

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001997-MR

JOANN THOMAS

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 99-CI-00183

BILL RAYMOND THOMAS

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND MINTON, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

BARBER, JUDGE: This appeal comes to us from a divorce proceeding originating in Calloway County, Kentucky. Appellee, Joann Thomas (Joann), and Appellant, Bill Raymond Thomas (Bill), were married on December 31, 1993.² It was a relatively short marriage with the parties separating February 25, 1999. On May 17, 1999, Joann filed for divorce from Bill.

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

² At the time of marriage, Joann was 50 years old and Bill was 58 years old.

At Joann's request, an Interlocutory Decree was entered November 17, 1999. A final hearing was held on the remaining issues of marital property and debt on April 27, 2000. The parties resolved several of the remaining issues at the hearing themselves. At the conclusion of the hearing, the Domestic Relations Commissioner (DRC) made oral findings on all issues of marital property and debt presented to him, including those agreed upon by the parties. The DRC delegated the task of putting his oral findings into written form to Joann's attorney.³ However, the DRC's Recommended Findings of Fact and Conclusions of Law was not entered until June 10, 2004.

Joann filed exceptions to the DRC's recommendations arguing primarily that due to the DRC's delay and the parties' subsequent changes in circumstance that additional proof needed to be taken.⁴ The exceptions were heard by the circuit court on

³ Joann's attorney through the dissolution proceedings was Cynthia Gale Cook.

⁴ Joann argued that the following "financial inequities" would occur to her if the circuit court adopted the DRC's recommendations:

- 1) Home in Versailles, KY - Joann alleged Bill had failed to comply with any of the conditions imposed upon him with respect to purchasing her equitable interest. Also, additional proof needed to be taken about the amount of mortgage on the property, the decrease in fair market value (FMV) attributable to Bill's failure to properly maintain, and the increase in FMV due to market conditions.
- 2) Rental property in Murray, KY - Property was sold and proceeds divided accordingly, but she argued that Bill should return a portion of the proceeds as reimbursement related to the issues with the home in Versailles.
- 3) 1995 Cadillac - The automobile was not sold as agreed upon by the parties. Bill retained possession of the car. As such, she argued that Bill should be required to pay her one-half the equity in the automobile at the time of the final hearing but also interest on the amount of equity.

August 23, 2004.⁵ Neither party presented a possible explanation for the delay in the DRC's issuance of his written recommendations. Shortly thereafter, the circuit court adopted the DRC's recommendations in their entirety September 1, 2004. Joann now appeals to our court.

Joann argues that the circuit court erred in not allowing her a hearing to present evidence as to why it would be inequitable to enforce the original recommendations of the DRC.

Kentucky Revised Statute 454.350(2) states:

Where a report, findings, or recommendations of a commissioner or hearing officer are required by statute or rule as a prerequisite to an order or judgment by the Circuit or District Court the same shall be filed within ninety (90) days of the conclusion of the trial or hearing at which the commissioner or hearing officer presided.

-
- 4) Joann's medical debts - The DRC recommended that said debts be divided equally. She argued a hearing was needed to determine what amounts Bill paid because he had not paid his share in full.
 - 5) Chase/Manhattan Bank credit card debt - The DRC found that the marital debt on said card was \$9,950. Joann argues that since the matter has not been finalized for four years, there is no reason why she should not be allowed to present further proof on this indebtedness.
 - 6) Auction of marital property - Joann argued that additional proof needed to be put on so the DRC could properly allow each party credit for the items of property bid upon.
 - 7) Attorney fees/Maintenance - At the final hearing, the parties told the DRC each would be responsible for their attorney fees. Joann argued that because she had suffered a loss of income since the final hearing, she was entitled to a consideration of maintenance, as well as, attorney fees.
 - 8) Bill's IRA accounts - The DRC found that two of Bill's IRA accounts were non-marital. Joann argued she now had proof that she was entitled to a credit against these accounts for sums she contributed.

⁵ The court did not get into the merits of each of Joann's exceptions at motion hour.

It is obvious from the record that the DRC failed to comply with this statute. A period of more than four years passed before the DRC issued his written recommendations. However, a violation of KRS 454.350 does not render a judgment or report void due to tardiness. Dubick v. Dubick, 653 S.W.2d 652, 655 (Ky.App. 1983). Further, the circuit court has the broadest possible discretion with respect to the use it makes of reports of domestic relations commissioners. Eiland v. Ferrell, 937 S.W.2d 713, 716 (Ky. 1997); see also Ky. CR 53.06(2).

In this instance, both parties were aware of what the DRC's recommendations to the circuit court were going to be. The DRC announced his findings in their entirety at the close of the final hearing on April 27, 2000. The language of Ky. CR 52.01⁶ allows a court to dictate, in the record, specific findings of fact and conclusions of law. Skelton v. Roberts, 673 S.W.2d 733, 734 (Ky.App. 1984).

In essence, Joann requested an opportunity to present additional proof on issues settled at the final hearing in 2000.⁷

⁶ Kentucky Rule of Civil Procedure 52.01 states, in pertinent part:
In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment . . . The findings of a commissioner, to the extent that the court adopts them, shall be considered as the findings of the court.

⁷ She requested additional proof be taken related to the home in Versailles, her medical bills, Chase/Manhattan Bank credit card debt, auction of marital property, maintenance, attorney fees, and Bill's IRA accounts. We also note

Although the delay was lengthy, the DRC's written recommendations were the same as his oral findings made four years earlier. At any time, either party could have requested the DRC to make written recommendations based on his oral findings, but neither chose to do so.

Following a review of the record, we do not believe that the court erred in denying Joann a hearing relating to her exceptions in this matter. Therefore, we affirm the Calloway Circuit Court.

MINTON, JUDGE, CONCURS.

HUDDLESTON, SENIOR JUDGE, DISSENTS.

HUDDLESTON, SENIOR JUDGE DISSENTING: Respectfully, I dissent. The four-year delay from the hearing to the date when the domestic relations commissioner submitted his report to the circuit court not only violates Kentucky Revised Statutes (KRS) 454.350(2), it is unconscionable. The financial condition of the parties, the value of the assets they owned and the debts they owed obviously changed significantly during those years. The circuit court should have conducted a hearing to receive updated information rather than summarily adopting the DRC's four-year-old report and recommendations. I would reverse the decree and remand with directions to Calloway Circuit Court to conduct an evidentiary hearing and then make appropriate

that her issues related to Bill's alleged failure to do some act would be more suitable for a motion to compel.

findings of fact and an equitable division of the parties' property and debts.

BRIEFS FOR APPELLANT:

Dennis Lortie
Murray, Kentucky

BRIEF FOR APPELLEE:

Steve Vidmer
Murray, Kentucky