

Commonwealth of Kentucky
Court of Appeals

NO. 2024-CA-0865-MR

ERNEST K. PERRY

APPELLANT

v. APPEAL FROM MADISON FAMILY COURT
HONORABLE NORA J. SHEPHERD, JUDGE
ACTION NO. 18-CI-50340

BETTY K. PERRY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, EASTON, AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Ernest K. Perry (hereinafter “Ken”) appeals from the Madison Family Court order, entered June 25, 2024, denying his motion to amend the portions of the court’s June 14, 2019, decree of dissolution pertaining to his retirement benefits. After careful consideration of the record, briefs, and law, we affirm.

Ken and Betty K. Perry were previously married. During the marriage, Ken retired from his employment with CSX Railroad after over 39 years

of service, 31 of those years predating the marriage, and began collecting his retirement benefits. Per the terms of his railroad retirement plan, separate from and in addition to Ken's full retirement benefits, Betty received a spousal annuity payment.

In 2018, Betty petitioned for a dissolution of marriage, and the court held a final hearing in May 2019. At the conclusion of proof, the court ruled orally from the bench and instructed Betty's counsel to prepare a conforming written order. On June 14, 2019, the court adopted the findings of fact, conclusions of law, and decree of dissolution tendered by Betty's counsel. Therein, the court found that the parties had stipulated and agreed that Betty was "still entitled" to a spousal portion of Ken's railroad retirement benefits post-dissolution and ordered that she be awarded benefits in the amount of \$675.87, per month.

On July 11, 2019, Ken filed a motion pursuant to Kentucky Rules of Civil Procedure (CR) 60.02 to amend the judgment, arguing that the court had made unintentional errors in the characterization and the distribution of the parties' property. Although the claimed errors are not relevant to this action, in resolving the motion the parties entered an agreed order wherein they "waive[d] any rights they ha[d] to appeal with regards to this action" in the interest of a full and final settlement.

In November 2023, The United States Railroad Retirement Board (the retirement board), which administers Ken's railroad retirement plan, notified him that his benefits would be reduced by the \$675.87 awarded to Betty in the decree.¹ As a result, on May 30, 2024, Ken filed the motion subject of this appeal pursuant to CR 60.01 and CR 60.02(d), (e), and (f) to alter, amend, or grant him relief from the portions of the dissolution decree awarding Betty an interest in his retirement benefits.

Ken argued in the motion that the decree was contrary to the court's oral rulings, stating that the court had declined to address his retirement accounts because neither party had presented evidence as to the value of the benefits. He also contended that the decree was not supported by the testimony, asserting that he had only agreed to Betty's retaining her spousal benefit so far as it did not reduce his proceeds. And finally, he argued that it was inequitable to enforce the decree because Betty had failed to serve him with the proposed order prior to its entry and the benefits at issue were predominately non-marital in nature.

In her response, Betty disputed Ken's claims that the decree was contrary to either the court's oral rulings or the parties' testimony that she should retain her benefits. She asserts that Ken's complaint does not arise from an error in

¹ Ken theorizes that neither his nor Betty's benefits changed for approximately four-and-a-half years after the decree was entered because, despite being included in the distribution list, the retirement board was unaware of the dissolution.

the decree, but rather from either his misapprehension of the effect of the dissolution on Betty's spousal annuity or from the retirement board's error in calculating his benefits. She argues that neither is a ground for the requested relief because Ken was in the best position to know the terms of his retirement plan when he agreed to Betty's retaining her benefits and, as the plan holder, he can challenge any error of the retirement board. Finally, Betty argued that the previously entered agreed order precluded Ken's requested relief.

The circuit court denied the motion via an order entered June 25, 2024. Therein, the court found that there had been no fraud affecting the proceedings and that there were no grounds for the motion. It also found that Ken had waived his right to appeal in the agreed order. Ken now appeals.

ANALYSIS

On appeal, Ken asserts that the court erred when it assigned Betty a set amount from his retirement, citing again the court's rulings from the bench and the parties' testimony on the issue. His entire argument is focused on the court's entry of the decree; however, this is not the order on appeal. As this Court advised Ken in a November 13, 2024, order, the issues on appeal are limited to those arising from the denial of his CR 60.02 motion. Other than a cursory mention in his recitation of the procedural history that the CR 60.02 motion was filed and denied, Ken's brief is silent as to bases or grounds that would support relief under

the rule.² Additionally, Ken’s brief does not address the court’s conclusion that the parties’ agreed order precluded the relief he sought.

It is not this Court’s job to craft arguments for litigants. *Hadley v. Citizen Deposit Bank*, 186 S.W.3d 754, 759 (Ky. App. 2005). Because Ken has failed to raise arguments that are responsive to the order on appeal, we affirm.

CONCLUSION

For the foregoing reasons, the order of the Madison Family Court is
AFFIRMED.

ALL CONCUR.

BRIEF FOR APPELLANT:

John A. Combs
London, Kentucky

BRIEF FOR APPELLEE:

Jennifer McVay Martin
Lexington, Kentucky

² CR 60.02 provides, relevantly, that:

On motion a court may, upon such terms as are just, relieve a party . . . from its final judgment[] upon the following grounds: . . . (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) . . . it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief. The motion shall be made within a reasonable time[.]