

RENDERED: July 23, 1999; 2:00 p.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-000501-MR

MICHAEL ROBERT RUSSELL

APPELLANT

v. APPEAL FROM MEADE CIRCUIT COURT  
HONORABLE HON. SAM H. MONARCH, JUDGE  
ACTION NO. 94-CI-119

LINDA RUSSELL

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: DYCHE, GUIDUGLI AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Michael Robert Russell (Michael) appeals from an order of the Meade Circuit Court entered on February 2, 1998, that confirmed and adopted most of the Domestic Relations Commissioner's Report entered on May 9, 1997. Michael claims the trial court erred in finding that he was responsible for paying his former wife \$20,000 arising out of her claim of interest in a corporation. Finding no error, we affirm.

On February 24, 1993, Michael and Linda Russell (Linda) were married in Meade County. Ten months later, on December 28, 1993, Linda wrote a check for \$20,000 payable to Bluegrass Logging, (the corporation). The corporation was wholly owned by Michael. Michael had asked Linda to make this loan to the corporation in order to provide some additional capital. The loan was not repaid prior to the parties' separation on or about July 3, 1994.

On September 22, 1994, a decree was entered dissolving Michael and Linda's marriage. A hearing was held on September 11, 1996, to address the remaining marital and non-marital property issues. Following the hearing, the Commissioner recommended that the trial court find that Michael owed Linda \$20,000.00 for her interest in the corporation. The Commissioner's recommended finding stated in part that Michael "has been unjustly enriched, however, by his spouse to the extent of \$20,000 dollars and to allow him to take advantage of the corporate shell to protect him from her recovery would be inequitable." Michael filed exceptions to this recommendation claiming that the corporation owed Linda the money since Linda wrote the check to Bluegrass Logging. The trial court adopted the Commissioner's report except that the interest rate to be paid by Michael was set at eight percent per annum from December 28, 1993, until paid, and not ten percent. This appeal followed.

Michael claims on appeal (1) that he should be protected by the corporate veil from having to repay the \$20,000 debt owed by

the corporation, and (2) that if he is personally liable for payment of the \$20,000 debt, then he is entitled to offset against the amount owed by him the amount of the marital expenses paid on Linda's behalf by the corporation. This Court does not accept Michael's "corporate veil" argument; and notes its agreement with the Commissioner's statement that, "This is a domestic relations case. Not a case involving a person, his wholly-owned corporation and a third party." Whether the loan is viewed as a loan by Linda to Michael for use in his future business endeavors; or as a loan by Linda to the corporation, the result is the same. Michael's wholly-owned corporation is being restored to him and it has an enhanced value of \$20,000.<sup>1</sup> The allocation of the \$20,000 debt has nothing to do with piercing the corporate veil. Rather, this case involves issues of marital property and non-marital property. The \$20,000 loan came from Linda's non-marital property and was used to enhance Michael's property.

Kentucky Revised Statutes (KRS) 403.190 states in 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 the court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall

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<sup>1</sup> It is unclear from the trial court's findings if the entire value of the corporation is being treated as non-marital property, or part of the value is non-marital and part is marital. For the purposes of deciding the issues before this Court, it makes no difference.

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 of the children.

(2) For the purposes of this chapter, "marital property" means all property acquired by either spouse subsequent to the marriage except:

- (a) Property 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;
- (b) Property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent;
- (c) Property acquired by a spouse after a decree of legal separation;
- (d) Property excluded by valid agreement of the parties; and
- (e) The increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during marriage.

(3) All property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property.

The Kentucky Rules of Civil Procedure (CR) 52.01 provides in part as follows: "Findings 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. The findings of a commissioner, to the extent that the court adopts them, shall be considered as the findings of the court." Our review is limited to determining whether the trial court's factual findings were clearly erroneous and whether its ruling that Michael was required to restore to Linda \$20,000 was an abuse of discretion. Cherry v. Cherry, Ky., 634 S.W.2d 423, 425 (1982); Eviston v. Eviston, Ky.App., 507 S.W.2d 153 (1974). See also Sharp v. Sharp, Ky.App., 516 S.W.2d 875 (1975), and Hamilton v. Hamilton, Ky.App., 458 S.W.2d 451 (1970). The evidence of record supports the trial court's finding that \$20,000 of Linda's non-marital property was used to enhance the value of the corporation, and that the corporation was Michael's property. The trial court having so found, we cannot say that the trial court in making the distribution of marital assets and debts abused its discretion in ordering Michael to pay Linda \$20,000.

Michael claims in the alternative that he is entitled to an offset in the amount of \$7,757.61 dollars plus interest. Upon examination of the evidence and testimony of both parties the Commissioner recommended, and the trial court adopted, the following finding:

There was evidence that the respondent's corporation did pay some expenses, and

performed some services to the petitioner, but none of these expenses approached what one would call a capital investment to the credit of the petitioner to which one could look to and identify and use as a justification for reimbursement or set-off. The Commissioner finds and reports that there are some things in a marriage that simply cannot and should not be an item that can be listed on a balance sheet.

Michael's admitted use of the corporate checking account for payment of his personal expenses supports the finding by the trial court that many 'business expenditures' were personal in nature and therefore not suitable as offsets. This finding is not clearly erroneous and must be affirmed.

For the foregoing reasons, we affirm the order of the Meade Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Hon. Dwight Preston  
Elizabethtown, Kentucky

BRIEF FOR APPELLEE:

Hon. Vincent P. Yustas  
Brandenburg, Kentucky