

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001447-MR

WILLIAM MORTON FRALEY

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE TIMOTHY NEIL PHILPOT, JUDGE
ACTION NO. 12-CI-01867

VICKI LEE MAXEY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

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

TAYLOR, JUDGE: William Morton Fraley brings this *pro se* appeal from a May 15, 2013, decree of dissolution and order, and a July 29, 2013, amended order, of the Fayette Circuit Court, Family Court Division. We affirm.

William and Vicki Lee Maxey were married in 2002 but later separated in 2005. A petition for dissolution of marriage was filed by William in 2012. In the family court's original findings of fact tendered May 15, 2013, dividing the parties' assets, the family court found that Vicki possessed two defined contribution retirement plans prior to the marriage – a Fidelity account and a TIAA-CREF account. The family court concluded the values of the Fidelity and TIAA-CREF accounts to be \$9,105 and \$198,000, respectively. The family court initially held that the value of the TIAA-CREF account had increased in value by \$68,000 and awarded William one-half, or \$34,000. The Fidelity account had also grown \$4,564 in value during the marriage and the family court initially awarded William one-half, or \$2,282.

Vicki then filed a motion to alter, amend or vacate the findings of fact, asserting various errors in the court's allocation of the retirement accounts. Vicki argued that the family court had failed to consider KRS 403.190(2)(e) in allocating the retirement accounts on the premise that most of the increase in value of the nonmarital portion of the accounts did not result from the efforts of the parties during the marriage and thus should have been excluded as marital property. William did not contest the substance of the motion, but rather argued it was untimely. On July 29, 2013, the court amended its findings of fact and conclusions of law regarding the retirement accounts, awarding William a total of \$1,563.66 as

his share of the marital contribution to Vicki's retirement accounts.¹ This appeal follows.

In his *pro se* brief, William argues that he is entitled to \$36,282 as his marital share of the Fidelity and TIAA-CREF retirement accounts as originally concluded by the family court. William fails to cite this Court to any statutory or common law to support his argument. His argument merely consists of four sentences, and he totally ignores the application of KRS 403.190(2)(e) and the family court's analysis regarding the same.

Upon review, we believe the family court accurately determined the marital and nonmarital shares of the retirement accounts and then properly divided the marital share equally between the parties. KRS 403.190; *Hunter v. Hunter*, 127 S.W.3d 656 (Ky. App. 2003). This Court will not set aside the findings of the family court unless they are clearly erroneous and due regard shall be given to the opportunity of the family court to judge the credibility of the witnesses. CR 52.01. In allocating the marital and nonmarital portions, we agree with the family court that William was only entitled to one-half of the total marital contributions and any appreciation in value of the marital portion during the marriage. The nonmarital contributions and any increase in value of those contributions not attributable to the efforts of the parties during the marriage were correctly assigned to Vicki.

¹ The family court concluded that \$2,062.75 represented the total marital contributions to these accounts and that \$1,064.57 represented the increase in value of said marital contributions during the marriage. Thus, the family court determined that \$3,127.32 was the marital portion of the accounts and awarded William Morton Fraley one-half of such marital portions (\$1,563.66) as his marital share of the Fidelity and TIAA-CREF retirement accounts.

KRS 403.190(2)(e). Accordingly, we hold that the family court did not err by awarding William \$1,563.66 as his marital share of the Fidelity and TIAA-CREF retirement accounts.

For the foregoing reasons, the decree of dissolution of marriage and order of the Fayette Circuit Court, Family Court Division, is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

William Morton Fraley, *Pro Se*
Lexington, Kentucky

BRIEF FOR APPELLEE:

Brent Cox
Lexington, Kentucky