

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2007-CA-001187-MR

DAVID WARD

APPELLANT

v. APPEAL FROM GARRARD CIRCUIT COURT  
HONORABLE C. MICHAEL DIXON, JUDGE  
ACTION NO. 07-CI-00027

GAIL FRYE WARD

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, MOORE, AND TAYLOR, JUDGES.

MOORE, JUDGE: David Ward appeals, *pro se*, from a decree of dissolution of marriage entered by the Garrard Circuit Court in which the trial court made a distribution of marital property. On appeal, David argues that the trial court abused its discretion by failing to: (1) properly distribute certain property; (2) criminally punish his ex-wife, Gail Ward; (3) reimburse him for money he

allegedly gave Gail; and (4) reimburse him for the proceeds of a check on which Gail allegedly forged his signature. Finding no error, we affirm.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

Gail filed a petition with the Garrard Circuit Court to dissolve her marriage to David while he was incarcerated in prison, serving a felony sentence. By the time Gail's petition was resolved, the parties' only child had reached the age of majority.

Although David was served with Gail's petition, he did not respond. As a result, the trial court appointed a Guardian Ad Litem (GAL), pursuant to Kentucky Rule of Civil Procedure (CR) 17.04. After the GAL contacted David by mail and telephone, the GAL filed a report with the trial court.

The GAL reported that David claimed he gave \$1,000.00 to Gail to cover three months of mortgage payments on the parties' mobile home. According to David, Gail spent the money on other things. David also claimed that Gail disposed of his guns, a new washer and dryer, a gas grill, a lawn mower, a chain saw, a coin collection and a brush cutter. David informed the GAL that he wanted Gail to account for these items. David communicated to the GAL that Gail had received one of his Supplemental Security Income (SSI) checks, had allegedly forged his signature on it, and cashed it. Additionally, David claimed that this check was an overpayment and that the Social Security Administration was now seeking reimbursement. Finally, David told the GAL that he wanted the trial court to make a fair and equitable division of his and Gail's marital property, to hold a

hearing regarding this matter, and to enter findings of facts, conclusions of law and a decree.

After the GAL filed his report, Gail filed a motion to set the case for final hearing, which the trial court granted. Although David was still incarcerated at the time, the record reflects that he received notice of the final hearing. Nothing in the record reveals that neither David nor the GAL requested that David be transported to Garrard County for the final hearing; thus, David was not present at the final hearing. Gail was the only person to testify; however, David's GAL cross examined her.

At the hearing, Gail testified regarding the parties' assets and debts, including the mortgage, child support, and the lien that encumbered the parties' property. Finally, Gail testified regarding the concerns that David raised in the GAL's report as follows:

- David never gave her \$1,000.00;
- Due to repossession of the parties' mobile home, she had to move to an apartment, which did not have a washer and dryer hook-up, so she gave away those items;<sup>1</sup>
- She had no knowledge of the gas grill nor the coin collection;
- David's step-father damaged the lawn mower, rendering it inoperable and left on the parties' property;
- The tools and chain saw had been inside David's pick up truck and that his mother now had possession of the vehicle and the tools; and

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<sup>1</sup> During Gail's testimony, she spoke very softly and had a tendency to mumble. As a result, this Court had difficulty understanding her testimony; however, regarding the washer and dryer, it appears she testified she gave the washer and dryer to David's mother.

- In January 2006, David had been arrested and incarcerated and that, in early February 2006, he instructed her to cash the SSI check and pay the parties' bills, which she did.

After the final hearing, the trial court entered its findings of fact and conclusions of law; in addition, the trial court entered a decree dissolving the parties' marriage and disposing of their assets and debts. The trial court did not address the alleged \$1,000.00, the alleged gas grill, the alleged coin collection, the inoperable lawn mower and the washer and dryer. Moreover, the trial court did not mention the SSI check. Regarding the tools and gun collection, the trial court, in the decree, awarded them to David. Unsatisfied with the decree, David now appeals, proceeding *pro se*.

## **II. STANDARD OF REVIEW**

When a trial court divides marital property, it is bound to make a just division in accord with the statutory standards. *Herron v. Herron*, 573 S.W.2d 342, 344 (Ky. 1978). When we review a trial court's division of marital property, we will not disturb the trial court's decision unless it has abused its discretion. *Id.* A trial court has abused its discretion when it has acted arbitrarily, unreasonably or unfairly or if its decision was unsupported by sound legal principles. *Sexton v. Sexton*, 125 S.W.3d 258, 272 (Ky. 2004).

## **III. ANALYSIS**

In his brief, David divides his arguments into three assignments of error. In the first assignment of error, David points out that he was not present at the final hearing. Because he was not present, he argues that he lost the

opportunity to present evidence. In addition, he argues that the gun collection, coin collection, washer and dryer, lawn mower and other yard maintenance tools were not marital property and should not have been distributed as marital property.

David complains that he was not present at the final hearing and lost the opportunity to present evidence. However, while David had notice of the final hearing, neither he nor his GAL requested his presence at the hearing.<sup>2</sup> The trial court did not *sua sponte* order David transported for the hearing, not having entered a transportation order. This was well within the trial court's discretion. *See State ex rel. Taylor v. Dorsey*, 81 Wash. App. 414, 421, 914 P.2d 773, 777 (Wash. Ct. App. 1996). Nonetheless, David was defended at all stages throughout the dissolution proceedings by his GAL as required under CR 17.04. In fact, the GAL thoroughly cross-examined Gail regarding each issue raised in the GAL's report,<sup>3</sup> providing a defense to David.

The trial court awarded the guns and all the tools to David, so this argument lacks merit. And, there is no evidence in the record to support (1) the existence of the claimed coin collection and gas grill nor (2) David's claim that the washer and dryer were non-marital property. Moreover, this issue is not properly

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<sup>2</sup> The record contains no evidence that David had funds to pay for such transportation.

<sup>3</sup> As previously mentioned, Gail was the sole witness at the final hearing. Because the trial court was acting as the fact finder, it had the sole responsibility to weigh the evidence and judge the credibility of Gail. *Dunn v. Commonwealth*, 286 Ky. 695, 151 S.W.2d 763, 764-765 (Ky. 1941). Furthermore, the trial court was free to believe any or all parts of Gail's testimony, and, given the outcome, it found her testimony regarding the parties' assets to be credible. *See Gillispie v. Commonwealth*, 212 Ky. 472, 279 S.W. 671, 672 (Ky. 1926).

preserved for this Court's review because David did not file a motion pursuant to CR 52.02, seeking to amend the decree or for additional findings.

In the second assignment of error, David reiterates that Gail forged his signature on one of his SSI checks and cashed it. According to David, even though the trial court knew that Gail's actions were criminal, it abused its discretion by not criminally punishing her for committing a felony. The trial court, however, was not presiding over a criminal case regarding Gail. Thus, there was no error.

In addition to his argument that the trial court should have prosecuted Gail, David argues that SSI benefits are like veterans' benefits. He reasons his SSI benefits could not be considered marital property, so the cash from the allegedly forged SSI check should be returned to him. David's claim, however, is not properly preserved for review by this Court. The circuit court did not address David's SSI benefits. Consequently, it was incumbent on David to file a CR 52.04 motion requesting a ruling on this claim. Having failed to do so, this claim is not properly before this Court.

In his third argument, David claims that the trial court awarded sole custody of the parties' daughter to Gail. This claim lacks all merit as the daughter was an adult at the time the decree was entered. Nonetheless, having reviewed the record, the trial court did not award custody of the parties' adult daughter to Gail.

The decree of dissolution entered by the Garrard Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

David Ward, *pro se*  
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BRIEF FOR APPELLEE:

Johnny O. Bolton  
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