

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-002281-MR

BEULAH MILLS

APPELLANT

v.

APPEAL FROM MEADE CIRCUIT COURT
HONORABLE SAM H. MONARCH, JUDGE
ACTION NO. 03-CI-00160

JAMES H. MILLS

APPELLEE

OPINION
AFFIRMING IN PART
REVERSING AND REMANDING IN PART

** ** *

BEFORE: ACREE AND CLAYTON, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

ACREE, JUDGE: Beulah Mills appeals from an order of the Meade Circuit Court which assigned nonmarital property, divided marital property, and awarded her maintenance upon the dissolution of her marriage to James Mills (Jess). Beulah

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 Kentucky Revised Statutes (KRS) 21.580.

contests the method used by the circuit court to determine her marital interest in a farm owned by her former husband prior to the marriage. She also contests the factual finding relating to the amount of the mortgage against the farm. We affirm in part, reverse in part and remand for further orders.

The parties were divorced in July 2003, after more than twenty years of marriage. It was a second marriage for each. No children were born of this marriage.

When they married, each individually held title to real property. Beulah owned a home in Louisville encumbered by a \$4,500 mortgage. Jess owned a farm of approximately two hundred twenty acres. The farm, livestock, and farming equipment were valued at \$329,500, and secured by two mortgages (one from First Federal Savings and Loan and one from Farmers home Administration) totaling \$318,355.17.

When they divorced, the parties owned other real estate, but only these properties were held to be nonmarital.² Beulah's house was valued at \$95,000.00 with a \$71,000.00 mortgage which she claimed was taken out to enable the parties to purchase more real estate. The circuit court ordered all the marital real estate sold, applied to pay off the mortgage on Beulah's house, and divided the remaining proceeds equally between the parties.

² Jess had deeded his farm jointly to himself and Beulah shortly before the divorce. However, the circuit court found that the deed was executed for marital purposes and Beulah's decision to leave Jess after the deed was executed defeated his purpose in placing her name on the deed. Thus, the farm was found to be nonmarital property, a decision which Beulah does not contest on appeal.

The circuit court ruled that the debt on Jess's farm had been reduced to \$276,282.38 by use of marital funds. The reduction, calculated by the trial court to be \$42,072.79, was to be divided evenly between the parties.

Additionally, Jess was ordered to pay \$750.00 per month in spousal maintenance until Beulah's death, remarriage, or cohabitation. This appeal followed.

Beulah first argues that the circuit court erred when it found the amount of the Farmers Home Administration mortgage against Jess' farm to be \$152,282.38. According to her, the evidence presented before the circuit court established that the mortgage was actually between \$142,000.00 and \$144,000.00. This error reduced the total amount of marital equity in the farm. Beulah's share of the marital equity was proportionately reduced. Jess agrees that the circuit court erred in this regard and states that the debt to Farmers Home Administration should be adjusted in the interests of justice and each party awarded their proper share of the marital equity in the farm. Consequently, this portion of the circuit court's order is reversed and remanded for entry of a new finding regarding the debt to Farmers Home Administration at the time of the divorce and recalculation of the parties' marital equity in the farm.

Next, Beulah contends that the circuit court erred when it refused to use the formula set forth in *Brandenburg v. Brandenburg*, 617 S.W.2d 871 (Ky.App. 1981), to determine the parties' marital and nonmarital interests in Jess' farm. She argues the circuit court's decision was arbitrary, unreasonable, unfair, or

legally unsound. *See, Kuprion v. Fitzgerald*, 888 S.W.2d 679, 684 (Ky. 1994).

The formula recognized by this Court in *Brandenburg* was summarized as follows:

there is to be established a relationship between the nonmarital contribution and the total contribution, and between the marital contribution and the total contribution. These relationships, reduced to percentages, shall be multiplied by the equity in the property at the time of distribution to establish the value of the nonmarital and marital properties.

Brandenburg, 617 S.W.2d at 872. However, we then went on to clarify that our adoption of the formula did not imply that this Court would reject “other procedures utilized by the lower courts in arriving at an equitable division of property as long as the relationship between the contributions of the parties is established.” *Id.* at 873.

During the parties’ marriage, Jess farmed the property while Beulah worked outside the home, contributing financially to the marital estate. The circuit court made a finding that the farm’s appreciation was not due to any efforts of the parties, but rather was a result of the appreciation of land values in the area.

Consequently, only the equity which resulted from debt reduction was marital property. *See, Overstreet v. Overstreet*, 144 S.W.3d 834, 837 (Ky.App.

2003)(“When the value of non-marital property is enhanced through the use of marital funds, only the increase in value of the property and the funds contributed in pursuit of that increase are subject to division as marital property.”). The circuit court ordered that amount to be evenly divided between the parties. Beulah has failed to demonstrate that this decision was arbitrary, unreasonable, unfair, or

legally unsound. Thus the circuit court's failure to use the *Brandenburg* formula was not clearly erroneous.

Beulah's third argument is that the circuit court erred when it found that the value of Jess's farm increased due to passive appreciation, rather than due to the parties' efforts. The circuit court addressed this contention in its order as follows:

Even though Ms. Mills argues that she contributed to the improvement of the farm by tiling, painting, wallpapering and general decorating, these things are more in line with typical upkeep and maintenance than property improvement. She also argues that farming the fields and maintaining the livestock led to the appreciation in the farm's value. However, again, this is typical farm use. Simply planting and harvesting crops is not enough to cause more than a passive appreciation in the land's value.

(Order dated February 22, 2006)(footnote omitted). In its order, the circuit court also noted that the only evidence supporting Beulah's claimed efforts to improve the property was her own testimony. Her testimony was contradicted by Jess, two farm employees, and a neighbor.

On appeal, Beulah contends that the remodeling efforts were more substantial than recognized by the circuit court. According to her, the parties sanded the kitchen cabinets, screened in the back porch, took out decorative beams, knocked out a bathroom wall, added a whirlpool tub, and replaced the windows and heating system. Kentucky Civil Rule 52.01 states that a trial court's findings of fact "shall not be set aside unless clearly erroneous, and due regard shall be

given to the opportunity of the trial court to judge the credibility of the witnesses.” We are bound by the findings of the circuit court unless they are not supported by substantial evidence in the record. *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky.App. 1986). Further, the evidence supporting the circuit court’s findings need not be uncontradicted. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 117 (Ky.App. 1998)(citing, *Rowland v. Holt*, 253 Ky. 718, 726, 70 S.W.2d 5, 9 (1934)). Since Beulah presented no evidence but her own testimony that her remodeling efforts contributed to the farm’s appreciation, the circuit court found that it would be speculative to assign a monetary value to them. We do not find this to be clearly erroneous.

Finally, Beulah argues that the circuit court erred in considering the debt owed to First Federal Savings and Loan in calculating the amount of reduction in the mortgages against the farm during the marriage. The circuit court found that this mortgage decreased the marital equity in the farm by \$124,000.00. Beulah argues that, since the First Federal loan was taken out a few months before the parties separated and the farm was found to be Jess’s nonmarital property, she did not receive a marital benefit from these funds. Consequently, she contends that the circuit court’s decision unfairly deprived her of a portion of her marital interest in the farm’s equity.

Jess testified that the First Federal mortgage was taken out to refinance a previous marital line of credit with PNC Bank. Further, Beulah does

not contest that her Cadillac Escalade was purchased with the proceeds of the First Federal mortgage. Therefore, the evidence before the circuit court did not support her contention that the First Federal mortgage was used primarily for the farm and for rental property. Beulah has failed to prove that the circuit court's decision to include the First Federal mortgage when calculating the increase in the farm's marital equity during the parties' marriage was unfair or unreasonable.

For the foregoing reasons, the order of the Meade Circuit Court is affirmed in part and reversed and remanded in part for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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