

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-000889-MR

TERESA BOND

APPELLANT

v.

APPEAL FROM CARROLL CIRCUIT COURT  
HONORABLE STEPHEN L. BATES, JUDGE  
ACTION NO. 97-CI-00073

GARY BOND

APPELLEE

OPINION  
AFFIRMING

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BEFORE: HENRY, JOHNSON, AND SCHRODER, JUDGES.

HENRY, JUDGE: Teresa Bond appeals from the circuit court's distribution of marital property in a dissolution action.

Teresa claims that (1) the circuit court failed to use the proper date for valuation of certain marital assets, (2) failed to properly divide Gary's retirement-plan assets, and (3) failed to award Teresa maintenance. Because Teresa has failed to demonstrate clear error in the circuit court's judgment, we affirm. Johnson v. Johnson, 564 S.W.2d 221, 223 (Ky.App. 1978).

Background

Gary and Teresa Bond were married in December of 1979. In 1997, the couple separated and Gary initiated divorce proceedings. On Gary's request, the circuit court bifurcated

the proceedings and issued a decree dissolving the marriage as of October 27, 1997 but reserving all other issues related to the divorce for later ruling.

As it happened, Gary and Teresa reconciled and began cohabiting again in 1998. But, this reconciliation only endured until June of 2002, when the couple again separated. Following this second separation, the circuit court referred the matter to a commissioner to distribute the marital estate and otherwise conclude the proceedings.

The commissioner entered his first report in 2004, but after objections by both parties, he rendered a final, amended report in 2005. The report made findings of fact and involved a complex property settlement involving several offsets of marital assets to each party. The report also recommended that no maintenance be awarded to either party. The circuit court adopted the Commissioner's report, completing the divorce proceedings.

#### Valuation Date

Teresa claims that the circuit court incorrectly used the date of the distribution hearings, 2004, when valuing certain rental properties in the marital estate instead of the date of the marriage dissolution, 1997. Moreover, she seems to claim that the increase in value of that rental property between 1997 and 2004 should be awarded to her, as if it had been

distributed to her as of 1997 even though no final property distribution was made until 2004. In support of her contention, she relies on case law indicating that, property acquired after legal separation is not subject to distribution as a marital asset. See Stallings v. Stallings, 606 S.W.2d 163 (Ky.App. 1980). However, Stallings is not on point here, as both parties acknowledge that the rental properties in question were acquired before separation and, therefore, constitute marital assets. Indeed, Stallings simply does not speak to the proper valuation date for properties in the marital estate. Also, no suggestion is made that the rental properties were acquired prior to the marriage, so KRE 403.190(2)(e) also has no bearing here.

Moreover, Teresa has cited no authority for the proposition that valuation of marital assets is reckoned from the time of dissolution when the dissolution order expressly reserves all questions relating to distribution. To the contrary, the limited authority we could find from sister jurisdictions on this issue indicates that, in a bifurcated divorce proceeding, the marital estate is ordinarily valued as of the time of distribution. See In re Marriage of Walters, 154 Cal.Rptr. 180, 182-83 (Cal.App. 1979).

This is not to say that Teresa could not argue that the increase in value of the rental properties after the dissolution order was significantly due to her efforts and

improvements-not just ordinary appreciation in real property values which would presumably be evenly divided-and thus, under KRS 403.190(1)(a), she is entitled to a greater portion of that value increase in the distribution. But that does not appear to be her contention here. Rather her argument seems to be (1) that, as of 1997, the marriage was over and the rental properties had, in effect, been distributed to her at that point; and (2) that she is thus entitled to all increases in value of the rental properties from 1997 on, regardless of the reason for the appreciation.

The flaw in this theory is that the record establishes that the rental properties were not distributed to Teresa in 1997, as the dissolution order expressly reserved the issue of distribution until a later date. Hence, her contention that she is automatically entitled to all the increase in value of the rental property after 1997, whatever the cause of the appreciation, is specious. Thus, we do not find that the circuit court's decision to value the rental property as of the time of actual distribution is clearly erroneous.

#### Retirement Plan

Teresa also complains that, in its distribution order, the circuit court improperly offset proceeds from Gary's retirement plan against proceeds garnered by Teresa in the liquidation of other marital assets. The ground of Teresa's

complaint is that, while the value of Gary's retirement assets was clearly proven, the value of the assets liquidated by Teresa was not, as the commissioner's report acknowledges. Hence, she contends that the offset was speculative and therefore erroneous.

On review, we note that valuation of marital assets cannot always be accomplished with scientific precision due to the nature of certain assets and the quality of proof available. And, in such circumstances, the commissioner, who has first-hand exposure to all the evidence, is in the best position to make decisions involving marital assets. Here, at most, Teresa's claim indicates that the offset decision may not have been precise, but she has failed to allege or demonstrate that the offset decision was in fact clearly erroneous. Consequently, she has failed to sustain her burden of persuasion on appeal. See Johnson v. Johnson, 564 S.W.2d at 223.

#### Maintenance

Teresa's last claim of error is that the circuit court improperly failed to award her maintenance. The sum total of her claim is a simple, one-sentence assertion that she is entitled to maintenance. She points to no specific mistake of law or fact made by the circuit court in its decision not to award maintenance. Consequently, she has again failed to meet her burden of persuasion on appeal. Id.

### Conclusion

For the foregoing reasons, we affirm the judgment of the Carroll Circuit Court.

SCHRODER, JUDGE, CONCURS.

JOHNSON, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

JOHNSON, JUDGE, DISSENTING: I respectfully dissent. I would vacate the final order and judgment and remand for additional findings.

Under the definition of "marital property" in KRS 403.190(2), the property must have been "acquired by either spouse subsequent to the marriage." The Majority Opinion concludes that "Stallings is not on point here, as both parties acknowledge that the rental properties in question were acquired before separation and, therefore, constitute marital assets." The flaw in this analysis is that it views the property to be divided as the item of property as opposed to the value of the item of property. The Majority's approach ignores the practical consequences of property changing in character and value. That approach is also contrary to Glidewell v. Glidewell,<sup>1</sup> because it allows treating the increase in the value of the property occurring after the dissolution as if the parties are in a common-law marriage.

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<sup>1</sup> 790 S.W.2d 925 (1990).

I would reverse the circuit court and remand this matter for a proper distribution of the property. A distribution of the couple's property as of October 27, 1997, the date the marriage was dissolved, should be made under KRS Chapter 403, and a second distribution under common-law contract law should be made of the property acquired after October 27, 1997, and the changes in the value of any property occurring after that date.

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