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# Commonwealth of Kentucky

# Court of Appeals

NO. 2017-CA-000235-MR

JON E. AMBURGEY — APPELLANT

v.

APPEAL FROM KNOTT CIRCUIT COURT
HONORABLE DWIGHT S. MARSHALL, JUDGE
ACTION NO. 14-CI-00020

JEANETTE E. AMBURGEY — APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

** ** ** ** **

BEFORE: CLAYTON, CHIEF JUDGE; ACREE AND J. LAMBERT, JUDGES.

CLAYTON, CHIEF JUDGE: Jon E. Amburgey appeals the Knott Family Court's Findings of Fact, Conclusions of Law, and Decree dissolving his marriage to Jeanette E. Amburgey as well as the order granting in part, the attendant motion to alter, amend, or vacate which therefore modified the Family Court's findings.

The primary focus of Jon's appeal involves the family court's decisions regarding the division of property in the dissolution action. He argues that the family court erred when it determined a postnuptial agreement was not valid and enforceable; adopted an appraisal of an asset by an ostensibly unqualified expert; failed to assign him certain personal and real property as his nonmarital property; and made non-specific findings regarding the contributions of the parties when it divided certain marital property.

After careful consideration, we affirm in part, reverse in part, and remand.

## FACTS

Jon and Jeanette married on December 22, 2000. No children were born of the marriage. On January 29, 2014, Jon filed a petition for dissolution of marriage. The main issues concerned division of property and a request for maintenance by Jeanette. The trial began on November 16, 2015, and concluded on August 30, 2016.

On November 14, 2016, the family court entered its findings of fact, conclusions of law, and decree. Jon responded to the order by filing a motion to alter, amend, or vacate. After the family court held a hearing on the motion, it entered an order on January 23, 2017, which modified the court's finding to reflect

that both Jon and Jeanette were awarded their non-marital property, but in all other respects denied Jon's motion.

Jon now appeals both orders. Additional facts will be developed as needed.

## STANDARD OF REVIEW

An appellate court reviews a trial court's factual findings for clear error. Kentucky Rules of Civil Procedure (CR) 52.01. When it is determined that a finding of fact is not supported by substantial evidence, that is, evidence "sufficient to induce conviction in the mind of a reasonable person[,]" the finding is deemed clearly erroneous. *Rearden v. Rearden*, 296 S.W.3d 438, 441 (Ky. App. 2009). In addition, an appellate court gives due regard "to the opportunity of the trial court to judge the credibility of the witnesses[.]" *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (internal quotation and citation omitted).

And the appellate court reviews *de novo* the family court's legal conclusions including its conclusions denominating items as marital or nonmarital. *Stipp v. St. Charles*, 291 S.W.3d 720, 723 (Ky. App. 2009). Designating property as marital or non-marital "involves an application of the statutory framework for equitable distribution of property upon divorce and therefore constitutes a question of law . . . ." *Holman v. Holman*, 84 S.W.3d 903, 905 (Ky. 2002). However, once

classified, "the division of marital property . . . is within the sound discretion of the trial court[.]" *McGregor v. McGregor*, 334 S.W.3d 113, 119 (Ky. App. 2011).

Finally, a trial court is necessarily afforded wide latitude and discretion in equitably dividing marital property and debt, and these decisions will not be disturbed absent an abuse of that discretion. *Neidlinger v. Neidlinger*, 52 S.W.3d 513, 523 (Ky. 2001). Abuse of discretion occurs when a court's decision is unreasonable, unfair, arbitrary, or capricious. *Kuprion v. Fitzgerald*, 888 S.W.2d 679, 684 (Ky. 1994) (citations omitted).

We now address the issues in the case at bar.

ANALYSIS

In general, when a trial court divides marital property, no presumption exists that "marital property be equally divided in a marriage dissolution proceeding." *Heskett v. Heskett*, 245 S.W.3d 222, 228 (Ky. App. 2008). Instead, Kentucky Revised Statute (KRS) 403.190 directs the family court to divide marital property "in just proportions." KRS 403.190(1).

Marital property is defined in KRS 403.190(2) as "all property acquired by either spouse subsequent to the marriage . . ." with various exceptions. And it is presumed that all property acquired during the marriage is marital unless it falls under one of the five enumerated exceptions set forth in KRS 403.190(2). *Sexton v. Sexton*, 125 S.W.3d 258, 266 (Ky. 2004).

In the case at bar, two pertinent exceptions to marital property, recognized in KRS 403.190(2)(a), are property acquired by gift or inheritance. *Barber v. Bradley*, 505 S.W.3d 749, 755 (Ky. 2016). Either spouse can establish that an asset was a nonmarital gift made to him or her individually during the marriage. After characterizing the couple's property as marital or nonmarital, the trial court first assigns the nonmarital property to its rightful owner, and then, equitably divides the marital property between the couple. *Sexton*, 125 S.W.3d at 264-65.

Having reviewed the division of property in a dissolution action, we turn to the matter at hand. On appeal, Jon disputes the following family court decisions: the postnuptial agreement was not valid and enforceable; an appraisal of the liquor store; the assignment of certain personal and real property as marital rather than Jon's nonmarital property; and failure to make specific findings about Jon's contributions toward certain property.

We begin our analysis by addressing the family court's assessment that a postnuptial agreement was not enforceable, and therefore, the liquor store was a marital asset.

*1. Liquor Store*

The liquor store operated under the name of East 80 Liquor, Inc., and both the land and the business were acquired during the marriage. Thus, the family

court found that the liquor store, including both the business and the realty, was marital property. It assigned one-half the liquor store's value to each party.

Jon declared that the liquor store and its associated real property should be designated as his nonmarital property and assigned only to him. He pointed out that the parties signed a postnuptial agreement making the liquor store his nonmarital property. Jon explained that the agreement executed by the parties was a postnuptial contract wherein Jeanette waived any interest in the liquor store, and in exchange, acquired no responsibility for any debt incurred with the purchase of the liquor store. Jeanette disputes the facts surrounding the creation, the signing, and the intent of the agreement.

The postnuptial document is dated November 4, 2004, and titled the "Agreement." The language of the Agreement that is disputed is as follows:

> I. Upon the purchase of Vernon's Liquor Store by Jon E. Amburgey, Party of the First Part, his wife Jeanette E. Amburgey, Party of the Second Part, shall not be liable for any debts resulting from said purchase from that day forward.
>
> II. Upon the purchase of Vernon's Liquor Store by Jon E. Amburgey, Party of the First Part, his wife Jeanette E. Amburgey, Party of the Second Part, shall not be entitled to any income resulting form said purchase from that day forward.

Jon, apparently under the impression that Jeanette was arguing that she had not signed the agreement, provided evidence that she had signed it. Jeanette does not claim she had not signed the Agreement. Further, a review of the

family court's orders, plus the record, indicate no disagreement about Jeanette signing the Agreement. However, while Jeanette remembers signing a document, she insisted that she did not understand it was the "Agreement."

Jeanette testified that Virginia Maggard, a notary public and bank loan officer, came unannounced to their home while Jeanette was preparing dinner. Maggard told Jeanette that Jon wanted her to sign the Agreement so that if Jon and Jeanette were unable to pay the debt on the liquor store, they could live off her credit. Although Jeanette was concerned about the implication of the document, Jon assured her that she would still reap the benefits of the liquor store.

Jon, too, testified that he had the Agreement drawn up to protect Jeanette. Nevertheless, Jon added that his mother would not loan him $40,000 for the purchase of the liquor store license unless the Agreement was signed. When the Agreement was signed, neither party disclosed their income or net worth nor did the Agreement enumerate the parties' financial assets.

Both parties signed the mortgage. Jon contended that Jeanette signed as "spouse" at the insistence of the bank. He also testified that the income from the liquor store was used to pay the mortgage. Besides the mortgage, other documents, including the deed and the promissory note, only had Jon's name and made no mention of Jeanette.

The Agreement was prepared by Chris Paul, an attorney, who was retained by Jon. In its findings, the family court noted that even though Paul is an attorney, he is not necessarily qualified as an expert; however, the family court treated his testimony as that from an expert. Paul stated in a video deposition that Jon purchased the liquor store with money borrowed from his mother. He was informed by Jon that Jeanette was not a part of the transaction. Jon asked Paul to prepare an agreement indicating her lack of involvement. Paul believed when Jeanette signed the Agreement, she waived any right to a marital interest in the business or the real property associated with the business.

The Agreement stated that Jeanette was not to receive any "income" from the store and would not be liable for any debt. Paul opined that the consideration for the Agreement was Jeanette's lack of liability on the debt. Further, Paul believed that the language of the mortgage, which Jeanette did sign, supports Jon's interpretation of the Agreement because it stated that Jeanette incurred no liability for the mortgage.

Paul asserted that the language of the Agreement was not ambiguous. Still, Paul acknowledged that the Agreement does not mention the concept of "equity" or specifically mention any waiver of marital rights. Instead, it merely waives "income." And he also testified that he had no knowledge of the requirements for postnuptial agreements.

Frank C. Medaris, Jr., an attorney, spoke on behalf of Jeanette. The family court also treated Medaris as an expert. Medaris maintained that Jeanette did not waive any marital interest in the liquor store business or property. He opined that the Agreement was ambiguous. In particular, he questioned the use of the words "income" and "debts," which have a myriad of meanings. Because of the ambiguity of the terms, he testified that the contract was not valid.

After reviewing the documents related to the property interests of the liquor store – the deed, the promissory note, the mortgage, and the Agreement – Medaris contended that Jeanette waived no marital equity in the store. He added that the mortgage and the promissory note are contracts between the Amburgeys and the bank and have no bearing on marital equity since neither party could waive marital interest through a contract with a third party.

As reflected by the family court in its findings, both Medaris and Paul agree that the term "income" is ambiguous. Although Paul maintained that the Agreement was not ambiguous, he noted that the term "income" could have referred to a variety of things, that is "could mean a hundred different things." This assertion supports that the agreement was ambiguous. Medaris unequivocally stated that the term "income" is ambiguous.

Moreover, the family court found that the agreement was too vague for Jeanette to understand that she was waiving her marital interests. The family

court also observed that the parties did not disclose either by written or verbal attestations their net worth or other assets, which is required for a valid postnuptial agreement. Therefore, the family court found that the liquor store was a marital asset to be divided equally between the parties.

Keeping in mind that Kentucky courts have traditionally treated postnuptial agreements under the same standards as prenuptial agreement, we turn to *Luck v. Luck*, a case focused primarily on prenuptial agreements but also applicable to postnuptial agreements, for the standard of review. Issues involving the legality of a postnuptial agreement are reviewed *de novo*, that is, on whether the trial court erred as a matter of law in ruling that the postnuptial agreement was not valid or enforceable. *Luck v. Luck*, 711 S.W.2d 860, 861 (Ky. App. 1986). Further, if any doubt or ambiguity exists with respect to such agreement, it must be construed in a light most favorable to the party challenging the postnuptial agreement. *Id.* at 862.

Under KRS 403.190(2), nonmarital property includes property acquired by gift, and property excluded by valid agreement of the parties. The Kentucky Supreme Court in *Gentry v. Gentry*, 798 S.W.2d 928 (Ky. 1990), and *Edwardson v. Edwardson*, 798 S.W.2d 941 (Ky. 1990), resolved that an otherwise valid postnuptial agreement is enforceable in the context of a marriage terminated by dissolution. The Court expressly overruled its prior opinions declining to

enforce prenuptial and postnuptial agreements but, in doing so, preserved the traditional defenses against enforcement of such agreements. Both agreements are contracts and are so judged.

The liquor store was acquired during the marriage, and hence, under KRS 403.190(2), it would be declared marital property unless it met one of the exceptions listed in KRS 403.190(2). Under the statute, property acquired after the marriage, which is excluded by valid agreement of the parties, is nonmarital property. *Id*. Jon argues that even though the liquor store was obtained during the marriage, it was excluded as marital property by a valid agreement.

Married partners can enter into a contract where each relinquishes his or her respective interest in the property of another. *Campbell v. Campbell*, 377 S.W.2d 93, 94 (Ky. 1964). These postnuptial contracts must be fair, equitable, and supported by adequate consideration. *Id*. Here, the family court reasoned that the parties' agreement did not meet the requirements for a valid postnuptial agreement, that is, it was not fair, equitable, and supported by adequate consideration. Therefore, because the postnuptial agreement was not valid or enforceable, the family court found that the liquor store was marital and assigned each party one-half of the store and its real estate.

We agree with the family court's decision that the postnuptial agreement was legally unenforceable. The Agreement is ambiguous and vague.

Further, as noted by the family court, when the Agreement was signed, it included no financial disclosures by the parties nor did the parties otherwise make any financial disclosures. Such disclosures are required for a valid postnuptial agreement. *Luck*, 711 S.W.2d at 863.

Accordingly, we affirm the decision of the family court finding that the Agreement was not valid and enforceable and hold that the family court did not err when it concluded that the liquor store was a marital asset to be divided between the parties.

Jon also contested the family court's valuation of the liquor store contending that it erred when it adopted the appraisal performed by John Paul Burchett. Jon argues that the appraiser was not qualified as an expert.

Both parties provided experts to provide a valuation of the liquor store. Jon used Marvin Hensley as his expert; and, Jeanette used John Paul Burchett as her expert. The realty was purchased in 2004 for $235,000. Hensley's valuation for the property was $236,000 and Burchett's valuation was $310,000. The family court used Burchett's valuation deeming it more accurate.

Jon argues that Hensley was more qualified than Burchett to value the property, and therefore, Hensley's valuation should have been used. He characterizes Burchett as a part-time, uncertified property appraiser. But Jon fails to mention Burchett's extensive experience as a real estate appraiser. He worked

for a bank for 37 years and began doing real estate appraisals early in his career. After working for the bank, Burchett went into private practice. He has done thousands of appraisals and has over sixty years of experience. Burchett estimated the value of the liquor store by performing a physical inspection of the liquor store.

Hensley is a real estate appraiser and broker who has been working in the field since 2004. Hensley used the comparable sales approach to determine the value of the realty. He compared the sales of four other sites to the liquor store. Two sites were in Paintsville; one was in Prestonsburg; and one was in Perry County. Besides geographical differences, the recent sales ranged in price from $90,000 to $400,000. Additionally, the "comparable" sales had different proximities to local traffic and comprised different types of commerce. Hence, his valuation relied on a disparate collection of comparable sales.

According to Kentucky Rules of Evidence (KRE) 702 and 703, if specialized knowledge will assist the trier of fact, the court is given the discretion to ascertain whether to have a "witness qualified as an expert by knowledge, skill, experience, training, or education . . . testify[.]" KRE 702. In fact, a trial judge has wide discretion to admit or exclude evidence including that of expert witnesses. *See Baptist Healthcare Systems, Inc. v. Miller*, 177 S.W.3d 676, 680 (Ky. 2005). Further, as noted in *Elsea v. Day*, 448 S.W.3d 259, 266 (Ky. App. 2014), "[t]he fact that an expert is not licensed in this state may affect the weight to

be given to his testimony, but it does not necessarily render him unqualified to testify as an expert witness."

Here, the trier of fact is a family court judge with personal knowledge of the geographical area under discussion. The family court judge, as the finder of fact, must judge the credibility of the witnesses and weigh the evidence presented. The family court's reliance on the expert testimony of Burchett to determine the value of the real estate was within its purview, and consequently, the family court did not abuse its discretion in using Burchett's appraisal to value the liquor store.

*2. Assignment of marital and non-marital property*

Next, we address Jon's contention that the family court erred when it failed to designate and assign a mobile home and $85,521.07 of various bank funds to him as his nonmarital property.

We begin by considering the status of the mobile home. Jon alleges that the family court's orders do not address the nonmarital nature of the mobile home nor do they assign it to him. He correctly noted that Jeanette agrees that the mobile home is his nonmarital property. However, Jeanette countered that the family court had already awarded Jon the mobile home as his nonmarital property. In the findings of fact, the family court states under finding 12:

> c. The parties agree that the mobile home by Mr. Amburgey is non-marital property as it was passed to him via an inheritance.
> . . .

e. The Petitioner shall be restored his non-marital property.

Besides this finding, the family court's order responded to Jon's motion to alter, amend, or vacate that "[n]either party was awarded their non-marital property in the Decree, therefore, the Decree shall be modified to reflect that both parties are awarded their non-marital property." Thus, the family court has granted in part Jon's motion and that the mobile home is nonmarital and assigned it to him.

Next, we address the family court's designation of $85,521.07 of bank accounts as a marital asset. To begin this discussion, we provide the findings of the family court that provided a list the various accounts. The family court based the listing on Jon's testimony and noted his claim that the assets are nonmarital.

| | | |
|---|---|---|
| 1. | Bank of Hindman (No. 23345) | $18,278.08 |
| 2. | Bank of Hindman (no number) | $51,287.17 |
| 3. | Bank of Hindman (No. 28617) | $80,620.92 |
| 4. | Bank of Hindman (No. 28266) | $27,717.71 |
| 5. | Bank of Hindman (No. 22040) | $68,831.00 (closed and put in a certificate of deposit $8,784) |

Jeanette provided exhibits that also showed No. 28617 ($80,620.92) and No. 28266 ($27,717.71). The exhibit provided another certificate of deposit, Account No. 6508521541 in the amount of $9,269.05 and a savings account at the Bank of Hindman, Account No. 3143961 in the amount of $51,287.17.

Jon's Exhibit Number 4 showed No. 23345 ($18,278.08) rolling over to No. 28266 ($27,717.71); No. 220402, which according to the exhibit was closed in the amount of $68,836.41; No. 28617 in the amount $80,620.92; and 6508521541 in the amount of $8,784.60. (Above Jeanette listed this account's value at $9,269.05 but its value was from a later date than Jon's exhibit.) Jon's exhibit included another certificate of deposit, Account No. 6000130925, in the amount of $8,784.60. Thus, the Bank of Hindman account provided by Jon, which has no account number, is presumably the savings account ($51,287.17) listed by Jeanette.

Jon clarified some discrepancy regarding the accounts at trial on February 15, 2016. He noted that the $18,278.08 account was closed and became No. 28266, valued at $27,717.71. This account is in both Jon and Jeanette's exhibits. He claimed it is now valued at approximately $35,000.

Jon also noted that the savings account at the Bank of Hindman listed at $51,287.17, which is found in both Jon's and Jeanette's exhibits, is now valued at about $23,000. He received this savings account from the estate of his mother in 2005 and asserts that it is nonmarital. Jon explained that the $80,620.92, (No. 28617) began as the $68,831.00. Therefore, the accounts are not separate but rolled into each other. It is now valued at approximately $85,000.

In its findings, the family court determined that $85,521.07 was marital. The family court held that because Jon testified that the funds in several bank accounts rolled over into other accounts and just guessed that the funds were nonmarital, he had not adequately traced the nonmarital status. Ultimately, the family court ordered that this marital asset be divided equally between Jon and Jeanette.

Jon emphatically insists that the funds are nonmarital. And a review of the document related to the source for the $85,521.07, according to Jon's testimony, was a saving account, apparently the Bank of Hindman, Account No. 3143961, in the amount of $51,287.17. Jon does not provide any document showing that the savings account was the result of an inheritance although he does testify that it was an inheritance.

Regarding the accounts for which Jon provided documents, the owners (or beneficiary) are Jon, his mother, or his son. In other words, Jeanette is not listed on any account as an owner or beneficiary. Further, Jeanette testified that she knew nothing about any of Jon's accounts.

Undoubtedly, the record is confusing. The record discloses different amounts for the accounts, different points in the history of the certificates, and different names as owners. And the exhibits proffered by both parties are not congruent with each other. Correspondingly, the family court ascertained that

several of Jon's certificates were nonmarital. These are listed in finding 28. But in finding 29, the family court holds that $85,521.07 is marital. It decided that the husband did not adequately trace the asset, and therefore, the asset is marital. Nonetheless, from the findings and the record, we are unable to discern the source of the $85,521.07. No exhibit was provided by either party indicating a bank account with a balance of $85,521.07. Yet, Jon stated that some of the nonmartial funds listed in finding 28 are the source of the $85,521.07.

Given the lack of clarity in the proffered evidence, we do not believe substantial evidence exists to support the family court's finding that $85,521.07 is marital. Since contradictory testimony exists as to where the $85,521.07 came from and if it devolved from one of the nonmarital assets in the family court's finding, evidence "sufficient to induce conviction in the mind of a reasonable person" does not exist. *Rearden*, 296 S.W.3d at 441. Hence, lacking substantial evidence, the finding is clearly erroneous. Consequently, we remand the matter to the family court to ascertain whether an account with $85,521.07 exists and the source of its funds prior to classifying it as marital or nonmarital. If the source of the funds derives from accounts or certificates listed in finding 28, it appears that the source of the funds would be nonmarital. But if not, and the source is not provided, then the family court may ascertain the tracing was inadequate, designate the property as marital, and equitably divide.

We conclude that the family court's findings were inadequate. Hence, we reverse and remand for additional findings and conclusions under KRS 403.190.

Finally, the family court characterized the interest earned on the nonmarital certificates and bank accounts as marital and ordered the interest income to be divided equally between Jon and Jeanette. But a reading of KRS 403.190 mandates a different response. The statute provides that "[p]roperty 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" is nonmarital. KRS 403.190(2)(a).

Prior to the statutory amendment in 1996 such interest income was considered marital. For example, in *Mercer v. Mercer*, 836 S.W.2d 897 (Ky. 1992), the trial court held that interest earned on nonmarital funds, which were deposited in a savings account, is income constituting marital property to be divided between the parties. However, in response to *Mercer*, the Legislature amended KRS 403.190 to exclude income derived from a gift, bequest, devise, or descent from the definition of "marital property." *See* KRS 403.190(2)(a).

The principal issue in *Mercer* was "whether the accumulation of interest from nonmarital funds deposited in a financial institution is income and to

be treated as marital property or is merely an increase in value of a nonmarital asset which is to be treated as nonmarital property." *Mercer*, 836 S.W.2d at 898. Following the statutory amendment, the income from gifted and inherited property is treated the same as the appreciation of other nonmarital property, that is, the income from such marital assets requires significant spousal activity to convert it into a marital asset; otherwise it remains a nonmarital asset.

Therefore, both appreciation and interest income remain nonmarital if they are passive. In the matter at hand, once the family court ascertains the bank funds' marital or nonmarital status, all interest income from the nonmarital assets remains nonmarital since the increase was passive and had no relation to any activity by the parties. Therefore, the income from the bank accounts and certificates designated nonmarital is also nonmarital. Consequently, the family court's decision that the income from these accounts was marital is reversed.

*3. Family court failed to make specific findings about Jon's contributions toward certain property.*

In the motion to alter, amend, or vacate, Jon proposed that the trial court erred when it failed to make specific findings of fact regarding the contribution of each party when it divided the marital property. He believed that the family court did not consider his contributions to the liquor store, working and managing it. Without his efforts, he believed there would have not been a

business. Jon suggests that because of his efforts and Jeanette's underemployment, the family court should assign a greater portion of the liquor store's value to him.

Jon did not make a motion under CR 52.04 for additional findings of fact. This rule states that a final judgment "shall not be reversed or remanded" because the trial court did not make "a finding of fact on an issue essential to the judgment" unless that omission has been brought to the judge's attention by a written request for that finding or by a motion filed within ten days after entry of the judgment. CR 52.04. Jon's motion to alter, amend, or vacate did not request additional findings but merely requested different findings. Hence, Jon failed to follow the procedure for obtaining additional facts.

Further, a trial court is directed by KRS 403.190(1) to divide marital property in "just proportions," while considering all relevant factors. These factors include the contributions of each spouse; the value of the property assigned to each spouse; the length of the marriage; and, economic circumstances of each spouse when the division of property becomes effective. *Id*. But the statute does not specify how much weight should be given to each factor. And a "just" division is not necessarily an equal division. *Stipp*, 291 S.W.3d at 726. Finally, a trial court is vested with broad discretion to divide marital assets, and its determination of a just division will not be disturbed absent an abuse of its discretion. *Hempel v. Hempel*, 380 S.W.3d 549, 553 (Ky. App. 2012).

Despite Jon's allegations, there is absolutely no indication that the family court failed to consider the requisite factors or considered other factors in its division of the marital estate. Furthermore, Jon did not mention Jeanette's contribution to the marriage including her years of employment; unpaid efforts at the liquor store; joint financial contributions to the marital home; and, assistance with rearing Jon's child. The family court did not abuse its discretion, and we perceive no error.

## CONCLUSION

The decision of the family is affirmed in finding the liquor store to be marital property and dividing it equally between the parties. Nor did the family court abuse its discretion in relying on Burchett for the valuation of the liquor store. We also hold that the family court made sufficient findings regarding the factors for dividing marital property.

However, the family court's decision that the interest income from Jon's nonmarital bank accounts was marital is reversed. And the designation of the $85,521.07 bank account as marital is clearly erroneous because it was not supported by substantial evidence. This matter is remanded for additional findings pursuant to KRS 403.190(2).

In sum, the decision of the Knott Family Court is affirmed in part, reversed in part, and remanded for further determination of characterization of the $85,521.07 asset.

ALL CONCUR.

BRIEF FOR APPELLANT:

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