

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001543-MR

YUNG LO

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE LINDA R. BRAMLAGE, JUDGE
ACTION NO. 00-CI-01011

SUSAN L. LO

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, GUIDUGLI, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. This is an appeal from those portions of a decree of dissolution dividing the parties' marital property and debts. Upon review of the record, we deem appellant's arguments to be either unpreserved or without merit. Thus, we affirm.

Appellant, Yung Lo, and appellee, Susan Lo, had been married for twenty-four years when Susan initiated dissolution proceedings on August 25, 2000. At that time, Susan was 46 years of age and Yung was 58. Two children were born of the

marriage who were both emancipated by the date of the decree. During the marriage, the parties entered, individually and jointly, into various business ventures. Yung has a master's degree in science and worked during part of the marriage as a structural engineer. Susan was the primary caretaker of the children and also worked in the parties' businesses. It is important to note that the parties kept their finances separate for a large part of the marriage.

Prior to 1991, the parties lived in Dallas, Texas in a home still owned by the parties at the time of the dissolution. In 1991, Susan moved to Kentucky and purchased a business, Ocean Express, which was a wholesale seafood supplier. Susan sold this business in 1995 for \$140,000. In 1995, the parties entered into a partnership with Susan's sister and brother-in-law entitled Lin & Lo, Inc. which operated a restaurant in Florence, Kentucky called Ming Chinese Garden. Susan invested \$110,000 from the sale of Ocean Express in Lin & Lo, Inc., while Yung invested \$50,000 in the partnership from the sale of a gas station. Yung managed the restaurant from 1995 through 1998. In 1998, the parties separated and Yung moved back to Texas. Starting in 1998, Susan managed the restaurant until it closed in November of 2000 as a result of a federal investigation regarding the employment of illegal aliens. In August of 2001, Lin & Lo, Inc. sold the restaurant for \$1,400,000 which included

a promissory note for \$550,000. After the payment of various expenses, only \$366,248 of the cash paid for the business, which was kept in an escrow account by the partnership's attorney, remained at the time of the dissolution. The sale of the restaurant's personalty yielded \$305,000 of which only \$90,000 remained in Susan's bank account after the payment of other outstanding debts of the restaurant, \$35,000 in salary to herself, \$60,000 on a loan, and \$80,000 to her sister and brother-in-law.

After a full hearing on the contested property issues in which Yung acted pro se, the family court judge entered its findings of fact, conclusions of law, and decree on June 21, 2002. The court found that the parties' interests in Lin & Lo, Inc./the Ming Chinese Garden restaurant were solely marital and, thus, equally divided the \$366,248 in proceeds from the sale of the restaurant held in escrow, as well as the \$550,000 in accounts receivable from the promissory note. In dividing the remaining marital property, the court awarded the following to Yung: the parties' Texas residence valued at \$168,290; \$5,422 in life insurance proceeds; his Thrift Savings money market account valued at \$45,497; his IRA valued at \$10,425; another money market account valued at \$13,722; his three checking accounts with balances totaling approximately \$30,845; the 1997 Dodge Caravan; and all of the household furnishings. Of the

marital property, Susan was awarded: the \$78,707 in proceeds from the sale of the Florence, Kentucky residence; the Redwood City, California property valued at \$30,000; the parties' share of the Tennessee joint venture property valued at \$5,000; her two IRAs with an approximate balance totaling \$19,558; the \$35,000 in restaurant salary from Lin & Lo, Inc.; her checking account balance of \$95,000, the majority of which represented the proceeds from the sale of the restaurant personalty; and the 2001 Nissan Pathfinder. As to debts of the parties, the court ordered that Susan would be responsible for any outstanding debt resulting from the sale of Ocean Express and for the loan on the Nissan Pathfinder. The \$50,000 debt to Yung's family was assigned solely to Yung. From this division of marital property and debt, Yung now appeals.

Yung's first argument is that the lower court erred in valuing the parties' Texas, Tennessee, and California properties. Specifically, Yung maintains that it was error for the court to allow Susan to testify as to the value of the California and Tennessee properties and to rely on an assessment in valuing the Texas property. During the hearing in this case, Yung never objected to Susan's stated opinion regarding the value of the California and Tennessee properties. Nor did Yung present any evidence of his own regarding the value of these properties. It is axiomatic that the trial court must be given

an opportunity to rule on issues which are the subject of alleged error. Kaplon v. Chase, Ky. App., 690 S.W.2d 761 (1985). Accordingly, Yung's claim of error as to the valuation of the California and Tennessee properties is unpreserved.

Similarly, Yung did not present any evidence that the value of the Texas property was different than the assessed value, nor did he object to the assessment or argue that the court should not rely on the assessed value. In fact, in his pretrial memorandum, Yung conceded that the appraised value of the Texas property was \$168,000, while contending that the property was in need of certain repairs. Hence, this issue was likewise unpreserved.

Yung next argues that the trial court erred in failing to divide the net restaurant profits from 1998, 1999, and 2000. Yung contends that there was evidence that Susan retained and thereafter dissipated over \$146,000 in restaurant profits from those years when she managed the restaurant, yet the lower court failed to make any finding on the issue and divide those monies. In reviewing the record, we see that there was indeed evidence that large sums of money passed through Susan's bank account during those years and that the trial court failed to make any findings on the issue. However, Yung never requested a specific finding on the issue as required by CR 52.04 which provides:

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 a written request for a finding on that issue or by a motion pursuant to Rule 52.02.

Hence, the alleged error was waived. Whicker v. Whicker, Ky. App., 711 S.W.2d 857 (1986).

Yung also complains that the lower court was inconsistent in assessing the values of the parties' bank accounts and life insurance policies. Yung cites in particular the court's valuation of Susan's bank account relying on a balance from the year 2002, while valuing his bank account based on a balance from 2000. As noted in Susan's brief, the court apparently relied on financial records from previous years to value certain of Yung's assets because he refused to provide current records of those assets, despite various discovery orders requiring him to do so. Yung cannot now be heard to complain on appeal that the court erred in failing to use a common valuation date.

Yung next assigns error to the court's failure to make a finding on and include in the marital estate \$15,314 that Susan allegedly received from a Jackson National Insurance policy she cashed in September of 2000. Once again, Yung failed

to request a specific finding on the issue as required by CR 52.04. Hence, the alleged error was waived.

Finally, Yung contends that the trial court erred in failing to divide the parties' marital property and debt in "just proportions" pursuant to KRS 403.190. Yung maintains that Susan was awarded substantially more property than he was as evidenced by the fact that she was allowed to keep her jewelry, the \$146,000 in restaurant profits, and the California property, while he was assigned sole responsibility for the \$50,000 debt to his family. As to the jewelry, the trial court found that it had been given to her by her family and thus it was properly assigned to Susan as her nonmarital property. KRS 403.190(2)(a). As for the \$146,000 in restaurant profits from 1998, 1999, and 2000, we have already addressed this issue and found that Yung waived any error related thereto.

Relative to the \$50,000 in family debt, Yung claims that he borrowed said funds from his brother and sister after the parties separated. There is no statutory presumption that debt incurred during the marriage is marital or that it be divided equally or in the same proportion as the marital property. Neidlinger v. Neidlinger, Ky., 52 S.W.3d 513, 522-523 (2001). A trial court's decision regarding the assignment of debt incurred during the marriage will not be reversed unless the court abused its discretion. Id. at 523. The only evidence

that Yung was required to pay back said monies was the testimony of Yung. Further, said funds were received and disposed of solely by Yung after the parties separated and thus were not used for the maintenance and support of the whole family. See Neidlinger, 52 S.W.3d at 523; Gipson v. Gipson, Ky. App., 702 S.W.2d 54 (1985). Accordingly, we cannot say that the trial court abused its discretion in assigning the entire debt to Yung.

The division of marital property is likewise reviewed under an abuse of discretion standard. Johnson v. Johnson, Ky. App., 564 S.W.2d 221 (1978). KRS 403.190 does not mandate an equal division of marital property, only that the property be divided in "just proportions". McGowan v. McGowan, Ky. App., 663 S.W.2d 219 (1983). Given the parties' complicated finances and the limited evidence the trial court had before it, we cannot say that the trial court abused its discretion in the division of marital property.

For the reasons stated above, the judgment of the Boone Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gregory D. Voss
Edgewood, Kentucky

BRIEF FOR APPELLEE:

Michael Davidson
Suzanne Baumgardner
Lexington, Kentucky