

RENDERED: NOVEMBER 4, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000755-MR

PEGGY S. YATES

APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE JEFFREY L. PRESTON, JUDGE
ACTION NO. 14-CI-00615

DENVER D. YATES

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, D. LAMBERT AND VANMETER, JUDGES.

VANMETER, JUDGE: In a marital dissolution action, a trial court is to divide the parties' marital assets in just proportions, although an equal division is not required. In this case, we must decide whether the Greenup Family Court abused its discretion in awarding the parties' bank accounts to the spouse in whose name the account was titled. We hold that the trial court did not abuse its discretion, and therefore affirm the trial court's division of assets.

I. FACTUAL BACKGROUND.

Denver and Peggy Yates were married in 1990. They separated in December 2014. Denver, age 68, was placed in a nursing home following the separation. He suffers from Alzheimer's disease and related infirmities. The trial court found that Denver pays \$140 per day to live in the nursing home and that Denver's prescription costs for January 2015 were \$2,700.

The parties' marital assets comprised their marital residence, valued at \$89,000, two automobiles, Denver's railroad pension, and the parties' respective bank accounts. The trial court ordered the future sale of the residence, at such time Peggy, age 56, receives Social Security Disability benefits or spousal railroad retirement benefits, whichever is sooner. The proceeds are to be split evenly between the parties. The trial court further awarded Peggy both automobiles. The only source of controversy was the trial court's decision to award Denver and Peggy the balance of their respective bank accounts.

At the time of the hearing, Peggy's accounts totaled \$17,986.96 and Denver's accounts held \$59,040.81. In her motion to alter, amend or vacate the marital distribution, Peggy argued the trial court abused its discretion by not awarding her more money from Denver's account. The trial court overruled Peggy's motion summarily, and this appeal followed.

II. STANDARD OF REVIEW.

The standard of review of a trial court's division of marital property is whether the court abused its discretion. *Herron v. Herron*, 573 S.W.2d 342, 344 (Ky. 1978). "The test for abuse of discretion is whether the trial court's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Smith v. Smith*, 450 S.W.3d 729, 737 (Ky. App. 2014) (internal quotations and citation omitted). By statute, the court is to divide marital property in just proportions, considering all relevant factors. KRS¹ 403.190(1). The court is not required to divide the marital assets equally. *Russell v. Russell*, 878 S.W.2d 24, 25 (Ky. App. 1994).

III. DISCUSSION.

On appeal, Peggy once again argues the trial court abused its discretion in awarding Denver the full amount from his bank accounts. She specifically contends the trial court should have explained why Denver "receive[d] such a windfall from the joint assets of the parties." For the following reasons, we disagree.

The trial court found that Denver's nursing home expenses exceed his monthly income by approximately \$1,300 per month.² The court noted testimony

¹ Kentucky Revised Statutes.

² Based on the family court's finding that the nursing home costs \$140 per day, and assuming a 30-day month, Denver's nursing home expenses, **exclusive** of medication costs, equal approximately \$4,200 per month ($\$140 \times 30 = \$4,200$). This is roughly \$1,300 more than Denver's monthly income, which according to the family court was \$2,892.

that Denver's medication for January 2015, two months prior to the hearing, cost \$2,700. On its face, the division of the bank accounts alone, approximately 77% to Denver and 23% to Peggy, may appear lopsided.³ Peggy's argument, however, ignores that she received two automobiles of indeterminate value, is entitled to live in the marital residence without paying rent until she receives either social security disability or spousal retirement benefits, and will receive one-half of the value of the marital residence, \$44,500, when it sells. After including the residence's value in the value received by each spouse, the marital property division ratio becomes 62% to Denver and 38% to Peggy.⁴ In its conclusions of law denying Peggy maintenance, the trial court further noted Denver "does not have the ability to pay any maintenance. The Court has taken into consideration the amount of money that [Denver] has to spend in order to live in a nursing home and finds he does not have the resources, after paying expenses, to pay any monies to [Peggy]." We hold that under the circumstances of this case, the trial court sufficiently articulated its decision as regards the division of marital property, KRS 403.190(1), and did not abuse its discretion.

We therefore affirm the decision of the Greenup Family Court.

ACREE, JUDGE, CONCURS.

³ Denver's accounts, \$59,040.81, plus Peggy's accounts, \$17,986.96 equals \$77,027.77. Denver's accounts are 76.6% of the total, and Peggy's accounts are 23.4% of the total.

⁴ Denver's accounts plus one-half value of house: $\$59,040.81 + \$44,500 = \$103,540.81$.
Peggy's accounts plus one-half value of house: $\$17,986.96 + \$44,500 = \$62,486.96$.
Total value subject to division: $\$103,540.81 + \$62,486.96 = \$166,027.77$.
Denver's share is 62.4% of the total; Peggy's share is 37.6% of the total.

D. LAMBERT, JUDGE, DISSENTS BUT WILL NOT FILE A

SEPARATE OPINION.

BRIEFS FOR APPELLANT:

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