

RENDERED: NOVEMBER 2, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001686-MR

DAVID WADE

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE JEFFREY T. BURDETTE, JUDGE
ACTION NO. 04-CI-00119

DEBORAH WADE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MAZE AND NICKELL, JUDGES.

NICKELL, JUDGE: David Wade challenges a Qualified Domestic Relations Order (QDRO) entered by the Pulaski Circuit Court on July 21, 2011. He contends the QDRO must, but does not, mirror the Findings of Fact, Conclusions of Law

and Decree of Dissolution of Marriage¹ entered by the same court on March 14, 2007. We affirm due to non-preservation.

Briefly, David and Deborah Wade married in 1971 and separated in 2003. Both had accumulated pensions administered by the Kentucky Retirement Systems. David is a retired engineer with the state transportation department. Deborah is a retired school teacher who also receives social security disability benefits.

The sole issue before us is the soundness of the QDRO. According to David, the QDRO erroneously includes provisions that were not part of the original decree of dissolution and are unsupported by the record. We begin by noting David's brief fails to comply with CR² 76.12(c)(v) pertaining to the formatting of appellate briefs. That rule requires each appellant's brief to "contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner." *Id.* Upon a thorough reading of David's brief, we see no statement of how, when, or even if, the issue was argued to the trial court. Upon a cursory review of the record, we see no proof the soundness of the QDRO was ever argued to the trial court. David's brief recounts with some detail the pleadings filed in the trial court

¹ David previously challenged the trial court's valuation of each party's pension benefits. In *Wade v. Wade*, 2008 WL 5191436 (Dec. 12, 2008, unpublished), we affirmed the trial court's decree. The QDRO that is the subject of this appeal was entered after our opinion affirming the decree became final. The record, since entry of our Opinion in 2008, and our Supreme Court's denial of discretionary review in 2009, contains just 23 pages, none of which raise the argument made in this appeal.

² Kentucky Rules of Civil Procedure.

but is curiously devoid of any specificity when it comes to explaining how this particular claim reached this Court.

As a court of review, we consider only those issues that were first presented to and ruled upon by the trial court. *Skaggs v. Assad, By and Through Assad*, 712 S.W.2d 947, 950 (Ky. 1986) (“errors to be considered for appellate review must be precisely preserved and identified in the lower court.”). That not having occurred, there is nothing for us to review. Furthermore, David’s noncompliance with CR 76.12 is sufficient grounds for us to affirm the QDRO without in-depth review. *Elwell v. Stone*, 799 S.W.2d 46, 48 (Ky. App. 1990).

WHEREFORE, the QDRO entered by the Pulaski Circuit Court on July 21, 2011, is AFFIRMED.

ALL CONCUR.

BRIEF FOR APPELLANT:

Joel R. Smith
Jamestown, Kentucky

BRIEF FOR APPELLEE:

No brief filed.