

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001769-MR

JOHN CONRAD ROBINSON, SR.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LAURANCE B. VANMETER, JUDGE
ACTION NO. 00-CI-01483

ANNE HARVEY ROBINSON

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, COMBS, AND DYCHE, JUDGES.

BUCKINGHAM, JUDGE: John Conrad Robinson, Sr. ("Con") appeals from an order of the Fayette Circuit Court that divided marital assets with his former wife, Anne Harvey Robinson ("Anne"). Specifically, Con argues that the trial court erred by overvaluing the inventory, equipment, and rolling stock of Con's business, Con Robinson Contracting, Inc., and by awarding Anne interest accrued as her nonmarital property on an \$86,000 loan

she made to the business in 1989. Having reviewed the record, the arguments of the parties, and the applicable law, we affirm.

Con and Anne were married on December 21, 1980. During their marriage, Con owned and operated a business¹ that sold topsoil, compost, and mulch to Lexington, Kentucky, area customers and that later engaged in wood and concrete recycling. Anne worked as chief financial officer for the business and handled the parties' corporate and personal finances.

Con operated the business from two tracts of land in Lexington. The business operations occurred on property located on Georgetown Road and in the Cahill Industrial Park. These properties are both considered to be valuable tracts of development property in the Lexington area. The Georgetown Road property contained large quantities of unprocessed material that was sold by the business. The business also bought, maintained, and sold various pieces of equipment that Con was using to further its purposes. The company's recycling, compost, and topsoil products also produced a reasonable profit during the 1990s.

Throughout their marriage, Con and Anne constantly disagreed over business practices and expenditures. These

¹ The record shows that Anne owned 51% of Con Robinson Contracting while Con owned 49% of the business. During the litigation of this matter, Con asserted that he was never aware that Anne owned a majority of the business. Anne stated that Con willingly signed over a majority of the business to her in recognition of her bookkeeping abilities as well as to qualify the business for special status as a female-owned enterprise.

disagreements, coupled with Con's desire to leave the business altogether, led the parties to place the business for sale. They unsuccessfully tried to sell the business as a going concern several times during the 1990s. In the meantime, the parties continued to buy and sell equipment and incurred additional debt. The business also became less profitable because it lost customers to increased competition that was able to produce better material through screening.

In 1998, Con discovered that Anne had moved over \$300,000 from the business accounts into accounts that were solely in her name.² Anne asserted that this money represented repayment of a loan she had made to the business from an inheritance in 1989 in the amount of \$86,000 at 15% interest. After learning of this and other withdrawals, Con removed Anne's signature authority on the business account and changed the address of the business's accounts receivable department. After losing her financial authority over the business, Anne filed for divorce on April 17, 2000.

An evidentiary hearing was held in this matter on March 18 and March 20, 2002. At this hearing, both parties presented evidence concerning the value of the business. Anne testified that Con annually assessed each piece of equipment and rolling stock individually and determined the value of those

² The largest withdrawal was a check to Morgan Keegan for \$275,000 on March 10, 1998.

items. The parties then purchased insurance on those items based on Con's assessment. Anne supported her testimony with insurance policies from CNA Insurance Company that listed the actual cash value of the equipment and rolling stock. The equipment and rolling stock were insured by CNA for 100% of the actual cash values as determined by Con during his assessments.

With regard to the inventory value of the business, Anne testified that she relied on quarterly and annual reports prepared for and provided to the Environmental Protection Agency and the Kentucky Division of Waste Management for the years 1998, 1999, and 2000. Anne stated that she was responsible for filing these quarterly and annual reports that summarized the sales and amount of material processed by the compost and recycling operations. From these reports, Anne estimated that 50,000 cubic yards of inventory was located on the Georgetown Road property and that the inventory was valued at \$500,000.³

Finally, Anne testified that she had loaned the company \$86,000 in 1989 from her inheritance in an effort to help the business during a period of financial difficulty. She noted that the parties had agreed to repay the loan at 15%

³ In obtaining this value, Anne estimated that the compost blend constituted 20,000 cubic yards of the inventory, which sold for \$15 per yard. The total value for the compost was estimated to be \$300,000. The remaining 30,000 cubic yards of product was mulch and was sold for \$11 per yard for a value of \$330,000. Anne discounted the \$630,000 in estimated inventory by 20% to take into account the cost the business would incur to finish the product and prepare it for sale. At this point, Anne obtained her final estimate that the inventory on the Georgetown Road property was valued at approximately \$500,000.

interest. Anne repeated her assertion that the \$300,000 she moved from the business accounts to accounts in her name only constituted the repayment of that loan. Con acknowledged that Anne had loaned the company \$86,000 and that the loan was paid back in 1998, but he denied having agreed to pay interest on the loan. Con testified that he was never aware that Anne moved money between accounts until 2000.

Calvin D. Cranfill, a certified public accountant, testified on Anne's behalf concerning his valuation of the business. Cranfill testified that he accepted Anne's valuation of the equipment, rolling stock, and inventory based upon the documentation Anne provided. Accordingly, Cranfill valued the inventory at \$500,000, the equipment at \$1,004,879, the rolling stock at \$162,650, and the accounts receivable at \$35,377. He further testified that the business possessed assets of \$226,227 in cash and \$162,650 in goodwill. Cranfill also placed a value on the real property owned by the business, with the Cahill property being worth \$1,075,000 while the Georgetown Road property was valued at \$875,000.⁴ According to Cranfill, the business had total assets of \$4,305,662 and liabilities of \$454,800. From these assessments, Cranfill determined the fair market value of the business to be \$3,850,862.

⁴ Cranfill did not appraise the real property himself. Rather, he accepted real estate appraiser Steven B. Rohlfig's valuation of the property. Con accepted Rohlfig's assessment of the Cahill property.

In response to Anne's evidence concerning the valuation of Con Robinson Contracting, Con's appraiser, Carrell L. Eakle, valued the business at \$2,060,003. Eakle stated that he believed the inventory stored on Georgetown Road possessed no value due to its poor condition. Further, Eakle testified that he assigned a value of \$1,021,490 to the equipment based upon its resale, not its insured, value. Eakle noted that he performed no independent appraisal of the equipment, but simply relied upon Con's assessment of the fair market value for each piece of equipment.

Con's property appraiser, Doris Leach, testified that the value of the Georgetown Road property was \$450,000. Leach noted that the poor condition of the inventory and the cost to clear this inventory from the premises lowered the value of the Georgetown Road property. However, Leach testified that if remediation of the property was not taken into account, the Georgetown Road property is worth approximately \$650,000.

Finally, Con testified that he believed Anne's valuation of the business was incorrect because the value of the equipment and inventory was inflated. According to Con, the inventory had no value because of its poor condition and because anyone could obtain this material from the Fayette County landfill for free. Yet, during his testimony, Con admitted that he did, in fact, possess inventory at the Georgetown Road farm

and that he prepared some of that inventory for sale and had received some income from the sale of the Georgetown Road inventory. With regard to the equipment, Con asserted that he appraised each piece of equipment personally, provided those values to Anne, and insured the equipment for its actual cost. Con further admitted that, from the time Anne filed for divorce, he renewed the CNA Insurance policies twice for the amounts in which he could actually sell each piece on the open market.

On June 13, 2002, the trial court issued its Supplemental Findings of Fact and Conclusions of law. In this judgment, the trial court first found that Anne had made a loan of \$86,000 to the business in 1989 from nonmarital funds and was entitled to have the loan paid back with 8% interest. The court also held that the interest was nonmarital property. Next, the court valued the marital estate at \$4,525,637. In making this finding, the court accepted Cranfill's valuation of the business in its entirety except for the value he assigned to the Georgetown Road property. For the Georgetown Road property, the court accepted Leach's assessment of \$650,000. Accordingly, the trial court found that the business was worth \$3,625,862.

The court then awarded Anne the Cahill and Harrodsburg road properties, valued together at \$1,931,000, a Central Bank account containing \$43,775, and cash from Con in the amount of \$288,043.50. Con retained the assets of the business except for

the Cahill property. After the cash payment was considered, each party received \$2,262,818.50, which represented one-half of the total marital estate.

After the trial court made its rulings, Con filed a motion for a new trial pursuant to Kentucky Rules of Civil Procedure (CR) 59.02, arguing that the evidence at trial was insufficient to support the value of the inventory, equipment, and rolling stock of the business. The court denied Con's motion on August 19, 2002. This appeal followed.

On appeal, Con presents three assertions of error for our review. First, he argues that the trial court erred in valuing the marital business because the evidence presented at trial was insufficient to support the value the court placed on the company's inventory, equipment, and rolling stock. In support of this argument, Con contends that the court erred in relying upon Anne's testimony concerning the valuation of the inventory, equipment, and rolling stock. He relies upon Robinson v. Robinson, Ky. App., 569 S.W.2d 178, 180 (1978), overruled on other grounds by Brandenburg v. Brandenburg, Ky. App., 617 S.W.2d 871 (1981), in asserting that the trial court should have ordered that additional evidence be obtained through appraisals by qualified experts.

In divorce actions, Kentucky law clearly permits a property owner to establish a value on property she owns.

Roberts v. Roberts, Ky. App., 587 S.W.2d 281, 283 (1979).

Indeed, a lay witness is authorized to testify regarding the value of property and services even if that testimony involves the use of opinions and conclusions. KRE⁵ 701; Department of Highways v. Swift, Ky., 375 S.W.2d 691 (1964). There must, however, be some qualifications for giving an opinion. Roberts, supra. Mere ownership of property does not qualify to establish a true value. Commonwealth, Department of Highways v. Fister, Ky., 373 S.W.2d 720, 721-22 (1963).

The record shows that each party testified during the hearing, with each party having personal knowledge of the business and being competent to testify as to the value of its components. While Con had a more thorough knowledge of his company's continuing field operations, Anne had been heavily involved in the business before the parties separated. As chief financial officer for the business, Anne was responsible for keeping all of the company's financial records, renewing the insurance policies on the business and its equipment, maintaining and collecting accounts receivable, staying educated on developments in the market that may affect the price of the company's products, and filing reports with various state and federal agencies concerning the activities of the business. With these responsibilities, Anne became familiar with the value

⁵ Kentucky Rules of Evidence.

of the equipment, the market for the inventory held at the Georgetown Road property, and the earnings adduced by this business. Accordingly, it is apparent that Anne, through her experience with the business, was qualified to express an opinion concerning the value of the company's inventory, equipment, and rolling stock. Her testimony concerning the valuation of the assets of the business was also supported by various insurance documents, environmental reports filed with state and federal agencies, and income tax returns.

Moreover, Anne's expert witness provided testimony that supported the value Anne assigned to the company's property. Cranfill testified that he confirmed the values of the equipment from its insured values, as evidenced by documents from CNA Insurance. Cranfill asserted that Con would not have insured the equipment for approximately \$1,000,000 if Con did not believe the equipment was actually worth that value. Further, Cranfill noted that this business had a history of selling equipment for reasonable gains.

As for the inventory, Cranfill stated that his value was based upon Anne's opinion, but he verified Anne's calculations with the reports the company filed with the EPA and the Kentucky Division of Waste Management. This value was consistent with the market price for mulch and compost, minus the cost of preparing these products for sale. Based upon this

information, Cranfill believed the value Anne assigned to the equipment and inventory was proper.

Hence, unlike Robinson, supra, there is not a total lack of evidence regarding valuation. To the contrary, the record shows that the parties, through lay and expert testimony, adduced substantial conflicting evidence as to valuation of the business assets, and the trial court assigned a value to those assets from this evidence. A trial court's valuation of marital property in a divorce action will not be disturbed on appeal unless it is clearly contrary to the weight of the evidence. Underwood v. Underwood, Ky. App., 836 S.W.2d 439, 442 (1992), overruled in part on other grounds by Neidlinger v. Neidlinger, Ky., 52 S.W.3d 513 (2001). Since the trial court's valuation of Con Robinson Contracting's assets was supported by competent evidence, we cannot say that it abused its considerable discretion in determining the value of those assets. Therefore, we find Con's argument concerning this issue to be without merit.

Next, Con asserts that the trial court erred because it failed to divide the marital property in just proportions as required by KRS 403.190. We disagree. As stated earlier, the trial court's valuation of the marital property was based upon substantial evidence. After placing values on the marital property, the court divided the marital estate evenly. Having

found the court's valuations to be proper, coupled with the fact that Anne and Con each received one-half of the marital estate, we believe that the marital property was properly divided in just proportions.

Finally, Con argues that the trial court erred in ruling that the 8% per annum interest on the \$86,000 in inherited monies that Anne loaned the business in 1989 was Anne's nonmarital property. In support of this argument, Con relies on KRS 403.190(2)(a), which provides as follows:

- (2) For the purpose of this chapter, "marital property" means all property acquired by either spouse subsequent to the marriage except:
 - (a) Property acquired by gift, bequest, devise, or descent during the marriage and the income derived therefrom unless there are significant activities of either spouse which contributed to the increase in value of said property and the income earned therefrom.

We believe Con's reliance on KRS 403.190(2)(a) is misguided. The record reveals that Anne acquired \$86,000 during the marriage from an inheritance and, as such, these funds are Anne's nonmarital property. Anne testified that she loaned this money to the business in 1989 with the understanding that it would be repaid to her. At the hearing, Con did not dispute that Anne loaned the money to the business and that she expected to be repaid.

Since Anne loaned, not invested, her inheritance money to the business, it cannot be said that any significant activities of these parties contributed to increase the value of her nonmarital property. Under Kentucky law, the mere increase in value of nonmarital property remains nonmarital. Mercer v. Mercer, Ky., 836 S.W.2d 897, 899-900 (1992). As such, there exists a distinction between an increase in value of property that occurs without effort on the part of the owners and the increase in the value of property that occurs as a result of the efforts of the parties. Marcum v. Marcum, Ky., 779 S.W.2d 209, 210-211 (1989). Accordingly, the increase in value of nonmarital property that is not attributable to "team effort" or "team funds" follows the property and must be returned to the party who owned the property prior to marriage. Sharp v. Sharp, Ky., 491 S.W.2d 639, 644 (1973).

Here, it is clear that the interest on Anne's loan accrued without any effort on the part of either party. Both parties testified that the business borrowed Anne's money and used these funds for business purposes. Also, there was no dispute that Anne was entitled to repayment of her loan. As such, equity and justice demand that one who uses money or property of another for his own benefit, particularly in a business enterprise, should pay interest on the original loan amount. Curtis v. Campbell, Ky., 336 S.W.2d 355, 361 (1960).

The accrual of interest on loaned monies merely increases the value of that property without any effort on the part of the borrower or the lender. In effect, this increase was caused merely because of general economic conditions, which does not entitle Con to share in that increase. Smith v. Smith, Ky., 497 S.W.2d 418, 419 (1973). As no "team effort" by these parties caused Anne's nonmarital inheritance to increase in value, the mere increase in the value of her nonmarital property remained her nonmarital property. See Mercer, 836 S.W.2d at 900. Hence, we find no error in the trial court's decision to award Anne her original \$86,000 loan with interest in the amount of 8% per annum as nonmarital property.

For the aforementioned reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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