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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000117-MR

JILLIAN LEIGH MOORE

APPELLANT

APPEAL FROM MARSHALL CIRCUIT COURT
FAMILY COURT DIVISION
v. HON. ROBERT DAN MATTINGLY, JR., JUDGE
ACTION NO. 14-CI-00239

MITCHELL LEE MOORE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; KRAMER AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Jillian Leigh Moore brings this appeal from Amended Findings of Fact, Conclusions of Law and Judgment entered January 5, 2016, by the Marshall Circuit Court, Family Court Division, regarding the division of certain nonmarital property. We affirm.

BACKGROUND

Jillian and Mitchell Lee Moore were married on February 8, 2006. On July 21, 2015, an interlocutory decree dissolving the marriage was entered, with the court reserving property division issues for future orders of the court. The family court conducted an evidentiary hearing on August 21, 2015, and the parties submitted post-hearing memorandums thereafter. On October 15, 2015, the family court entered its Findings of Fact, Conclusions of Law and Judgment, which was subsequently amended on January 5, 2016. This timely appeal followed.

This appeal is limited to four issues raised by Jillian regarding property division. On appeal Jillian argues that the court erred as follows: 1) in awarding Mitchell a 56 percent nonmarital ownership interest in the parties' mobile home; 2) in finding Mitchell had a 96 percent nonmarital interest in a 20.3-acre tract of land jointly owned by the parties; 3) in awarding Mitchell the 1977 Ford truck as his separate nonmarital property; and 4) that Julian was entitled to an equal share of the 2015 crop income as marital property. We will address the arguments of the parties on these issues accordingly.

DEFICIENT BRIEFS

We begin by noting that both parties have filed deficient briefs with this Court in contravention of Kentucky Rules of Civil Procedure (CR) 76.12. Jillian's brief fails to comply with CR 76.12(4)(c)(iv), which requires the

“STATEMENT OF THE CASE” section to contain “ample references to the specific pages of the record, or tape and digital counter number in the case of untranscribed video or audiotape recordings,” and CR 76.12(4)(c)(v), which requires the “ARGUMENT” section of an appellant’s brief to contain “ample supportive references to the record and . . . a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.”¹ Jillian’s brief does make two references to the hearing video record that provide little assistance to this Court. Mitchell’s brief is similarly deficient. *See* CR 76.12(4)(d). We note that neither party objected to these deficient filings. When faced with a deficient brief we have three options: “(1) to ignore the deficiency and proceed with the review; (2) to strike the brief or its offending portions, CR 76.12(8)(a); or (3) to review the issues raised in the brief for manifest injustice only[.]” *Hallis v. Hallis*, 328 S.W.3d 694, 695-96 (Ky. App. 2010). For reasons of judicial expediency, we have elected to ignore the deficiencies and proceed with our review on the merits, while warning counsel for both parties that future filings of this nature will likely not receive such leniency.

¹ Jillian Leigh Moore does refer generically to exhibits which she attached to her brief, that appear to be from the record on appeal. However, she does not provide specific citation in the record where those exhibits are located. For example, on page seven of her brief she refers sweepingly to Exhibit A, which is sixteen pages long and contains itemizations of dozens of financial transactions, including images of dozens of checks. Jillian also does not specify where in the record the materials contained within these exhibits to her brief may be located for our review.

STANDARD OF REVIEW

In Kentucky, the allocation and division of property in a divorce proceeding is governed by Kentucky Revised Statutes (KRS) 403.190. Pursuant to KRS 403.190, the family court must engage in a three-step process when addressing property issues in a divorce. *Sexton v. Sexton*, 125 S.W.3d 258 (Ky. 2004). First, the family court shall characterize each item of property as either marital or nonmarital; second, the court shall assign each party their nonmarital property; and third, the court must equitably divide the marital property. *Id.* There exists a presumption that property acquired by either party during the marriage is marital property; conversely, property acquired before the marriage is generally nonmarital property. KRS 403.190(3). As with nearly every rule there are exceptions and relevant herein is the exception which provides that property acquired during the marriage by gift to one spouse is nonmarital property. KRS 403.190(2)(a); *Hunter v. Hunter*, 127 S.W.3d 656 (Ky. App. 2003). And, a gift of nonmarital property to a spouse may be made either by a third party or by the other spouse. *O'Neill v. O'Neill*, 600 S.W.2d 493 (Ky. App. 1980); *Sexton*, 125 S.W.3d 258.

Upon dividing the property in accordance with KRS 403.190, we then review whether the family court's findings of fact are clearly erroneous pursuant to CR 52.01. A finding of fact not supported by substantial evidence is deemed

clearly erroneous. *Rearden v. Rearden*, 296 S.W.3d 438, 441 (Ky. App. 2009); *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). We further review *de novo* the family court's legal conclusions on whether the property is determined to be marital or nonmarital. *Smith v. Smith*, 235 S.W.3d 1 (Ky. App. 2006).

ANALYSIS

As noted, Jillian raises four property division issues on appeal. We will address each as follows:

(i) The Mobile Home

Jillian's primary argument regarding the family court's ruling on the mobile home is that Mitchell failed to adequately trace and legally establish a nonmarital interest and, consequently, the family court erred by concluding he had a 56 percent nonmarital interest in the mobile home's equity. We disagree.

The family court explained its reasoning in detail. The court stated Mitchell bought the mobile home prior to the marriage for \$23,300 and paid \$6,080 as a down payment while taking a loan for \$18,793. The balance of that loan when the parties were married in 2006 was \$11,907.91. Thus, including the down payment and loan payments, the court concluded that Mitchell had paid approximately \$12,965 on the mobile home prior to the marriage. In December 2006, after the parties were married, Mitchell used a \$4,450 gift to him from his

grandfather to pay toward the loan balance. Thus, Mitchell's total nonmarital contribution was \$17,415 (\$4,450 + \$12,965).

The original premarital loan on the mobile home was paid off in 2009, and in 2011 a new loan for \$15,768.44 was obtained by the couple, using the mobile home as collateral. As of the date of the divorce in 2015, the payoff for that loan was \$9,413.44. The parties stipulated at the hearing that the current fair market value of the mobile home was \$14,750. Thus, the court concluded that the current equity in the mobile home was \$5,366.56.²

The court then concluded that the parties had made a total contribution of \$31,228 towards the mobile home.³ Since Mitchell had paid \$17,415 of that total amount as a nonmarital contribution, the court concluded that the nonmarital interest was 56 percent of the total payments made by the parties.⁴ The court then awarded 56 percent of the equity (i.e., \$2,988) as Mitchell's nonmarital interest in the mobile home.⁵ The remaining 44 percent marital share of equity in the property (\$2,348) was then divided equally between the parties.

² There appears to be a \$30 typographical error in the court's equity computation that neither party challenged or corrected below. That number was later corrected by the court in computing Mitchell's nonmarital interest which the court utilized as set out in footnote 5 below.

³ \$6,080 (down payment) + \$18,793 (premarital loan amount) + \$6,355 (\$15,768.44 original second loan amount - \$9,413.44 remaining balance) = \$31,228.

⁴ \$17,415 / \$31,228 = 0.557, or 56%.

⁵ \$5,336.56 X .56 = \$2,998.47.

Jillian's primary argument is that the marital equity in the mobile home should have been \$6,355. She arrives at that figure by simply subtracting the \$9,413.44 loan payoff amount from the 2011 loan of \$15,768.44. But Jillian's computations ignore the fact that she stipulated that the mobile home's current market value was \$14,750, which was utilized by the court. The family court did not err in using the parties' agreed valuation. Additionally, Jillian infers that the family court did not give her credit for making some of the payments on the loan. However, her payments were made toward the marital interest for which the family court awarded her half of the marital equity.

Jillian further cites this Court to Appendix A to her brief, a 16-page document, as evidence of her equity argument without any analysis whatsoever or how this evidence proves her argument. Thus, we discern no error in the family court's findings on this issue. Likewise, any argument that Mitchell failed to establish his nonmarital interest in the property is without merit and otherwise not supported by the record on appeal.

(ii) The 20.3-Acre Tract of Land and Ford Truck

The family court awarded Mitchell a 96 percent interest in the 20.3-acre farm as nonmarital property and further awarded him the 1977 Ford truck as his separate nonmarital property for the same reason as the 20.3-acre tract of land.

The family court concluded Mitchell had a 96 percent nonmarital interest in the land because 96 percent of the purchase price came from funds he acquired by way of inheritance from his grandfather and a gift from his brother. Unfortunately, unlike the detailed explanation of its findings regarding the mobile home, the family court gave no explanation as to how it reached this finding, other than Mitchell had adequately traced the application of his inheritance proceeds to the farm. However, neither Jillian nor Mitchell asked the family court for additional findings on this issue. *See* 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.”).

Upon review of Jillian’s argument on appeal, we simply cannot determine from her brief or the record on appeal how the family court erred in this ruling. While making two generic references to the hearing video record, Jillian fails to establish how the ruling was clearly erroneous or the division of the property was in error as a matter of law. Her arguments are conclusory at best and as previously stated, this Court will not scour the entire record to find evidence supporting her arguments. Similarly, the arguments regarding the Ford truck also

fail to establish how the court erred. We, thus, must affirm the family court's judgment on both the land and the truck.

(iii) Crop Income

Finally, Jillian argues on appeal that she is entitled to \$300 in crop income for 2015 as her equal share of the marital property. Her argument is set out in her brief in two sentences without any citation to the record or any legal authority to support the argument. The family court did not address crop income in its judgment, nor is there any recitation to the record where this issue is raised or otherwise preserved for ruling on appeal. It is not our function or duty to research and construct a party's argument. Since this issue was not addressed in the judgment on appeal, we deem it to be waived for purposes of our review. *See Hadley v. Citizen Deposit Bank*, 186 S.W.3d 754 (Ky. App. 2005).

CONCLUSION

For the reasons and grounds set forth herein, the family court's judgment entered on January 5, 2016, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Dianna Riddick
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