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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001295-MR

JAMES FRANKLIN VANHORN APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE JEFFREY L. PRESTON, JUDGE
ACTION NO. 09-CI-00027

RHONDA D. VANHORN APPELLEE

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: COMBS AND CLAYTON, JUDGES; LAMBERT,[1] SENIOR JUDGE.

COMBS, JUDGE: James Franklin VanHorn appeals from a decree of dissolution of marriage entered May 29, 2009 in Greenup Family Court. After our review, we vacate and remand for additional proceedings.

[1] Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

James and Rhonda D. VanHorn were married on January 18, 1997. Rhonda petitioned for dissolution of the marriage in January 2009. No children were born of the marriage.

A final hearing was conducted on May 26, 2009. The court's findings of fact, conclusions of law, and decree of dissolution were entered two days later on May 28. Relevant to this appeal, Rhonda was awarded one-half of the pension benefit earned by James between the date of the marriage and the date of the separation. Two firearms were assigned to Rhonda as part of her non-marital property, and James was ordered to pay the costs of Rhonda's health insurance benefits for a period of twelve months. Subsequently, James filed a motion to alter, amend, or vacate. The motion was granted in part by order entered June 10, 2009. This appeal followed.

James contends that the family court erred by effectively awarding maintenance to Rhonda in the form of her health insurance premiums. James argues that Rhonda, a registered nurse, did not show -- nor did the trial court -- find that she lacked sufficient property to provide for her reasonable needs and that she was unable to support herself through appropriate employment. We agree.

An award of maintenance is within the sound discretion of the family court and will not be disturbed on appeal absent an abuse of discretion. *Gentry v. Gentry,* 798 S.W.2d 928 (Ky.1990). However, when considering whether an

award of maintenance is appropriate, Kentucky Revised Statute(s) (KRS) 403.200(1) *requires* the family court to make two distinct findings of fact:

> In a proceeding for dissolution of marriage . . . the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:
>
> (a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and
>
> (b) Is unable to support himself through appropriate employment . . . .

These findings of fact are mandatory and must be made part of the record in order to support an award of maintenance. *Hollon v. Hollon*, 623 S.W.2d 898 (Ky. 1981). Moreover, a party is not required to request more specific findings under Kentucky Rule(s) of Civil Procedure (CR) 52.04 in order to preserve for appeal the trial court's failure to make mandatory findings under the provisions of KRS 403.200(1). *Id.*

In this case, the family court made *no findings* with respect to Rhonda's ability to provide for her reasonable needs or her ability to support herself through appropriate employment. Instead, the court found that James had "violated the standard Order of this Court when dropping [Rhonda] from his medical insurance coverage without prior Court approval and without notice to [Rhonda]." Decree at 3.

We have searched the record and have found no order directing James to continue paying for Rhonda's health insurance premium during the period of

separation. Nor is there any argument that this portion of the decree represents a purge order with respect to James's civil contempt. Therefore, upon remand, the family court shall reconsider its award of maintenance and shall make findings of fact as required by KRS 403.200(1).

Next, James contends that the family court erred in its attempt to divide the marital component of his pension benefit. In its decree, the court concluded that Rhonda was "entitled to one-half the pension that accumulated on behalf of [James] during his time of employment. This shall be computed by utilizing the time period of 1992 until the parties separated November 1st, 2008." Decree at 4. Following James's motion to alter, amend, or vacate, the court amended the order to provide as follows: "[Rhonda] shall receive her portion of the pension computed by using the dates of January 18, 1997 [the date the parties were married] to November 1, 2008 [the date of their separation]." James argues that the family court erred by referring to any period beyond 2004 (the date on which he retired and stopped earning pension benefits) and by distributing to Rhonda a portion of an unknown sum. We agree.

KRS 403.190 provides that all property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property; the family court shall divide the marital property in just proportions. In this case, the portion of James's pension acquired after the marriage and before the order of dissolution is subject to division. However, without reference to the specific marital and non-marital components of James's pension, neither the parties

to the action, nor the plan administrators who will be involved in the actual division of the pension, can determine how much money is due to either party. Without knowing the value of Rhonda's marital share of James's retirement benefit, the family court is unable to determine whether an award of maintenance is appropriate under the provisions of KRS 403.200. On remand, the family court must determine the value of each party's non-marital assets and the value of the marital assets to be distributed to each of them.

Finally, James contends that the family court erred by assigning two firearms to Rhonda as her separate, non-marital property. James contends that Rhonda's possession of the firearms violates federal law as she is the subject of a domestic violence order (DVO) duly issued by the Greenup Family Court. Evidence presented during the final hearing indicates that the DVO is still in effect.

Under provisions of the Federal Gun Control Act, 18 U.S.C. §922(g)(8), it is unlawful for any person who is subject to a court order restraining her from "harassing, stalking, or threatening an intimate partner" to possess a firearm. Rhonda does not contend that the provisions of the Act do not apply to her under the facts and circumstances of this action. Instead, she argues that the trial court did not err by assigning them to her since a third-party may be appointed to take possession of the weapons until such time as she is no longer bound by the firearms restriction. We agree with this solution.

Our review of the record indicates that there was sufficient evidence from which the court could (and did) conclude that the firearms were Rhonda's

non-marital property. However, upon remand, the family court must make proper provision for the safeguarding or "escrowing" the firearms until such time as Rhonda may be permitted to assume possession of them.

We vacate the findings of fact, conclusions of law, and decree of dissolution of marriage of the Greenup Family Court and remand this matter for further proceedings.

ALL CONCUR.

BRIEF FOR APPELLANT:

W. Jeffrey Scott
Grayson, Kentucky

BRIEF FOR APPELLEE:

Roger R. Cantrell
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