

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-001161-MR

LONNIE NIXON

APPELLANT

v. APPEAL FROM ELLIOTT CIRCUIT COURT
HONORABLE KRISTI HOGG GOSSETT, JUDGE
ACTION NO. 04-CI-00081

JUDITH IDELL NIXON (NOW HOLBROOK)

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ABRAMSON AND DIXON, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

DIXON, JUDGE: Lonnie Nixon appeals from an order of the Elliott Circuit Court regarding the distribution of marital property and the restoration of non-marital property in this dissolution action. Finding no error, we affirm.

The parties were married on October 27, 1996. This was Lonnie's third marriage and Judith's fourth marriage, and there were no children born of their marriage.

¹ Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised statues (KRS 21.580.

They separated on December 22, 2004, and the Elliott Circuit Court thereafter entered a decree dissolving their marriage, and reserving other issues. Following hearings on December 6 and December 14, 2005, the trial court entered an order dividing marital property and restoring non-marital property. Lonnie filed a motion to alter, amend or vacate the judgment, which was denied. This appeal ensued.

In reviewing issues in an action for dissolution of marriage, we must defer to the considerable discretion of the trial court unless it has committed clear error or has abused that discretion. *Herron v. Herron*, 573 S.W.2d 342, 344 (Ky. 1978). An appellate court “cannot disturb the findings of a trial court in a case involving dissolution of marriage unless those findings are clearly erroneous.” *Cochran v. Cochran*, 746 S.W.2d 568, 569-70 (Ky. App. 1988).

Lonnie first argues that the trial court abused its discretion by failing to award him any portion of the increase in value of Judith's non-marital residence or any value of a Longaberger basket collection. The trial court found that Judith's non-marital home had a fair market value of \$66,000 at the time of the marriage and a fair market value of \$101,000 at the time of the dissolution. Citing *Travis v. Travis*, 59 S.W.3d 904 (Ky. 2001), the trial court concluded, however, that Judith did not sustain her burden of proving that the increase in value was attributable to non-marital contribution, and thus ruled that the increase in value of \$36,600 was marital in nature. Nevertheless, the trial court did not award Lonnie any portion of that value.

Similarly, the trial court found that Judith had acquired a significant collection of Longaberger baskets while working as a sales consultant for the company. Judith testified that the collection had a value of around \$7,500. The trial court noted in its findings that although the basket collection had both marital and non-marital components, no evidence had been presented to establish the value of each component. The trial court awarded Judith the collection of baskets.

There is no presumption or requirement that marital property be equally divided in a dissolution of marriage action. *McGowan v. McGowan*, 663 S.W.2d 219, 223 (Ky. App. 1983); *Quiggins v. Quiggins*, 637 S.W.2d 666, 669 (Ky. App.1982); *Herron, supra*. As noted by this Court in *Russell v. Russell*, 878 S.W.2d 24, 25 (Ky. App.1994),

Marital property must be distributed in accord with KRS 403.190. Pursuant to this provision, the court must assign each spouse their non-marital property and then divide the couple's marital property in "just proportions," without regard to marital misconduct and in light of the following factors: each spouse's contribution to the acquisition of the marital assets, including homemaking duties; the value of each spouse's non-marital property; the duration of the marriage and the economic circumstances of each spouse at the time of distribution. KRS 403.190(1)(a)-(d).

The evidence herein established that the majority of the improvements to Judith's home, while made during the marriage, were paid for from funds given to Judith by her aunt. Thus, even though Judith failed to prove that the increase in the realty's value was non-marital, nevertheless, the trial court was apparently of the opinion that Judith was entitled to the entire value of the property. The same rationale applies to the award of the Longaberger baskets. And a review of the property distribution clearly

shows that Lonnie was awarded a fair share of farm equipment, vehicles, knives, and cash proceeds. Notwithstanding, the award of the non-marital residence and the basket collection was clearly within the trial court's broad discretion, and we find no abuse of that discretion. *Cochran, supra*.

Lonnie next argues that the trial court erred in failing to set aside as his non-marital property two antique vehicles. The trial court found that Lonnie transferred ownership of the vehicles to Judith prior to their marriage to avoid taxes and to prevent his former wife from receiving any of the proceeds of the vehicles. Thus, the trial court concluded that the vehicles were Judith's non-marital property and that the doctrine of unclean hands prevented Lonnie from claiming ownership. Lonnie's only argument on appeal is that he never intended the vehicles to be gifts and that Judith convinced him to transfer such to avoid taxes.

Obviously, Lonnie's arguments are wholly without merit. The trial court's findings of fact and conclusions of law are lengthy, thorough and clearly supported by substantial evidence. As such, there was no abuse of discretion in its determination that the vehicles were Judith's non-marital property. *Cochran, supra*.

The decision of the Elliott Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

MaLenda S. Haynes
Grayson, Kentucky

BRIEF FOR APPELLEE:

W. Jeffrey Scott
Grayson, Kentucky