

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001790-MR

VIPUL PAREKH

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE DENISE CLAYTON, JUDGE
ACTION NO. 97-FC-000649

MALIKA PAREKH

APPELLEE

OPINION

AFFIRMING IN PART; REVERSING IN PART;

AND REMANDING

*** **

BEFORE: DYCHE, MCANULTY, AND MILLER, JUDGES.

DYCHE, JUDGE: Vipul Parekh appeals from an order of the Jefferson Family Court, contending that the trial court erred in its distribution of the parties' marital and nonmarital property.

The parties, appellant Vipul Parekh and appellee Malika Parekh, were married on January 16, 1995, in Bombay, India. On January 21, 1997, Malika filed for divorce. The case came to trial on November 16, 1997. On January 9, 1998, the trial court entered its findings of fact, conclusions of law, and divorce decree. Vipul filed a motion to alter or amend, and Malika filed

a motion to correct various clerical mistakes. On June 16, 1998, the trial court entered an order on these motions. This appeal followed.

Vipul's first argument is that the trial court's determination that income from the appellant's premarital bonds was reinvested into bonds was clearly erroneous.

At the time of the parties' marriage, Vipul owned seven municipal bonds. Two of the bonds were sold during the marriage and the proceeds were used to purchase additional bonds. The trial court held that Vipul had, with the exception of \$383.51, traced and established all bonds as his premarital property.

During the marriage, the bonds produced "marital" interest income of \$3,500.00.¹ According to Vipul, the interest income was issued by check and the proceeds were deposited into Vipul's separate checking account. The trial court held that this interest "was reinvested in other similar bonds" and awarded Malika 50 percent of that amount, or \$1,750.00, as marital property.

Vipul contends that the bond interest income was not, in fact, reinvested into additional bonds but, rather, was deposited into his bank account and used to pay marital expenses. It is undisputed that the interest income earned prior to July

¹ Effective July 15, 1996, KRS 403.190(2)(a) was amended to provide that income derived from property acquired by gift, bequest, devise, or descent during the marriage is nonmarital property. Though this statute, on its face, does not apply to the present situation, as we understand the proceedings, income on the bonds after July 15, 1996, was treated as Vipul's nonmarital property. The issue of whether the statute should have applied to Vipul's premarital bonds is not an issue in this appeal.

15, 1996, became marital property when it was received. Vipul challenges the trial court's ruling based upon his claim that the trial court was clearly erroneous in its determination that the bond interest had been "reinvested in other similar bonds."

Vipul cites us to various portions of the record showing the issuance of checks drawn on interest earned on the bonds. He also directs us to bank statements showing the deposits of similar amounts shortly after the interest income was received. In his brief, Vipul "challenges" Malika to direct us to those portions of the record wherein it is shown that the funds were reinvested into bonds. We agree with the assessment of the record by appellant as stated in his reply brief. The appellee "dodged the issue." The appellee does not direct us to any evidence or testimony contained in the record to the effect that any portion of the \$3,500.00 in bond interest at issue was reinvested into additional bonds. While it is not the appellee's burden to do that, her failure to accept the challenge is telling, and our independent review of the record likewise fails to corroborate the trial court's finding that the interest income earned on the bonds was, in fact, used to purchase additional bonds.

The trial court's finding that bond interest had been reinvested into additional bonds is not supported by substantial evidence in the record, and is therefore clearly erroneous. CR 52.01; Black Motor Company v. Greene, Ky., 385 S.W.2d 954, 956 (1964). We reverse that portion of the trial court's ruling awarding Malika an interest in "marital property" bonds.

Vipul's second argument is that the trial court's division of his Bank One bank account funds was clearly erroneous. The trial court's order awarded Malika \$2,950.00 as her marital share of the Bank One account.

In this argument Vipul attempts to apply the rule set forth in Allen v. Allen, Ky. App., 584 S.W.2d 599 (1979), that tracing requirements for bank accounts are satisfied when it is shown that nonmarital funds were deposited and commingled with marital funds and that the balance of the account was never reduced below the amount of the nonmarital funds deposited.

Vipul contends that his personal bank account on the date of the parties' marriage carried a balance of \$6,946.63, that its lowest balance during the marriage was \$5,927.18, that its balance on the date of separation was \$7,067.64, and that therefore \$1,019.45 ($\$6,946.63 - \$5,927.18$) of the bank account represented marital property as of the date of separation.

Even if we accept Vipul's contention that his marital portion of the account is \$5,927.18, nevertheless, Vipul's computation subtracting this amount from the account's balance on the date of the marriage is not a valid computation to determine Malika's marital share of the account. Similarly, such a calculation based upon the date of separation would not be valid. Funds flowing into the account following separation but before the decree are presumed to be marital. KRS 403.190(3); Underwood v. Underwood, Ky. App., 836 S.W.2d 439, 441 (1992).

The last statement following separation appearing in the record is dated April 1, 1997. An examination of this

statement discloses the flaw in Vipul's argument. The April 1, 1997, balance was \$12,696.37. If that balance is used to calculate marital funds, Bank One marital funds are determined to be \$6,769.19 (\$12,696.37 - \$5,927.18). In turn, Malika's fifty percent share of the account is calculated to be \$3,384.60 as compared to the trial court's award of \$2,950.00.

In summary, Vipul has failed to establish a valid minuend to be used in his Allen calculation. Accordingly he has failed to meet his burden of establishing that the trial court's award of marital property as to the Bank One account was clearly erroneous.

The appellant also argues that the trial court failed to consider a \$2,500.00 balance held in a bank account controlled by Malika at the time of the parties' separation. The appellee concedes that she had that money at the date of separation; however, she additionally contends that, following the separation, she spent those funds to support herself. Unless there is a decree of legal separation, the relevant date in property distribution analysis is not necessarily the date of separation. Marital assets may continue to be acquired and depleted following that date. KRS 403.190(3); Underwood v. Underwood, supra. The bank account existed at the time of separation; nevertheless, there is no allegation that Malika dissipated the funds, hence there is no basis for us to question the trial court's treatment of this bank account.

Vipul next argues that the trial court's award to the appellant of substantially his entire portion of the marital

property in the form of assets to which his rights and benefits are totally prospective was an abuse of discretion. Vipul was assigned an \$8,000.00 account receivable, which represented a loan to his sister, and his pension benefit, which is not immediately accessible. Because he was required to pay Malika for her fifty percent share of these assets, and because these awards are not liquid, Vipul contends that a great inequity will befall him.

The trial court, basically, split all marital property fifty-fifty. We discern no abuse of discretion in the trial court's division of property. KRS 403.190. It is common for a spouse with a pension account to pay off his spouse's marital interest in the pension. The trial court's treatment of the account receivable was likewise proper. The debtor is the appellant's sister, and placing the responsibility of collecting the debt upon the appellant was not an abuse of discretion.

We agree with Malika that the cases cited by Vipul, Garrett v. Garrett, Ky. App., 766 S.W.2d 634 (1989), and Gipson v. Gipson, Ky. App., 702 S.W.2d 54 (1985), when applied to the present circumstances, do not establish an abuse of discretion. Under these cases, the assignment to one spouse of primarily prospective, non-liquid, assets may be an abuse of discretion if such a distribution would result in an economic hardship to the distributor. However, Vipul has substantial nonmarital property, primarily bonds, and is gainfully employed.

Finally, Vipul argues that the trial court's order requiring him to pay Malika her portion of the marital property

out of his nonmarital property is contrary to the provisions of KRS 403.190. In effect, in this argument, the appellant objects to having to pay the appellee her share of the property split. This argument is meritless. There was no violation of KRS 403.190.

For the foregoing reasons, the judgment of the Jefferson Family Court is affirmed in part, reversed in part, and remanded for additional proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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