

RENDERED: March 26, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-000980-MR

AND

NO. 2003-CA-001181-MR

ROBERT MICHAEL BALDWIN

APPELLANT/CROSS-APPELLEE

v. APPEALS FROM JOHNSON CIRCUIT COURT
HONORABLE STEPHEN N. FRAZIER, JUDGE
ACTION NO. 99-CI-00363

EDWINNA RUTH BALDWIN

APPELLEE/CROSS-APPELLANT

OPINION

AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

** ** * * *

BEFORE: COMBS, DYCHE, AND KNOPF, JUDGES.

KNOPF, JUDGE: Robert Baldwin appeals and Edwinna Baldwin cross-appeals from an order of the Johnson Family Court, entered April 28, 2003, awarding a commissioner's deed and partial reimbursement for mortgage payments to Edwinna but otherwise denying the parties' requests for relief. Edwinna claims entitlement to additional mortgage reimbursement for payments on

the parties' former marital residence. Robert claims entitlement to credit for his contributions to the mortgage principal. Because we agree with Robert that he is entitled to this credit, we reverse in part and remand.

The parties' twenty-five year marriage was dissolved by decree entered February 4, 2000. The decree referred the division of the parties' property to a domestic relations commissioner. The commissioner heard the matter in June 2000 and issued his recommended order in December 2000. The parties' principal asset was their residence. It was agreed that Edwinna would be awarded the residence and that she would pay Robert half the existing equity less certain debts that Edwinna was deemed to have paid on Robert's behalf. In pertinent part the recommended order provided as follows:

Respondent [Edwinna] is awarded the marital residence free and clear of all claims of the Petitioner. Respondent shall assume all incidents of liability relative to the ownership of the marital residence including, but not limited to, the mortgage indebtedness at Family Bank in the approximate amount of \$29,000.00, and hold the Petitioner harmless. . . . Respondent shall pay to the Petitioner, one-half (1/2) of the marital equity in the marital residence . . . within thirty (30) days of the entry of this Order and Judgment. Respondent shall be entitled and is awarded credits against the equity she is herein ordered to pay the Petitioner in the following amounts: . . . \$3,150.00 representing one-half (1/2) of the mortgage payments Respondent has paid on the marital

residence since November 1999. Respondent shall be entitled to additional credits in the event she has continued to pay the entire amount of the monthly mortgage indebtedness post-July 2000.

These provisions contemplate that Robert will continue to be responsible for half the mortgage payment until entry of the order, at which point Edwinna "shall assume all incidents of liability . . . including . . . the mortgage indebtedness."

A dispute over the value of the residence delayed the trial court's ruling on the commissioner's recommendations, but by order entered June 10, 2002, the court amended the value found by the commissioner and otherwise adopted the commissioner's recommended order. The court found the residence to have a value of \$78,300.00 and a mortgage debt of \$29,000.00, the same debt found as of June or July 2000. The marital equity was thus found to be \$49,300.00, and Robert's share, after the deduction of Edwinna's credits, was \$9,200.00. The court made no adjustment to the mortgage debt nor to the amount of Edwinna's credit for mortgage payments.

Nevertheless, in April 2003, Edwinna moved for a commissioner's deed and for \$10,800.00 additional credit against Robert because, she alleged, she had continued to pay the entire amount of the monthly mortgage indebtedness. Edwinna sought \$1,600.00 from Robert apparently as the difference between the additional credit she claimed and the \$9,200.00 equity

settlement she owed him. Robert did not dispute that he remained liable for half of Edwinna's house payment until entry of the court's order in June 2002, when Edwinna became solely liable for the mortgage debt. Robert argued, however, that if he remained liable for the debt he also remained entitled to a share of the increased equity; if Edwinna's credit was to be adjusted then so should be his equity award. Robert also claimed that he should be awarded a share of the tax credit generated by the mortgage interest payments.

Without explanation the trial court granted Edwinna's claim to the extent of \$9,200.00 but denied her claim for \$1,600.00 beyond Robert's equity award. The court denied Robert's request for an equity adjustment and for tax credit. Both parties have appealed.

We agree with Robert that if he is to be charged for mortgage payments after July 2000, the date at which the mortgage debt was determined, then he is entitled to a share of the subsequent reduction of that debt. As Robert correctly notes, in Drake v. Drake,¹ this Court ruled that

[o]nce the parties are divorced, the [husband's] payments which reduce the indebtedness on the mortgage increase the husband's equity in the residence.²

¹ Ky. App., 809 S.W.2d 710 (1991).

² Drake v. Drake 809 S.W.2d at 712.

To charge Robert for mortgage payments but to deny him a corresponding share of mortgage reduction is clearly unfair. The trial court erred by denying Robert the equity adjustment he sought.

The court did not err by denying Robert a share of the tax deduction for interest paid on the mortgage. Robert has cited no authority in support of this claim, and even if there were authority, the claim is clearly untimely, having played no part in the proceedings until months after the June 10, 2002, order became final.

Nor did the court err by denying a portion of Edwinna's claim. As noted above, Robert's liability for house payments does not extend beyond June 10, 2002, when the trial court entered the order making Edwinna the sole owner of both the house and the mortgage debt. Edwinna's claim, however, was based on an alleged thirty-one months of mortgage payments. Because the period from July 2000 to June 2002 is only about twenty-four months, Edwinna's claim would appear to have been based in part on payments for which Robert bore no liability. This is a sufficient reason, we believe, for the trial court's partial denial of her claim.

In sum, we reverse the trial court's order to the extent that it denied Robert an award of half the mortgage principal reduction between July 2000 and June 2002 and remand

for determination of the amount of that award. In all other respects, we affirm the April 28, 2003, order of the Johnson Family Court.

COMBS, JUDGE, CONCURS.

DYCHE, JUDGE, CONCURS IN RESULT.

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