

RENDERED: JULY 18, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-000501-MR

LARRY HITE

APPELLANT

v. APPEAL FROM FLOYD CIRCUIT COURT
HONORABLE JULIE PAXTON, JUDGE
ACTION NO. 02-CI-01252

SHARON HITE

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; NICKELL, JUDGE; GRAVES, □ SENIOR JUDGE.

COMBS, CHIEF JUDGE: Larry Hite appeals from a judgment of the Floyd Family Court in an action for dissolution of marriage. He contests its disposition of the parties' property. After our review, we vacate the portion of the court's judgment that ordered the sale of the parties' separate property.

On November 2, 1999, Larry Hite conveyed an interest in real property to Sharon Jones by way of a recorded deed. Following the conveyance, they shared a joint tenancy with right of survivorship, and they lived together in the house located on the property.

On September 7, 2001, they married and continued to reside at the property. Six months later, they separated. Sharon petitioned the family court for a dissolution of the marriage in December 2002.

The parties eventually reached an agreement regarding an equitable division of their marital property and debts. Their agreement was approved by the family court and was incorporated into the decree of dissolution entered on February 6, 2006. The decree ordered Larry to obtain an appraisal of the marital home within thirty days of the judgment. If Sharon was not satisfied with the terms of the appraisal, she was authorized to obtain a second appraisal of the home. The court ordered that Larry would have the right to purchase Sharon's interest in the house. If he chose not to do so, Sharon would have the option to purchase Larry's interest. In the event that they were unable to reach an agreement with respect to the property, it was to be auctioned by the Master Commissioner. This appeal followed.

On appeal, the parties agree that the disputed property should be properly characterized as non-marital. Larry contends that this separate property is not subject to division by the family court. We agree.

The deed of conveyance executed by Larry Hite and recorded in 1999 created a joint tenancy with right of survivorship. *McLeod v. Andrews*, 303 Ky. 46, 196 S.W.2d 473 (Ky.1946). Since the property was acquired before the parties were married, the joint tenancy survived their divorce as their separate property. Pursuant to the provisions of Kentucky Revised Statutes (KRS) 403.190, the real estate was not subject to the jurisdiction of the family court for purposes of division.

Therefore, that portion of the judgment of the Floyd Family Court providing for the division of the disputed real property is vacated, and this matter is remanded to that court for entry of an amended judgment consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Larry D. Brown
Prestonsburg, Kentucky

BRIEF FOR APPELLEE:

Jimmy C. Webb
Prestonsburg, Kentucky