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NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-000864-MR

DONALD WAYNE BEARD, II

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE CLARENCE A. WOODALL III, JUDGE  
ACTION NO. 09-CI-00132

AMY MARIE BEARD

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CAPERTON, MOORE AND STUMBO, JUDGES.

STUMBO, JUDGE: Donald Beard is appealing from the decree in a dissolution of marriage action in which the Lyon Circuit Court refused to grant a continuance to obtain counsel and in which it found he had no marital interest in certain real property. We find no error and affirm.

This action was initiated by a petition for dissolution of marriage filed by Amy Beard on September 3, 2009. On October 2, 2009, an order was entered scheduling a final evidentiary hearing for December 29, 2009. At this time, counsel represented Mr. Beard. On December 16, 2009, an order was entered allowing Mr. Beard's counsel to withdraw. Soon thereafter, at the request of both parties, the final hearing was cancelled in order for the parties to attempt reconciliation. The reconciliation failed and an order was entered on February 25, 2010, scheduling a final hearing for March 25, 2010.

On March 25, 2010, both parties were present for the final hearing. Ms. Beard was present with counsel, but Mr. Beard appeared without counsel. Mr. Beard was not prepared to proceed without counsel and asked the court for a continuance in order to retain new counsel. He stated that he had been unable to obtain new counsel because he had lost his job and been unable to find new employment. The court declined to grant a continuance and proceeded with the hearing.

Ms. Beard testified at the hearing. She testified that the parties married July 7, 2007. She also stated that she purchased the marital residence prior to the marriage on June 6, 2005. She purchased the house via a loan for the full purchase price of \$66,700. She also introduced an appraisal of the house dated September 11, 2007. That appraisal valued the house at \$74,400. Ms. Beard admitted that Mr. Beard had performed certain remodeling work on the house, but testified that the work was unfinished. She also testified that the mortgage

payments had been made from their joint marital resources. Finally, she testified that the balance due on the mortgage was \$65,000.

Mr. Beard also testified at the hearing. He confirmed the testimony of Ms. Beard and did not introduce any evidence concerning the current value of the house or what increase in value, if any, his remodeling work had on the house. He did state that it cost him around \$2,600 to do the remodeling work. He claimed that this work did add to the value of the house, but did not testify to a specific increase.

On April 2, 2010, the trial court entered a final decree of dissolution. At issue on this appeal, other than the denial of a continuance is the court's finding that the marital residence was the non-marital property of Ms. Beard. The court found that there was no evidence of an increase in value due to Mr. Beard's incomplete remodeling work. The court also held that Mr. Beard was not entitled to any credit for his contribution to the mortgage payments during the two years of marriage. The court reasoned that because the mortgage had only been reduced by \$1,700, the reduction was minimal and Mr. Beard was not entitled to any credit. The court also reached this conclusion because Mr. Beard offered no proof of specific amounts or any proof of a specific reduction of the mortgage balance attributable to him. This appeal followed.

Mr. Beard's first argument on appeal is that the trial court erred in denying his request for a continuance in order to obtain counsel. It is well settled that a "trial court has broad discretion in granting or overruling a motion for

continuance and this Court will not interfere in the exercise of that discretion unless it is clearly abused.” *Stallard v. Witherspoon*, 306 S.W.2d 299 (Ky. 1957). The test for abuse of discretion is “whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principals.” *Miller v. Eldridge*, 146 S.W.3d 909 (Ky. 2004).

Factors we consider when reviewing the denial of a continuance are: length of delay; previous continuances; inconveniences to litigants, witnesses, counsel and the court; whether the delay is purposeful or is caused by the accused; availability of other competent counsel; complexity of the case; and whether denying the continuance will lead to identifiable prejudice. *Guffey v. Guffey*, 323 S.W.3d 369, 371 (Ky. App. 2010). We find the case at hand similar to *Guffey, supra*. In *Guffey*, Roger and Stefanie Guffey were getting divorced. A final hearing was set for April 23, 2009. Four weeks prior to the hearing, on March 23, the court granted a motion allowing Stefanie’s counsel to withdraw from the case. The weekend before the hearing, Stefanie called the court’s office to ask that the hearing be postponed. The staff advised her to contact Roger’s counsel. Roger’s counsel refused to postpone the hearing. During the hearing, Stefanie requested a continuance. The trial court denied the continuance and proceeded with the hearing.

On appeal, Stefanie argued that the trial court erred by not granting her a continuance. A previous panel affirmed the trial court’s decision finding that

a continuance could have resulted in a significant length of delay . . . A continuance would have been inconvenient for the court, [Roger], and his counsel. The court's docket had been arranged for the hearing, and a delay and re-appearance would have resulted in extra attorney's fees for Sam. Stefanie had known for four weeks that she needed to retain counsel. Nevertheless, she did not begin her attempt to request a continuance until a few days before the hearing.

Although Stefanie claims that she was prejudiced by the denial of a continuance, the *Snodgrass* factors demand a showing of *identifiable* prejudice. Stefanie has not explained how a later hearing in which she might have had representation would have rendered results different from the hearing at which she acted *pro se*. She mentions an inequitable division of debt (which we address later in this opinion). However, she cannot demonstrate that the division of debt would have been different if she had been represented by counsel, and we cannot conclude that she was prejudiced by the denial of a continuance.

*Id.* at 372-373.

The case at hand has similar facts. Mr. Beard had one month to find a new attorney. When he could not, he did not seek a continuance until the day of the hearing. The court's schedule had already been arranged for a hearing. Continuing the case for a later date would have been inconvenient for Ms. Beard, her attorney, and the court. In addition, Ms. Beard would have undoubtedly incurred more attorney fees if a continuance had been granted. Finally, Mr. Beard cannot show any identifiable prejudice, nor how the outcome would have been different had he been allowed a continuance to retain counsel. While the issue at bar is the division of alleged marital property rather than the allocation of debt, Mr.

Beard has not demonstrated that a continuance would have created a different result. As the court pointed out in its decree of dissolution, only a minimum amount of the mortgage had been paid and the remodeling work had not been completed. Based on the factors set out in *Guffey* and the result of that case, we cannot hold that the trial court in the case *sub judice* abused its discretion in denying Mr. Beard's motion for a continuance.

Mr. Beard also argues that the trial court erred by failing to find a marital interest in the marital residence. It was uncontroverted at the hearing that Ms. Beard bought the house prior to the marriage. If there is an increase in value of property acquired before the marriage resulting from the efforts of the parties during the marriage, then the increase in value is considered marital property. KRS 403.190. There was no evidence presented of any increase in value of the property. Even though Mr. Beard performed some remodeling on the house, it was incomplete and no evidence was presented to show that the incomplete work increased the house's value.

There was also no evidence presented as to Mr. Beard's specific contribution to the mortgage payment. Ms. Beard purchased the house in 2005, two years prior to the marriage. The parties married in July of 2007. As of the date of the final hearing on March 25, 2010, the mortgage had only been reduced by \$1,700. The trial court found this reduction to be minimal and gave Mr. Beard no credit for it. The trial court also found that there was no specific evidence as to this reduction coming from marital funds. We agree. Because there was no

evidence presented that the value of the house increased due to marital circumstances, we affirm the holding of the trial court that the house is non-marital property.

Based on the above, we affirm the decisions of the trial court.

MOORE, JUDGE, CONCURS.

CAPERTON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

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Providence, Kentucky

BRIEF FOR APPELLEE:

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