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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000913-MR

EDWIN DEAN DIALS

APPELLANT

v. APPEAL FROM KNOTT CIRCUIT COURT
HONORABLE DWIGHT S. MARSHALL, JUDGE
ACTION NO. 12-CI-00112

SANDRA DIALS

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: JONES, MAZE, AND NICKELL, JUDGES.

JONES, JUDGE: This is a dissolution of marriage action. The Appellant, Edwin Dean Dials, asks us to review the trial court's judgment dividing the parties' marital property. He asserts that we should vacate the order because it is not supported by appropriate factual findings. Having reviewed the record in accordance with the applicable legal authority, we affirm.

I. BACKGROUND

Edwin and Sandra Dials were married on April 12, 1989. They separated in March of 2011. Thereafter, on April 30, 2012, Sandra filed a petition for dissolution of marriage in the Knox Circuit Court. In her petition, Sandra requested the trial court to grant the parties a decree of dissolution of marriage, equitably divide the martial property, allocate marital debt, and restore non-marital property.

In July of 2013, the parties participated in mediation for the purpose of resolving the issues concerning property distribution. The mediation was not successful. On November 5, 2013, the trial court entered an order dissolving the parties' marriage; the order reserved all issues related to the parties' marital and non-marital property for future determination.

On August 11, 2014, the trial court conducted a hearing for the purpose of receiving evidence related the parties' property. The trial court's minute order indicates both Sandra and Edwin testified at the hearing.¹ Various exhibits were also introduced as evidence at the hearing including real property deeds, personal property inventory lists, and documents pertaining to the parties' debts.

¹While we have been provided with a complete copy of the filings and orders, we have not been provided with either a written or video transcript of the hearing conducted before the trial court. "Although the trial court clerk is responsible for preparing the record, the appellant has the legal responsibility to see that the record is prepared and certified by the clerk within the prescribed time period." Kentucky Rules of Civil Procedure ("CR") 75.07, Comments. "When the complete record is not before the appellate court, that court must assume that the omitted record supports the decision of the trial court." *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985).

On May 11, 2015, the trial court entered its findings of fact, conclusions of law, and order for distribution of property. Based on the testimony of the parties at the hearing, the trial court found that the parties acquired the following property during their marriage: 1) Toyota Camry; 2) Jeep Cherokee; 3) Ford Truck; 4) Ford Explorer; 5) pontoon boat and trailer; 6) a portion of real property and the marital home used to secure a loan from People's Bank and Trust of Hazard; 7) an "enormous amount" of personal property located in a storage building, including jet skis, movers for the jet skis, unused power tools, and thousands of dollars of unused outdoor equipment still original packaging; 8) a large storage shed, which was considered part of the marital home by the appraiser; and 9) many items of personal property inside the marital residence, including home appliances, pine furniture, shelving, a La-Z-Boy couch, two recliners, a tanning bed, and an unfinished desk.

The trial court also found that the parties acquired extensive debt during their marriage: 1) an outstanding loan debt of roughly \$40,000 taken by the parties to build the storage shed, which is secured by a mortgage on two tracts of land; and 2) debt on several credit cards totaling approximately \$50,000. The trial court found that most of the credit card debt was acquired by Edwin to purchase the items of personal property located in the storage shed.

The trial court first considered the two tracts of property where the marital residence was located. Based on the deeds and the parties' testimony, the trial court found that Sandra inherited both tracts during the marriage, and Edwin's

name would not have been on the deeds, but for his marriage to Sandra. The trial court also found that the marital residence itself was paid for “from a combination of marital funds and an amount Sandra [] received from a settlement.” At the trial court’s request, David Mark Holbrook performed an appraisal of the residence. He estimated that as of March 19, 2014, the residence had a fair market value of approximately \$237,000.00. The trial court accepted this value, which it noted was “not disputed by either party.”

The trial court then concluded that based on their contributions during the marriage, Sandra had “a 75% equitable interest in the home and property attached thereto” and Edwin had “a 25% equitable interest in the home and property attached thereto.” The trial court pointed out that because Sandra was willing to assume all the parties’ marital debt (\$50,000 credit card debt and \$40,000 loan debt), the most equitable thing to do would be award the marital residence to Sandra.

With respect to the personal property, the trial court awarded each party the two vehicles currently in his or her possession. The trial court awarded the pontoon boat and trailer to Edwin, noting that Edwin wanted those items and that they could be “used to offset [Edwin’s] loss of his interest in the marital home.” The trial concluded that the items in the storage shed greatly exceeded the value of items of personal property in the home. It awarded the items in the shed to Edwin and the items in the home to Sandra, noting that to the extent the items in

the shed exceeded the value of the items in the home it would “offset the fact that [Edwin] is not receiving the marital home.”

This appeal followed.

II. Analysis

“The provisions of KRS² 403.190(1) as to the division of marital property require that the trial court divide the property of the parties in just proportions and consider all relevant factors.” *Ford v. Perkins*, 382 S.W.3d 821, 825 (Ky. 2012). In relevant part, the statute provides:

(1) In a proceeding for dissolution of the marriage or for legal separation . . . 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, including contribution of a spouse as homemaker; (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, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

(2) For the purpose of this chapter, “marital property” means all property acquired by either spouse subsequent to the marriage except: (a) Property acquired by gift, bequest, devise, or descent during the marriage and the income derived therefrom unless there are significant activities of either spouse which contributed to the increase in value of said property and the income earned therefrom; (b) Property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; (c) Property acquired by a spouse after a decree of legal separation;

² Kentucky Revised Statutes.

(d) Property excluded by valid agreement of the parties; and (e) The increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during marriage.

(3) All property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.

KRS 403.190.

With the statutory requirements of KRS 403.190 in mind, the Supreme Court of Kentucky extensively addressed the classification and division of property in *Sexton v. Sexton*, 125 S.W.3d 258 (Ky. 2004). The Court explained:

Under KRS 403.190, a trial court utilizes a three-step process to divide the parties' property: (1) the trial court first characterizes each item of property as marital or non-marital; (2) the trial court then assigns each party's non-marital property to that party; and (3) finally, the trial court equitably divides the marital property between the parties.

Id. at 264–65 (footnote omitted).

A particular item of property might consist of both marital and non-marital components, which would require the court to “determine the parties' separate non-marital and marital shares or interests in the property on the basis of the evidence before the court.” *Id.* at 265 (footnote omitted). The court must apply the “source of funds” rule in order to characterize the property or the parties'

interests in it as marital or non-marital. *Id.* (footnote omitted). The Court stated that “[n]either [the] title nor the form in which property is held determines the parties' interests in the property [.]” *Id.* This adjudication requires the court to engage in at least a good faith effort at fact finding and that these factual findings be included in a written order. *Keifer v. Keifer*, 354 S.W.3d 123, 126 (Ky. 2011) (citing *Anderson v. Johnson*, 350 S.W.3d 453 (Ky. 2011)).

Edwin’s sole argument on appeal is that the trial court erred as a matter of law because it failed to make findings concerning the contributions of each spouse, the value of the property, the duration of the marriage and the economic circumstances of each spouse. We disagree.

The trial court made findings concerning the length of the marriage and the parties’ economic circumstances in its order of dissolution. Therein, it found that the parties had been married since 1989 and that at the time of dissolution both parties were unemployed due to disability. The trial court further accepted the appraiser’s value of the marital residence, which it noted in its written order. It likewise attempted to determine the percentage of contribution each party made to the marital residence. Ultimately, it found that Sandra’s contribution was 75% and Edwin’s contribution was 25%. It then balanced the value of the personal property. Finally, it considered the fact that it assigned all the marital debt, approximately \$90,000, to Sandra.

The trial court made a good faith effort at fact finding in conformance with KRS 403.190(1). Edwin filed a notice of appeal without moving for any

additional findings as required by CR 52.04. This precludes any further review by us. CR 52.04 (“A final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by a written request for a finding on that issue or by a motion pursuant to Rule 52.02.”).

III. Conclusion

For the reasons set forth above, we affirm the Knott Circuit Court.

ALL CONCUR

BRIEF FOR APPELLANT:

James W. Craft, II
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BRIEF FOR APPELLEE:

Jonathan S. Wilder
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