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Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000484-ME

WILLIAM JOHN MURPHY — APPELLANT

v.

APPEAL FROM BOURBON CIRCUIT COURT
HONORABLE TAMRA GORMLEY, JUDGE
ACTION NO. 08-CI-00198

ALISON THOMPSON MURPHY — APPELLEE

AND NO. 2011-CA-000800-ME

WILLIAM JOHN MURPHY — APPELLANT

v.

APPEAL FROM BOURBON CIRCUIT COURT
HONORABLE TAMRA GORMLEY, JUDGE
ACTION NO. 08-CI-00198

ALISON THOMPSON MURPHY AND
HON. M. SUZANNE VAN WERT — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: TAYLOR, CHIEF JUDGE; DIXON AND LAMBERT, JUDGES.

DIXON, JUDGE: Appellant, William John Murphy, appeals from the Bourbon Family Court's amended findings of fact, conclusions of law, and final order in this dissolution proceeding. Finding no error, we affirm.

William and Appellee, Alison Thompson Murphy, were married in February 2000. Two children were born during the marriage in 2000 and 2003. The parties separated in September 2008, and a final decree of dissolution was entered on January 23, 2011.

Prior to the parties' marriage, William was employed by Rockwell Farms. In 2001, William and his sister, Claire Murphy, incorporated the farm and William obtained an ownership interest in the newly formed Rockwell Sales Agency, Inc. Also during that same time period, William became a member of The Murphy Trust Fund, LLC. Subsequently, in May 2002, William sold his interest in both entities in separate sales to Claire for a total of $720,000.

William and Alison thereafter created ABSquared, LLC, a closely held corporation in which each party held a 50% interest. The parties used $700,000 of the proceeds from the sale of William's business interests as a down payment on real estate located at 323 and 411 Brentsville Road in Paris, Kentucky, and established an equine business known as Ballingswood Farm, Inc. The total

purchase price of the real estate was $1.2 million, and the parties obtained a mortgage for the additional $500,000.

The parties separated in May 2008 and William filed a petition for dissolution of marriage on June 11, 2008. Extensive pretrial litigation ensued. The family court held a final hearing on May 26 and June 14, 2010. In its subsequent findings of fact and conclusions of law, the family court first determined that the Brentsville Road property was marital and ordered such sold. The court then allocated the proceeds as part of the broader dissolution of ABSquared, LLC as follows: first to pay the costs of the sale and marital debts, then to reimburse Alison for a loan made from nonmarital inheritance money, with the remainder divided equally between the parties. Ballingswood Farms, Inc. was also ordered to be dissolved with proceeds applied first to business and marital debt. The family court then awarded William a 3% nonmarital interest in the assets, with the remaining funds divided equally between the parties.

Finally, the family court awarded the parties joint custody of the two minor children, with Alison designated as the primary residential parent. The court further determined that Alison was entitled to maintenance in the amount of $1,190 per month for a period of two years. Alison was also awarded attorney's fees of $42,426. Following the denial of William's motion for a new trial, to vacate the

judgment, and to stay the enforcement of the decree,[1] he appealed to this court as a matter of right.

In dissolution proceedings, appellate review is constrained by procedural rules, statutes, and caselaw. Reversal is only appropriate if the trial court has abused its considerable discretion. We must defer to the trial court's findings of fact unless they are clearly erroneous; i.e., not supported by credible evidence. Kentucky Rules of Civil Procedure (CR) 52.01; *Bennett v. Horton*, 592 S.W.2d 460 (Ky. 1979). The test for abuse of discretion is whether the trial court's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *McKinney v. McKinney*, 257 S.W.3d 130, 133 (Ky. App. 2008). A factual finding is not clearly erroneous if it is supported by substantial evidence. "Substantial evidence" is evidence of substance and relevant consequence sufficient to induce conviction in the minds of reasonable people. *Owens–Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998).

William first argues that the family court failed to properly allocate his nonmarital interest in the Brentsville Road real estate before dividing the marital property between the parties. William maintains that the majority of the money he was paid for his interest in Rockwell Sales Agency, Inc. was attributable to assets he owned prior to the parties' marriage and incorporation of the business.

[1] Following a hearing, the family court issued amended findings of fact, conclusions of law, and final order on April 12, 2011. However, the amended order did not alter the prior substantive rulings on any issues before this Court.

William concedes that since the $720,000 payment occurred after the marriage there was a marital component to such, but contends that the trial court failed to account for any of the value of his premarital interest in Rockwell Farms.

A trial court's ruling regarding the classification of marital property is subject to a *de novo* review because the classification of property as marital or nonmarital is based on the application of Kentucky Revised Statutes (KRS) 403.190 and, thus, is a question of law. *Heskett v. Heskett*, 245 S.W.3d 222, 226 (Ky. App. 2008); *Holman v. Holman*, 84 S.W.3d 903, 905 (Ky. 2002). However, we review a trial court's determinations of value and division of marital assets for abuse of discretion. *Armstrong v. Armstrong*, 34 S.W.3d 83, 87 (Ky. App. 2000); *Duncan v. Duncan*, 724 S.W.2d 231, 234–35 (Ky. App. 1987). "The property may very well have been divided or valued differently; however, how it actually was divided and valued [is] within the sound discretion of the trial court." *Cochran v. Cochran*, 746 S.W.2d 568, 570 (Ky. App. 1988) (citation omitted). As such, this Court, as an appellate court, exists to correct errors of law made by lower courts, not to provide the parties with a trial *de novo*.

KRS 403.190(3) creates a presumption that all property acquired during the marriage is marital property. However, KRS 403.190(2)(b), in pertinent part, exempts from the definition of marital property "[p]roperty acquired in exchange for property acquired before the marriage." Nevertheless, because all property acquired during the marriage is presumed marital, "[a] party claiming that

property, or an interest therein, acquired during the marriage is nonmarital bears the burden of proof." *Sexton v. Sexton*, 125 S.W.3d 258, 267 (Ky. 2004).

"[A]n item of property will often consist of both nonmarital and marital components, and when this occurs, a trial court must determine the parties' separate nonmarital and marital shares or interests in the property on the basis of the evidence before the court." *Travis v. Travis*, 59 S.W.3d 904, 909 (Ky. 2001). Numerous decisions of Kentucky Courts interpreting KRS 403.190 have led to the creation of the concept of "tracing," which requires a party to trace any nonmarital property owned before the marriage to a specific asset or assets currently owned by the parties. *Chenault v. Chenault*, 799 S.W.2d 575, 578 (Ky. 1990). With respect to the tracing requirements, the Kentucky Supreme Court has explained:

> While such precise requirements for nonmarital asset-tracing may be appropriate for skilled business persons who maintain comprehensive records of their financial affairs, such may not be appropriate for persons of lesser business skills or persons who are imprecise in their record-keeping abilities.

Id.

We agree with the family court that William failed to prove by clear and convincing evidence that the Brentsville Road property is traceable to nonmarital assets he acquired prior to the marriage. The Brentsville Road property was purchased after the parties' marriage using proceeds from the sales of William's business interests in Rockwell Sales Agency, Inc. and Murphy Trust Fund, LLC, both of which also occurred after the marriage. Not only did William

fail to demonstrate that he had legal interest in either business prior to the marriage, but neither business entity even existed prior to 2001. Certainly, Rockwell Farms had been in existence since 1996 but there was no evidence that William was anything other than an employee or that he acquired a legal ownership interest until 2001. Accordingly, we are of the opinion that William did not meet his burden of tracing the $720,000 to any nonmarital asset he acquired before the parties' marriage.

Nor do we find persuasive William's argument that Claire Murphy's intent in purchasing his business interests is relevant to the determination herein. Citing *Sexton v. Sexton*, 125 S.W.3d 258 (Ky. 2004), William argues that because Claire was the "source of the funds" for the purchase of the Brentsville Road property, her "donor's intent" that the money would be for his benefit controls the classification of property as nonmarital. We disagree.

It is apparent that William has confused two distinct types of nonmarital property: that acquired by gift or inheritance and that acquired in exchange for property owned by one party prior to the marriage. Claire Murphy had no "donor's intent" because she was not a donor within the context of *Sexton*. She was simply a purchaser of William's business interests. As the family court found, Claire purchased marital property from William during the marriage, the proceeds of which were then used to purchase the real estate at issue. Clearly, the family court was correct in determining that the Brentsville Road real estate was marital property subject to equitable division.

William next argues that the family court erred in awarding Alison maintenance under KRS 403.200 because she received sufficient property and was capable of finding appropriate employment. We disagree.

The amount and duration of maintenance is within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion. *Gentry v. Gentry*, 798 S.W.2d 928, 937 (Ky. 1990); *Newman v. Newman*, 597 S.W.2d 137, 140 (Ky. 1980). Under KRS 403.200, the trial court has dual responsibilities: one, to make relevant findings of fact; and two, to exercise its discretion in making a determination on maintenance in light of those facts. In order to reverse the trial court's decision, a reviewing court must find either that the findings of fact are clearly erroneous or that the trial court has abused its discretion. *Weldon v. Weldon*, 957 S.W.2d 283, 285 (Ky. App. 1997).

KRS 403.200(1) provides that a trial court may award maintenance only if it finds that the spouse seeking maintenance lacks sufficient property, including marital property apportioned to her, to provide for her reasonable needs, and the spouse is unable to support herself through appropriate employment. It is appropriate to award maintenance when a party is not able to support themselves in accordance with the same standard of living that they enjoyed during the marriage. *Powell v. Powell*, 107 S.W.3d 222, 224 (Ky. 2003); *Robbins v. Robbins*, 849 S.W.2d 571, 572 (Ky. App. 1993). The burden of proof is on the party seeking maintenance. *See Newman*, 597 S.W.2d 137.

The family court herein made specific findings of fact that Alison had not been employed outside of the family farm business during the majority of the marriage, that the marital estate provided her limited assets, and that she was the primary residential parent of both minor children. Based upon those findings, the family court determined that an award of $1,190 per month for a period of two years to allow Alison to "obtain stability" was warranted.

In his brief, William alleges that Alison's father purchased a portion of the parties' farm when it sold at auction, and thus Alison can immediately beginning boarding horses again on "her" farm. However, as Alison points out, no information regarding the purchase of the farm was before the family court at the time maintenance was awarded. In fact, the marital farm had not been sold at the time of the trial herein and no information has been certified in the record as to the identity of the purchaser(s).

This Court will not consider evidence outside the record in determining whether maintenance was justified. If William now believes that Alison's circumstances have changed such that the amount or duration of maintenance is unconscionable, his recourse is a motion to modify pursuant to KRS 403.250. Our review is limited to the evidence presented to the family court. Based upon consideration of all of the relevant factors, we cannot conclude that the amount and duration of maintenance was erroneous.

Finally, William contends that the family court erred by awarding Alison excessive attorneys fees. William argues that the family court failed to consider

the financial resources of both parties before awarding Alison $42,426.00. Again, we must disagree.

Under KRS 403.220, the trial court may award a party a reasonable amount of attorney fees and costs associated with a dissolution action. To justify such an award, there must exist a disparity in the parties' financial resources. *Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001). Additionally, "'obstructive tactics and conduct, which multipl[ies] the records and proceedings' are proper considerations 'justifying both the fact and the amount of the award.'" *Sexton*, 125 S.W.3d at 273. (Quoting *Gentry*, 798 S.W.2d at 938). However, the award of attorney fees and costs is not mandatory, and appellate review is limited to abuse of discretion. *Id.* An abuse of discretion occurs when the circuit court's decision was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

In its Findings of Fact and Conclusions of Law, the family court herein ruled:

> The Court has considered the financial resources of both parties as is required by KRS 403.220 before allocating the costs of litigation, including attorney's fees as requested by [Alison]. . . . [William] shall reimburse [Alison]her attorney's fees for the year 2009, in the amount of $42,426.00, for the necessity of having to continually return to the Court to address [William's] repeated defiance of this Court's Orders. Excepted from this amount is one-half attorney's fees of $2,150.00 (or $1,075.00) paid by [William] in June 2009, which fees were paid by company funds, which are marital.

Indeed, the record herein is voluminous and a cursory review substantiates that Alison incurred significant legal fees as a direct result of William's repeated and blatant violation of court orders. Considering the facts of this case, we are simply unable to conclude that the family court's award of attorney fees and costs was arbitrary, unreasonable, unfair, or unsupported by legal principles. Accordingly, it did not abuse its discretion.

For the reasons stated herein, the findings of fact, conclusions of law and final judgment of the Bourbon Family Court are affirmed.

TAYLOR, CHIEF JUDGE, CONCURS.

LAMBERT, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

LAMBERT, JUDGE, DISSENTING: Respectfully I dissent. Based on the holding and reasoning in *Chenault v. Chenault,* 799 S.W.2d 575, 578 (Ky. 1990), I would remand the above-styled action to the Bourbon Circuit Court for a new trial.

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NO BRIEF FOR APPELLEE
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