

RENDERED: December 6, 1996; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 95-CA-1061-MR
NO. 95-CA-1089-MR (CROSS-APPEAL)

ROBERT E. HATCHER

APPELLANT/
CROSS-APPELLEE

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 93-CI-287

TONYA H. HATCHER and
HON. GORDON J. DILL

APPELLEES/
CROSS-APPELLANT

OPINION
AFFIRMING

* * * * *

BEFORE: Chief Judge, WILHOIT, JOHNSON and KNOPF, Judges.

KNOPF, JUDGE: Robert and Tonya Hatcher divorced in 1995. Robert appeals the trial court's division of the property, the award of temporary maintenance, and the award of attorney's fees. Tonya cross-appeals claiming the trial court erred in terminating maintenance after three (3) years, not awarding her entire attorney's fees and in evaluating the Bellefonte Country Club membership.

Both parties, however, have failed to comply with CR 76.12(4)(c)(iv), which requires a statement at the beginning of

the argument which references the record and shows that each issue has been properly preserved for appeal. As Bertelsman and Phillips in Kentucky Practice recognize this statement required by CR 76.12 (4)(c)(iv) is mandatory. "[It] is designed to save the appellant court the time of canvassing the record in order to determine if the claimed error was properly preserved for appeal." Comment 4 (4th ed. 1989PP).

Although case laws provides that an appeal can be dismissed for failing to comply with CR 76.12 (4)(c)(iv), (See, Elwell v. Stone, Ky., 799 S.W.2d 46 (1990) and Hollingsworth v. Hollingsworth, Ky. App., 798 S.W. 2d 145 (1990)), we have reviewed the record and found the issues on appeal were preserved. Thus, we will decide this case on its merits.

First, Robert argues that the trial court erroneously divided the marital property. He claims that he was awarded most of the retirement account while Tonya was awarded all liquid assets. Because tax consequences exist if the retirement account was liquidated, Robert believes that the retirement account should have been divided more equitably between him and Tonya. He states that his fifty percent (50%) of the marital estate is reduced to forty-five percent (45%) if he were to liquidate the retirement account. He also states that the trial court unfairly divided the household items.

Robert also argues that the trial court abused its discretion in awarding Tonya \$2,500.00 a month in maintenance for three (3) years. He contends that the trial court failed to make relevant findings and ignored Tonya's income from her job as well

as income on the liquid assets that she was awarded. To support his position, Robert recites much evidence that was presented to the trial court. Tonya, on the other hand, contends that the trial court erred in terminating her maintenance in three (3) years.

Finally, Robert claims that the trial court also abused its discretion by awarding Tonya \$5,000.00 in attorney's fees. He says that Tonya had already used a joint account to pay a portion of her attorney's fees so that he in essence has already paid \$3,600.00 towards her attorney's fees. Tonya believes the trial court should have awarded her entire attorney's fees rather than just \$5,000.00.

Lastly, Tonya claims that the trial court erred in evaluating her Bellefonte Country Club membership. Because the membership cannot be sold, Tonya argues that it should have no value assigned to it.

All of these matters lie within the sound discretion of the trial court. Johnson v. Johnson, Ky. App., 564 S.W.2d 221 (1978) and Browning v. Browning, Ky. App., 551 S.W.2d 823 (1977). In this case considerable evidence and argument was presented to the domestic relations commissioner and reviewed by the trial court. Robert was an oil broker who earned from \$176,000.00 to \$1,137,000.00 in the past four (4) years. Tonya was a Montessori school teacher earning \$13,400.00 a year. Evidence was presented that Tonya could obtain a teaching certificate or become involved in more lucrative employment within three (3) years. The commissioner heard considerable evidence regarding

the parties' expenses and their income from employment, from a real estate business and from conservative investments. With this information and more the commissioner made recommendations, which the trial court adopted, about dividing the marital property, awarding maintenance and attorney's fees.

When one household splits into two, both become less than what they were. Both parties suffer financial stress and adjustment. While it may appear to the parties that one is suffering more than the other, the commissioner and the trial court made difficult decisions that strive for the least harm to both parties and the children. We believe that the trial court equitably resolved the issues in this divorce and did not abuse its discretion.

For these reasons, we affirm the Greenup Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Richard W. Martin
Ashland, Ky

BRIEF FOR APPELLEE:

Gordon J. Dill
Ashland, Ky