

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000345-MR

WILLIAM CHARLES WOLEJSZA

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE SQUIRE N. WILLIAMS, III, JUDGE
ACTION NO. 04-CI-01622

PATTIE MARIE WOLEJSZA AND
HON. SQUIRE N. WILLIAMS, III

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, KELLER, AND THOMPSON, JUDGES.

THOMPSON, JUDGE: William Charles Wolejsza appeals from the December 6, 2010, findings of fact and conclusions of law of the Franklin Circuit Court. That judgment addressed the division of property between William and Pattie Marie Wolejsza in their dissolution of marriage proceeding. We hold that the trial court did not abuse its discretion and affirm.

This case has a lengthy procedural history and is before this Court for the third time. The only issue currently before this Court is the distribution of marital property, including a residence, a retirement account and other personal property.

In 2006, the parties stipulated to a fair market value of \$242,500 for the marital residence. The residence was encumbered by two mortgages totaling \$71,488.93. It was agreed that the parties were entitled to an equal amount of the equity, and that William would pay to Pattie the sum of \$85,505.54 for her interest in the residence. It was also agreed that William would retire effective March 31, 2006, and would choose the option of receiving a one-time partial lump sum payment of \$181,614.40, with remaining monthly payments of \$2,793.99. The parties further agreed that the one-time lump sum and the monthly payments would be equally divided between the parties. Therefore, Pattie would receive a one-time payment of \$90,807.30 from the lump sum as well as monthly payments of \$1,397 during William's lifetime. Orders as to these agreements were entered on March 27, 2006 and March 31, 2006. William was ordered to tender complete payment to Pattie in the amount of \$176,312.84, representing her half interest in the residence and her half interest in the retirement lump sum, no later than May 1, 2006.

On March 31, 2006, William completed the necessary forms with his retirement administrator and chose a plan other than that to which he had agreed in the dissolution proceeding. Under the plan chosen, instead of receiving the \$181,614.40 lump sum and \$2,793.99 in monthly payments, William would

receive a lump sum of \$0 and \$5,044 in monthly payments. In response to William's actions, the trial court found him in contempt and ordered that he quitclaim his interest in the marital property to Pattie as compensation for the loss of the anticipated lump sum payment. William appealed.

In an unpublished opinion, this Court vacated the trial court's order and remanded the matter for further proceedings. *Wolejsza v. Wolejsza*, 2007 WL 2893994. It was held that William was entitled to an evidentiary due process hearing on the issue of contempt, as well as findings as to whether he willfully disobeyed the trial court's order. It was further held that the trial court abused its discretion by awarding Pattie \$171,011.07 more in marital property than William, contrary to the agreement that the parties would each receive one-half of the residential equity and one-half of the retirement benefits.

On remand, the trial court ordered that the marital residence would be listed at the agreed-to price. It was also ordered that William would remain in the residence and be responsible for all outstanding debts on the home. Thereafter, the trial court heard testimony from Pattie regarding her claim that she was entitled to a credit for mortgage payments she made during the period of time that the residence was quitclaimed to her. She also claimed credit for a portion of William's monthly retirement benefits which she had not received. Following a hearing, a new order was entered in which the trial court held that Pattie was entitled to \$6,178.09, the sums which she paid towards the residential mortgage and equity loan during the time it was quitclaimed to her, minus any amounts paid

to her by William for rent. It was also determined that she was entitled to \$6,582 in back-pay for her share of William's retirement payments. William filed a motion to alter, amend, or vacate, which was subsequently denied. William then appealed.

In another unpublished opinion, this Court held that the October 5, 2007, opinion of the Court required that the residential equity and retirement benefits be divided in just proportions, pursuant to KRS 403.190. *Wolejsza v. Wolejsza*, 2009 WL 2974223. It was also held that the Court could not determine if its instructions had been followed, because the trial court failed to enter findings of fact and conclusions of law in conformity with CR 52.01. Accordingly, the issue was remanded to the trial court "for entry of a judgment comporting with the requirements of KRS 403.190(1) and CR 52.01." *Id.*

Following this Court's order, the trial court issued its findings of fact and conclusions of law. While the appeal was pending, the marital residence sold for \$225,000. That sale produced a net profit of \$153,839.55, of which Pattie received \$98,602.50, and William received \$55,237.05. The amount that Pattie received included the \$85,505.54 which William had originally agreed to pay; the amount awarded to her by the trial court for her mortgage and equity line principal reductions; and the amount awarded for past due retirement payments. It was further concluded that William was not entitled to an offset for any contributions he made to the mortgage or for expenditures that he made in order to prepare the house for sale. The trial court justified this distribution by concluding that William

had “assumed the risk of the house depreciating when he agreed to pay Pattie a sum certain for her share.” The findings of fact also concluded that the parties had previously divided their personal property and such division had been ruled equitable. William filed a motion to alter, amend, or vacate, which was denied. This appeal followed.

The division of marital property is governed by KRS 403.190, which mandates that the trial court “shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors.” KRS 403.190(1). We review a trial court's distribution of marital property under an abuse of discretion standard. *Wilder v. Wilder*, 294 S.W.3d 449, 452 (Ky.App. 2009).

William’s first argument is that the trial court did not follow the mandates of this Court. In particular, William makes a generalized argument that the trial court did not divide all the marital property and did not enter findings as to all of the marital property. After a review of the record, we find no error.

William also takes issue with a number of the trial court’s findings of fact. In essence, William simply does not agree with the trial court’s findings and believes that they should support a different outcome. “Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” *Hunter v. Hunter*, 127 S.W.3d 656, 659 (Ky.App. 2003)(citation omitted); *see also* CR 52.01. “A factual finding is not clearly erroneous if it is supported by substantial

evidence.” *Id.* From our review of the record, we are satisfied that the trial court’s findings are supported by substantial evidence. We are further satisfied that the trial court did not abuse its discretion in the application of the facts to the division of marital property.

William next argues that the trial court erred by utilizing a valuation for the marital residence that was voided by the effects of two separate opinions of this Court. We disagree. The previous opinions of this Court did not address the valuation of the marital residence but addressed the division of the marital property and the trial court’s failure to enter supporting findings of fact. The value of the marital residence was agreed to by the parties and memorialized in the 2006 agreed order. Any failure of that agreement to come to fruition was brought on by William’s failure to perform his end of the agreement, which makes his current challenge to that amount disingenuous. It was agreed that William would purchase Pattie’s share of the marital residence within two months, but by failing to select the lump sum retirement option, he lacked the funds needed to purchase the house. Therefore, the house had to be sold in order for Pattie to obtain her share of the equity. In the two years before the house was sold, its fair market value decreased. Given the circumstances, we do not believe the trial court abused its discretion in holding William to the terms of his agreement. Accordingly, this argument is also without merit.

William’s next argument on appeal is that the trial court erred in assigning property interests without making the findings and conclusions required

by KRS 403.190 and CR 52.01. A review of the record demonstrates that the trial court made extensive findings and conclusions in the equitable distribution of the marital property; thus, the trial court did not abuse its discretion.

William's final argument is that the trial court erred by failing to assign him credit for the mortgage payments that reduced the outstanding principal balance on the marital residence. As previously noted, the parties agreed that William would purchase Pattie's share of the marital residence within two months. That agreement was made in 2006, but Pattie did not receive her share of the marital residence for more than two years after it was originally owed, and only then by order of the trial court. The trial court did not abuse its discretion by failing to credit William with payments he made during the time he resided alone in the residence. Any loss to William was due to his continued failure to abide by the agreement.

For the foregoing reasons, the December 6, 2010, findings of fact and conclusions of law of the Franklin Circuit Court are affirmed.

CAPERSON, JUDGE, CONCURS.

KELLER, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANT:

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