

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001392-MR

EDWARD W. BISHER

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 98-CI-01192

VICKIE JO BISHER

APPELLEE

AND: NO. 2001-CA-001462-MR

VICKIE JO BISHER AND
MICHAEL L. JUDY, ESQ.

CROSS-APPELLANTS

v. CROSS-APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 98-CI-01192

EDWARD W. BISHER

CROSS-APPELLEE

OPINION
AFFIRMING
** **

BEFORE: COMBS, DYCHE, AND KNOPF, JUDGES.

DYCHE, JUDGE: Edward W. Bisher appeals from an order of the Kenton Circuit Court awarding Vickie Jo Bisher more than half of the parties' marital assets, ordering him to pay sixty-five percent of Vickie's post-separation debts, and to pay maintenance. Vickie and her attorney cross-appeal the trial

court's judgment assigning marital debt to Vickie and denying her motion to recover attorney fees. We affirm.

Ed and Vickie were married on September 11, 1971. During their marriage, Ed owned and operated Data Design, a sole proprietorship that designs and sells business forms. Vickie's employment during the marriage consisted of a brief stint as a secretary, and she occasionally assisted Ed with his business. Primarily, Vickie served as a homemaker and caretaker for the couple's three children. When the parties separated on April 11, 1998, Vickie was a full-time student at Northern Kentucky University majoring in Art Education.

Ed filed for divorce on June 19, 1998. For approximately twenty months after filing for divorce, Ed continued to pay the two mortgages against the marital home, taxes, utilities, and insurance premiums. Ed, however, refused to provide funds for Vickie's educational and daily living expenses. To meet her needs, Vickie used credit cards, loans from her parents, and unilaterally withdrew \$25,000.00 from the parties' personal line of credit.

During the litigation of this matter, the trial court held hearings concerning the division of marital assets and debts between the parties, as well as Vickie's request for maintenance and attorney fees. In its June 1, 2001, amended findings of fact, conclusions of law, and judgment, the trial court dissolved the marriage. Further, the trial court awarded Ed the business, valued at \$132,123.00, the business bank account of \$15,475.00 and a \$5,500.00 life insurance policy that Ed unilaterally

redeemed. Vickie received the marital home valued at \$187,200.00, a 1992 Volvo automobile valued at \$5,210.00, and a checking account containing \$3,846.14. Each party also received \$229,321.44 from the equal division of their pensions. Thus, Ed received \$382,419.74, or 47.3% of the marital assets while Vickie was awarded \$425,577.88, or 52.7% in marital assets.

Concerning marital debt, the trial court divided the mortgage debts of \$98,558.58 equally between the parties, assigning each \$49,279.29. Vickie's post-separation debts of \$25,000.00 from the line of credit withdrawal, \$16,217.00 loaned from her parents, and \$28,897.79 in credit card expenses were divided sixty-five percent to Ed and thirty-five percent to Vickie. Thus, Ed was ordered to pay \$45,574.61 of the debt with Vickie being assigned debts of \$24,540.18. In all, the trial court assigned Ed \$94,853.90 and Vickie \$73,819.47 of the marital debt.

The trial court also awarded Vickie maintenance in the amount of \$1,500.00 per month until Vickie's graduation or June 2002, whichever comes first. Thereafter, maintenance was reduced to \$750.00 per month. Each party was ordered to pay his or her own attorney fees. These appeals followed.

Ed presents three arguments for our review. First, Ed argues that the trial court abused its discretion in dividing the marital assets by awarding Vickie over half of the marital equity despite his superior financial contributions. We disagree.

The trial court possesses "wide discretion" in distributing marital property. Lykins v. Lykins, Ky. App., 34

S.W.3d 816, 819 (2000). Even with wide discretion, marital property must be distributed according to KRS 403.190. Pursuant to this statute, after assigning each spouse his or her non-marital property, the trial court must divide the marital property in "just proportions," without regard to marital misconduct and in light of the following factors: each spouse's contribution to the acquisition of marital assets, including homemaking duties; the value of each spouse's non-marital property; the duration of the marriage, and the economic circumstances of each spouse at the time of distribution. KRS 403.190(1)(a)-(d); Russell v. Russell, Ky. App., 878 S.W.2d 24, 25 (1994).

Here, Vickie received \$43,158.14 more in marital assets than Ed. However, in formulating this award, the trial court thoroughly and completely considered the non-marital property awarded to each spouse, the duration of the couple's twenty-seven year marriage, Vickie's contributions as a homemaker, and Ed's income contributions. The trial court also considered Vickie's age, health and that, as an unemployed college student aspiring to become an art education teacher, she will never enjoy an income that will equal the economic condition she enjoyed during her marriage. The record shows that Ed, on the other hand, will continue to attain a six-figure income. Thus, we believe that the circuit court's findings supported its division of the couple's assets. Since this division of marital assets was fair, equitable, and in conformity with KRS 403.190, we affirm.

Second, Ed argues that the trial court erred in ordering him to pay sixty-five percent of Vickie's post-separation debts. In support of this argument, Ed asserts that, since he provided for all of Vickie's needs and complied with all orders regarding maintenance, Vickie should be completely responsible for all debts she incurred prior to her maintenance award in January 2000. We disagree.

There is no presumption that marital debts must be divided equally or in the same proportions as marital property. Neidlinger v. Neidlinger, Ky., 52 S.W.3d 513, 523 (2001). Neidlinger also provides guidance concerning the assignment of debt:

Debts incurred during the marriage are traditionally assigned on the basis of such factors as receipt of benefits and extent of participation, whether the debt was incurred to purchase assets designated as marital property, whether the debt was necessary to provide for the maintenance and support of the family, and the economic circumstances of the parties bearing on their respective abilities to assume the indebtedness.

Id. (citations omitted).

In the matter presently before us, the trial court found that Vickie used credit cards, an interest free loan from her parents, and money borrowed from a line of credit to pay for clothes, food, utilities, telephone, and medical bills. This debt was necessary since Ed did not pay maintenance from April 11, 1998, until January 2000. In fact, Ed did not financially assist Vickie with daily needs until ordered to pay maintenance. Additionally, the trial court considered the fact that Ed is better able to pay these debts since he was awarded the asset

with the most consistent cash flow, his business. Since the court considered the factors propounded in Neidlinger, we believe that the trial court did not abuse its discretion in the assignment of debt.

Ed argues that Neidlinger is "on all fours" with the case presently before us. We disagree. In Neidlinger, the husband was paying maintenance and child support to his former wife. However, the wife incurred an additional \$26,000.00 of debt for her personal benefit and to send their child to an expensive private school. The Kentucky Supreme Court held that the wife was responsible for the additional \$26,000.00 in debt because, if those debts were assigned to the husband, then she would unilaterally increase the husband's financial obligation. Id. at 523. Hence, under Neidlinger, Ed would have a valid argument only if he had been ordered to pay monthly maintenance and the household bills since the date of separation and Vickie incurred these debts despite Ed's financial assistance.

In this case, the record clearly shows that Vickie was not receiving any maintenance from Ed when she incurred the credit card, line of credit, and parental loan debts. Further, the record reflects that Ed refused to pay for any of Vickie's daily living expenses until ordered to do so by the trial court in January 2000. Thus, the trial court's division of this debt to Ed was proper because the record fails to establish that Vickie created a marital debt despite Ed's financial assistance.

Ed also argues that the trial court erred in awarding Vickie maintenance. Ed further argues that the trial court

awarded Vickie an excessive amount in maintenance and failed to properly define the duration of the award. Again, we disagree.

The amount and duration of maintenance is within the sound discretion of the trial court. Gentry v. Gentry, Ky., 798 S.W.2d 928, 937 (1990); Combs v. Combs, Ky. App., 622 S.W.2d 679, 680 (1981); and Browning v. Browning, Ky. App., 551 S.W.2d 823 (1977). It is also within the trial court's discretion to terminate a maintenance award upon the recipient's death or remarriage. Russell, Ky. App., 878 S.W.2d 24, at 26 (1994); Van Bussum v. Van Bussum, Ky. App., 728 S.W.2d 538, 539 (1987). In awarding maintenance, the trial court must determine whether Vickie lacked sufficient property to meet her reasonable needs and is unable to support herself through appropriate employment according to the standard of living established during the marriage. KRS 403.200; Casper v. Casper, Ky., 510 S.W.2d 253 (1974).

The record reveals that the trial court thoroughly considered the circumstances of both parties prior to awarding maintenance. The trial court found that, unless it assigned the entire marital estate to Vickie, she could not provide for her reasonable needs. Maintenance was necessary because Vickie would have no income until she graduates from Northern Kentucky University. Even then, her income, a teaching salary, will be approximately eighty-two percent lower than Ed's income. Vickie's emotional and physical problems will also hinder her ability to support herself. With these facts, maintenance was proper.

In her cross-appeal, Vickie presents two arguments for our consideration. First, Vickie argues that the trial court erred in assigning her approximately \$73,000.00 in marital debt. We reject this argument.

As previously discussed, there is no presumption that marital debts must be divided equally or in the same proportions as marital property. Neidlinger, 52 S.W.3d at 523. The trial court does not abuse its discretion in distributing marital debts upon dissolution when it divides the marital debts in light of its distribution of marital assets. Russell, 878 S.W.2d at 26. In this case, Vickie received \$425,577.88, or 52.7% in marital assets, which included the marital home and half of the couple's pensions. The trial court assigned Vickie \$73,819.47 of the marital debt. Given the fact that Vickie obtained the bulk of the marital estate and was responsible for approximately forty-four percent of the marital debt, the trial court's findings support its distribution of the family's marital debts. Consequently, the trial court did not abuse its discretion.

Finally, Vickie argues that the trial court erred by failing to award her attorney fees and costs. We find this assertion to be completely without merit.

KRS 403.220 authorizes a trial court to order one party to a divorce action to pay a "reasonable amount" for the attorney fees of the other party, but only if there exists a disparity in the relative financial resources of the parties in favor of the payor. Sullivan v. Levin, Ky., 555 S.W.2d 261, 263 (1977), overruled on other grounds, Hale v. Hale, Ky., 772 S.W.2d 628

(1989). But even if a disparity exists, whether to make such an assignment and, if so, the amount to be assigned is entirely within the discretion of the trial court. Wilhoit v. Wilhoit, Ky., 521 S.W.2d 512, 514 (1975).

In this case, Vickie received more of the marital assets and equity, an award of maintenance, and was assigned fewer debts. Under these facts, it is clear that no disparity of financial resources existed in Ed's favor. Thus, the trial court properly refused to award Vickie attorney fees.

The judgment of the Kenton Circuit Court is affirmed.

ALL CONCUR.

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