

RENDERED: OCTOBER 6, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000269-ME

TYRESS MADDOX

APPELLANT

v. APPEAL FROM NELSON CIRCUIT COURT
HONORABLE CHARLES C. SIMMS, III, JUDGE
ACTION NO. 14-CI-00015

BRANDY MADDOX (NOW THURMAN)

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON, TAYLOR AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Tyress Maddox appeals from the findings of fact, conclusions of law and judgment of the Nelson Circuit Court in this dissolution action. He argues: (1) the trial court did not divide the martial property in just proportions as required by Kentucky Revised Statutes (KRS) 403.190(1); (2) the trial court erred when it required him to reimburse his former wife, Brandy

Maddox, \$585 she paid to the Internal Revenue Service (IRS) for a tax debt incurred during the marriage; and (3) the trial court erred when it awarded attorney's fees to Brandy. Concluding that the trial court did not abuse its discretion, we affirm.

Tyress and Brandy were married in 2009 and have one child. In January 2014, Brandy filed an action for dissolution of marriage. A decree of dissolution of marriage was entered on October 16, 2014, reserving all other issues. On November 23, 2015, temporary orders for child support and timesharing were entered. A trial was scheduled for September 28, 2016. Subsequently, Tyress's counsel withdrew and Tyress was personally notified of the trial date. Tyress also had several bench warrants issued for non-payment of child support.

A trial was conducted on September 28, 2016, at which Tyress failed to appear. At that time, the trial court noted on the record that Tyress failed to appear at court hearings in the past and there was no counsel of record for Tyress. Brandy was the sole witness.

Brandy admitted documentary exhibits to support her position regarding various marital property issues. The evidence showed the marital home had been appraised for \$140,000 but was encumbered by two mortgages totaling \$143,072. Brandy also had a retirement account with The Vanguard Group, Inc, part of which was premarital. She also submitted an affidavit and itemized bill

from her attorney showing she incurred \$5,302.50 in attorney's fees with a balance of \$3,754.80. Additionally, documents were introduced showing various vehicles were purchased during the marriage.

Brandy testified that after the separation and divorce, she acquired personal property which she alone paid for and is in the marital residence. She further testified that \$558 was taken from her tax return because of Tyress not reporting income during the parties' marriage. She testified that various vehicles purchased during the marriage were taken by Tyress after the separation and divorce and documented their corresponding values. Some of the vehicles remained in Tyress's possession and others were sold without her receiving any proceeds. She testified that originally, she did not retain an attorney to represent her in the dissolution action because she believed the issues between the parties could be easily and quickly resolved. However, Tyress was uncooperative, filed various motions, and refused to settle any disputes over property requiring her to hire counsel and incur significant attorney's fees.

Based on the unrefuted record, the trial court awarded the personal property in the marital residence to Brandy. It also awarded Brandy \$3,500 in the Vanguard account as well as the marital residence with Brandy responsible for all debt on the property.

The trial court found that Tyress had taken numerous vehicles with him that were acquired during the marriage, which offset the meager property award to Brandy. The trial court found that Tyress was at fault for the parties' \$558 tax return debt and required that he reimburse Brandy that amount. Finally, the trial court found that Tyress had been obstreperous throughout the litigation. He filed numerous frivolous motions, failed to cooperate in settlement attempts and otherwise prolonged the litigation warranting an award of \$4,000 in attorney's fees to Brandy.

Tyress hired his third attorney and filed a motion to alter, amend and/or vacate, which was denied. This appeal followed.

A trial court "has wide discretion in dividing marital property; and we may not disturb the trial court's rulings on property-division issues unless the trial court has abused its discretion." *Smith v. Smith*, 235 S.W.3d 1, 6 (Ky.App. 2006). A trial court abuses its discretion when its decision is arbitrary, capricious or unreasonable and unfair. *Sexton v. Sexton*, 125 S.W.3d 258, 272 (Ky. 2004). However, "the trial court's conclusions of law are reviewed *de novo*." *Stipp v. St. Charles*, 291 S.W.3d 720, 723 (Ky.App. 2009).

Tyress contends that the trial court did not divide the marital property in just proportions and assigned the tax debt entirely to him as punishment for his

failure to appear rather than with consideration of the relevant factors. We do not agree.

The trial court is required to divide the marital property in just proportions considering those set forth in KRS 403.190(1):

- (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.

The parties' very modest marital assets were awarded to Brandy.

Under the circumstances, the trial court's division was just. The trial court specifically found the value of the vehicles acquired during the marriage and sold by Tyress without Brandy receiving any of the proceeds far exceeded the value of the property awarded to Brandy. Based on the evidence in the record, the trial court did not abuse its discretion in dividing the marital property.

Tyress argues he should not have been ordered to reimburse Brandy the \$558 taken from her tax return by the IRS as payment for a tax debt incurred during the marriage. Tyress argues that because the IRS determined that Brandy

owed the \$558 debt, the trial court could not require Tyress to reimburse her that amount. He is incorrect. “[A] determination by the IRS or Federal Tax Court is not dispositive in a division of marital debt that includes tax liability.” *Dobson v. Dobson*, 159 S.W.3d 335, 337 (Ky.App. 2004). As with any other marital debt, the trial court has wide discretion to assign the debt to either party or, in this case, order one party to reimburse the other for the payment of that debt. *Neidlinger v. Neidlinger*, 52 S.W.3d 513, 523 (Ky. 2001). There was no abuse of discretion.

The final argument presented by Tyress concerns the award of \$4,000 in attorney’s fees. KRS 403.220 provides:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

An award of attorney’s fees under KRS 403.220 is only supported by an imbalance in the financial resources of the parties. *Lampton v. Lampton*, 721 S.W.2d 736, 739 (Ky.App. 1986).

Tyress argues that the resources of the parties were approximately equal, an award of attorney’s fees under the statute was an abuse of discretion. Because Tyress failed to appear for trial, the only evidence of his income is that

included on the child support worksheet which, if correct, indicates that his income is the same or even lower than Brandy's income. Arguably, despite his failure to appear, an award of attorney's fees pursuant to KRS 403.220 was an abuse of discretion. However, KRS 403.220 is not the only source of the trial court's authority to award attorney's fees.

In *Lampton*, this Court noted the inherent power of the court to assess attorney's fees under Kentucky Rules of Civil Procedure 37 in a dissolution of marriage proceeding. *Lampton*, 721 S.W.2d at 739. An award of attorney's fees is appropriate when at least a portion of the fees were incurred because of "obstructive tactics" and a "refusal to cooperate in the proceedings." *Gentry v. Gentry*, 798 S.W.2d 928, 938 (Ky. 1990). The amount of any award of attorney's fee is within the trial court's discretion. *Id.* As noted in *Gentry*: "That court is in the best position to observe conduct and tactics which waste the court's and attorneys' time and must be given wide latitude to sanction or discourage such conduct." *Id.*

In awarding attorney's fees, the trial court reasoned as follows:

[T]he court heard testimony concerning the amount of time this case has languished, including the fact that [Tyress] has fired two different attorneys, made several motions that lacked merit, and otherwise was ornery regarding settlement of any matter contained in this case despite obvious evidence.

There is ample evidence to support the trial court's findings that Tyress has been uncooperative throughout this dissolution action evidenced by his unexplained repeated failure to appear at court hearings and unwillingness to engage in reasonable settlement negotiation. Moreover, the record reveals Tyress made numerous discovery requests for information that had been previously provided to his counsel or was available to him.

As to the amount of fees awarded, Brandy requested that she be awarded the amount incurred as result of Tyress's vexatious and unnecessary behavior. The trial court awarded her \$4,000, an amount less than the total attorney's fees incurred. We conclude the trial court did not abuse its discretion.

Accordingly, the findings of fact, conclusions of law and judgment of the Nelson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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