

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000679-MR

ERIC MILLS

APPELLANT

v.

APPEAL FROM KNOX CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 00-CI-00093

CRYSTAL M. MILLS

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUIDUGLI, MILLER AND TACKETT, JUDGES.

GUIDUGLI, JUDGE. Eric Mills appeals from an order of the Knox Circuit Court partially denying his motion to alter, amend, or vacate a contempt order. We affirm.

Crystal Gail Mills ("Crystal") and Eric Mills ("Eric") were married in Knox County, Kentucky on December 16, 1996. On July 20, 2000, the marriage was dissolved by way of a decree of dissolution rendered in Knox Circuit Court. The decree incorporated findings of fact and conclusions of law relating to disposition of property and other matters. The circuit court found therein that the parties' residence, a 1996 mobile home, was marital property. The court awarded the mobile home to Eric,

and ordered that Crystal receive one-half the value of the home equaling \$9,571.26.

Thereafter, Eric filed a CR 60.02 motion seeking relief from judgment. He argued therein title to the mobile initially was held by Crystal and/or her father-in-law, Carl Mills ("Carl"), and that Carl transferred title to the mobile home to his wife Lisa Mills ("Lisa") several months prior to the entry of the decree of dissolution.¹ As such, he maintained that the court was without jurisdiction to adjudicate the rights of the parties to property they did not own. Eric also noted the mobile home was manufactured in 1994 rather than 1996 as stated in the findings of fact and conclusions of law. The motion was denied by way of an order rendered January 5, 2001.

At approximately the same time, Crystal filed a motion seeking an order holding Eric in contempt for failure to pay her \$9,571.26 representing her interest in the mobile home. A hearing on the motion was conducted, and an order sustaining the motion was rendered on January 5, 2001.

On January 17, 2001, Eric filed a motion pursuant to CR 59.01 and CR 59.05 to alter, amend, or vacate the January 5, 2001, contempt order and order overruling his motion for relief. He again argued therein that title to the mobile home was transferred to Lisa some six months prior to the entry of the decree of dissolution, and that the court was without

¹Eric's pleadings repeatedly refer to Lisa as his mother-in-law. Later rulings of the circuit court state that she is his father's wife.

jurisdiction to adjudicate rights of the parties to property that they did not own.

Upon considering the motion, the circuit court rendered an order on March 2, 2001, finding that the mobile home was manufactured in 1994. It went on to rule that while the mobile home was not owned by the parties at the time the decree of dissolution was entered, it was owned by Crystal during the marriage and transferred by Eric's father to his wife Lisa prior to the entry of the decree. It suggested, though did not expressly hold, that the mobile home was transferred by Carl in order to dissipate Crystal's assets in anticipation of the dissolution proceeding. It denied Eric's motion for relief, and gave him ten days to comply with the January 5, 2001, order. This appeal followed.

Eric now argues that the circuit court erred in denying his motion to alter, amend, or vacate the contempt order. He again argues that the court was without jurisdiction to adjudicate rights to property not owned by the parties at the time of dissolution. He seeks to have the matter remanded for entry of an order amending the dissolution decree to remove any reference to the mobile home.

We have closely studied the record, the law, and the arguments of counsel, and find no error. We are first compelled to note that Eric likely would have prevailed on this claim of error had he brought a direct appeal from the July 20, 2000, findings of fact, conclusions of law, and decree of dissolution. Clearly, the mobile home was not marital property at the time of

dissolution as it was not owned by either of the parties, and we would have found the circuit court to be clearly erroneous in so ruling. Similarly, it is difficult to comprehend how the circuit court could award Eric a mobile home that was owned at the time of dissolution by a non-party who was not under the jurisdiction of the court. As to the potential issue of dissipation, Eric never owned the mobile home and thus would have been incapable of dissipating the asset in anticipation of the dissolution. Were Crystal to seek redress on this issue, it would come, if at all, via a civil action against Carl.

The issue now before us, though, is not whether the trial court erred in its findings of fact, conclusions of law, and decree of dissolution; rather, it is whether Eric is entitled to relief under CR 59.01 and CR 59.05, as it is the denial of this motion from which he now appeals. He is not. CR 59.01 allows for the filing of a motion for new trial. It is not a substitute for a direct appeal, and a motion under CR 59.01 must be filed within 10 days from the entry of the judgment. CR 52.02. In the matter at bar, the findings of fact, conclusions of law, and decree of dissolution were rendered on July 20, 2000. Eric's motion for new trial was tendered on January 17, 2001, well outside the ten-day limitation imposed by CR 59.02. This fact, taken alone, disposes of Eric's claim of error.

Eric's motion also sought relief pursuant to CR 59.05, in which he requests that the court alter, amend or vacate its contempt order and January 5, 2001, order denying his motion for relief. CR 59.05, however, does not allow for such relief. It

merely states that a CR 60.02 motion must be filed within 10 days from the entry of judgment. This point aside, Eric had previously sought CR 60.02 relief on or about November 16, 2000, and the motion was denied by way of an order rendered January 5, 2001.

For the foregoing reasons, we affirm the March 2, 2001, order of the Knox Circuit Court denying Eric's motion for relief under CR 59.01 and CR 59.05.

ALL CONCUR.

BRIEF FOR APPELLANT:

Scott M. Webster
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BRIEF FOR APPELLEE:

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