

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001717-MR

CLIFFORD HOWARD

APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE JEFFREY L. PRESTON, JUDGE
ACTION NO. 06-CI-00600

BILLIE SUE HOWARD,
NOW SOWARDS

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: ACREE AND VANMETER, JUDGES; HENRY,¹ SENIOR JUDGE.

ACREE, JUDGE: This is an appeal from orders of the Greenup Circuit Court
dividing the marital property of Billie Sue Sowards (formerly Howard) and
Clifford Howard and otherwise relating to their action for the dissolution of their

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute 21.580.

marriage. Clifford contends that the circuit court committed several errors in dividing the parties' property, retirement accounts, and bank assets. We disagree and affirm the circuit court.

Billie Sue and Clifford were married on March 23, 1999, and separated in September or October of 2006. The trial court dissolved the parties' marriage on July 23, 2007. There were several contested property issues. Billie Sue and Clifford owned two homes: a condo located on Deering Court and a second residence on Gilley Street. The couple also owned several water craft including a small boat, a houseboat, and a Seadoo jet ski. Both parties had individual retirement and bank accounts. In dividing the parties' property, the trial court awarded Billie Sue the Deering Court condo and awarded Clifford the home on Gilley Street. Clifford received the houseboat and jet ski and also the proceeds from the sale of the smaller boat, which was sold after the parties separated. The trial court awarded each party his or her respective retirement and bank accounts.

Following the entry of the trial court's judgment, Clifford moved to alter, amend, or vacate the order. The trial court denied the motion. This appeal followed.

We review the findings of facts in a dissolution action only to determine if they are clearly erroneous. CR 52.01; *Sexton v. Sexton*, 125 S.W.3d 258 (Ky. 2004); *Ghali v. Ghali*, 596 S.W.2d 31 (Ky.App. 1980). CR 52.01 states, in part,

Findings of fact shall not be set aside unless clearly erroneous, and due respect shall be given to the opportunity of the trial court to judge the credibility of the witnesses.

Decisions concerning the division of marital property are within the sound discretion of the trial court, and we will not disturb those decisions except for an abuse of that discretion. *Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001). In *Cochran v. Cochran*, 746 S.W.2d 568 (Ky.App. 1988), this court stated,

The property may very well have been divided or valued differently; however, how it actually was divided and valued was within the sound discretion of the trial court.

In *Lawson v. Lawson*, 228 S.W.3d 18, 21 (Ky.App. 2007), we stated,

In dividing marital property, including debts, appurtenant to a divorce, the trial court is guided by Kentucky Revised Statute 403.190(1), which requires that division be accomplished in “just proportions.” This does not mean, however, that property must be divided equally. . . . It means only that the division should be accomplished without regard to marital misconduct and in “just proportions” considering all relevant factors.

Cochran, 746 S.W.2d at 570 (internal citations omitted).

Clifford argues that the trial court committed reversible error in its unjust and inequitable distribution of the parties’ physical and real property assets. According to Clifford’s calculations, which include substantial deductions to the value of each of the boats he was awarded due to repairs and depreciation, the trial court’s property division deprived him of \$13,295.35. We are unconvinced that the disparity in the awarded assets is as substantial as alleged by Clifford. We also

note that Clifford's calculations fail to account for the \$17,000.00 in debt Clifford brought into the marriage and which was subsequently paid off during the marriage. Overriding in our review is that the division of marital assets, as discussed above, is within the trial court's discretion. *Cochran*, 746 S.W.2d at 570. We find no abuse of that discretion here.

As to the retirement and individual bank accounts, nothing requires the equal division of these accounts. As stated previously, the only requirement is that marital property be divided in "just proportions." Again, we reiterate that "just" does not necessarily mean "equal." *Lawson*, 228 S.W.3d at 21. The trial court did not ignore these accounts but simply decided, in the context of the comprehensive property division, that it was not necessary to divide these particular assets. We are not convinced that this was an abuse of discretion.

A trial court's decision that does not appear to divide assets on a fifty-fifty basis, at first blush, may appear less than equitable. However, having examined the record and considered the arguments of the parties, and while another court may have divided the marital property differently, we cannot say that any finding of the circuit court in this case was based on less than substantial evidence or that any of this circuit court's determinations were clearly erroneous.

For the foregoing reasons, the Greenup Circuit Court's orders entered in this case on July 24, 2007, and August 8, 2007, are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Tracy D. Frye
Russell, Kentucky

BRIEF FOR APPELLEE:

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