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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000590-MR

DANIEL J. PAISLEY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 13-CI-01952

ANNE M. TALLEY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: CLAYTON, KRAMER AND STUMBO, JUDGES.

STUMBO, JUDGE: Daniel J. Paisley appeals from a Fayette Circuit Court order which directed the net proceeds from the sale of a residence he owned as a joint tenant with right of survivorship with Anne M. Talley to be divided equally between them. Because under Kentucky law Daniel is entitled to proportionate

reimbursement for the payment of liens and other encumbrances on the property, we reverse and remand.

Daniel and Anne were never married but cohabitated for fifteen years. In 2004, they purchased a tract of land on Lakewood Drive in Lexington in order to build a residence together. At that time, Anne was married to Roger Talley. Daniel was previously divorced and owned a residence in his own name. Anne also owned a residence, which she sold. The proceeds from that sale, \$120,000, were used as the down payment for the Lakewood Drive property. The parties initially placed the property solely in Daniel's name because Anne was still legally married. Anne and Roger Talley divorced on October 17, 2006. On November 1, 2006, the Lakewood Drive residence was placed in the parties' joint names with right of survivorship. At that point, according to Daniel, he had paid \$109,942 in construction and loan costs, and Anne had paid the initial \$120,000 down payment on the property.

Also in November of 2006, two mortgages were taken out on the property, one in the amount of \$225,000 and the other \$250,000. Ann and Daniel were both named on the mortgages and the notes.

Daniel sold his residence in July of 2007, and used \$200,000 of the proceeds to pay down the \$250,000 mortgage on the Lakewood residence. In December of 2009, he paid off the balance of that mortgage. He also paid \$19,119 down on the \$225,000 mortgage, and \$3,052 to close a construction loan in November of 2006.

From 2007 until March of 2014, Daniel made all the mortgage payments in full. According to Daniel, he never demanded payment from Anne because he believed she would have the funds to contribute her share to the residence after her former husband paid her \$350,000 as part of their divorce settlement.

Anne and Daniels' relationship eventually ended. Daniel moved out of the Lakewood residence in January of 2013, although he continued to make the mortgage and insurance payments. He filed a complaint several months later, seeking to sell the residence and divide the equity in proportion to the parties' contributions, and specifying that Anne should be solely responsible for the expenses associated with the house while she resided there alone.

The house ultimately sold for \$715,000. The total equity in the residence was \$477,397. Daniel proposed that these proceeds be divided to reflect the fact that he had contributed more to the residence; by his calculation, Anne had contributed \$120,000 and he had contributed \$383,921. He proposed to receive \$369,500 from the proceeds, and for Anne to receive \$106,500.

Following a bench trial, the court found that the parties did not have an agreement about what would happen to the property if their relationship ended, and ordered the equity in the residence to be divided equally between them. This appeal by Daniel followed.

In an appeal from a bench trial without a jury, the trial court's findings of fact "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Kentucky Rules of Civil Procedure (CR) 52.01; *Goshorn v. Wilson*, 372 S.W.3d 436, 439 (Ky. App. 2012). Factual findings are not considered clearly erroneous if they are "supported by substantial evidence." *Gosney v. Glenn*, 163 S.W.3d 894, 898 (Ky. App. 2005) (citations omitted). Appellate review of legal determinations and conclusions from a bench trial is *de novo*. *Id.* (citations omitted).

Daniel argues that it was he and Anne's original intent to make equal contributions to the residence, and that there is no basis in law or fact for the trial court's assumption that they intended to divide the proceeds equally in the event they did not, as planned, make equal contributions. He contends that the trial court should have considered their relative contributions when dividing the proceeds, and that its approach has resulted in an inequitable apportionment of the funds, with Anne receiving \$118,698 more than she contributed, and Daniel receiving \$145,222 less than he contributed.

The trial court's finding that the couple had no agreement about what would happen to the property if their relationship ended is supported by substantial evidence in the form of the parties' own testimony, and consequently will not be disturbed on appeal. Although Daniel has cited some statements by the trial court which suggest that it may at some point during the trial have thought that the parties did have such an agreement, these comments are not relevant in light of its

final order. Regardless of the oral statements of the court, a court only speaks through its written orders. *Kindred Nursing Centers Limited Partnership v. Sloan*, 329 S.W.3d 347, 349 (Ky. App. 2010).

Daniel's primary substantive argument, that "contribution" should be considered when dividing jointly-titled property, has some basis in Kentucky law.

We set forth the definition of a joint tenancy:

A joint tenancy, as distinguished from the tenancy by the entirety, is an estate held by two or more people who (in the case where the estate is held by only two) are not husband and wife. Each is jointly entitled to the enjoyment of the estate so long as all live; however, the interest of a joint tenant, at his or her death, passes to the survivor.

Sanderson v. Saxon, 834 S.W.2d 676, 678 (Ky. 1992) (citations omitted).

[J]oint tenants . . . may deal with the property between them as they wish, making decisions as individuals, and not as one entity. Indeed, if one joint tenant decides to convey his or her interest in the property, the joint tenancy is destroyed. Each tenant may deal with the property independently of the other. Essentially, in a tenancy by the entirety, the feature distinguishing it from joint tenancy is that the survivor of a joint tenancy by the entirety takes at the death of the other not by virtue of the death, but because by law each was viewed to own the entire estate from the time of its creation. In a joint tenancy, however, each is merely entitled to enjoyment of the estate with an interest passing at death to the survivor.

Newton v. Newton, 365 S.W.3d 565, 569-70 (Ky. App. 2011) (citing *Sanderson v. Saxon*, 834 S.W.2d 676 (Ky. 1992)).

Under Kentucky law, joint tenants are entitled to proportionate reimbursement for the payment of liens and other encumbrances on the property.

“It is a general rule that one joint tenant is entitled to contribution from his cotenant for liens and incumbrances paid by him, including mortgages, taxes, and ground rent.” *Larmon v. Larmon*, 173 Ky. 477, 191 S.W. 110, 113 (1917) (citations omitted).

[O]ne who pays a joint debt is entitled to contribution from his co-obligors and . . . a tenant who relieves common property from a lien is subrogated to the lien on his cotenant’s share for the excess he has paid over his proportionate share. We think this rule applies with equal force to a joint tenancy with survivorship.

Petty v. Petty, 220 Ky. 569, 295 S.W. 863, 864 (1927).

An agreement between the joint tenants for this type of reimbursement is not required:

Equitable contribution between co-owners of undivided interests in real estate has often been recognized and enforced, even without a contract between the parties to that effect. If one such joint owner at his own expense discharges a lien upon the joint property, or is compelled, in order to protect his own interest therein, to pay out his own money to acquire an outstanding title for the common benefit, he may enforce contribution in equity from the other joint owners in proportion to their interests.

Bishop v. Wolford, 218 Ky. 657, 291 S.W. 1049, 1052 (1927) (citations omitted).

In light of these cases, we reverse the order of the Fayette Circuit Court. The case is remanded for further proceedings to determine the amount to

which Daniel is entitled to be proportionately reimbursed by Anne for payments he made during the course of their joint tenancy.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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