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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2023-CA-0635-MR

REGINALD WILLIAMS, II

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE LAUREN ADAMS OGDEN, JUDGE
ACTION NOS. 09-CI-500616 AND 21-CI-500342

PAMELA BROWN (FORMERLY
WILLIAMS)

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CALDWELL, CETRULO, AND ECKERLE, JUDGES.

CALDWELL, JUDGE: Reginald Williams (“Reginald”) appeals from orders of the Jefferson Family Court awarding Pamela Williams (“Pamela”) her marital share of his monthly retirement benefits distributed from March 2021 to December 2022. We affirm.

FACTS

Pamela Brown (formerly Williams) and Reginald Williams were married on January 16, 1999. Reginald was on active duty with the United States Navy at the time of their marriage. The parties had three children together; their oldest is no longer a minor. A petition for dissolution of the marriage was filed by Pamela on February 25, 2009.¹ The parties entered into a property settlement agreement and filed it with the court on April 1, 2009. The property settlement agreement indicated “[t]he issue concerning marital division of the parties’ retirement accounts is reserved.” A decree of dissolution of marriage was entered January 13, 2010.

At some point the parties reconciled, albeit unsuccessfully. On February 9, 2021, Reginald filed a new petition in the Jefferson Family Court regarding custody of the parties’ child who was born subsequent to the decree.² This action was consolidated with the 2009 dissolution of marriage case and the actions proceeded under the earlier case number. Motion practice and mediation followed on the custody issue; a mediated agreed order concerning custody was entered July 1, 2021. This order stated, “[a]ll other provisions of the parties’ April

¹ Jefferson Circuit Court, Family Court Division Four (4), No. 09-CI-500616.

² Jefferson Circuit Court, Family Court Division Four (4), No. 21-CI-500342.

1, 2009 Property Settlement Agreement which are not inconsistent with this Mediated Agreed Order shall remain in effect.”³

On August 9, 2021, Pamela moved the family court to adjudicate the division of the parties’ retirement accounts. An affidavit filed by her at that time explained the issue was reserved “because [Reginald’s] military retirement benefit would not become vested until [Reginald] had obtained a minimum of 20+ years of service[.]” Incidentally, her affidavit claimed, Pamela’s interest could not be ascertained until Reginald retired. The affidavit further asserted Reginald had retired in February 2021 and started receiving monthly benefits in March 2021. Pamela’s request for the retirement benefit division issue to be removed from abeyance and placed on the active docket identified three issues for determination: (1) the value of the retirement benefit, (2) the value of the parties’ marital interest in this asset, and (3) the equitable division of said marital portion.

On August 16, 2021, the family court scheduled a hearing for October 5, 2021, on the issue of retirement benefits. This hearing was rescheduled for January 22, 2022 as the parties scheduled an intervening agreed mediation. However, as counsel for Reginald contracted COVID-19, the originally scheduled mediation did not occur, and the January hearing was cancelled. After the

³ While neither custody nor child support are directly at issue in the appeal, the overlap in proceedings before the family court will prompt some discussion of the procedural history of those issues.

rescheduled mediation proved unsuccessful, Pamela moved the family court to set a hearing on the issue of the retirement. The family court scheduled a hearing for April 26, 2022, but the hearing was postponed and again rescheduled after a motion by Reginald's counsel indicated he had a scheduling conflict as a result of an error in calendaring on his part.

As a result of these and other issues, a hearing on the issue of retirement benefits did not occur until June 21, 2022. At that time, both parties were given full opportunity to present their cases and rendered testimony regarding their retirement benefits. Post hearing, the family court issued findings of fact, conclusions of law, and order on July 8, 2022. The order held:

[Reginald] enlisted in the United States Navy in 1996. He was on active duty at the time of the parties' marriage. [Reginald] retired from the Navy on January 31, 2021, with a rank of E-7. He now receives a military pension of \$3,169.00 per month. After deductions for child support and a spousal survival benefit for his current wife, his net monthly payment is \$2,524.62.

[Pamela] served one year of active duty during the marriage. She then stayed home with the parties' three children for the next 7 years, before returning to work at the Department of Defense.

[Pamela] has a Federal Employee Retirement System (FERS) plan . . . funded beginning in 2006. Both parties have Thrift Savings Plans (TSP) that were also partially funded during their marriage. [Pamela] believes that both parties took loans against their respective accounts for non-marital purposes during the marriage. Neither party provided any account statements.

...

In accordance with KRS^[4] 403.190, the parties shall divide the marital portion of their retirement accounts equally. These include [Reginald]'s military pension, [Pamela]'s FERS account, and both parties' TSP accounts. "Marital portion" shall be defined as the portion of the account accruing between January 16, 1999, and January 13, 2010. Any loans against [Reginald]'s accounts shall be deducted from his portion. Any loans against [Pamela]'s accounts shall be deducted from her portion.

The order additionally appointed a neutral attorney for the purpose of preparing necessary Qualified Domestic Relations Orders ("QDROs"). This occurred for Reginald's military pension and, apparently, Pamela's FERS account.

The QDRO for Reginald's military pension, styled a Military Retired Pay Division Order, was entered August 22, 2022. Therein, Pamela's marital portion, as defined by the family court's July order, had been "calculated as a percentage, with 45.83% of the pension marital and [Pamela's] award therefore being 22.91% of [Reginald's] disposable military retired pay." The QDRO further ordered "[Pamela] shall begin to receive her share of the benefits as soon as administratively feasible[.]" Specific reference was made in the QDRO to its being incidental to the family court's July 8, 2022, order.

⁴ Kentucky Revised Statutes.

The record reflects that Pamela first received this portion of Reginald's monthly benefit in January 2023, for the month of December 2022. This was about four months after entry of the QDRO, six months after the July order dividing the benefits, and sixteen months after Pamela had filed the motion requesting adjudication.

On March 8, 2023, Pamela filed two separate motions with the family court. One sought modification of the parties' child support obligations and requested the court order the parties to exchange financial information. Pamela's other motion requested an order compelling Reginald to pay her share of retirement funds she felt Reginald had received and wrongfully withheld. An affidavit Pamela filed in support alleged "from March 1, 2021, through December 1, 2022, [Reginald] received funds through his military retirement pension that included funds awarded [Pamela] as her marital share of this retirement benefit." Her affidavit further asserted she "did not receive any distribution for the funds owed to her from March 2021 through November 2022" and was "entitled to her marital share of the proceeds distributed" for that period. The affidavit conceded a credit was due Reginald for his share of funds Pamela received from her TSP during the same period and set forth a calculation of the amount Pamela maintained she was owed, after application of this credit.

Reginald filed a written response to Pamela's motion to modify the child support obligations. There, he argued Pamela had failed to comply with the procedural requirements of the family court so the family court did not have jurisdiction to modify its prior child support order. However, he filed no written response to Pamela's motion concerning the pension benefits received by Reginald from March 2021 to December 2022.

At the corresponding motion hour, held March 20, 2023, counsel for Reginald referenced his written arguments regarding the child support matter. However, upon the family court noting supplementation by Pamela since filing of the motion, counsel for Reginald tentatively agreed to Pamela's proposed order concerning exchange of information and scheduling of hearings on the issue of child support.

As to Pamela's motion regarding the monthly payments Reginald had received before distribution pursuant to the QDRO took effect, the family court advised the parties it had not yet had an opportunity to review the matter. Counsel for Reginald orally objected to the motion, alleging it was an untimely attempt to "open back up" the July 8, 2022, order. Counsel for Pamela countered that, while the funds in question were received by Reginald while the issue was pending adjudication, they remained subject to the family court's July 2022 order, and were to be divided accordingly. Pamela's position was her marital share had been

included in the distributions received by Reginald and he had wrongfully retained her marital share rather than paying it to her.

Reginald requested, in the event the court was not persuaded by his objection, he be granted a hearing on the matter, mentioning the distributions had been subject to income taxes. The family court advised it would review its prior order and rule accordingly, if able. Should the family court conclude a hearing was necessary, the judge advised, counsel would be contacted for scheduling of same.

The court entered its order on the issue concerning the retirement account funds on April 26, 2023, finding:

[t]his case came before the Court off docket on [Pamela's] motion to effectuate division of the parties' retirement accounts as ordered July 8, 2022. The Court takes judicial notice of the findings and orders previously entered in this action.

After reiteration of relevant findings and conclusions of the July 8, 2022, order, the family court continued:

[Reginald] received his full pension benefit between March 1, 2021, through December 1, 2022. [Pamela] claims that her share of those payments totals \$17,358.44. [Pamela] acknowledges that she received full pension benefits from her TSP during that time, and that [Reginald's] share was \$4,039.40. Accordingly, [Reginald] owes [Pamela] the difference of \$13,319.04. [Reginald] has not supplied any evidence to the contrary.

[Reginald] shall pay [Pamela] \$13,319.04 within 90 days to effectuate the division of retirement assets as ordered on July 8, 2022.

Reginald filed a timely motion to alter, amend, or vacate the family court's April 26, 2023, order. He claimed the court's denial of a request for a hearing on the matter resulted in the court's order failing to consider the tax implications and Reginald's prior use of the funds. Reginald further argues the order improperly modified the July 8, 2022, order, as the family court lacked jurisdiction to do so.

The trial court amended its prior order with the entry of another on May 17, 2023, addressing Reginald's arguments therein:

This case came before the Court at Motion Hour on May 15, 2023, on [Reginald's] motion to alter, amend, or vacate the Court's Order of April 26, 2023, which requires the [Reginald] to reimburse the [Pamela] for her share of retirement proceeds that were paid to him.

[Reginald] argues that the Order improperly modifies a prior order, entered July 8, 2022. The Court disagrees. The July 8, 2023, Order specifically states: "The parties shall divide the marital portion of their retirement accounts equally." Marital Portion was defined as the value accruing between January 16, 1999, and January 13, 2010. The [prior] Order does not modify the property division; it effectuates it.⁵ [Pamela] was and is entitled to

⁵ In apparent typographical errors, the family court's order of May 17, 2023 twice indicates the date of the order Reginald challenged as May 15, 2023. Elsewhere, the family court indicates the date of the order at issue is April 26, 2023. The record contains no indication of any order being entered in the case on May 15, 2023, the date the family court heard Reginald's motion to alter, amend, or vacate. Neither party calls attention to this discrepancy and discuss the matter under apparent agreed understanding these two lines reference the April 26, 2023 order. This is

one-half of the [Reginald's] retirement accruing between January 16, 1999, and January 13, 2010.

[Reginald] also argues that the calculation used in the [prior] Order was not supported by the record and did not account for tax withholdings.⁶ The Court made no prior findings regarding the exact amounts due. [Pamela] alleged in her motion that her monthly benefit was \$789.02 per month, and [Reginald] did not present any argument to the contrary.

Lastly, [Reginald] argues that his total retirement benefit was included in his income when the parties' [sic] negotiated child support in 2021, and so to award [Pamela] her share of the account that retained at the time amounts to "double dipping." The parties attended mediation, which resulted in an agreement for the [Reginald] to pay \$247 per month for the support of two minor children. The agreement does not indicate how support was calculated, but at the time of the agreement, [Reginald] was aware that division of the parties' retirement accounts remained in dispute.

Accordingly, the Order entered April 26, 2023, shall be modified as follows:

[Reginald] shall reimburse [Pamela] for her share of his retirement benefits that were paid to him between March 1, 2021, and December 1, 2022. Her share shall be calculated based on her current net monthly payment times 21 months. (Emphasis in original.)

[Reginald] shall be entitled to a credit for the amount due to him from [Pamela's] TSP account during the same

also consistent with the remainder of the order and the family court judge's statements on the record before us.

⁶ See footnote 5.

time. This amount shall be calculated based on his current net monthly payment times 21 months.

This is a final and appealable order and there is no just cause for delay in its entry.

Reginald's appeal followed.

ANALYSIS

I. Jurisdiction.

As Reginald alleges the family court acted outside of its jurisdiction, the standard of review is *de novo* for this issue. *Grange Mut. Ins. Co. v. Trade*, 151 S.W.3d 803, 810 (Ky. 2004).

Reginald preserved this issue in his motion to modify the family court's order of April 26, 2023. There, as here, Reginald argued Pamela's motion, seeking her marital share of military pension payments he previously received was one to modify the family court's July 8, 2022, order. Accordingly, he reasons, Pamela was required, per CR⁷ 60.02, to file her motion within ten days of the prior order or, per KRS 403.250(1), to allege grounds to reopen the order. *See Copas v. Copas*, 359 S.W.3d 471, 475 (Ky. App. 2012).

The family court addressed Reginald's argument in its order of May 17, 2023, where the court asserted its prior order "does not modify the property division; *it effectuates it.*" (Emphasis added.) Nonetheless, the factual premise of

⁷ Kentucky Rules of Civil Procedure.

Reginald's current argument continues to assert the family court's order of July 8, 2022 "did not allow Pamela to recoup any retirement funds [Reginald] had received since his retirement in February 2021." However, he fails to pinpoint or quote any specific portion of the order to support this assertion; we locate no language in the July 8, 2022 order confining the award to funds Reginald received subsequently.

Reginald provides no argument or calculations as to how the 21 distributions at issue *did not* reflect payments which included "the portion of the account accruing between January 16, 1999 and January 13, 2010." Rather, he apparently suggests the family court's order was contingent upon distribution pursuant to the QDRO taking effect. As an example, Reginald makes no distinction, among the distributions in question, as to whether he received them before or after the family court's July 8, 2022, order. Furthermore, at least four of the distributions at issue occurred *after* entry of the July 2022 order. Nonetheless, he points to nothing on the record to support a contingency of this nature being a term of the parties' separation agreement, or of any ruling by the family court adjudicating same.

Pamela's written motion and affidavit filed March 8, 2023, regarding the payments at issue, simply do not request modification of the July 8, 2022, order. At the hearing, her counsel expressly stated the request was not for

modification but for enforcement. The family court advised it would review its prior order to resolve the dispute. The express language of the family court's order of April 26, 2023, indicates Pamela's motion had not been interpreted or adjudicated as one for modification: "[t]his case came before the Court off docket on [Pamela's] *motion to effectuate division* of the parties' retirement accounts *as ordered July 8, 2022.*" (Emphasis added.)

Enforcement and/or effectuation of property settlement agreements is a matter courts are frequently tasked with in domestic relations cases, including terms regarding retirement funds. *See McMullin v. McMullin*, 338 S.W.3d 315, 319 (Ky. App. 2011). This is clearly distinct from modification of a prior order. The family court explicitly asserted its prior order *did* allow Pamela to recoup her marital interest in retirement funds Reginald received before distribution pursuant to when the QDRO took effect. We find no conflict with the July 8, 2022, order. To the extent Reginald had misinterpreted this order, the family court provided clarification.

Kentucky law has long recognized a court retains authority "to enforce its own judgments and remove any obstructions to such enforcement." *Akers v. Stephenson*, 469 S.W.2d 704, 706 (Ky. 1970). The trial court certainly did not err in interpreting its own order contrary to Reginald's characterization, or in

determining it retained jurisdiction to enforce its prior order. We detect no error in the court's enforcement of its prior judgment and affirm on this issue.

II. *Res Judicata.*

Reginald argues, in the alternative, Pamela was barred from seeking the retirement funds he had already received by application of *res judicata* and failure to protect her known interest.

RAP⁸ 32(A)(4) specifically requires each argument to include “a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.” Reginald makes no statement of preservation regarding this argument. Nor does the specific argument appear in his motion to alter, amend, or vacate the family court's April 25, 2023, order. With the lack of a preservation statement and no adequate reasoning for the neglect, we may consider the issue unpreserved and review solely for palpable error resulting in manifest injustice. *Ford v. Commonwealth*, 628 S.W.3d 147, 155 (Ky. 2021). *See also* CR 61.02.

There is no indication of palpable error by the family court resulting in manifest injustice. Reginald's argument, on the issue of *res judicata* or Pamela's failure to protect her known interest, is that Pamela was barred from “seeking retroactive funds” which had been excluded from the family court's

⁸ Kentucky Rules of Appellate Procedure.

original determination of the matter. This, again, rests on the erroneous premise that Pamela sought, and the family court ordered, *modification* of the July 8, 2022, order. We affirm the family court on this issue.

III. Evidentiary Hearing.

Reginald's final argument is the family court erred in declining his request for a hearing on Pamela's motion before issuing its order.

The family court "is vested with a large discretion in the conduct of the trial of causes and an appellate court will not interpose to control the exercise of such discretion by a court of original jurisdiction, unless there has been an abuse or a most unwise exercise thereof." *Addison v. Addison*, 463 S.W.3d 755, 762 (Ky. 2015) (quoting *Transit Auth. of River City (TARC) v. Montgomery*, 836 S.W.2d 413, 416 (Ky. 1992)). This extends to discretion in exercising control over "the amount of evidence produced on a particular point." *Id.* (internal quotation marks and citations omitted).

Reginald argues, because his request for a hearing was denied, "the court's findings are not supported by any significant probative evidence, as no evidence was offered." This ignores the record and history of the case, as well as specific mention in the family court's order taking judicial notice of prior orders and findings. That a trial court may take judicial notice of its own records and rulings, including all prior proceedings in the same case, is well established. *See*

Adkins v. Adkins, 574 S.W.2d 898, 899 (Ky. App. 1978). A court may take judicial notice of such records and rulings at its discretion, “whether requested or not.”

KRE⁹ 201(c).

Reginald argues a hearing was necessary “as there were complicated financial issues intertwined in those funds.” Matters concerning tax implications and the relevancy of the funds to child support calculations were specifically addressed by the family court. Reginald makes no specific argument as to a miscalculation or factual error in these findings. Furthermore, he fails to detail any other specific issues which were not addressed by the family court, or that might have required a different finding, had a hearing been granted. In short, he identifies nothing specific which suggests the family court abused its broad discretion in managing its own docket.

CONCLUSION

Having reviewed the record herein, in consideration of the issues raised, we find no error or abuse of discretion in the ruling of the trial court.

Therefore, we affirm the trial court.

ALL CONCUR.

⁹ Kentucky Rules of Evidence.

BRIEFS FOR APPELLANT:

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