

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000503-MR

STANLEY WAYNE SNIDER

APPELLANT

v. APPEAL FROM HENRY CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 00-CI-00175

BECKY JEAN SNIDER (NOW VAUGHN)

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; MINTON AND VANMETER, JUDGES.

COMBS, CHIEF JUDGE: Stanley Wayne Snider appeals from an order of the Henry Circuit Court in his dissolution proceeding. He contends that the trial court erred when it suspended for one hundred twenty-three weeks the obligation of his former spouse to make child support payments to him. Stanley also contests the valuation and division of the marital property by the trial court. He complains of Becky's failure to abide by various portions of the court's order: (1) to permit Stanley to retrieve certain personal items, (2) to copy family photographs,

and (3) to provide him with tax information necessary for filing his tax returns for 1999 and 2000. While these issues concern matters lying within the enforcement powers of the trial court, their presence is relevant to the profusion of clear error that we have found. Accordingly, we reverse and remand.

The appellee, Becky Jean Snider, filed a petition for dissolution of marriage on August 4, 2000, in the Henry Circuit Court. Her petition recited that the parties had married in 1982 and that they had separated in mid-July 2000. Three children were born of the marriage: Mary Beth in November 1982; Cody in October 1989; and Hayley in October 1990.

In his response to the petition, Stanley sought sole custody of the children as well as child support. In a temporary order entered December 1, 2000, the Henry Circuit Court ordered Becky to pay \$85.00 per week to Stanley as part of her child support obligation.

The marriage was dissolved by order entered December 15, 2000, with the issues of the distribution of property and child custody to be reserved for later determination. The trial court conducted a lengthy hearing concerning these remaining issues on July 8, 2002.

On February 25, 2003, the trial court entered its findings of fact, conclusions of law, and order. This appeal followed.

Stanley contends that the trial court erred by inflating the value of marital assets awarded to him so as to result in an inequitable division of the property. Compounding that error, the court then ordered the suspension of Becky's child support payments in order "to equalize" the division of marital property. We agree that serious error has occurred.

The trial court calculated Becky's child support obligation based upon its finding that she earned \$1,720.00 per month. Next, taking into account the parents' combined monthly adjusted income (imputing income of \$910 per month to Stanley), the court set the total child support obligation at \$617.00 per month. Finally, after the total monthly child support obligation was divided between the parents in proportion to their monthly income, Becky was ordered to pay \$360.00 per month to Stanley.

Without stating any reason or justification for deviating from the child support guidelines set out in KRS¹ 403.212, the trial court summarily ordered that Becky's child support obligation be suspended for one hundred twenty-three weeks. The court captioned the final paragraph of its order of February 4, 2004, as "Equitable Distribution," detailing the following set-off provision:

¹ Kentucky Revised Statutes.

In assigning the marital property and debts, the court finds that there is a balance owed to Becky (see attached worksheet). As such, the prescription and medical bills assigned to Becky in the amounts of \$642.50 and \$609.91 will be subtracted from the amount owed to Becky and her obligation to reimburse Stanley for those bills is suspended. This leaves a balance of \$10,231.73 owed to Becky in (sic) order to equalize the distribution between the two parties. Rather than order Stanley to pay Becky this amount, the Court orders that Becky's child support obligation shall be suspended for the next one hundred twenty-three (123) weeks following this order. As such, Becky shall recommence payment of child support on July 2, 2004.²

By virtue of this order, Becky effectively received a credit of \$10,000.00 against her future child support obligation.

It is a fundamental principle underlying child support that a custodial parent receives the support in a fiduciary capacity. Minor children are the sole beneficiaries of the award, and a custodial parent is obligated to expend the funds for their well-being and support. The suspension of Becky's child support obligation in this case is a wholly impermissible distortion and diversion of the funds owed to the children under the statutory guidelines. Regardless of any arguable shortfall to Becky with respect to the court's division of marital property, an order suspending her child support obligation cannot be fashioned as an attempted set-off in order to equalize

² This date was later amended to July 2, 2005.

her interests at the expense of the children. The order is clearly erroneous, socially inconceivable, and legally unprecedented.

As to the underlying issue of equitable division of marital property, we are not persuaded that the court's allocation of the property resulted in any significant shortfall to Becky. KRS 403.190(1) directs the court to divide the marital property in just proportions considering all relevant factors -- including the value of property set apart to each spouse. While an accurate valuation of non-liquid assets is imperfect, it is nevertheless essential to an equitable division of property.

In this case, the court awarded to Stanley the value of a number of guns (whether or not in his possession); a vandalized and inoperable Chevrolet Corvette; and a farm subsidy. The court valued the guns at \$10,000.00; the car at \$6,500.00; and the subsidy at \$1,987.00. With the exception of a Ford Mustang valued at \$2,000.00 (assigned to Stanley), these were the only marital assets to be divided. It was their assigned or presumptive value that formed the basis of the so-called shortfall to Becky.

With respect to the value of the gun collection, Becky indicated that she had no idea of its worth. Prompted by counsel, she could not provide even a "rough guess." Prompted

once again, Becky gave a "rough estimate" of \$45,000 as the value of the collection. Stanley indicated that the formerly valuable collection had been "lived up"; *i.e.*, it had been sold off during the marriage for living expenses when neither party was employed.

With respect to the Corvette, Becky admitted that the vehicle had been purchased some ten to fifteen years earlier; that it had been abandoned to the elements; that it was in rough shape; and that it had been uninsured and inoperable for years. Stanley testified that the vehicle had been vandalized and was no more than junk. The assigned estimate of \$6,500 apparently was far inflated as the car at most was worth only salvage value.

With respect to the farm subsidy, Becky's records indicated that the funds had been paid out between September 24, 1996, and November 1, 1999 -- before the filing for dissolution of marriage. Stanley contended that the proceeds had been entirely consumed before the parties separated in July 2000. That contention remained un rebutted. Its value for purposes of the property settlement was both illusory and irrelevant.

While a trial court normally retains broad discretion in such matters, we cannot agree that the court had competent proof to conclude that the value of the marital assets awarded to Stanley amounted to more than \$20,000.00. The scant evidence

reinforced the fact that there was an utter lack of evidence for purposes of evaluating the meager marital estate.

Becky acknowledged that she was not competent to testify as to the value of the gun collection. She admitted that the Corvette was in poor condition and that it was otherwise inoperable. She candidly reported that the value of the farm subsidy had been paid out long before the parties separated. Her testimony as to each of these assets gave the court no evidentiary basis for its extrapolation of figures wholly unrelated to actual values. We find nothing in the record or in the court's findings of fact to support the assigned values. Consequently, we conclude that the court's determinations were clearly erroneous. CR³ 52.01.

The order of the Henry Circuit Court is reversed, and this matter is remanded for entry of an order reinstating the full value of the child support to Stanley that was erroneously suspended, for a judgment as to the valuation and distribution of marital property, and for appropriate relief as to the matters of personalty previously ordered to be made accessible to Stanley.

ALL CONCUR.

³ Kentucky Rules of Civil Procedure.

BRIEF FOR APPELLANT:

Stanley Wayne Snider, *pro se*
Gratz, Kentucky

BRIEF FOR APPELLEE:

Alan Q. Zaring
New Castle, Kentucky