

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-001570-MR

WILLIAM CHARLES WOLEJSZA

APPELLANT

v.

APPEAL FROM FRANKLIN FAMILY COURT
HONORABLE O. REED RHORER, JUDGE
ACTION NO. 04-CI-01622

PATTIE MARIE WOLEJSZA

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: CAPERTON, CLAYTON, AND DIXON, JUDGES.

CAPERTON, JUDGE: William Charles Wolejsza appeals an adverse judgment from the Franklin Family Court regarding the division of certain marital assets.

After review, we reverse and remand for additional proceedings not inconsistent with this opinion.

William and Pattie Marie Wolejsza married in 1976 and separated in 2004. The parties were granted a divorce in 2005, and subsequently the trial court entered an order dividing the marital property in 2006. The property division in 2006 included personal property, the marital residence, and William's retirement account. The trial court found that the property should be divided equally between William and Pattie.

As a result of this finding, the parties entered into an agreement whereby William would pay Pattie \$85,505.54 for Pattie's half-interest in the equity of the marital home. William also agreed to retire immediately and exercise a retirement benefits option, wherefrom he would receive a lump sum payment of \$181,614.60, plus a monthly retirement benefit of \$2,793.99 attributable to the 377 months of the parties' marriage, with no survivor benefits. Pattie was to receive half of the proceeds, which included \$90,807.33 of the lump sum payment and \$1,397.00 of William's monthly benefits attributable to the parties' marriage. Several other property matters were also taken under submission.

After reviewing the agreement of the parties, on March 31, 2006, the court ordered William to retire immediately and divided the equity in the marital home and William's retirement benefits as described above.

Unfortunately, William did not follow the court's order and selected a retirement option that only provided monthly benefits, in which the marital interest amounted to \$5,044.00 per month. After finding William in contempt, the trial court ordered that William's interest in the equity of the marital house, which

amounted to \$85,505.54, should be immediately quitclaimed to Pattie as compensation for the loss of her anticipated share of the lump sum payment, which amounted to \$90,807.33. Furthermore, as punishment for William's contempt, the trial court also ordered that Pattie should receive roughly half of William's monthly retirement benefits, which amounted to \$2,500.

William appealed this decision, and in October 2007, this Court vacated the trial court's division of the equity in the marital home and William's retirement benefits. The basis of this decision was that the trial court failed to divide the equity and the retirement benefits in accordance with its finding that each party should receive equal shares of the equity and retirement benefits. Therefore, this Court remanded this case to the trial court to enter an order dividing the marital property, specifically the marital home and the retirement benefits, equally among the parties.

Upon remand, in January 2008, the trial court entered an order in accordance with its previous finding, which was upheld by this Court, that each party was to receive half of the equity in the marital home, which amounted to \$85,505.54. Subsequently in June 2008, the trial court entered another order, in accordance with its previous finding regarding the division of marital property that was upheld by this Court, that Pattie was to receive half of William's retirement benefits attributable to the marriage, which amounted to \$2,500. In addition the trial court ordered William to pay Pattie \$6,178.99 upon the sale of the home in order to compensate her for payments she made upon the home during the period

when William was responsible for all debts regarding the marital home. This appeal followed.

Upon appeal, William presents three issues. The first issue is whether the trial court failed to follow this Court's mandate set forth in the previous appeal, *Wolejsza v. Wolejsza*, 2006-CA-001211-MR. The second issue is whether the trial court's order of June 9, 2008, lacked the necessary findings and conclusions required by Kentucky Revised Statutes (KRS) 403.190(1) and Kentucky Rules of Civil Procedure (CR) 52.01. The third issue is whether the trial court erred by failing to credit William for the mortgage payments he made that reduced the outstanding principal balance on the property during the separation of the parties. We shall only address the first and second issues as they are dispositive of this appeal.

This Court's opinion of October 2007, remanded the case to the trial court stating that "the marital property must be divided so as to satisfy such requirements." Our Court's use of the term "requirements" was referencing the requirements of KRS 403.190(1) that marital property should be divided in "just proportions". Appellant now argues that the trial court did not make the division of property as instructed by our earlier decision and failed to enter the necessary findings of fact and conclusions of law.

The requirements of KRS 403.190(1) as to the division of marital property require that the trial court divide the property of the parties in just proportions and consider all relevant factors. Civil Rule 52.01 requires a trial court

to “find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment” The trial court has not met the requirements of CR 52.01 and, therefore, we cannot determine if the requirements of KRS 403.190(1) are met. Thus, we must again remand to the trial court.

For the foregoing reasons, we hereby remand to the trial court for entry of a judgment comporting with the requirements of KRS 403.190(1) and CR 52.01.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT
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BRIEF AND ORAL ARGUMENT
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