

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000340-MR

JEFFREY WILLIAM ROBINSON

APPELLANT

v.

APPEAL FROM CARTER FAMILY COURT
HONORABLE KRISTI GOSSETT, JUDGE
ACTION NO. 04-CI-00111

LAURA MICHELLE ROBINSON

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOFF, JUDGES.

DYCHE, JUDGE: Jeffrey and Laura Robinson were married in October 1988. They had two sons, ages twelve and thirteen at the time of the parties' separation in March 2004. Jeffrey filed a petition for dissolution that same month. However, the parties continued to live in the same residence until later that summer.

Hearings were held in August and December 2004. The Carter Family Court entered its Findings of Fact, Conclusions of Law, and Judgment on January 19, 2005. Jeffrey appeals. He

complains that the family court erred in its disposition of several of the parties' assets. We affirm.

Jeffrey first questions the court's ruling regarding a rustic cabin located on the parties' property. The materials for the cabin were located in an old barn on the farm, which Jeffrey had purchased prior to the Robinsons' marriage; Jeffrey rebuilt the cabin himself. Therefore, Jeffrey insists, the trial court erred in its determination that the cabin was marital property.

We disagree. The disposition of property in a dissolution of marriage action is governed by KRS 403.190. That statute acknowledges that property acquired during a marriage is presumed to be marital property. KRS 403.190(2). However, it excepts, as a general rule, the "increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during the marriage." KRS 403.190(2)(e). But here the family court found that the parties' joint efforts did increase the value of Jeffrey's nonmarital interest in the property. It was not (nor are we) persuaded by Jeffrey's argument that his sweat equity alone built that cabin. See Travis v. Travis, 53 S.W.3d 904, 908-909 (Ky. 2001). Laura's contributions as the sole homemaker of the family contributed to the increase in value as well. KRS 403.190(1)(a); Goderwis v. Goderwis, 780 S.W.2d 39, 40 (Ky.

1989). During the marriage, the cabin was built from the ground up (albeit with timber from a pre-existing unusable structure) on another site on the farm, near a pond which was added during the marriage; electric service was added to the cabin, and it was suitable for overnight visits by appellant and his sons. Thus, the family court did not err in finding that Laura was entitled to one half the value of the cabin.

Jeffrey's next several assignments of error, which concern the disposition of two years' vacation pay (2004 and 2005), one year's tax refund (2005), and the distribution regarding his pension benefits, have one common theme, viz., that the monies were earned subsequent to the parties' separation but prior to the dissolution. Again we disagree. KRS 403.190(3) allows for the division of these assets if earned prior to a "decree of legal separation." No legal decree was entered until the decree of dissolution in January 2005. The trial court did not err in allocating all contributions made prior to the entry of the decree.

Jeffrey's argues that the family court erred in awarding Laura one half the 2003 vacation pay and tax refund. He claims that the funds were no longer in existence, having been wholly expended by the time of the decree. The family court found otherwise: Since the parties were totally debt free and since Jeffrey earned approximately \$80,000 per year and was

claiming no extraordinary expenses, it was not convinced that the funds were in fact exhausted. The record supports this finding, and we decline to disturb it.

Jeffrey lastly argues that the family court erred in its award of attorney fees to Laura. KRS 403.220 permits this award absent an abuse of discretion, which Jeffrey fails to demonstrate. Neidlinger v. Neidlinger, 52 S.W.3d 513, 519 (Ky. 2001).

The judgment of the Carter Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

W. Jeffrey Scott, PSC
Grayson, Kentucky

BRIEF FOR APPELLEE:

Rebecca K. Phillips
Grayson, Kentucky