

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-002189-MR

JAMES A. PIPER, III

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE JO ANN WISE, JUDGE
ACTION NO. 05-CI-04002

JONI C. PIPER

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: TAYLOR, CHIEF JUDGE; ACREE AND COMBS, JUDGES.

COMBS, JUDGE: James A. Piper, III, *pro se*, appeals from a post-dissolution order of the Fayette Family Court entered on October 26, 2009. He contends that the family court erred by determining that the division of his retirement benefits was meant to commence on July 13, 2007, the date of entry of

the family court's original decree of dissolution, custody, and property distribution.

After our review, we affirm.

This divorce action was initiated by Joni C. Piper in September 2005. It went to trial on May 9, 2007. The only contested issues related to the classification, valuation, and distribution of the parties' property. After considering the evidence, the family court determined that Joni was entitled to receive 44% of James's gross monthly pension. The court's order dissolving the parties' marriage, awarding them joint custody of the children, and distributing their property was entered on July 13, 2007. By that time, James's pension was in pay status.

James filed a timely motion to alter, amend, or vacate the order of the family court. He argued that the court's division of the parties' pension benefits did not accurately reflect the marital and non-marital contributions that were the basis of their acquisition. Based upon James's argument, the family court recalculated the division of his pension.

The family court issued amended findings of fact, conclusions of law, and decree of dissolution, which were entered on December 29, 2007. In its amended order, the family court assigned 33% of James's pension benefits to him as his non-marital property. The remaining 67% of James's pension benefits was determined to be marital property and was distributed evenly between the parties.

On January 8, 2008, James filed another motion to alter, amend, or vacate the family court's amended findings of fact, conclusions of law, and decree of

dissolution.¹ James again contended that the court had erred in its division of his monthly pension benefits. He now argued that his pension was exempt from division under the provisions of Kentucky Revised Statute[s] (KRS) 61.690(1). In the alternative, James proposed that the court determine the net present value of his pension benefits and adjust the division of the parties' other assets to reflect an apportionment of that value to Joni.

On February 25, 2008, the family court entered an order correcting a computational error in an equalizing payment (not directly related to the value of the divided pension benefit) to be made by Joni to James. The remaining portion of James's motion to alter, amend, or vacate was denied. On March 24, 2008, James filed a notice of appeal.

On August 7, 2009, this court rendered its opinion affirming the amended decree of dissolution, custody, and property distribution, which was entered by the Fayette Family Court on December 29, 2007. The court noted some difficulty in sorting through James's *pro se* brief. In a concurring opinion, one of the panel's judges commented specifically on James's "vexatious tactics and irascible attitude" toward the family court. Our opinion became final on September 21, 2009.

On October 6, 2009, Joni filed a motion to enforce the family court's judgment. In her motion, Joni noted that James had refused to disburse her share of the marital component of his monthly pension that had accrued since July 13, 2007. James responded and argued that Joni was entitled to a portion of his

¹ The Kentucky Rules of Civil Procedure (CR) do not allow for a second motion to alter, amend, or vacate. CR 59.05.

monthly retirement benefits to be payable only as of entry of the court's order of February 25, 2008.

On October 26, 2009, the family court determined that Joni was entitled to a portion of James's retirement benefits as of July 13, 2007. James was ordered to pay to Joni the sum of \$26,163.78 representing the accumulated arrearage/delinquency. He was also ordered to remit the sum of \$993.94 on the fifteenth day of each month beginning on October 15, 2009. This appeal followed.

Since the portion of the family court's final decree dissolving the marriage could not be appealed, the parties' marriage was finally dissolved as of July 13, 2007. *See* KRS 22A.020(3). The family court's division of James's retirement benefits was based in part on Joni's contribution toward acquisition of the marital portion of that asset. Joni's contribution toward the acquisition of James's pension began on the date of the parties' marriage and ended on July 13, 2007. KRS 403.190. Consequently, Joni was entitled to her share of the pension benefit beginning July 13, 2007. The family court did not err by ordering James to pay to Joni a sum representing the accumulation of Joni's monthly share of the asset effective July 13, 2007.

The order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James A. Piper, III, *pro se*
Lexington, Kentucky

BRIEF FOR APPELLEE:

Kathy W. Stein
Lexington, Kentucky