid-1998. He additionally contends the court erred in not accounting for any business proceeds from mid-1998 until the final decree was entered.

The record reflects the trial court concluded that Kay was entitled to the profits which she derived from her sole operation of the business between mid-1995 and mid-1998. The

court considered that this was an equitable means by which to divide the marital property in that J.C. received approximately \$66,000 more in property and credits. Furthermore, during this period J.C. was operating an identical business and was not required to account for any profits or share same with Kay. As such, we deem no error. KRS 403.190(1); CR 52.01.

In our opinion, J.C.'s contention that the court was obligated to calculate any profits derived between June 1998, and April 1999, the time the decree was entered, is not compelling. Rather, in June 1998, the parties jointly submitted the matter to the court, on the record, with the accounting provided by Kay regarding business expenses and proceeds being current to that time. While the matter was under submission, neither Kay nor J.C. were required to account for their respective incomes. As such, the lack of division on both parties' part negates the omission. Such a determination is not clearly erroneous.

The judgment of the Casey Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Theodore H. Lavit
Lebanon, KY

BRIEF FOR APPELLEES:

Jerry L. Foster
Liberty, KY