

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000774-MR

JOHN N. FRISBY

APPELLANT

v.

APPEAL FROM BOYD CIRCUIT COURT
HONORABLE MARC I. ROSEN, JUDGE
ACTION NO. 98-CI-00653

IRENE B. FRISBY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, McANULTY, AND PAISLEY, JUDGES.

BUCKINGHAM, JUDGE: John N. Frisby appeals from an order of the Boyd Circuit Court relating to nonmarital property in a divorce case. We affirm.

Irene B. Frisby and John N. Frisby were married in 1979. Each had been previously married, and they came to the marriage with their own property. John owned nearly all the stock in Breezeland Swim Club, Inc., a business in Ashland, Kentucky, which he operated throughout the marriage. At the

time of their marriage, the stock had a value of approximately \$150,000. Early in the marriage, John obtained the few remaining outstanding shares of stock. Also, Irene purchased 25 of the outstanding shares with her pre-marital funds and put them in John's name.

In 1985, acting on the advice of his accountant and attorney, John transferred nearly half of the Breezeland stock into Irene's name. At the time of their separation in 1998, 289 shares of the stock were titled in John's name, and 270 shares were titled in Irene's name. The stock was sold during the pendency of the divorce action, and the sale netted \$24,708.28. The decrease in value of the stock was due in part to the depletion of the corporation's assets during the marriage. The proceeds of the sale of one of the corporation's assets, an interest in a real estate partnership, were added to other nonmarital property belonging to John and were used to buy a yacht on which the parties resided during the time they spent in Florida.

Irene filed a petition for dissolution of marriage in July 1998. The case was referred to a domestic relations commissioner (DRC) for hearing. On October 7, 1999, the DRC entered her report and recommendations. John filed exceptions which were overruled by the court, and the DRC's report was confirmed and a divorce decree entered on June 14, 2000.

John appealed the final judgment and decree to this court, which rendered an opinion on July 20, 2001, affirming in part, reversing in part, and remanding. John's appeal challenged the trial court's ruling with respect to its jurisdiction to dissolve the parties' marriage and its failure to treat certain assets as his nonmarital property. John's argument that the trial court lacked jurisdiction to dissolve the marriage was based on his claim that Irene was a resident of Florida and had not resided in Kentucky for the 180-day period as required by KRS¹ 403.140(1)(a) prior to filing her petition for dissolution. This court found no error in the trial court's exercise of jurisdiction and affirmed the trial court on that issue.

The second issue before this court in John's initial appeal concerned the Breezeland stock and the yacht. The DRC had treated the 270 shares of Breezeland stock titled in Irene's name as her separate property despite the fact that John had owned the stock prior to the marriage. The DRC had concluded that the shares had been transformed into Irene's nonmarital property because she held title to them and because of the joint efforts of the parties during the marriage. Although the trial court had accepted the DRC's findings and conclusions on the issue, this court held that the trial court erred. This court

¹ Kentucky Revised Statutes.

held that "[w]ith the exception of the 25 shares that Irene purchased with her nonmarital funds, the shares of stock in Breezeland should have been awarded to John as his nonmarital property." Thus, the matter was remanded to the trial court with directions to divide the proceeds of the sale of the stock with 4% (25/559) of the proceeds payable to Irene and 96% (534/559) payable to John. This court also directed the trial court to apply the same percentages of ownership in calculating and liquidating the parties' respective interests in the yacht.

After the case was remanded to the trial court, the matter was again referred to the DRC. In her report and recommendations which were entered on January 4, 2002, the DRC applied the percentages as directed by the opinion of this court and awarded Irene \$1,104.46 of the funds remaining from the sale of the Breezeland stock.² The DRC also awarded Irene \$6,358.58 for her share of the yacht. John filed exceptions which were rejected by the court in an order entered on April 1, 2002. This appeal by John followed.

John, who represents himself in this appeal, raises several arguments in his briefs. As we have noted, the sole issue remanded by this court to the trial court from the appeal of the final judgment concerned the valuation of Irene's

² Some funds from the sale of the stock had previously been divided by the agreement of the parties. See paragraph 2 of the January 4, 2002, DRC report.

interests in the Breezeland stock and in the yacht. John does not complain of the trial court's award of approximately \$1,100 to Irene for her interest in the remainder of the proceeds from the sale of the Breezeland stock. However, he claims that the court erred in awarding Irene \$6,358.58 for her interest in the yacht based on 25/559 of \$142,250. He asserts that the correct amount to be awarded to Irene for her interest in the yacht was \$5,185. He bases that amount on 3.6451% of the value of the yacht. He asserts that he generally agrees with this court's prior opinion concerning the yacht, but he argues that Irene's interest of 25/559 does not give credit for his 3.0045% ownership in Empire Unlimited.

John is precluded from challenging this court's prior opinion because of the applicability of the "law of the case" doctrine. That doctrine holds that "an opinion or decision of an appellate court in the same cause is the law of the case for a subsequent trial or appeal however erroneous the opinion or decision may have been." Union Light, Heat & Power Co. v. Blackwell's Adm'r, Ky., 291 S.W.2d 539, 542 (1956). See also Taylor v. Commonwealth, Ky., 63 S.W.3d 151, 167 (2001). If John had desired to further challenge this court's opinion concerning the percentage to which Irene was entitled, he should have filed a petition for rehearing with this court or filed a petition for

discretionary review with the Kentucky Supreme Court. He is now precluded from doing so.

John also complains about the portion of the DRC report which states that he shall receive a credit of \$11,249.68 for the excess funds Irene received from the cash left after the sale of the Breezeland stock, if she actually received the \$12,354.14 previously agreed to. John insists that the amount of \$12,354.14 was paid to Irene. We fail to see how John has any argument in this regard since the DRC made no finding that John had not paid the amount to Irene. If he paid the amount, he will receive the credit.

Next, John complains about the amount of a superceded bond for \$25,275 that he was directed to post by the trial court in an order entered on May 6, 2002. That order was entered after John filed his appeal herein and, therefore, was not an order from which his appeal was taken.

Finally, John continues to complain about the orders of the trial court that it had jurisdiction over the case based on Irene's residency and orders concerning other assets. Again, there are issues that John may not pursue in this appeal due to the "law of the case" doctrine. Union Light, supra; Taylor, supra.

The order and judgment of the Boyd Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

John N. Frisby, *Pro Se*
Tavernier, Florida

BRIEF FOR APPELLEE:

Jeffrey L. Preston
Catlettsburg, Kentucky