

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-002040-ME

JAMES SKAGGS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE TARA HAGERTY, JUDGE
ACTION NO. 14-CI-500576

DEBORAH G. SKAGGS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, KRAMER, AND J. LAMBERT, JUDGES.

LAMBERT, J., JUDGE: In this dissolution action, James Skaggs has appealed from the orders of the Jefferson Family Court related to the division of the equity in the marital residence. Finding no error or abuse of discretion, we affirm.

James and Deborah Skaggs were married on November 28, 1998, in Louisville, Kentucky. Four children were born of the marriage in 2005, 2007, and

2010 (the children born in 2010 are twins). One of the children, born in 2007, had a brain aneurysm in 2013. He requires nursing care sixteen hours per day. The parties separated on November 18, 2013, and James filed a petition to dissolve the marriage on February 27, 2014. In addition to ruling on custody and child support, James requested that the court assign non-marital property and debt, equitably divide the marital property and debt, and award him spousal support. In her response, Deborah stated that the children had lived with her at the marital residence on Newmarket Drive since the separation, with the exception of one of the children who had temporarily lived at The Home of the Innocents for medical reasons. She sought joint custody of the children, with herself designated as the primary residential custodian, child support, restoration of her non-marital property, and an equitable division of marital property and debts.

James works in sales for Frito Lay, where he earns about \$6,000.00 per month, while Deborah is not employed but has income in excess of \$300,000.00 per year from trust accounts, investments, gifts, and payments from her father's family business. The family court ordered James to pay Deborah \$3,000.00 per month in child support and maintenance, finding that James had the ability to contribute 30% of the family's expenses while Deborah contributed 70%. Of that amount, \$2,000.00 represented child support, and the remainder represented his contribution to household expenses as long as he continued to live

in the marital residence. The parties reconciled a number of times during the pendency of the dissolution proceedings, but these reconciliations ultimately proved to be unsuccessful. James' support payments were suspended at various times due to the reconciliations.

Because the issue in this case involves the marital residence, we shall generally confine this opinion to that issue. Prior to the 2017 trial in this matter, the parties filed pre-trial compliance memoranda setting forth the contested issues. Specifically regarding the marital residence, Deborah stated that court-appointed appraiser Ray Suell determined the fair market value of the Newmarket home to be \$585,000.00. In 1998, Deborah and James purchased a home on Indian Ridge for \$125,000.00. Both contributed \$10,000.00 in non-marital funds for the down payment. Deborah stated that she expended \$59,000.00 in non-marital funds to pay down the mortgage and that the property was sold at a profit of \$100,000.00. She stated that both she and James should be awarded their \$10,000.00 down payments as non-marital property, and she should be restored an additional \$59,000.00. Therefore, of the \$100,000.00 down payment placed on the Newmarket property when it was purchased in 2008, she argued that \$69,000.00 was her non-marital contribution, \$10,000.00 was James' non-marital contribution, and the remaining \$21,000.00 was the marital contribution to the Newmarket property. Deborah went on to discuss her non-marital contributions to the

Newmarket property. She claimed to have spent \$181,000.00 in non-marital funds to remodel the house and \$25,000.00 for new kitchen cabinets in 2009, all prior to moving into the property. In 2013 and 2014, she expended \$126,000.00 in non-marital funds for an addition to the house for their disabled son.

Deborah indicated that the mortgage balance on the Newmarket property was \$126,000.00, which left a potential equity of \$459,000.00. Subtracted from the equity would be James' \$10,000.00 non-marital contribution and her own \$69,000.00 non-marital contribution. She also sought restoration of the \$181,000.00 remodeling costs, \$25,000.00 for the kitchen cabinets, and \$126,000.00 for the addition. This left a marital balance of \$48,000.00, which she stated should be divided equitably between the parties. She also sought an award of the marital residence for which she would be responsible for paying the mortgage. In a supplemental filing, Deborah provided more detailed information about the source of the funds used to pay for the renovations and stated that she used \$99,000.00 in non-marital funds to pay down the Wells Fargo mortgage on April 12, 2012, of which she also sought restoration.

In his pre-trial compliance memorandum, James stated that his own appraiser valued the marital residence at \$675,000.00.¹ James claimed at least \$200,000.00 as his equity interest in the property, noting that Deborah would be

¹ The court did not permit the entry of the appraisal during the trial.

receiving 65% of the equity in the residence and that he had contributed extensively to the household expenses during many years of the marriage. In addition, he had contributed time and effort to the renovation projects.

On July 28, 2017, the family court held a final hearing related to the remaining disputed issues, including the value of the marital residence and child support. Several witnesses testified, including James and Deborah. None of the prior hearings referenced during this hearing were included in the certified record. James believed Deborah held \$100,000.00 in non-marital equity in the residence and the remainder was marital. Deborah testified about the source of the funds used for the Newmarket residence, including her trust and a gift to her from her father, both of which were non-marital. She said she received about \$250,000.00 per year from her trust and dividends as well as paychecks from her father for a total annual income of about \$300,000.00.

The family court entered an amended limited decree of dissolution, and, separately, its findings of fact, conclusions of law, and judgment on August 24, 2017, in which it adopted James' proposed findings. Deborah moved the court to alter, amend, or vacate its order and to make additional findings pursuant to Kentucky Rules of Civil Procedure (CR) 52.02 and CR 59.02, to which James objected. The court entered a subsequent order on September 8, 2017, in which it signed Deborah's tendered order. James moved the court to vacate its second

order. Deborah objected to the motion, arguing that James was not permitted to file the second CR 59.05 motion pursuant to the Civil Rules.

The family court entered another order on October 16, 2017, in which it stated that it had not intended to enter the proposed findings of fact tendered by either party when it did and that both were entered through the electronic filing system without the court's knowledge or authorization. It therefore set aside the August 24 and September 8, 2017, orders. It then set forth its intended findings of fact and conclusions of law on the disputed issues, including the marital residence. The court awarded the marital residence to Deborah, finding the equity in the property to be approximately \$485,000.00 and that a significant portion of that amount was Deborah's non-marital property. This included the \$65,000.00 down payment, the funds she paid toward the renovations in 2009/2010 and 2013, and the resulting increase in value due to the renovations. The court had previously noted that the property had increased in value since they had purchased it in the amount of \$260,050.00, which it stated was "considerably less" than the parties' investment in the renovation and remodeling. It went on to observe that it was "unclear to the Court what portion of the increase in value since 2009 can be attributed purely to the housing market in general and what portion is a result of the improvements made by the parties."

After considering the equities and the factors in KRS 403.190, the court awarded James \$10,000.00 as his non-marital interest in the equity that arose from his down payment on the first marital residence and the remainder of the equity in the marital residence to Deborah. The court went on to award James additional property as set forth in the order, including 100% of his 401(k) account, his IRA, his UBS stock account; the full \$20,000.00 he withdrew from the parties' joint checking account during the separation; \$14,167.00 he withdrew from his Fidelity investment account in December 2013; 100% of his PepsiCo stock; and his 2017 Chevrolet Silverado Extended Cab truck.

James moved the court to alter, amend, or vacate the October 16, 2017, order, in which he disputed the court's ruling related to the division of the equity in the marital residence. He argued that there was no evidence presented regarding tracing or that the increase in the value was tied to the non-marital funds used to renovate the residence. James requested that the order be amended to require Deborah to pay him \$184,851.89 as his portion of the marital assets. In her response, Deborah argued that James was not permitted to file another motion to alter, amend, or vacate and that the court lacked jurisdiction to hear his motion.

In an order entered December 8, 2017, the court addressed whether James was procedurally barred from filing the motion to alter, amend, or vacate, and it opted to consider his motion because the previous orders had been set aside

due to clerical errors. However, the court declined to set aside its final order, noting both the extent of Deborah's non-marital wealth and her contribution to their lifestyle during the marriage. This appeal by James now follows.

On appeal, James seeks review of the family court's division of the marital residence. Our standard of review is as follows:

Our review of the trial court's findings is governed by Kentucky Rule of Civil Procedure (CR) 52.01 which provides, in pertinent part, that "[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." *See also Largent v. Largent*, 643 S.W.2d 261 (Ky. 1982); *Taylor v. Taylor*, 591 S.W.2d 369 (Ky. 1979); *Alvey v. Union Inv., Inc.*, 697 S.W.2d 145 (Ky. App. 1985). We are therefore foreclosed from vacating a trial court's findings in a divorce proceeding unless they are found to be "clearly contrary to the weight of the evidence." *Clark v. Clark*, 782 S.W.2d 56, 58 (Ky. App. 1990).

Lawson v. Lawson, 228 S.W.3d 18, 21 (Ky. App. 2007).

KRS 403.190 provides for the assignment and division of property and provides in relevant part as follows:

(1) In a proceeding for dissolution of the marriage or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, 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.

In *Lawson*, 228 S.W.3d at 21, this Court addressed the application of KRS 403.190(1):

In dividing marital property, including debts, appurtenant to a divorce, the trial court is guided by [KRS] 403.190(1), which requires that division be accomplished in “just proportions.” This does not mean, however, that property must be divided equally. *Russell v. Russell*, 878 S.W.2d 24 (Ky. App. 1994); *Wood v. Wood*, 720 S.W.2d 934 (Ky. App. 1986). It means only that the division should be accomplished without regard to marital misconduct and in “just proportions” considering all relevant factors. *Brosick v. Brosick*, 974 S.W.2d 498 (Ky. App. 1998).

With this in mind, we shall consider James’ appeal.

James argues that the family court improperly awarded all the equity in the marital residence to Deborah without proof of adequate tracing of the non-marital funds or a finding of such, citing *Brandenburg v. Brandenburg*, 617

S.W.2d 871(Ky. App. 1981), and *Barber v. Bradley*, 505 S.W.3d 749 (Ky. 2016) (applying a four-factor test to determine whether a transfer is a gift to one spouse and constitutes non-marital property). In her response brief, Deborah disputes this assertion, pointing out that the family court restored to James his non-marital contribution of \$10,000.00. The court did not, however, restore the entirety of the equity to Deborah as her non-marital property, as James asserted. Rather, Deborah argued that the family court “made an award of marital property to each party in just proportions” pursuant to the statute. We agree with Deborah.

KRS 403.190(1) requires a court to “divide the marital property . . . in just proportions considering all relevant factors[,]” which includes the contribution of each spouse to the acquisition of that property (KRS 403.190(1)(c)). The family court painstakingly discussed the finances related to the first and second marital residences, and it recognized the large amount of non-marital funds Deborah contributed to the Newmarket residence, including for improvements. It went on, however, to state that it was “unclear” what portion of the increase in value since 2009 could be attributed to the housing market, generally, or to the renovations. Therefore, the court did not restore the remaining equity in the marital residence to Deborah as her non-marital property, but rather awarded it to her as marital property. The court went on to award James 100% of his retirement accounts and withdrawals he made from marital accounts during the separation in order to affect

an equitable separation of the marital funds. We find no abuse of discretion in the family court's decision to award the remaining equity in the marital residence to Deborah in light of the non-marital funds she expended, the assignment to her of the remaining \$100,000.00 mortgage debt on the property, and the additional funds James was awarded.

Similarly, we find no merit in James' argument that the \$65,000.00 gift from Deborah's father was a joint gift. He produced no evidence other than his own unsupported testimony to prove that assertion, failed to raise this issue in a post-judgment motion, and improperly relied on the family court's award in the vacated findings of fact and conclusions of law as supportive of his position.

For the foregoing reasons, the orders of the Jefferson Family Court are affirmed.

DIXON, JUDGE, CONCURS.

KRAMER, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Thomas V. Haile
Louisville, Kentucky

BRIEF FOR APPELLEE:

James P. McCrocklin
Louisville, Kentucky