

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000391-MR

SCOTT C. DALE

APPELLANT

v. APPEAL FROM FRANKLIN FAMILY COURT
HONORABLE O. REED RHORER, JUDGE
ACTION NO. 07-CI-01452

TRESINA D. DALE

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: TAYLOR, CHIEF JUDGE; STUMBO, JUDGE; LAMBERT,¹
SENIOR JUDGE.

LAMBERT, SENIOR JUDGE: Scott C. Dale seeks our review of two questions
involving the valuation of assets of a marriage. Discovering no reversible error,
we affirm.

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 Kentucky Revised Statutes (KRS) 21.580.

Tresina Dale sought dissolution of her marriage to Scott Dale. The couple were the sole shareholders in several closely held corporations, and their valuation is the subject of this appeal. Maximum Pest Control, Inc. was founded by the couple in 1996. In 2004, the corporation's customer list was sold to a competitor, and actions were taken to re-name the corporation CHANEL Holdings, Inc. A 2003 Ford Expedition SUV was owned by Maximum Pest Control, and it was free of any liens or encumbrances. It had a fair market value of \$18,000.

Tresina traded the 2003 Ford Expedition for a 2007 Ford Fusion and a 2003 Ford F-150 pick-up truck at a local dealership. She had the two new vehicles titled in her individual name. She testified this was done with Scott's knowledge and permission, but there are no corporate records authorizing the sale of this corporate capital asset, and Scott denies ever granting permission. The trial court awarded Tresina the 2003 Ford Expedition as well as the 2007 Ford Fusion and awarded Scott a 2004 Ford F-150 pick-up truck and the 2001 Ford Ranger that he had retained. Scott now argues that he was entitled to one-half of the value of the 2003 Ford Expedition as his share of the assets of Maximum Pest Control/ CHANEL Holdings, Inc.

It appears that the trial court may have taken a short-cut to arrive at the disposition of the various marital assets, but even Scott acknowledges that assigning the value of the vehicle to the corporation and then disbursing the

corporate assets resulted in the same outcome as if the parties had retained their respective vehicles. He argues however that he should receive one-half of the value of the \$18,000 Expedition as his share of the interest in Maximum Pest Control/CHANEL Holdings, Inc.

Marital property is to be divided between the parties “in just proportions[.]” Kentucky Revised Statutes §403.190(1). There is no requirement that it be divided exactly in half as Scott proposes. “Since the family court is in the best position to evaluate the testimony and to weigh the evidence, an appellate court should not substitute its own opinion for that of the family court.” *B.C. v. B.T.* 182 S.W.3d 213, 219 (Ky.App. 2005).

Thus, in reviewing the decision of the family court, the test is not whether the appellate court would have decided it differently, but whether the findings of the family court are clearly erroneous, whether it applied the correct law, or whether it abused its discretion.

Id. at 219-20.

The law does not require equal division of assets. We find nothing in the record and Scott provides nothing to support a belief that the trial court abused its discretion in awarding Scott the two vehicles he retained while awarding Tresina the two vehicles she retained. There was no error.

The couple was also the sole members of the limited liability company S&T Dale, LLC. That company owed three parcels of real property in Franklin County, Kentucky. By the time of the dissolution, Tresina was living in one with an equity valuation of \$32,000 while Scott was residing in another

property with an equity valuation of \$22,000. The trial court ordered the third parcel sold with the assets from that sale divided equally between the parties. Scott now argues that he was entitled to \$5,000 as one half of the difference in value between the property he retained and the property retained by Tresina. We again disagree.

The trial court was not required to divide the assets exactly in half as Scott argues but merely in a “just” manner. We find nothing in the record and Scott provides no argument to lead us to believe the division was not “just.” While it may not have been exactly equal, that is not the standard used to divide marital assets. We find no abuse of discretion in the allocation of the parcels of real estate. There was no error.

The judgment of the Franklin Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Steven G. Bolton
Frankfort, Kentucky

BRIEF FOR APPELLEE:

None submitted