

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-000105-MR

RUTH ARLENE HADLEY

APPELLANT

v.

APPEAL FROM ADAIR CIRCUIT COURT  
HONORABLE JAMES G. WEDDLE, JUDGE  
ACTION NO. 05-CI-00283

DOUGLAS P. HADLEY

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: COMBS, STUMBO, AND WINE, JUDGES.

COMBS, JUDGE: Ruth Arlene Hadley appeals from the Adair Circuit Court's findings of fact, conclusions of law, and decree of dissolution of marriage entered December 7, 2009. After our review, we vacate and remand for additional findings.

Ruth and Douglas P. Hadley were married on February 14, 1998. They separated on December 14, 2005. No children were born of the marriage.

At the time of trial in July 2009, Douglas was forty-two years of age. He had worked with KBR, Inc., (an American engineering, construction, and private military contracting company) in Iraq for the four and one-half years immediately preceding the trial and was earning between \$93,000.00 and \$99,250.00 annually. He was unemployed at the time of trial.

Ruth was forty-six years of age at the time of trial. She worked seasonally at Lake Cumberland State Park where she earned approximately \$20,000.00 per year as a waitress.

After considering the evidence presented by the parties, the circuit court determined that a 330-acre farm and residence along Wellie Grant Road in Columbia were Douglas's non-marital property. The court found that the farm and the house had been acquired by Douglas before his marriage to Ruth and that their combined value at the time of the marriage was \$92,000.00. The court determined that their value at the time of trial was \$437,000.00. The outstanding mortgage balance was \$142,858.77. The court rejected Ruth's contention that at least a portion of the property's appreciation constituted marital property to be equitably divided between the spouses and concluded that the property's increase in value was attributable solely to prevailing economic conditions.

The court divided the funds from the tobacco-transition payment program and the income derived from the lease of the farm. It assigned the entire mortgage debt to Douglas and ordered him to pay maintenance to Ruth in an amount totalling \$36,000.00. Funds from a joint bank account were divided between the

parties. Douglas was also ordered to contribute \$10,000.00 toward Ruth's attorney fees and to reimburse her for nearly \$12,000.00 – one-half the sum that Douglas had expended in violation of the court's *status quo* order. The couple's remaining personal property was divided by agreement, and a final decree of dissolution of marriage was entered. This appeal followed.

On appeal, Ruth contends that the trial court erred by failing to allocate to her a share of the equity in the farm; by failing to require Douglas to account for a portion of the marital estate that she alleges he dissipated; and by failing to award her post-trial maintenance.

First, Ruth argues that the trial court erred by failing to allocate to her a share of the equity in the farm property. While Ruth acknowledges that Douglas was deeded the disputed property as a result of the dissolution of his prior marriage, she contends that the property was encumbered by a mortgage that exceeded its value at the time that she and Douglas married. She argues that Douglas cannot show an exclusively unilateral, non-marital contribution toward the reduction of the mortgage principal or to any other improvement made to the property. She argues that the property's increase in value is attributable solely to the couple's joint efforts both to improve it and to reduce the mortgage.

Douglas contends that the real property was properly classified as his non-marital property. He denies that the increase in the property's value is attributable to anything other than general economic conditions. He argues that the mortgage indebtedness only increased over the course of the parties' marriage because they

borrowed money to finance several failed business ventures. He contends that Ruth's evidence regarding any improvements made to the property "was not wholly credible, and [was] devoid of any proof demonstrating a nexus between the increase in value of the property and the value of the improvements alleged." Brief at 10.

With respect to the disposition of property in a dissolution of marriage action, Kentucky Revised Statute[s] (KRS) 403.190 directs the court, in part, as follows:

(1) [T]he court shall assign each spouse's property to him. It also shall divide the marital property . . . in just proportions. . . .

(2) For purposes of this chapter, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(e) The increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during marriage.

(3) All property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.

Under the provisions of this statute, the family court must engage in a three-step process. First, the court must categorize each piece of disputed property as

either marital or non-marital. Second, the court must assign to each party his non-marital property. Finally, the court must equitably divide the marital property.

Upon our review of the family court's division of property, we generally defer to the discretion of the trial court. *Herron v. Herron*, 573 S.W.2d 342 (Ky.1978). We may not reverse the trial court's findings of fact unless they are clearly erroneous. Kentucky Rule[s] of Civil Procedure (CR) 52.01. Findings of fact are not deemed clearly erroneous if they are supported by substantial evidence. *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409 (Ky.1988). *Substantial evidence* is evidence sufficient to induce conviction in the minds of reasonable people. *Id.*

The family court's conclusions of law are reviewed *de novo*, however. *Hunter v. Hunter*, 127 S.W.3d 656 (Ky.App.2003). A trial court's classification of property as marital or non-marital concerns a matter of law. *Wilder v. Wilder*, 294 S.W.3d 449 (Ky.App.2009). While we defer to the family court with respect to the factual findings upon which the court relies in determining whether property is marital or non-marital, we give no deference to the court's overall classification of the property. *Smith, supra*.

The undisputed evidence in this case establishes that at the time of the parties' marriage in February 1998, the farm property was encumbered by a mortgage that exceeded its value. No evidence was introduced to indicate that Douglas made any non-marital contribution to the property thereafter. Under these circumstances, the provisions of KRS 403.190(3) create a presumption that the

disputed property is marital. Consequently, we must conclude that the trial court erred by assigning any portion of the farms property's equity to Douglas as his non-marital property. We vacate on this issue and remand for the trial court to distribute the marital property between the parties in just proportions.

In view of its division of the farm property, the court must also revisit its assignment of the debt associated with the mortgage on the disputed property and its decision to award maintenance (and in what amounts and duration) as well as its order directing Douglas to contribute to Ruth's attorney fees.

Next, Ruth argues that the trial court erred by failing to conclude that Douglas dissipated a sizeable portion of the marital estate. She contends that Douglas should be held accountable for more than \$165,000.00 that was misspent in various ways -- including transfers of cash to his family.

As mentioned previously, the trial court concluded that Douglas had violated a *status quo* order entered during the proceedings by incurring unreasonable expenses associated with a vacation to Dubai, Romania, and Budapest. Douglas was ordered to reimburse Ruth for one-half of the cost of the trip. The court concluded that Douglas's contributions to "Options Express" also violated the *status quo* order. He was ordered to reimburse Ruth in the amount of \$7,500.00, representing one-half of his personal investment in this account. However, the court concluded that Douglas had not violated the order by expending sums for his education and rejected Ruth's contention that Douglas should reimburse the marital estate for money that he used to help his daughters (from a previous

marriage) to purchase cars. With respect to these challenged expenditures and others, the court specifically found that Douglas “did not live extravagantly or transfer money for personal gain. There is no indication that assets have been hidden or that [Ruth] has been deceived.” Order at 5.

KRS 403.190(1) provides that “[The court] also shall divide the marital property *without regard to marital misconduct* in just proportions considering all relevant factors. . . .” (Emphasis added.) Nevertheless, where the spouse alleging dissipation can show that marital property was expended for non-marital purposes in anticipation of divorce and with the intent to deprive her of her proportionate share of the marital property, her spouse may be held to account for the property. *Barriger v. Barriger*, Ky., 514 S.W.2d 114 (1974). Gifts to family members can constitute a dissipation of the marital estate if they are not made to further the “marital enterprise.” *Robinette v. Robinette*, 736 S.W.2d 351, 354 (Ky.App.1987). Once dissipation has been shown, the burden of proof shifts to the party charged with the dissipation to produce evidence sufficient to establish that the challenged expenditure was appropriate. *Brosick v. Brosick*, 974 S.W.2d 498 (Ky.App.1998).

In this case, Ruth presented specific documentary evidence showing that once he left for Iraq, Douglas deposited money into his mother’s checking account and then established a joint checking account with his mother. It appeared that Douglas alone made regular deposits to the joint account. Ruth also presented evidence to indicate (among other challenged expenditures) that Douglas bought cars for his daughters; gave money to his brother; bought his mother a washer and

dryer; and made mortgage payments for the benefit of a third-party. Douglas generally denied that he had used marital assets for non-marital purposes without making a specific accounting for the challenged expenditures. Douglas's mother claimed that she had used the money deposited into her account or into the joint account to pay off the couple's marital debts.

While the trial court was at liberty to decide whether Douglas's oral accounting and explanation for the expenditures were sufficient to refute the inference of dissipation, it did not do so explicitly in its order. Since the trial court did not complete an analysis of the allegation of dissipation, we cannot conduct a meaningful review of the trial court's order relative to the issue. Consequently, we must remand for additional relevant findings and conclusions on this issue as to dissipation.

Finally, Ruth argues that the trial court erred by failing to impute wages to Douglas in line with his earning capacity and by failing to award her post-decree maintenance. KRS 403.200(1) provides that a court may grant maintenance only where it finds that the spouse seeking maintenance has shown that he:

(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 . . . .



The provisions of KRS 403.200(2) direct that where an award of maintenance is warranted, the “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.

In reaching a decision with respect to maintenance, the trial court must consider the value of marital property distributed to the spouse seeking the award. Since the trial court must revisit its distribution of the marital property in this case, it must also consider whether to re-calculate the maintenance award (if any) to which Ruth is entitled. Consequently, that issue cannot be decided in this appeal as its resolution is contingent upon the results of the remand.

The judgment of the Adair Circuit Court is vacated and remanded for additional findings and a new judgment.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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