

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000405-MR

DAVID MARK BREEDING

APPELLANT

v. APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT, III, JUDGE
ACTION NO. 11-CI-00105

DONNA SUE BREEDING

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: David Mark Breeding brings this appeal from July 2, 2013, and February 18, 2014, orders of the Letcher Circuit Court dividing marital assets and assigning debts. We affirm.

David and Donna Sue Breeding were married August 10, 1986, and separated on or about January 1, 2011. Donna filed a Verified Petition for

Dissolution of Marriage in the Letcher Circuit Court on March 11, 2011. By partial decree of dissolution of marriage entered August 2, 2011, the parties' marriage was dissolved, and all other issues were reserved for future adjudication.¹

The circuit court referred the matter to the Domestic Relations Commissioner (DRC) for an evidentiary hearing. Following the hearing, the DRC filed recommended findings of fact, conclusions of law, and final decree on December 7, 2012. Therein, the DRC recommended that David be awarded the unencumbered marital residence and that Donna be awarded her retirement benefits and Individual Retirement Account (IRA). Relevant to this appeal, the DRC further recommended that Donna pay David: (1) \$11,000 to equalize the division of marital property, (2) \$300 per month as temporary maintenance, and (3) up to \$1,500 in attorney's fees. Donna subsequently filed exceptions to the DRC's recommendation on these three issues. Upon conducting a hearing on the exceptions, by order entered July 2, 2013, the circuit court sustained the exceptions as concerns the equalization payment and payment of maintenance by Donna. The exception regarding the payment of David's attorney's fees by Donna was overruled.

On February 18, 2014, the circuit court entered a final order adopting the DRC's findings and recommendations as modified by the court's order entered July 2, 2013. This appeal follows.

¹ David Mark Breeding and Donna Sue Breeding had one child. The only child was emancipated before the filing of the petition for a decree of dissolution of marriage.

David initially contends the circuit court erred by not requiring Donna to pay \$11,000 to equalize the division of marital property. David argues that Donna was awarded approximately \$85,500 in marital property while he was only awarded approximately \$65,850 in marital property.

Kentucky Revised Statutes (KRS) 403.190 governs the division of marital property, and it provides, in relevant part:

- (1) In a proceeding for dissolution of the marriage . . . the court shall assign each spouse's property to him. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including:
 - (a) Contribution of each spouse to acquisition of the marital property . . . ;
 - (b) Value of the property set apart to each spouse;
 - (c) Duration of the marriage; and
 - (d) Economic circumstances of each spouse when the division of property is to become effective

KRS 403.190(1). Pursuant to KRS 403.190(1), the circuit court must equitably divide marital property in just proportions after considering all relevant factors. 15 Louise E. Graham & James E. Keller, *Kentucky Practice – Domestic Relations Law* §15.4 (2d ed. 1997). And, it should be noted that an equitable division is not necessarily an equal division. *Russell v. Russell*, 878 S.W.2d 24 (Ky. App. 1994). The circuit court also possesses wide discretion in its division of marital property, and the court's decision will not be disturbed on appeal absent an abuse of that discretion. *Id.*

In this case, David was awarded the parties' marital residence. The residence was unencumbered and valued at \$55,000, excluding the real property upon which the residence was situated. The residence was apparently located on David's family farm. Donna was awarded her retirement benefits and an IRA account valued at \$72,000. Each party was awarded a motor vehicle and other items of personal property.

From the evidence introduced, it is apparent that the circuit court had limited flexibility in dividing the parties' marital assets as the only significant assets were the marital home and Donna's retirement benefits and IRA. Although the division was not equal, the record reflects that the marital property was divided in "just proportions" considering the specific circumstances of this case. Consequently, we cannot say that the circuit court abused its discretion failing to award David an \$11,000 property equalization payment.

David next maintains that the circuit court erred by not awarding him maintenance. David asserts he lacks sufficient property to provide for his reasonable needs and is unable to support himself through employment due to his poor health.

KRS 403.200 governs an award of maintenance in a dissolution proceeding. KRS 403.200(1) specifically provides that the court may award maintenance only upon a finding that the spouse seeking maintenance:

- (a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs;
- and

(b) Is unable to support himself through appropriate employment

KRS 403.200(1). Additionally, “the court certainly must also consider the ability of the spouse from whom maintenance is sought to meet his or her own needs while at the same time meeting the needs of the spouse seeking maintenance.”

Dotson v. Dotson, 864 S.W.2d 900, 903 (Ky. 1993). An award of maintenance will only be disturbed on appeal where “the findings of fact are clearly erroneous or that the trial court has abused its discretion.” *Perrine v. Christine*, 833 S.W.2d 825, 826 (Ky. 1992).

During the marriage, David had been self-employed doing carpentry and HVAC work. But, shortly after the parties’ separated, David suffered a stroke and was unable to work. At the time of the hearing, David was awaiting receipt of social security disability benefits. Donna was employed as an office manager for a medical provider and was earning approximately \$30,000 per year.

Although David’s financial situation was meager, the circuit court believed that maintenance was improper because Donna would be unable to meet her reasonable needs upon paying maintenance to David. *See Dotson*, 864 S.W.2d 900. Donna was employed but only earned approximately \$30,000 per year, and she was not awarded a residence. The only substantial asset Donna was awarded was her retirement benefits and IRA. Donna also demonstrated that her monthly expenses equaled her monthly income. Considering Donna’s tenuous financial

situation, we cannot conclude that the circuit court abused its discretion by denying David maintenance. *See Dotson*, 864 S.W.2d 900.

For the foregoing reasons, the July 2, 2013, and the February 18, 2014, orders of the Letcher Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gene Smallwood, Jr.
Whitesburg, Kentucky

BRIEF FOR APPELLEE:

James W. Craft, II
Whitesburg, Kentucky