

RENDERED: OCTOBER 30, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-002153-MR

TAMMY Y. MCKINNEY TRUDE

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE A. BAILEY TAYLOR, SPECIAL JUDGE
ACTION NO. 13-CI-50007

WILLIAM TRUDE, JR.

APPELLEE

OPINION
REMANDING

** ** * * * * *

BEFORE: COMBS, KRAMER AND STUMBO, JUDGES.

KRAMER, JUDGE: Tammy Y. McKinney Trude appeals from the findings of fact and conclusions of law entered by the Madison Circuit Court in this dissolution of marriage action. Because the trial court failed to make adequate findings as required by Kentucky Rules of Civil Procedure (CR) 52.01 and Kentucky Revised Statutes (KRS) 403.190, we remand for further proceedings.

Tammy and William Trude, Jr. (Bill) were married in December 2005. At that time, Tammy owned a house and lot located on Forest Hills Drive in Irvine, Kentucky. She owned the home free and clear, and had no indebtedness of any kind. Bill also owned a home which he sold after the marriage, receiving approximately \$30,000 in proceeds. These funds were used to pay Bill's credit card debts.

Shortly after getting married, the parties bought a home together on Dry Branch Road, in Irvine. They obtained a \$133,000 loan secured by Tammy's Forest Hills property. Of that loan, \$95,000 was used as half the purchase price of the Dry Branch residence. The parties dispute how the remainder of that loan was spent. Both parties signed the notes for the mortgages on each residence. In 2012, they refinanced the existing mortgage on the Dry Branch residence and increased the debt to the sum of \$162,000.

In 2006, Bill lost his campaign for re-election as a circuit judge. He stopped working in the legal profession until 2009, when he reopened his private practice. According to Tammy, who had resigned her job as a flight attendant to assist with Bill's campaign, she had to hold multiple jobs during this period and sell much of her nonmarital property to keep the marital finances afloat. When Bill resumed work as an attorney in 2009, he was able to earn over \$100,000 per year. He ran unsuccessfully for election again in 2010.

The couple separated in November 2012, and Bill petitioned for a decree of dissolution in January 2013. At that time, Tammy was fifty-five years of age, and Bill was sixty years of age.

Following a hearing, the trial court awarded the Dry Branch Road home with its associated debt to Bill and ordered him to pay Tammy \$32,000 in order to “equalize the division of this marital asset between the parties.” Tammy was awarded the home at Forest Hills Drive with its associated debt. Apart from referring to the Dry Branch home as a marital asset, the trial court order does not characterize any of the property or debt as marital or nonmarital, nor does it assign a value to the property or the debt. Bill was awarded a wedding ring, and the trial court terminated Tammy’s monthly maintenance of \$2,500, which had been paid pursuant to a temporary order for the preceding five months. The order states that the maintenance obligation was considered by the court to be a setoff to any of Tammy’s other claims.

On appeal, Tammy argues that the division of the marital debt was inequitable, that the trial court abused its discretion in awarding Bill the wedding ring and in denying her request for attorney fees. She also argues that the trial court erred in deeming the award of temporary maintenance an offset against her other claims.

We are hampered in our review of these issues by the paucity of the trial court’s findings of fact. KRS 403.190(3) creates a presumption that all property acquired after the marriage is marital property. *See Sexton v. Sexton*, 125

S.W.3d 258, 266 (Ky. 2004) (citations and quotation marks omitted). “A party claiming that property acquired during the marriage is other than marital property, bears the burden of proof.” *Terwilliger v. Terwilliger*, 64 S.W.3d 816, 820 (Ky. 2002). When disposing of property in a dissolution of marriage action, the trial court is required by KRS 403.190 to follow a three-step process: (1) the trial court first characterizes each item of property as marital or nonmarital; (2) the trial court then assigns each party’s nonmarital property to that party; and (3) finally, the trial court equitably divides the marital property between the parties. *See Travis v. Travis*, 59 S.W.3d 904, 908-09 (Ky. 2001) (citations and footnotes omitted).

A similar procedure is required to assign debt. KRS 403.190 “does not create a presumption in regard to debt[.] . . . The burden of proving that a debt is marital is upon the party that incurred it and now claims it is marital.” *Rice v. Rice*, 336 S.W.3d 66, 68-69 (Ky. 2011) (internal citations omitted). Four factors form the basis for determining the nature of a debt: (1) Was the debt incurred for the purchase of marital property? (2) Was the debt necessary to maintain and support the family? (3) What was the extent and participation of each party in incurring or benefitting from the debt? and (4) What are the economic circumstances of the parties after divorce to allow for payment of the debt? *Id.*

Beyond describing the Dry Branch property as a marital asset, the trial court made no findings characterizing the property and the debts of the parties as either marital or nonmarital, nor did the court explain the legal and equitable principles underlying its division of the property. Such findings and conclusions

are required by CR 52.01, which states, “In all actions tried upon the facts without a jury . . . , the court shall find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment[.]”

Bill argues that Tammy has waived her right to appeal issues concerning the division of assets and debts, maintenance and attorney fees because she did not make a motion pursuant to CR 52.04, which requires a party to object to the lack of a finding of fact in order to preserve the issue for review. The Kentucky Supreme Court has recently addressed the interplay between these two Rules, and concluded as follows:

To the extent possible, this Court should read the rules in harmony, rather than in conflict, to avoid rendering any of the language surplusage. This can be done by reading CR 52.01 as creating a general duty for the trial court to find facts, and 52.04 as applying only after the court has complied with its general duty. CR 52.01 requires that the judge engage in at least a good faith effort at fact-finding and that the found facts be included in a written order. Failure to do so allows an appellate court to remand the case for findings, even where the complaining party failed to bring the lack of specific findings to the trial court’s attention. Thus, CR 52.04 does not conflict with this reading of CR 52.01, because CR 52.04 only bars reversal or remand “because of the failure of the trial court to make a finding of fact on an issue essential to the judgment” when a litigant fails to bring it to the court’s attention by a written request for a finding.

Anderson v. Johnson, 350 S.W.3d 453, 458-59 (Ky. 2011).

Our review of the record and the parties’ briefs indicates that this case involves complicated and disputed issues of property and debt. Under the

circumstances, we are compelled to remand because the court failed to comply with its “general duty” to make findings of fact, which would render any present review of its disposition of the property purely speculative on our part.

For the foregoing reasons, this case is remanded to the Madison Circuit Court with directions to make additional findings of fact and conclusions of law.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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