

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-000072-MR

DALE D. CHESSER

APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT  
HONORABLE JEFFREY L. PRESTON, JUDGE  
ACTION NO. 09-CI-00602

WILLA J. CHESSER AND  
HON. MEL LEONHART

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: COMBS, STUMBO AND WINE, JUDGES.

STUMBO, JUDGE: Dale Chesser appeals from the Greenup Circuit Court's findings of fact, conclusions of law, and decree of dissolution of marriage with respect to the court's division of marital property, award of maintenance, and order to pay attorney fees. After careful review of the record, we affirm.

Dale and Willa Chesser were married for twenty-eight years, during which time Willa was primarily a stay-at-home mom for the parties' two children, who are both now adults. At the time of the court's decree, Dale was employed at Marathon Oil and had earned approximately \$80,000 per year over the previous three years. Willa was employed at Wee Care daycare, working approximately forty hours a week and earning \$7.25 per hour.

The parties agreed to a division of their personal property, which the trial court ordered to be divided accordingly.<sup>1</sup> The court further divided the parties' real property, along with a camper, and awarded maintenance and attorney fees to Willa. From this decree Dale appeals.

KRS<sup>2</sup> 403.190(1) requires a trial court to divide marital property "in just proportions" considering the following relevant factors:

- (a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;
- (b) Value of the property set apart to each spouse;
- (c) Duration of the marriage; and

---

<sup>1</sup> The parties agreed that Dale would receive the 2006 Ford truck, 2005 Aveo, 1998 Honda Shuttle motorcycle, 1996 Dodge Stratus, boat, golf cart, four-wheeler, his guns and gun safe, fishing tackle, golf clubs, big screen TV, his computer and computer stand, chair, stereo, video camera, and police scanner. Willa would receive the 2005 Cadillac, 1998 Honda CRV, hot tub, her jewelry, her laptop computer, Craftmatic bed, family room furniture, kitchen antique storage cabinet and antique bicycle. Each party would receive one-half of the balances at Ashland Credit Union, Home Federal Savings & Loan, savings bonds, Marathon retirement, Ashland retirement, USEC retirement, if any now exist, and the thrift plan from Marathon retirement and/or Ashland retirement. The 2001 Olds Alero would be given to the parties' daughter and the 1994 Ford Mustang would be given to the parties' son.

<sup>2</sup> Kentucky Revised Statutes.

(d) Economic circumstances of each spouse when the division of property is to become effective[.]

Importantly, “a trial court is not obligated to divide the marital property equally.” *Smith v. Smith*, 235 S.W.3d 1, 6 (Ky. App. 2006) (citation omitted). The trial court “has wide discretion in dividing marital property; and we may not disturb the trial court’s rulings on property-division issues unless the trial court has abused its discretion.” *Id.* (citation omitted). The test for abuse of discretion is whether the trial court’s decision was “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted).

Dale first argues that the trial court abused its discretion in its division of real property owned by the parties. We disagree.

The trial court awarded Willa the marital residence, valued at \$62,000, and which the court found to be in a state of disrepair. The record shows that Willa had utilized \$14,000 from an inheritance to purchase the home. The court also awarded Willa a campsite, valued at \$22,000, and a camper, which had been flooded and which is located on the campsite. The record reflects that the campsite is located between two other campsites which are owned and occupied by Willa’s family. The court awarded Dale three lots, valued at \$21,000, located in the Bob Johnson subdivision.

In making this division, the court took into consideration that the parties had been married for twenty-eight years, during which time Willa was primarily a stay-

at-home mom. The court also considered that Dale currently earns approximately \$80,000 per year and has sufficient income to provide suitable housing for himself, while Willa earns minimum wage and is in need of the marital residence in order to have proper housing. The court took into account its division of property as a whole and found the division to be equitable. The basis of Dale's argument on appeal seems to be that the division was unjust because it was unequal; however, the requirement that marital property be divided justly does not mean equally. *Lawson v. Lawson*, 228 S.W.3d 18, 21 (Ky. App. 2007). Our review of the record shows that the court considered the requisite factors set forth in KRS 403.190(1) and that the court's division was not "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *English*, 993 S.W.2d at 945.

Next, Dale argues that the trial court abused its discretion by ordering him to pay Willa \$500 per month in maintenance and to provide her with medical insurance. We disagree.

KRS 403.200 governs spousal maintenance and provides, in part:

(1) 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[.]

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:

(a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently . . . ;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) The standard of living established during the marriage;

(d) The duration of the marriage;

(e) The age, and the physical and emotional condition of the spouse seeking maintenance; and

(f) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

This court reviews a trial court's award of maintenance for an abuse of discretion. *Powell v. Powell*, 107 S.W.3d 222, 224 (Ky. 2003). In the present case, the trial court ordered Dale to pay Willa \$500 per month in maintenance until such time as she receives disability or begins drawing social security retirement benefits. The court noted that Willa earns \$7.25 per hour and Dale earns approximately \$80,000 a year. The court considered the parties' salaries and individual expenses and found that Willa could not adequately provide for her needs without a financial contribution from Dale and that Dale's income was

sufficient to pay maintenance and provide for his needs. Our review of the record discloses that the court did not abuse its discretion by making this award.

The court also ordered Dale to provide medical insurance for Willa of equal or greater value than she currently has, to continue until she can obtain insurance coverage through social security disability or until such time as she can receive medical insurance as a result of any retirement. The court noted that Willa has numerous health issues which require a substantial investment in medical care and medical and drug expenses each month and that her job at the daycare does not provide her with health insurance. The court was concerned that Willa could not provide for her medical conditions without Dale's financial assistance. Based on the record, we are unable to say that the court abused its discretion by ordering Dale to provide medical insurance to Willa.

Finally, Dale argues that the trial court abused its discretion by ordering him to pay Willa's attorney \$1,000 in attorney fees. We disagree.

The court ordered Dale to pay attorney fees based on the parties' disparity of income. Dale complains that the court did not make the proper findings of fact to justify an award of attorney fees, however,

[a] final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by a written request for a finding on that issue or by a motion pursuant to Rule 52.02.

CR<sup>3</sup> 52.04. If such an alleged failure is not brought to the court's attention and the court, therefore, is denied the opportunity to address the issue, a party is considered to have waived the right to raise the issue on appeal. *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982). In this case, Dale failed to move the court for more definite findings of fact on the issue of attorney fees, thereby waiving his right to argue this issue on appeal.<sup>4</sup>

The final decree of the Greenup Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Richard A. Hughes  
Ashland, Kentucky

BRIEF FOR APPELLEES:

Melvin C. Leonhart  
Greenup, Kentucky

---

<sup>3</sup> Kentucky Rules of Civil Procedure.

<sup>4</sup> Having said that, the allocation of attorney fees in a divorce action lies solely in the discretion of the trial court. *Glidewell v. Glidewell*, 859 S.W.2d 675, 679 (Ky. App. 1993). The only requirement for an allocation of attorney fees is a disparity in the financial resources of the parties. *Id.* at 679-80 (citing KRS 403.220; *Gentry v. Gentry*, 798 S.W.2d 928 (Ky. 1990)). Here, the court specifically found a disparity of incomes between the parties and, thus, did not abuse its discretion by ordering Dale to pay Willa's attorney \$1,000 in attorney fees.