RENDERED: April 1, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000544-MR

JAMES DOUGLAS PEYTON APPELLANT

v.

APPEAL FROM HOPKINS CIRCUIT COURT
HONORABLE CHARLES W. BOTELER, JR. JUDGE
CIVIL ACTION NO. 00-CI-00458

MARILYN E. PEYTON APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BARBER AND VANMETER, JUDGES; HUDDLESTON, SENIOR JUDGE.[1]

HUDDLESTON, SENIOR JUDGE: James Douglas Peyton (Doug) appeals from a Hopkins Circuit Court decree that dissolved his marriage with Marilyn E. Peyton. The decree incorporated in their entirety two reports and recommendations of the court's Domestic Relations Commissioner (DRC). The DRC found that a property

[1] Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

settlement agreement entered into by Doug and Marilyn prior to the dissolution of their marriage was unconscionable, and she recommended an alternative disposition of the marital estate that the circuit court approved and adopted. Because we have concluded that the DRC and the circuit court did not err in finding the agreement unconscionable or in characterizing and dividing the marital property, we affirm the decree.

Doug and Marilyn were married in 1971. They began their life together with few assets except for a mobile home and a car. By the time of their divorce, however, the marital estate was valued at well over $2 million, primarily in the form of bank accounts and real estate. Most of these assets came from the sale of Doug's interest in a coal mine.

The interest in the coal mine was, according to Doug, given to him by his brother Gary in 1974. The brothers operated the mine as a partnership, the Peyton Mining Company. Doug was employed full time at the mine, receiving a salary and sharing in the profits. Marilyn did not work outside the home except for a brief period in 1977. She spent her time housekeeping, gardening and looking after the parties' child, Jamie.

By 1981, Doug had saved over $200,000.00 from his salary and mining royalties. He testified that he invested in a new mine, Deer Creek. When the mine closed in 1985 he lost his entire investment. He continued to work at the Peyton Mining

Company. In 1990, he sold part of his interest in that company to Adwest for $1,130,000.00. In 1991, Marilyn went to work for her mother, who had opened a restaurant/delicatessen. Marilyn worked long hours at the restaurant until 1998 but received no pay.

In 1998, Doug arranged to sell his remaining interest in Peyton Mining to his brother Gary for $1 million. For tax reasons, the actual transaction was to take place early the next year. In the autumn of 1998, Doug and Marilyn began having marital problems. They discussed divorce and Doug told Marilyn he would give her a settlement consisting of $500,000.00 in cash, a new house and a new Chevrolet Blazer. Doug testified that he had arrived at these terms by multiplying the number of days they had been married (approximately 10,000) by a set amount ($60.00). He also testified that he was aware that his portion of the marital estate under this agreement was greater than Marilyn's, but he felt that he "was worth more because he had worked."

In early January 1999, Doug sold Gary his share in the mine and received the agreed-upon $1 million. Shortly thereafter, he bought the new Chevrolet Blazer for Marilyn. He also went with her to the bank to deposit $500,000.00 in her account. On Doug's advice, she placed $475,000.00 into a

repurchase agreement[2] that named Doug as the surviving beneficiary, and the remaining $25,000.00 into a joint checking account with Doug.

The couple then proceeded to Doug's attorney's office on January 14, 1999, where Marilyn signed a settlement agreement that memorialized the terms she and Doug had discussed. Doug had previously visited his attorney and directed him to draft the agreement. Marilyn was not represented by counsel at this one-hour meeting. Marilyn never consulted a lawyer about the agreement, although Doug's attorney informed her that she was free to seek independent legal counsel.

Marilyn later testified that she was never informed of the extent of the assets in the marital estate, nor was she told what percentage her share under the settlement agreement constituted. When she was asked why she signed the agreement, she said, "I had always done what Doug told me to." She also testified that she was upset at the meeting with the attorney both because of the pending dissolution of her marriage and because the parties' daughter Jamie was at that time involved in a bitter custody dispute over her son.

After a failed attempt at reconciliation, Doug filed a petition seeking dissolution of marriage on June 1, 2000, and asked the court to incorporate the settlement agreement into the

[2] A repurchase agreement is similar to a certificate of deposit.

final divorce decree. Marilyn, who by that time had retained counsel, argued against incorporation on the ground that the agreement had been executed when she was under extreme emotional distress.

Hearings were held into the matter of the settlement agreement on April 27, 2001, and May 4, 2001. The DRC found that both the circumstances surrounding the signing of the agreement and its terms rendered it unconscionable. She filed her report and recommendation on May 18, 2001. Doug filed exceptions, but the circuit court accepted the DRC's report in its entirety in an order entered on November 8, 2001.

A second set of hearings was held to determine the content and disposition of the marital estate. A fundamental point of dispute was whether the highly lucrative interest in Peyton Mining that was acquired by Doug in 1974, constituted a gift from his brother Gary that could be excluded from the marital estate pursuant to Kentucky Revised Statutes (KRS) 403.190(2). The DRC found that there was insufficient evidence to show that Gary intended the share of the mine he transferred to Doug to be a gift, so she included the proceeds of the sale of the share in the marital estate. Under the DRC's proposed division of the marital estate, Marilyn was awarded approximately 82% of the cash and Doug 88% of the real estate. Each received about half of the marital estate.

Doug filed exceptions, but the circuit court again accepted the DRC's report in its entirety. The reports and DRC's recommendations were incorporated into the decree of dissolution that was entered on March 2, 2004. This appeal followed.

In reviewing the circuit court's decision, we are mindful that, in an action tried without a jury, "[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a commissioner, to the extent that the court adopts them, shall be considered as the findings of the court."[3] A factual finding is not clearly erroneous if it is supported by substantial evidence,[4] that is, evidence, when taken alone or in light of all the evidence, which has sufficient probative value to induce conviction in the mind of a reasonable person.[5] "When reviewing the sufficiency of the evidence, we have often pointed out that '[a]ll evidence which favors the prevailing party must be taken as true and the reviewing court is not at liberty to determine

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[3] Ky. R. of Civ. Proc. (CR) 52.01.

[4] Owens-Corning Fiberglas Corp. v. Golightly, 976 S.W.2d 409, 414 (Ky. 1998).

[5] Kentucky Racing Comm'n v. Fuller, 481 S.W.2d 298, 308 (Ky. 1972) citing Blankenship v. Lloyd Blankenship Coal Co., 463 S.W.2d 62 (Ky. 1970).

credibility or the weight which should be given to the evidence, these being functions reserved to the trier of fact.'"[6]

Doug's first argument is that the circuit court erred in setting aside the settlement agreement. Although private settlement agreements are encouraged, KRS 403.180 also provides that they may be set aside if the court finds them unconscionable. The statute provides that:

> (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for maintenance of either of them, disposition of any property owned by either of them, and custody, support and visitation of their children.
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> (2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the custody, support, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

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[6] Gordon v. NKC Hospitals, Inc., 887 S.W.2d 360, 363 (Ky. 1994), citing Lewis v. Bledsoe Surface Mining Co., 798 S.W.2d 459, 461 (Ky. 1990) (citations omitted).

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, support, and maintenance.

The DRC rejected the settlement agreement created by Doug and his attorney on the ground that it was "manifestly unfair and inequitable." The DRC also found that Marilyn signed the agreement "under the undue influence and overreaching of [Doug]."

Doug argues that the DRC's rejection of the agreement was based on the erroneous principle that an agreement is unconscionable simply because it does not apportion the marital estate equally. He contends that it is "contrary to law to hold that there has to be an equal distribution of the marital estate." In support of this argument, he cites to several cases in which Kentucky's appellate courts have upheld settlement agreements that did not evenly divide the marital estates in question.[7]

There is no indication in this case, however, that the DRC based her decision on the principle that there must be an equal division of the marital estate, although she did note Doug's testimony that he would receive two-thirds and Marilyn

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[7] See, e.g., Wood v. Wood, 720 S.W.2d 934 (Ky. App. 1986); Peterson v. Peterson, 583 S.W.2d 707 (Ky. App. 1979); Russell v. Russell, 878 S.W.2d 24 (Ky. App. 1994).

but one-third of the total estate pursuant to the settlement agreement. Indeed, the DRC demonstrated a full awareness that an agreement that does not evenly divide the marital estate is not *per se* unconscionable. She acknowledged that under Peterson v. Peterson, a settlement agreement cannot be held unconscionable solely on the basis that it is a "bad bargain."[8] She thereafter distinguished the Supreme Court's opinion in Shraberg v. Shraberg,[9] which upheld a finding that an agreement was unconscionable. She stressed that even the dissenters in that case, who had favored upholding the agreement, observed that: "proof that an agreement is 'lopsided' and clearly detrimental to one party creates a presumption that the agreement is unconscionable."[10] Ultimately, the DRC found that the settlement agreement was not simply a bad bargain for Marilyn, it was "lopsided" by Doug's own admission and detrimental to Marilyn's best interests. The DRC and the circuit court merely relied on the unequal division of assets as one factor in determining that the agreement was unconscionable.

Doug also contends that under Peterson, the party challenging a settlement agreement on appeal should have a relatively high burden of proof, and that such an agreement

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[8] Supra, note 7, 583 S.W.2d at 712.

[9] 939 S.W.2d 330 (Ky. 1997).

[10] Id. at 334.

should not be set aside unless there is some evidence of fraud, undue influence, overreaching, or evidence of a change of circumstances since the execution of the original agreement.[11]

More recently however, the Kentucky Supreme Court has stressed that fraud, duress and coercion are not necessary prerequisites to a finding of unconscionability under KRS 403.180. Rather, the trial court must determine whether the agreement is manifestly unfair and unreasonable after examining the economic circumstances of the parties and any other relevant evidence produced by the parties.[12] Fraud, undue influence, and overreaching are identified as entirely separate grounds.[13] There was no need for the DRC to make a finding of fraud in order to invalidate the agreement. Doug's argument that nondisclosure of assets does not constitute fraud is therefore irrelevant.

Next, Doug denies that there was any "overreaching" on his part. Overreaching is defined as "[t]he act or an instance of taking unfair commercial advantage of another, [especially] by fraudulent means."[14] Doug defines it as "bad faith" or some other "fundamentally unfair action on [his] part." Doug insists

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[11] Peterson, supra, note 7, 583 S.W.2d at 712.

[12] Shraberg, supra, note 9, 939 S.W.2d at 333.

[13] Id. (citation omitted.)

[14] Black's Law Dictionary 1129 (7th ed. 1999).

that he “felt” that the agreement was fair and provided Marilyn with sufficient funds on which to live without being forced to work. He also points out that she had ample time in which to renegotiate the terms of the settlement, or to seek the advice of counsel. He argues that her real motives in doing nothing were fear that information that she was having an affair would be exposed, that she knew the interest in the coal mine was a gift to Doug from his brother and thus not part of the marital estate, that it would be discovered that she allegedly took $300,000.00 from the marital estate, and her knowledge that she had not contributed to the acquisition of marital assets. Doug argues that the DRC erred in failing to consider these factors. We disagree.

These alleged motives, most of which are purely speculative, presuppose a familiarity with (and in one case a profound misunderstanding of) Kentucky dissolution law on Marilyn’s part for which there is no evidence in the record. Although Marilyn may have feared disclosure of her alleged affair, such a revelation would not have affected the division of the marital estate. Under Kentucky’s “no fault” dissolution policy, KRS 403.190 expressly directs that the court “shall divide the marital property **without regard to marital misconduct** in just proportions considering all relevant factors[.]” Even if we assume that Marilyn was motivated to sign the agreement by

this misplaced fear, it does not render the agreement conscionable. Similarly, any fear she had that the fact she had not worked for money outside the home meant that she was not entitled to a fair share of the marital estate would have been a mistaken belief because KRS 403.190(1)(a) specifically directs the court to consider the "[c]ontribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker[.]"

As to the assets stemming from the sale of the Peyton Mining Company, no evidence was provided by Doug to suggest that Marilyn was aware of the terms of KRS 403.190(2) that provide for the exclusion of gifts from the marital estate.

As the DRC highlighted in her summary of evidence, the real cause for concern with this agreement was Doug's unilateral determination of the amount he felt Marilyn deserved coupled with his lack of recognition of her contribution to the marital estate; the evidence that although Marilyn wrote checks and was aware of some of the assets of the marriage, she was not fully informed as to the extent of the marital estate (for example, she was not aware of the $200,000.00 Doug had saved and subsequently lost in the Deer Creek mining investment); that at his suggestion, Doug was made the beneficiary of the repurchase agreement and cosigner on the account created from Marilyn's share of the estate under the agreement before it was even

formally signed; that Marilyn was in a highly emotional state when the agreement was signed; that Marilyn never consulted an attorney and was not represented by counsel at the signing of the agreement. In the light of this substantial evidence that the terms of the agreement were unfair and the conditions under which it was signed were troubling, the circuit court did not abuse its discretion in adopting the DRC's report and recommendation rejecting the settlement agreement as unconscionable.

Doug's second principal argument concerns the division of the marital estate by the circuit court. Doug claims that the circuit court erred in including as part of the marital estate those properties acquired after the signing of the settlement agreement. He cites for support KRS 403.190(2) which provides that all property is marital property but also provides that this presumption can be overcome by showing that the "[p]roperty [was] excluded by valid agreement of the parties[.]"[15] He points out that the property settlement agreement excluded any property from the marital estate that was acquired by either party after the signing of the agreement. He alludes specifically to houses built by Doug with his brother Harold on Doug's properties after the signing of the agreement. He contends that they added approximately $480,000.00 to the

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[15] KRS 403.190(2)(d).

value of the estate. He claims that "[t]he evidence clearly showed that Marilyn did nothing to help build the houses acquired by Doug after the Agreement was entered into by the parties, and it is not equitable to allow Marilyn to share in Doug's efforts from his work after signing the agreement." He also points out that if he had died while the settlement agreement was still in effect, Marilyn would not have inherited these assets.

This argument is specious. The statute provides that such an exclusion of assets is permitted only if a valid agreement between the parties exists. The court here properly found that the agreement was not valid. Surely the DRC could not be expected to rule that the agreement was unconscionable and therefore invalid, yet thereafter treat it as being valid for purposes of excluding certain assets from the marital estate.

Doug's next claim concerns the share in the Peyton Mining Company transferred to him by his brother Gary. Doug maintains that the DRC improperly characterized the share and all traceable assets stemming from it as marital property. This was obviously a key determination because the proceeds of the sales of the interest in the mine exceeded $1.6 million.

> Property acquired by either spouse subsequent to the marriage is presumed to be marital property, except for

certain enumerated types including property acquired by gift. KRS 403.190(2). The party claiming property acquired after the marriage as his/her non-marital property through the gift exception bears the burden of proof on that issue.[16]

A party claiming that property is non-marital by reason of the gift exception has the burden to prove it by clear and convincing evidence.[17] "This Court has said on numerous occasions that the donor's intent is the primary factor in determining whether a transfer of property is a gift."[18] The donor's intent must be characterized by "disinterested generosity."[19]

Doug maintains that the partnership share in the mining company was a gift because it was not contingent on anything nor was he expected to do anything in return for the share. He also disputes the DRC's finding that there was insufficient value established for the interest in the mine.

At the hearing, Doug's brother Gary was reluctant to discuss the partnership interest in the mine, and initially even

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[16] Hunter v. Hunter, 127 S.W.3d 656, 660 (Ky.App. 2003), citing Travis v. Travis, 59 S.W.3d 904, 912 (Ky. 2001); Adams v. Adams, 565 S.W.2d 169 (Ky. App. 1978).

[17] Sexton v. Sexton, 125 S.W.3d 258, 267, n. 31 (Ky. 2004) citing Browning v. Browning, 551 S.W.2d 823, 825 (Ky. App. 1977).

[18] Underwood v. Underwood, 836 S.W.2d 439, 442 (Ky.App. 1992) (citations omitted).

[19] Id. at 443.

refused to disclose why he transferred it to Doug. He eventually testified that when he gave Doug the interest, he expected Doug to "pull half the load." He also explained that at the time of the transfer, he had just lost a foreman, and that Doug had recently completed the training to be a mining foreman. He also testified that Doug is a good mechanic and that he gave the share to Doug because he trusts him.

Doug attempts to distinguish these facts from the situation in Underwood v. Underwood, where a father gave his son an interest in an insurance company contingent upon the son employing the father.[20] In Underwood, we held that this element of contingency meant that the transfer was not a gift. Doug points out that the transfer of the partnership interest from Gary was not contingent on anything.

This factor (whether the transfer is contingent on some action by the recipient) is not dispositive. Furthermore, Gary's testimony indicated that Doug was given the share based on the expectation that he had the skills and the work ethic to make the venture a success from which both brothers could profit. These facts, coupled with the fact that Gary did not file gift tax returns, support the finding that Gary's intent was not characterized by disinterested generosity.

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[20] Id.

Doug also takes exception to a portion of decree stating that it appeared from the testimony that Doug was working at a reduced rate so that he could share in the profits of the business as a partner. Doug points out that the partnership paid him a generous weekly salary, his income taxes, health insurance and expenses. The evidence showed, however, that he worked extremely long hours at the mine, and Doug notes in his appellate brief that he worked very hard throughout the marriage, "anywhere from 12 to 16 hours a day." He was able to save at least $200,000.00 by 1981 that he subsequently lost in another mining venture. The circuit court did not clearly err therefore when it concluded that Doug was given the share precisely because he would work harder than a conventional employee and thereby increase the value of the partnership.

Finally, we agree with the DRC that even if the share in the mining company was a gift, insufficient evidence was provided to establish the value of his non-marital interest. Doug disagrees, arguing that a 1999 tax return shows that the basis value of the mine in 1974 was $403,390.00. The return also indicates that the property was sold for $1 million with a resulting capital gain of $596,010.00. No evidence was offered to show how Doug arrived at the basis entered on his tax returns. Gary was unable to provide even an approximate figure for the value of the mine at the time he allegedly gave it to

Doug. The court did not err when it rejected the basis amount shown on income tax returns for capital gains purposes, without any further evidence or explanation, as insufficient to establish the value of the asset. We agree with the court that Doug failed to meet his evidentiary burden of establishing the value of the property.

After strenuously arguing that the court erred in setting aside the settlement agreement because it did not divide the marital estate in equal portions, Doug next proceeds to attack the court's division of marital property on the same ground. KRS 403.190(1) does not require the court to divide the marital property equally (as Doug earlier pointed out in defense of the settlement agreement), but in "just proportions" without regard to marital misconduct and in light of the following factors: each spouse's contribution to the acquisition of the marital assets, including homemaking duties; the value of each spouse's non-marital property; the duration of the marriage and the economic circumstances of each spouse at the time of distribution.[21]

Doug maintains the court abused its discretion in approving a division of the marital estate that essentially gave Doug approximately 18% of the cash (bank accounts and certificates of deposit totaling approximately $300,000.00) and

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[21] KRS 430.190(1)(a)-(d); Polley v. Allen, 132 S.W.3d 223, 229-30 (Ky.App. 2004).

88% of the real property (valued by the court at approximately $854,000.00). Marilyn received 82% of the cash (bank accounts and certificate of deposit totaling approximately $1 million) and 12% of the real property (valued by the court at approximately $120,000.00).

Doug maintains that this division (a total of $1.167 million for Doug and $1.135 million for Marilyn) was unjust because he worked long hours throughout the marriage whereas Marilyn only worked outside the home for a few years without pay and therefore made no monetary contribution to the marital estate. This argument overlooks the fact that the statute specifically directs the court to consider the contribution of a spouse as homemaker. Doug testified that Marilyn did not wash the windows of their home, and his daughter from a prior marriage testified that Marilyn was not a good housekeeper. Undisputed evidence was also offered, however, that Marilyn did cook, clean the family home, do the laundry and yard work, and look after Jamie. Evidence also showed that Marilyn led a frugal lifestyle that included buying her clothes second hand from St. Vincent de Paul. The DRC concluded that Marilyn's efforts supported Doug and enabled him to work the long hours that led to the accretion of monetary assets throughout the almost thirty years of the marriage. The court did not abuse its discretion in adopting this division of the marital estate.

Doug further argues that the division of marital property was unfair because he received the bulk of the real property whereas Marilyn received primarily cash. Under this division, he contends that he will have to abandon his hope of retirement and continue working to survive, or sell out at a tremendous loss, considering expenses such as realtors' commissions and capital gains taxes. We acknowledge that the potential costs of selling the real property could diminish Doug's share of the marital estate considerably. Nevertheless, the court's rejection of this objection is based on substantial evidence. The court observed that:

> [Doug] fails to address the issue that several family members are using different properties at no charge. Certainly, he is welcome to use his property as he wishes, but said assets are capable of producing income well above what the cash assets could produce. This Court also finds that the petitioner is in a better position to manage said properties to his benefit, and is capable of working outside the home, whereas the respondent is untrained and has been out of the workforce for a significant amount of time in order to manage the household. Therefore, it is appropriate to award the respondent the assets that are more readily available for use and this Court finds that

the commissioner's recommendations concerning the same were reasonable.

The court did not abuse its discretion when it determined that the income-producing potential and the potential for appreciation outweighed other concerns.

Doug next argues that brother Harold's house, valued at $57,750.00, should have been excluded from the marital estate or classified as a marital debt. Doug testified that he gave the house to Harold as a form of payment for work Harold had done for him. The record shows, however, that the house is still in Doug's name. It was never deeded to Harold apparently because Harold had credit and tax problems. We agree with the DRC that the evidence, consisting only of Doug's testimony and some calculations of debts between the brothers, is not sufficient to establish that Harold has an ownership interest in the residence.

Doug's final argument concerns Marilyn's alleged dissipation of the marital estate. Dissipation has been defined as "spending funds for a non-marital purpose . . . during a period when there is a separation or dissolution impending, and . . . where there is a clear showing of intent to deprive one's spouse of his or her share of the marital property."[22] Doug claims that Marilyn systematically withdrew at least $300,000.00

[22] Robinette v. Robinette, 736 S.W.2d 351, 354 (Ky.App. 1987)(citations omitted).

from the couple’s joint accounts beginning in 1990. There is insufficient evidence, however, to support his allegation that a separation or dissolution was impending when these withdrawals began, nor does he offer any evidence that the money was spent for non-marital purposes. Doug argues that the funds were expended in anticipation of the dissolution because the withdrawals coincided with the time that Marilyn started working long hours at her mother’s restaurant and began taking extended horseback rides; however, Doug himself had worked long hours for years but there was no suggestion that this was evidence that the marriage was about to be dissolved. In fact, the alleged dissipation occurred over a period of approximately ten years. It does not seem excessive for an individual in a marriage with assets totaling $2.2 million to spend $30,000.00 per year.

The DRC also alluded to the fact that Doug himself had spent large sums of money on race cars, that he had buried large sums of cash, and had lost in excess of $200,000.00 on the Deer Creek Mining Company. Doug himself acknowledged that Marilyn had little, if any, knowledge of his involvement with the Deer Creek Mining Company or of the amounts of money invested and lost in that venture. The DRC recommended, and the circuit court agreed, that neither party should be charged with dissipation of marital assets. This was not an abuse of discretion.

Doug also argues that three houses with a total value of $231,000.00 that are currently inhabited by Jamie and by Doug's two adult children from a previous marriage should not have been included in the marital estate. He argues that he and Marilyn intended to provide homes for the children. We agree with the DRC that clear and convincing evidence was not adduced to prove that the houses were gifts to the children. The houses were never deeded to the children nor formally transferred to the children. The court did not therefore err in including these properties in the marital estate.

The circuit court neither erred when it adopted the DRC's reports containing findings of facts supported by substantial evidence nor did it abuse its discretion when it divided the marital estate as recommended by the DRC. Therefore, we affirm the decree dissolving the marriage between James Douglas Peyton and Marilyn E. Peyton.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR APPELLANT:

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Madisonville, Kentucky

BRIEF FOR APPELLEE:

J. Christopher Hopgood
Stephen D. Gray
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ORAL ARGUMENT FOR APPELLEE:

J. Christopher Hopgood