

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002119-MR
&
NO. 2006-CA-002143-MR

ROY G. HAMM

APPELLANT/CROSS-APPELLEE

v. APPEAL AND CROSS-APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE JEFFREY T. BURDETTE, JUDGE
ACTION NO. 02-CI-01134

DIANA E. HAMM

APPELLEE/CROSS-APPELLANT

OPINION
AFFIRMING

** ** * ** * **

BEFORE: LAMBERT AND TAYLOR, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Roy G. Hamm brings Appeal No. 2006-CA-002119-MR from Findings of Fact, Conclusions of Law and Decree of Dissolution of Marriage entered January 19, 2006, and a September 13, 2006, Order Amending Judgment of the Pulaski Circuit Court dividing the parties' marital property and denying a request for permanent maintenance. Diana E. Hamm brings Cross-Appeal No. 2006-CA-002143-MR from the same orders. We affirm.

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Roy and Diana Hamm were married July 31, 1965. During much of the marriage, Roy was employed as a tool and die repairman earning approximately \$44,000 annually. Diana was disabled and received social security disability benefits of \$740 per month. The parties were divorced by decree of dissolution of marriage entered in the Pulaski Circuit Court January 19, 2006. Therein, the circuit court awarded each party their nonmarital property and divided the parties' marital property. The court also denied Diana's request for permanent maintenance. Relevant to this appeal, the circuit court particularly stated:

1. Diana Hamm shall receive as her non-marital property the following: \$30,442.86 contained in an account at Citizens National Bank, \$10,739.17 contained in an account at First Southern Bank, and \$10,489.46 contained in an account at First Southern Bank, the aforementioned monies being obtained through inheritance and by gift; the 1999 Toyota Camry purchased by her father either directly or by her with funds provided by him; the 1990 Dodge Caravan purchased from inherited money; certain bonds given her by her mother; an antique wash stand, antique butter mold, antique dough tray, two antique rocking chairs, antique solid oak piano, an old guitar, two marble end tables, a straight-backed chair, wrought iron porch furniture, several flower pots, and a smoke stand received by Ms. Hamm as gifts.

2. Roy G. Hamm shall receive as non-marital property the antique table and chairs that were gifts from his family.

3. The marital property shall be divided as follows: the parties' real property, located at 245 Happy Circle Drive, Somerset, Kentucky, and the adjoining lot shall be awarded to Diane [sic] Hamm. She asked for this marital residence in her brief. The Court notes that because of the termite problem in the home, selling the residence and adjoining lot would be cost-intensive and time-consuming. In order to avoid selling the residence for less money that [sic] it is potentially worth, the court finds that Ms. Hamm should keep it. Furthermore, given Ms. Hamm's medical problems, this will provide her with rent-free living. The house and adjoining lot have been the subject of conflicting values, with Clifford Childers' valuation of \$40,000 and J.W. Grabeel's valuation of \$75,000. The Court finds it equitable to value

the residence by obtaining the average of these two figures, or \$57,500.

Roy Hamm shall retain all of his IRA, which has a value of approximately \$27,167.23. The parties will each receive ½ of the cash value of a Commonwealth Insurance Policy (cash value of \$5,749.01) and a universal life policy (cash value \$2,504.68).

The pontoon boat, motor, trailer, and equipment shall be awarded to Roy Hamm. Testimony indicated that at the very least he provided \$4500 towards the purchase of these items.

The court also awarded Roy his tools (valued at \$1,200 to \$1,500), various firearms, and other miscellaneous items. The court denied Diana's request for permanent maintenance. This appeal follows.

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Roy contends the circuit court did not divide the marital property in "just proportions" as required by Kentucky Revised Statutes (KRS) 403.190. Specifically, Roy asserts that the court erred by awarding Diana the marital residence and adjoining lot (valued at \$57,500) while merely awarding him an IRA account (valued at \$27,167). Roy argues that a just division would require the marital residence to be sold and the proceeds from the sale, along with the IRA funds, to be divided equally.

It is well-established that the circuit court shall divide marital property in "just proportions." KRS 403.190(1); *McGowan v. McGowan*, 663 S.W.2d 219 (Ky.App. 1983). A just division of marital property may not be an equal division. *Russell v. Russell*, 878 S.W.2d 24 (Ky.App. 1994). KRS 403.190(1) provides that when dividing marital property the circuit court shall consider all relevant factors including:

- (a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;
- (b) Value of the property set apart to each spouse;
- (c) Duration of the marriage; and

(d) Economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

Furthermore, the circuit court has broad discretion when dividing marital property, and an appellate court will not disturb the circuit court's ruling unless the court abused its discretion. *Davis v. Davis*, 777 S.W.2d 230 (Ky. 1989).

In the case *sub judice*, the parties had been married for over forty years. Roy was employed full-time and earning approximately \$44,000 per year. In contrast, Diana was disabled and receiving social security disability benefits of \$740 per month. Although Diana also had approximately \$50,000 in nonmarital property, the court considered how Diana's medical problems affected her economic circumstances. The court further found that "because of the termite problem in the home, selling the residence and adjoining lot would be cost-intensive and time-consuming."

Upon the whole, we conclude that the circuit court clearly considered the relevant factors as required by KRS 403.190. Although the marital property was not divided "equally," we nevertheless believe it was divided in "just proportions." Considering Diana's disability that negatively impairs her economic circumstances, and considering the condition of the parties' residence, we believe the marital property was divided in just proportions. As such, we cannot say the court abused its discretion in its division of marital property.

Cross-Appeal No. 2006-CA-002143-MR

Diana contends that the circuit court abused its discretion by not awarding her permanent maintenance. The circuit court's decision to award maintenance is within the sound discretion of the court. *Browning v. Browning*, 551 S.W.2d 823 (Ky.App. 1977). It is well-established, however, that an award of maintenance must

satisfy KRS 403.200(a) and (b). *Drake v. Drake*, 721 S.W.2d 728 (Ky.App. 1986).

Pursuant to KRS 403.200, the court may award maintenance only where it finds that the spouse seeking maintenance lacks sufficient property to provide for her reasonable needs and is unable to support herself through appropriate employment. KRS 403.200(a) and (b).

In the case *sub judice*, the evidence established that Diana was permanently disabled and received social security disability benefits of \$740 per month. It was further established that Diana had approximately \$50,000 in nonmarital funds in various bank accounts. Although Diana incurs substantial medical expenses, she was awarded the unencumbered marital residence. As to Roy, he was employed full-time and earning approximately \$44,000 per year. He was awarded his IRA valued at \$27,167 but also bears the expense of establishing a new residence. Upon the whole, we believe there existed substantial evidence to support a finding that Diana possess sufficient property and receives adequate monthly income to provide for her reasonable needs. Hence, we cannot say that the circuit court abused its discretion by failing to award Diana permanent maintenance.

For the foregoing reasons, the Findings of Fact, Conclusions of Law, Decree of Dissolution of Marriage, and Order Amending Judgment of the Pulaski Circuit Court are affirmed in Appeal No. 2006-CA-002119-MR and Cross-Appeal No. 2006-CA-002143-MR.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT FOR
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