

RENDERED: April 4, 1997; 2:00 p.m.  
NOT TO BE PUBLISHED

NO. 94-CA-2381-MR  
NO. 95-CA-2204-MR  
NO. 95-CA-2984-MR  
NO. 96-CA-0261-MR

LORENE WEBB

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE STEPHEN K. MERSHON, JUDGE  
ACTION NO. 91-FD-001826

DONALD R. WEBB

APPELLEE

**OPINION**

**VACATING AND REMANDING WITH DIRECTIONS**

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BEFORE: WILHOIT, CHIEF JUDGE; GUIDUGLI and MILLER, Judges.

MILLER, JUDGE: Lorene Webb brings these appeals from orders of the Jefferson Circuit Court surrounding the April 21, 1992, dissolution of her marriage to appellee, Donald R. Webb. We vacate and remand with directions.

The facts, which have grown to undue proportions and complexity, primarily surround a piece of nonmarital real estate owned by Lorene and located in Elizabeth, Harrison County, Indiana.

Lorene and Donald married on February 4, 1982, in Warren County, Kentucky. At the time, Lorene owned the Indiana

acreage, which she had acquired upon the death from her former husband. Donald made nonmarital contributions to the property.

On March 27, 1992, the circuit court entered an interlocutory order providing, inter alia:

The parties are also owners of certain unimproved acreage in Elizabeth, Indiana. The parties shall cooperate immediately to place that property on the market for sale. Counsel for the parties shall select a Southern Indiana realtor to attempt to sell that property, and in the event that the parties are unable to agree upon a listing price, the same shall be set by the realtor.

If the property in Elizabeth, Indiana is not sold within one year, then the Court orders that it be auctioned.

This order has given rise to tremendous controversy resulting in these four consolidated appeals. The foregoing interlocutory order was incorporated in the dissolution decree of April 21, 1992. That decree also provided as follows:

With respect to the parties' property in Elizabeth, Indiana, the proceeds from that sale shall first be applied as follows:

First: to satisfy any encumbrances on the property including, if applicable, the Paulins.

Second: to repay the \$10,000.00 non-marital contribution that Mr. Webb made on the property and to reimburse Mr. Webb any amounts due under Paragraph 10 below entitled, "Marital Debts."

Third: to satisfy any remaining balance due to Citizens Fidelity Bank on Mr. Webb's note.

Fourth: any remaining proceeds shall be divided seventeen percent to Ms. Webb and eighty-three percent to Mr. Webb.

The Court has reached these percentages by considering Mr. Webb's Exhibit No. 10 and the

Court's prior findings. Mr. Webb's exhibit indicates a \$2,000.00 non-marital interest of Ms. Webb. While the Court does not have a specific note with respect to this, the Court's notes do reflect that Ms. Webb's sworn disclosure stated that the property cost \$14,000.00 and that \$12,000.00 was owed at the time of the marriage. Thus, the Court will attribute a \$2,000.00 non-marital contribution to her.

While Mr. Webb's Exhibit No. 10 attributes \$12,000.00 in non-marital contributions to himself, the Court in its findings has attributed only \$10,000.00 worth of non-marital contributions to him and has found that the other \$2,000.00 which he contributed was a trade off for some other asset with Ms. Webb.

Thus, the parties' total non-marital contributions were \$12,000.00, of which Ms. Webb's were seventeen percent and Mr. Webb's eighty-three percent. The Court uses these as percentages to divide any remaining proceeds.

In accordance with the March 27, 1992, order, the Indiana property was listed for sale. A buyer was found, and a buy and sell agreement was executed, calling for a consideration of \$48,500.00. At the Indiana closing, Lorene failed to appear, maintaining that she was being defrauded and that the property was worth much more than the agreed sum. We are advised that litigation ensued.

Subsequently, Donald sought to have Lorene held in contempt for failing to execute a deed to the Indiana property pursuant to the buy and sale agreement. Originally, the court issued a contempt order, but later vacated same and chose to pursue the course of having the Master Commissioner of Jefferson County, Kentucky, execute a conveyance of Lorene's interest in

the property pursuant to Ky. Rev. Stat. (KRS) 426.571. It is from this course of action that the appeals are now before us.

The impasse between the parties appears to be substantially as follows: Donald seeks completion of the Indiana conveyance and distribution of the proceeds pursuant to the dissolution decree; Lorene offers Donald the sum of \$32,213.00 for a quit-claim of his interest; Donald counters with an offer of \$40,949.00.

We are familiar with the case of Becker v. Becker, Ky. App., 576 S.W.2d 255 (1979), but we are not of the opinion that a master commissioner of this state can convey property located in Indiana under the authority of KRS 426.571. We do agree that under the authority of Becker, the enforcement of a court order to convey foreign realty may be had by contempt. Considering the serious questions surrounding the validity of the Indiana sales contract, we are of the opinion that the circuit court should reduce the sum owed Donald to a sum certain and enter an appropriate money judgment. In computing the amount of the judgment, the court may, in its discretion, of course, consider its past order, in addition to any other relevant evidence. We premise our decision upon the specific facts of this case and the realization that the use of contempt power is within the discretion of the chancellor. Cf. Barrett v. Barrett, 287 Ky. 216, 152 S.W.2d 610 (1941).

Lorene claims that the judgment settling the property improperly calculated Donald's interest. Upon the whole of the

case, we think this contention without merit. We do not deem the chancellor's findings clearly erroneous. Ky. R. Civ. P. 52.01.

For the foregoing reasons, the orders of the circuit court are vacated, and this cause is remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Bonnie M. Brown  
Louisville, KY

BRIEF FOR APPELLEE:

Joseph V. Mobley  
Louisville, KY