

RENDERED: SEPTEMBER 26, 2003; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001294-MR

JACK HAROLD EALY

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 00-CI-00094

DEBRA LOUISE EALY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND JOHNSON, JUDGES.

BUCKINGHAM, JUDGE. Jack Harold Ealy appeals from the Bell Circuit Court's decree of dissolution of marriage that divided the marital property and awarded maintenance to Debra Louise Ealy in the amount of \$3,000.00 per month for life.

Furthermore, the circuit court ordered Jack to pay all the outstanding marital debts.

On appeal, Jack argues that the circuit court clearly erred and abused its discretion when it awarded the majority of the marital property to Debra and ordered him to pay all the debts. Further, he argues that maintenance was not appropriate, but even if it were, the circuit court erred in awarding such a high amount for such a long period of time. Also, Jack argues that the circuit court failed to make sufficient factual findings to support its decision. Finding that the circuit court did not err or abuse its discretion, we affirm its decision.

After nearly 28 years of marriage, Debra filed for divorce in the Bell Circuit Court. At Jack's request, the circuit court entered an interlocutory decree of dissolution, ending the marriage while reserving the issues of maintenance and division of the marital property and debt.

On May 16, 2002, the circuit court entered a final decree of dissolution and awarded to Debra the marital residence, including all the furniture, appliances, and furnishings; an adjoining lot and building; one-half of the Ealys' prints; one-half of Jack's firearms; and one-half of Jack's mutual fund account. The circuit court awarded Jack his ownership interest in Jackrock, LLC, a coal mining company; his oil lamp collection; one-half of the prints; one-half of his firearms, and all of his workshop equipment. The circuit court

ordered Jack to pay the mortgage on the marital home; the current balances on all credit cards; the 2001 property taxes for the home; all medical expenses up to May 16, 2002; Debra's legal fees; and to provide medical insurance for Debra. Furthermore, the circuit court awarded Debra maintenance in the amount of \$3,000.00 per month for life with an offset for any future social security benefits. Being unsatisfied with the circuit court's judgment, Jack appealed to this court.

MARITAL PROPERTY AND MARITAL DEBT

Jack argues that the Bell Circuit Court erred and abused its discretion regarding the division of the marital property and the marital debts. According to KRS¹ 403.190, when dividing marital property, a court must consider all relevant factors including:

(a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker; (b) Value of the property set apart to each spouse; (c) Duration of the marriage; and (d) Economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

KRS 403.190(1). Jack argues that the circuit court failed to properly consider these factors.

¹ Kentucky Revised Statutes.

According to Jack, he was the sole provider of monetary support and the sole contributor to acquiring all the marital property. Although he admits that Debra's contribution as a full-time homemaker and mother had value, Jack insists that the circuit court should have placed greater weight on his role as the sole monetary provider and should have given him no less than 50 percent of the marital property for his contribution to the marriage.

According to Jack's calculations, Debra received property that was worth in excess of \$144,610.85 while he only received property worth somewhat over \$84,240.85. Thus, he concludes Debra received property in excess of her contributions to the marriage. Furthermore, Jack complains that Debra received almost all the marital property plus over \$40,000.00 in temporary maintenance, while he has been ordered to pay all the marital debt and has been reduced to living in a small one-bedroom apartment.

Jack also argues that the circuit court erred and abused its discretion by requiring him to assume all the marital debts, which total \$87,124.22. Jack argues that \$8,947.20 of this debt was incurred by Debra after they had separated. Citing Neidlinger v. Neidlinger, Ky., 52 S.W.3d 513 (2001), and Bodie v. Bodie, Ky. App., 590 S.W.2d 895 (1979), Jack argues that any debt incurred by a party to a divorce is not presumed

to be marital. He asserts Debra incurred over \$8,000.00 in debt for her sole benefit after their separation and without his knowledge; therefore, she should be responsible for at least that amount.

Debra and Jack were married for over 27 years. During that time, Debra was a full-time housewife and mother who raised the couple's two daughters. While it is true that the court awarded the majority of the marital property to Debra, the property awarded to her, such as the marital residence, does not generate income. However, the circuit court did award Jack his full interest in Jackrock LLC, which generates millions of dollars in coal sales each year.

Jack argues that "under no circumstances" would he be entitled to less than 50 percent of the marital property. We disagree. The statute does not require that the marital property be divided equally; rather, it requires that it be divided in "just proportions" after consideration of the aforementioned factors. KRS 403.190. Considering the duration of the marriage, Debra's contribution as a homemaker, and the fact that Debra was awarded property that did not generate income like the business awarded to Jack, we cannot say that the court abused its discretion in dividing the marital property. See Johnson v. Johnson, Ky. App., 564 S.W.2d 221, 222 (1978)

("KRS 403.190 vests in the trial court wide discretion in the division of marital property").

As to the portion of the decree ordering Jack to pay the marital debts, he particularly objects to paying the Sears debt, which he states is \$3,947.20, and the Community Trust Bank debt, which he states is \$5,000. Noting that debts are not presumed to be marital (see Neidlinger and Bodie, supra), he argues that these debts were incurred by Debra after the parties separated and should have been assigned to her.

Debra explains in her brief that the Sears debt was to finish their kitchen after Jack left and that the Community Trust Bank debt was a result of a \$5,000 check that Jack left her on the night of their separation. She states that he told her to use it to pay marital expenses and that she did. Jack does not dispute Debra's statements in his reply brief.

Debra also states in her brief that the bulk of the marital debt was incurred in connection with the start-up costs of Jackrock LLC. Further, she states that two debts incurred as college loans for the children were voluntarily assumed by Jack. He does not dispute either statement in his reply brief.

"[I]ssues pertaining to the assignment of debts incurred during the marriage are reviewed under an abuse of discretion standard." Neidlinger, Ky., 52 S.W.3d 513, 523 (2001). As the Sears debt was incurred to improve marital

property and the bank debt was incurred to pay marital debts, we conclude that the court did not abuse its discretion in refusing to assign them to Debra. Likewise, in light of the respective financial abilities of the parties, we find no abuse of discretion in the assignment of all the parties' indebtedness to Jack.

MAINTENANCE

Jack argues that the circuit court erred when it awarded maintenance to Debra. Citing KRS 403.200, Jack argues that a party to a divorce is entitled to maintenance only upon a finding that the party lacks sufficient property, including any marital property awarded, to provide for his or her reasonable needs and the party is unable to support himself or herself through appropriate employment. Citing Perrine v. Christine, Ky., 833 S.W.2d 825 (1992), Jack argues that Debra received nearly \$200,000.00 in marital property and temporary maintenance and is debt free; thus, she has sufficient property to meet her reasonable needs.

Due to her medical condition, the circuit court concluded that Debra cannot work. Jack admits that Debra suffers from cystinuria, which causes her tremendous pain and frequent hospitalization. However, despite her medical condition, he maintains that she is capable of working. Jack claims that other members of Debra's family also suffer from

cystinuria and that they work. Thus, he maintains that she should be able to work, too. Also, he claims that Debra's treating physician, Dr. William S. Muse, Jr., never stated in his deposition that she is disabled, handicapped, or medically limited from working. Jack argues that Debra raised two children, kept their home, and even briefly ran a crafts store. Thus, he argues that she is capable of working.

Jack also contends that even if the circuit court did not err in awarding maintenance, it still erred in awarding such a large amount for such a long duration. According to KRS 403.200, when determining the appropriateness, the amount, and the duration of maintenance, a trial court must consider the following factors:

(a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian; (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment; (c) The standard of living established during the marriage; (d) The duration of the marriage; (e) The age, and the physical and emotional condition of the spouse seeking maintenance; and (f) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

KRS 403.200(2)(a)-(f). Jack argues that since Debra is capable of working, the duration should have been no longer than needed for Debra to obtain the necessary training to get a job. Jack insists that he and Debra had a standard middle-class marriage, and, since she has no debt, he does not believe that her standard of living has decreased from that which was established during the marriage. Furthermore, Debra has no emotional problems, and, according to Jack, her medical condition does not preclude her from working.

Pointing to his 2000 federal tax return, Jack argues that he grosses only \$4,873.75 per month; however, the circuit court ordered him to pay both maintenance and the outstanding marital debt. In addition, Jack claims that his monthly expenses are \$3,212.00. Jack argues that he cannot pay maintenance, the marital debt, and his own monthly expenses and still have enough money to meet his reasonable needs.

Jack cites Weldon v. Weldon, Ky. App., 957 S.W.2d 283 (1997), in which this court held that the trial court abused its discretion when it awarded an ex-wife maintenance in the amount of \$1,200.00 per month for life. Jack argues that the circuit court has ordered him to pay twice as much maintenance as the ex-husband in Weldon; therefore, he concludes that the circuit court abused its discretion when it awarded Debra maintenance for life.

Debra owned and operated a craft store for six months during the 1990's, which she was forced to close due to her medical condition. Debra's treating physician, Dr. Muse testified that Debra's medical condition, cystinuria, causes her to frequently and repeatedly form and pass kidney stones. This causes Debra tremendous amounts of pain and requires her to be frequently hospitalized. Dr. Muse opined that this severely limits her ability to find and retain work.

Also, before Jack became a partner in Jackrock, LLC, he worked as a mine superintendent and earned approximately \$100,000.00 per year. Furthermore, after he and Debra had separated, Jack also entered into a partnership in another coal mining company, Kentucky Darby. Given these facts, the Bell Circuit Court did not abuse its discretion in making the award.

Furthermore, we hold that the circuit court did not err when it awarded Debra maintenance for life. Maintenance is presumed to be for life unless rebutted or otherwise ordered by the circuit court. Combs v. Combs, Ky. App., 622 S.W.2d 679, 680 (1981). The circuit court found that Debra was not employable due to her medical condition. Jack failed to rebut this finding.

SUFFICIENT FINDINGS OF FACT

Jack cites Hollon v. Hollon, Ky., 623 S.W.2d 898 (1981), and argues that a trial court must set forth sufficient

findings of fact to support its decision regarding the division of marital property and debt and the awarding of maintenance. He insists that the circuit court made only one factual finding, that the marriage lasted 28 years. According to Jack, the circuit court failed to make factual findings regarding: 1) either his or Debra's contribution to the marriage, 2) the value of the marital property, 3) either his or Debra's economic circumstances, 4) Debra's financial resources, 5) the time necessary for Debra to acquire sufficient education or training to enable her to find work, and 6) his ability to meet his needs while paying maintenance to Debra.

However, according to CR 52.04:

A final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by written request for a finding on that issue or by a motion pursuant to Rule 52.02.

Jack failed to request the circuit court for specific findings of fact; thus, he waived this issue. See Underwood v. Underwood, Ky. App., 836 S.W.2d 439, 445 (1992); Cherry v. Cherry, Ky., 634 S.W.2d 423, 425 (1982); Whicker v. Whicker, Ky. App., 711 S.W.2d 857, 860 (1986).²

² It appears to us that the reasoning in the Hollon case has limited application to the particular fact situation where basic statutory requirements were not met. The Kentucky Supreme Court appeared to so

CONCLUSION

The circuit court's factual findings were supported by substantial evidence. It neither erred nor abused its discretion regarding either marital property, marital debts, or maintenance. Also, since Jack failed to file a motion for more specific findings of fact, he waived that issue for appeal. Thus, we affirm the Bell Circuit Court's May 16, 2002, decree of dissolution.

ALL CONCUR.

BRIEF FOR APPELLANT:

Otis Doan, Jr.
Harlan, Kentucky

BRIEF FOR APPELLEE:

Neil Ward
Pineville, Kentucky

limit Hollon in Cherry, and the cases of Underwood and Whicker followed this rationale.