

RENDERED: AUGUST 8, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001889-MR

MARK L. CROSSLAND

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CYNTHIA E. SANDERSON, JUDGE
ACTION NO. 05-CI-00651

IRIS D. KELLY-CROSSLAND

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON AND VANMETER, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

CAPERTON, JUDGE: Mark Lee Crossland (Mark) brings this appeal from an August 16, 2007, judgment of the McCracken Family Court, whereby the court entered its final decree on the disposition of martial property. After a thorough

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

review, we affirm the Hon. Cynthia E. Sanderson, Judge, McCracken Family Court.

The parties were married for under two years when Iris D. Kelly-Crossland (Iris) filed for divorce. At that time the parties reconciled and then proceeded to separate in November 2005. On November 30, 2005, Iris again informed Mark that she was going to see her lawyer to file for divorce. The next day while Iris was at work, the home that she and Mark had shared, which was a premarital asset from Iris's prior marriage, caught fire. The majority of the contents were destroyed and Iris's pet died in the house fire. The investigators determined that the cause of the fire was arson. Mark was found in possession of items from the home. Since Mark was incarcerated, the court appointed a guardian ad litem to represent his interest in the dissolution of marriage proceedings. The court entered an interlocutory decree of dissolution of marriage and reserved a final ruling on property distribution until resolution of Mark's criminal charges. Mark was convicted of second-degree arson, first-degree burglary, theft by unlawful taking over \$300, and theft by unlawful taking firearm enhanced.

In the final decree, the court awarded Iris her entire retirement pension, including a martial share of \$10,288.55, based on the dissipation of martial assets and non-martial assets, including the death of her pet, from Mark's criminal actions. The court then awarded the parties their respective vehicles. Iris was then awarded all insurance proceeds in connection with the destruction of the home. The court found that Iris had a non-martial interest in the residence which

was greater than the equity at the time of the fire and that she was assuming responsibility for the additional debt placed against the residence during the course of the marriage. The court further found that based on Mark's arson conviction he was not entitled to any insurance proceeds, although any personal property of his within the home that was salvaged would be restored to him. It is from this Judgment that Mark appeals.

Mark presents three arguments on appeal. One, the trial court abused its discretion in failing to apply applicable law in determining and equitably dividing martial and non-martial property. Two, Iris misrepresented to the court an accurate accounting of martial property. Three, the trial court abused its discretion by allowing a biased and prejudicial attitude to sway its decision.

A trial court has wide latitude in dividing marital property and debt equitably and absent an abuse of discretion we shall not disturb the trial courts ruling. *See Smith v. Smith*, 235 S.W.3d 1 (Ky.App. 2006) and *Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001). Abuse of discretion is that which is arbitrary or capricious, or at least an unreasonable and unfair decision. *See Sexton v. Sexton*, 125 S.W.3d 258, 272 (Ky. 2004).

We do not agree that the trial court abused its discretion in dividing the marital property. KRS 403.190 sets out the procedure a court is to follow in the disposition of property. While fault is not generally considered, a party may not dissipate marital assets. *Brosick v. Brosick*, 974 S.W.2d 498 (Ky.App. 1998).

As stated in *Brosick*,

The court may find dissipation when marital property is expended (1) during a period when there is a separation or dissolution impending; and (2) where there is a clear showing of intent to deprive one's spouse of her proportionate share of the marital property. *Id.* at 501 (internal citations omitted).

We agree with the trial court that the burning of the home resulted in dissipation of both marital and non-marital assets. Given that Iris assumed the resulting increase in debt against the house during the marriage which, based on the record, significantly outstrips the award of the marital share of the pension plan, we do not find an abuse of discretion in the court's award.

Further, the trial court correctly determined that public policy prohibited Mark from receiving any of the insurance funds. It has long been a maxim of law that a tortfeasor may not benefit from his wrong to the detriment of the other party. *Burke Enterprises, Inc. v. Mitchell*, 700 S.W.2d 789 (Ky. 1985) and *Krahwinkel v. Commonwealth Aluminum Corp.*, 183 S.W.3d 154 (Ky. 2005). Generally one who intentionally sets fire to his property may not recover insurance proceeds based on public policy. *American Hardware Mut. Ins. Co. v. Mitchell*, 870 S.W.2d 783 (Ky. 1993). Thus, the trial court did not abuse its discretion in determining that Mark's arson conviction prohibited him from recovering any of the equity in the home. We also do not find it an abuse of discretion for the trial court to offset the loss of irreplaceable items by awarding Iris the entire pension. Evidence in the record indicates that the insurance on the house may not have been sufficient to compensate for all property destroyed by the fire. The court could

certainly view Mark's arson, destruction of irreplaceable items and dissipation of assets as an offset against Mark's interest in the pension and equity in the home.

As to Mark's second argument, that Iris misrepresented to the court an accurate accounting of martial property, we likewise disagree that the trial court abused its discretion. There was ample evidence in the record for the trial court to base its decision. The trial court as finder of fact is given great deference to judge the creditability of witnesses and the evidence presented to it. *See Ghali v. Gahli*, 596 S.W.2d 31 (Ky.App. 1980); *Adkins v. Meade*, 246 S.W.2d 980 (Ky. 1952).

Lastly, Mark argues that the trial court abused its discretion in allowing a biased and prejudicial attitude to sway its decision. While appellant makes a blanket assertion that due to the alleged errors the court must have been biased, there is no such indication in the record. Where the record is silent we presume that the evidence supported the findings of the court. *See Porter v. Harper*, 477 S.W.2d 778 (Ky. 1972).

We find no error in the judgment of the Honorable Cynthia E. Sanderson, Judge, McCracken Family Court, and accordingly affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mark Lee Crossland, *Pro Se*

BRIEF FOR APPELLEE:

Tiffany Gabehart Poindexter
Paducah, Kentucky

