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NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2012-CA-001988-MR

MARK EVAN SCOTT

APPELLANT

v. APPEAL FROM SCOTT CIRCUIT COURT  
HONORABLE TAMRA L. GORMLEY, JUDGE  
ACTION NO. 07-CI-00366

TINA SCOTT, NOW ROMANO

APPELLEE

OPINION  
AFFIRMING

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BEFORE: MAZE, NICKELL AND STUMBO, JUDGES.

MAZE, JUDGE: Mark Scott appeals the order of the Scott Circuit Court assigning marital assets and debts between himself and his former wife, Tina Romano. The trial court determined a lump sum workers' compensation award to be a marital asset and divided the total marital estate accordingly. Finding no error, we affirm.

The parties were married for twenty years; Scott was the primary wage-earner, and Romano was a homemaker. During the marriage, Scott was injured at work and received various monetary awards from different sources, including a lump sum workers' compensation payment in the amount of \$250,000; a settlement payment from his employer in the amount of \$35,000; and a 401(k) disbursement, the amount of which is not clear from the record. Some of these funds were combined with monies Romano inherited and invested into the parties' marital homes. The parties also purchased an annuity with the award.

Prior to the dissolution, the parties sold one of the marital properties for approximately \$240,000 and allocated the proceeds among themselves. Additionally, Scott withdrew funds from the annuity, an action for which he later failed to provide an accounting to the trial court. The parties also accrued some debt following a determination that Scott's employer overpaid on his workers' compensation benefits.

The trial court ruled that the workers' compensation payment, annuity, and overpayment debt were marital, and that Romano's contribution of her inherited funds to the marital residence was non-marital property. In addition to recognizing the amounts that the parties had previously allocated among themselves, the trial court awarded Romano \$80,000 from an escrow account representing her non-marital share and \$50,253.22 from the annuity as her share of the marital estate. Scott was apportioned the overpayment debt and subsequently filed this appeal.

Scott claims the trial court mistakenly characterized the entire workers' compensation lump sum award as marital property. The award was calculated based on him receiving \$217.97 per week for a period of about 21 years. Scott argues that the award should have been deemed non-marital property to the extent it could have been prorated to the remaining years of life expectancy following the dissolution of the marriage.

Kentucky Revised Statute (KRS) 403.190(2) provides guidance as to whether property received during the marriage constitutes marital property.

(2) For the purpose of this chapter, "marital property" means all property acquired by either spouse subsequent to the marriage except:

- (a) Property acquired by gift, bequest, devise, or descent;
- (b) Property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent;
- (c) Property acquired by a spouse after a decree of legal separation;
- (d) Property excluded by valid agreement of the parties; and
- (e) The increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during the marriage.

The case law is clear; lump sum workers' compensation disbursements received during the marriage are marital property. "[A]ll property is to be considered marital property unless it falls within one of the enumerated exceptions. There is no exception for property acquired by way of a workers' compensation settlement." *Quiggins v. Quiggins*, 637 S.W.2d 666, 667 (Ky. App. 1982). "Though an award of workers' compensation may be intended to replace

lost wages which otherwise would have been earned in the future, it nevertheless is money in hand and it is not within the exceptions to KRS 403.190, which is the controlling statute.” *Johnson v. Johnson*, 638 S.W.2d 703, 704 (Ky. 1982).

The trial court did not err when it arrived at the same conclusion. The parties agreed at trial that the lump sum workers’ compensation award was disbursed during the marriage. No further findings or analysis were necessary for the trial court to determine the lump sum award to be marital property.

Scott cites *Weakley v. Weakley*, 731 S.W.2d 243 (Ky. 1987), as supporting the proposition that the trial court should have deemed a prorated amount of the award as non-marital. But *Weakley* specifically distinguished workers’ compensation disbursements from amounts recovered in tort actions, and the analysis from that case applies only to tort damages.

Scott also argues that the trial court’s division of marital property was unjust. “The trial court’s findings with respect to the division of marital property will not be disturbed unless shown to be clearly erroneous.” *Quiggins*, 637 S.W.2d at 669. Hence, we review for clear error.

In a dissolution action, the trial court must “divide the marital property without regard to marital misconduct in just proportions considering all relevant factors,” including those outlined in KRS 403.190. *Herron v. Herron*, 573 S.W.2d 342, 344 (Ky. 1978). Here, the trial court awarded Romano escrowed funds in the amount of \$80,000 and an annuity in the amount of \$50,253.22, while requiring Scott to assume \$8,000 in debt for overpayment of workers’

compensation funds. The trial court found, based Scott's own stipulation, that Romano had contributed \$80,000 of non-marital funds towards one of the marital residences. The award of the escrow account funds represented those non-marital contributions.

Additionally, the trial court ruled that the annuity was Romano's share of the marital estate, and that a just division would require Scott to be responsible for the overpayment debt. This division was based on evidence of Romano's contributions as a homemaker, her ongoing responsibilities regarding the parties' children, and the impact of Scott's health on his ability to provide financially for Romano and their children in the future. Having crafted its ruling according to this substantial evidence, the trial court did not commit clear error in its division of marital property.

The judgment of the trial court is affirmed.

ALL CONCUR.

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