

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001628-MR

ROGER WILLIAM BALLENGER, SR.

APPELLANT

v. APPEAL FROM GRANT CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 00-CI-00291

BARBARA MAE GRIFFIN BALLENGER

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, JOHNSON AND MINTON, JUDGES.

GUIDUGLI, JUDGE. Roger William Ballenger (hereinafter "Roger") appeals from the Grant Circuit Court's order entered June 28, 2002, which divided certain property owned by him and Barbara Mae Griffin Ballenger (hereinafter "Barbara").

Roger and Barbara were married on July 24, 1964.

During the marriage, each party inherited various properties from his or her parents. Barbara inherited an interest in a 146 acre farm and Roger inherited approximately \$126,000 from his

family. Also during the marriage, the parties purchased the remaining interest in the farm and used Roger's inheritance to develop the farm into a golf course. However, the golf course failed and on the date of dissolution, the value of the property was based upon its value as farmland. The parties had also accumulated other property that is not at issue in this appeal.¹

On May 16, 2002, the circuit court entered a decree of dissolution dissolving the marriage and reserving its ruling on "all issues concerning the real estate." Thereafter, the matter concerning the real estate was heard by the Domestic Relations Commissioner (hereinafter "DRC"). The DRC filed his report concerning the real estate on June 6, 2002. In his report, the DRC recommended the following:

Based on the above cited Findings of Fact and Conclusions, this Commissioner recommends the following order:

1. That the wife be awarded a \$227,250.00 interest in all real property of the marriage and assume marital debt in the amount of \$13,200.00.

2. That the husband be awarded a \$75,750.00 interest in all real property of the marriage and assume marital debt in the amount of \$4,400.00.

¹ In that the record before this Court is very limited, it is impossible to ascertain the other assets and liabilities of the parties. We assume that they have been divided in an equitable manner. In any case, that information is not before this Court nor does either party address any other issue relative to the dissolution of marriage or related matters.

3. That the wife shall pay to the husband the net sum of \$71,350.00 within sixty (60) days of entry of this Order.

4. That simultaneously with receipt of said funds, the husband shall execute a quitclaim deed to the wife for his interest in the real property. Should the husband fail or refuse to do so, upon notice and motion, the Master Commissioner of the Grant Circuit Court is authorized to sign the deed in his behalf.

Dissatisfied with the division of the property in the fashion decided by the DRC, Roger filed an "exception to Report of Domestic Relations Commissioner" on June 19, 2002. However, since said exceptions were filed outside the ten days permitted by CR 53.06 and the pleading failed to comply with the provisions of the Grant County Local Rules, the circuit court refused to docket Roger's objections.² Thereafter, on June 28, 2002, the Grant Circuit Court entered an order disposing of the real property in question following the recommendations made by the DRC. This appeal followed.

On appeal, Roger attempts to put forth arguments similar to those he attempted to present to the circuit court in the exceptions he tendered following the DRC's report. However, the trial court rejected them as untimely and not in compliance

² While Roger's pleading uses the term "exceptions" to the DRC report, the trial court correctly noted that CR 53.06 speaks in terms of objections. Since Roger refers to his objections as exceptions, we will do likewise to avoid additional confusion.

with local rules and proceeded as if no objections had been filed. The circuit court's order states:

The Domestic Relations Commissioner having filed his Report in this action with no objections having been filed within the time required by law, or with any such objections having been overruled, and the Court having fully reviewed the record herein and being otherwise fully advised, IT IS HEREBY ORDERED AS FOLLOWS:

1. That the wife be awarded a \$227,250.00 interest in all real property of the marriage and assume martial debt in the amount of \$13,200.00.

2. That the husband be awarded \$75,750.00 interest in all real property of the marriage and assume marital debt in the amount of \$4,400.00.

3. That the wife shall pay to the husband the net sum of \$71,350.00 within sixty (60) days of entry of this Order.

4. That simultaneously with receipt of said funds, the husband shall execute a quitclaim deed to the wife for his interest in the real property. Should the husband fail or refuse to do so, upon notice and motion, the Master Commissioner of the Grant Circuit Court is authorized to sign the deed in his behalf. (Emphasis added).

CR 56.06(2) sets forth that objections to a DRC's report are to be filed within ten days. In Eiland v. Ferrell, Ky., 937 S.W.2d 713 (1997), the Supreme Court of Kentucky held that in order to preserve an issue for appeal, a party must file timely objections to the DRC report. Specifically, the Court held:

While actions tried before the court without intervention of a jury are governed by CR 52, et. seq., it seems apparent that on matters referred to a commissioner pursuant to CR 53.03, the specific provisions of the rules relating to commissioners prevail. Williams v. Commonwealth, Ky.App., 829 S.W.2d 942 (1992). In general, a party who desires to object to a report must do so as provided in Cr 53.06(2) or be precluded from questioning on appeal the action of the circuit court in confirming the commissioner's report. United States v. Central Bank & Trust Co., Ky., 511 S.W.2d 212 (1974). Such a rule does not create in the commissioner an additional level of the Court of Justice or elevate the status of the office, but merely recognizes that enforcement of such a rule is necessary as the means of informing the trial court of the parties' disagreement with or complaint about the report. Ordinarily, appellate courts review only the orders or judgments of lower courts, and pursuant to CR 46, a party must make "known to the court the action which he desires the court to take or his objection to the action of the court." If we should merely apply the provisions of CR 52.03, as appellant urges, and authorize review of questions of sufficiency of evidence without requiring objections to the commissioner's report, appeals would be taken from trial court judgments adopting commissioner's reports without the trial court ever having been apprised of any disagreement with the report. Not only would this amount to the blind-siding of trial courts, it would also result in unnecessary appeals, confusion in appellate courts, needless reversals, and in general, would invite all the mischief associated with appellate review of unreserved error.

Id. at 716. See also Brewick v. Brewick, Ky.App., 121 S.W.3d 524 (2003). In that Roger was deemed to have not filed

objections, any error that he makes relative to the circuit court's order that relied upon and adopted the DRC's report was not properly preserved and is not subject to our review.

Based upon the foregoing, the order of the Grant Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

C. Ed Massey
Erlanger, KY

BRIEF FOR APPELLEE:

Steven N. Howe
Dry Ridge, KY