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Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000815-MR

STEVEN L. LECLAIR — APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT (FAMILY) COURT
HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 08-CI-01110

GRETA M. LECLAIR — APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART, AND
REMANDING

** ** ** ** **

BEFORE: TAYLOR, CHIEF JUDGE; MOORE AND WINE, JUDGES.

WINE, JUDGE: Steven LeClair appeals from findings of fact, conclusions of law and a judgment entered by the Oldham Family Court dissolving his marriage to Greta LeClair. Steven argues that the trial court clearly erred and abused its discretion in its rulings concerning custody of the parties' children, imputation of

income for purposes of maintenance and child support, the amount and duration of maintenance, classification and allocation of non-marital property, division of debts, and attorney fees.

We agree with Steven that the trial court clearly erred by imputing a greater income to him that he has historically earned. As a result, Steven's child support obligation must be re-calculated based on an income of no more than $33,000 per year. We also agree with Steven that the trial court's findings classifying a lawn mower and a golf cart as Greta's non-marital property were clearly erroneous. In addition, we agree with Steven that the trial court failed to compensate Steven for his non-marital property which Greta is unable to return.

Finally, we agree with Steven that the trial court's order dividing a debt owed to Greta's parents appears to require him to repay half of the debt without regard to whether they would be entitled to enforce the obligation. The trial court must clarify that its order affects only the parties' respective rights and cannot address the validity of third-party claims. Consequently, we must remand these matters to the trial court for entry of a new judgment. We affirm the trial court's judgment on the remaining issues raised in this appeal.

Relevant Facts and Procedural History

Steven and Greta LeClair were married in 2001 and separated on October 15, 2008. The parties have two children, E.M.L., born in 2001, and C.S.L., born in 2005. Greta filed a petition for dissolution of the marriage on November 21, 2008. Immediately after the filing of the petition, Greta filed

motions seeking temporary sole custody of the children, temporary child support and maintenance, the payment of certain debts and the return of certain personal property. On April 7, 2009, the trial court entered an order: (1) granting temporary joint custody of the children with Greta designated as the primary residential custodian; (2) requiring Steven to pay Greta temporary child support in the amount of $600.21 per month. The court also ordered Steven to pay the children's health insurance premiums; (3) granting Steven two non-overnight visitations with the children per week; (4) requiring Steven to pay Greta temporary maintenance in the amount of $1,000 per month; (5) requiring Steven to make the car payment; and (6) specifying possession of certain personal property.

The matter proceeded to a bench trial on October 27, 2009. On January 28, 2010, the trial court entered findings of fact, conclusions of law and a judgment on the disputed issues concerning custody, visitation, child support, maintenance, and division of marital property and debt. In pertinent part, the trial court awarded sole custody of the children to Greta. The court granted Steven limited visitation with the children with no overnight visitation. The trial court found that Steven was voluntarily underemployed and imputed income to him for child support and maintenance purposes. The court ordered Steven to pay child support in the amount of $621 per month, and maintenance to Greta in the amount of $1,000 per month for a period of twenty-four months commencing on December 1, 2008 through November 1, 2010.

The parties had made an initial division of the household goods and furnishings. The court found that Greta had brought or was given 90 percent of the remaining household personalty to the marriage. Consequently, the court awarded these items to her as her non-marital property. The court also awarded Greta a riding lawn mower and a golf cart which were acquired during the marriage. The court awarded a gun collection to Steven as his non-marital property. However, the court noted that Greta's father was holding the collection as collateral on a debt for unpaid rent. The court found that the parties had incurred a $38,000 marital debt to Greta's parents for unpaid rent and ordered that the parties each would be liable for payment of half of that debt. However, the court found that Steven had not substantiated a debt which he alleged that the parties owed to his father. Finally, the court ordered Steven to contribute $1,500 toward Greta's attorney fees.

Steven filed a timely Kentucky Rules of Civil Procedure (CR) 59.05 motion to alter, amend or vacate certain aspects of the trial court's findings. In an order entered on April 1, 2010, the trial court reduced Greta's maintenance award to $500 per month prospectively. In all other aspects, the trial court denied the motion. In the same order, the trial court entered a decree of dissolution which adopted its prior findings.

Issues on Appeal

On appeal, Steven argues that the trial court erred (1) by awarding sole custody of the children to Greta; (2) by imputing income to him for child support and maintenance purposes; (3) by awarding maintenance to Greta in both

its *pendente lite* and its final orders; (4) in its findings concerning the non-marital property; (5) in its findings concerning the debts owed to the parties' parents; and (6) by awarding attorney fees to Greta.

Custody

Steven first argues that the trial court erred by awarding sole custody of the children to Greta. Kentucky Revised Statutes (KRS) 403.270(2) provides that in marriage dissolution proceedings, "courts shall determine custody in accordance with the best interests of the child . . . ." Factors relevant to this determination include, among other things, the wishes of the parents, the wishes of the child, the interaction of the child with his parents and siblings, the child's adjustment to his home, school, and community, and information and evidence of domestic violence. *See* KRS 403.270(2)(a)-(d) and (f). In reviewing a child custody determination, this Court reviews the trial court's factual findings for clear error. *Reichle v. Reichle*, 719 S.W.2d 442 (Ky. 1986). The court's "[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." CR 52.01; *Sherfey v. Sherfey*, 74 S.W.3d 777, 782 (Ky. App. 2002). "A factual finding is not clearly erroneous if it is supported by substantial evidence." *Id.* "'Substantial evidence' is evidence of substance and relevant consequence sufficient to induce conviction in the minds of reasonable people." *Id.* (footnote omitted). After a trial court makes the required findings of fact, it must then apply the law to those facts. The resulting custody award as determined by the trial court

will not be disturbed unless it constitutes an abuse of discretion. *See Drury v. Drury*, 32 S.W.3d 521, 525 (Ky. App. 2000).

In making its determination on custody, the trial court relied upon Greta's testimony concerning Steven's alleged addiction to pornography. Steven objects to this finding on two grounds. First, Steven argues that there was no expert testimony showing that he has an addiction to pornography. The only evidence on the subject was Greta's testimony concerning his conduct and her opinion that Steven has such an addiction. As a result, Steven contends that the trial court's finding was not supported by substantial evidence. And second, Steven argues that the trial court based its custody decision on this evidence without finding that his habit is likely to adversely affect the children.

In its findings of fact, the trial court adopted significant portions of the factual summary in Greta's post-trial memorandum, including much of the discussion about Steven's alleged addiction. *See* Record on Appeal at 179. The trial court has wide discretion to adopt tendered findings as long as it does not abdicate its fact-finding and decision-making responsibilities under CR 52.01. *Bingham v. Bingham*, 628 S.W.2d 628, 629-630 (Ky. 1982). We are not convinced that the trial court failed to exercise its duties as fact-finder in this case.

However, we are concerned about the trial court's adoption of argumentative and hyperbolic language from Greta's trial brief concerning Steven's pornography habit. The purpose of no-fault divorce is to dissolve the marriage without assigning blame to either party. Clearly, allegations of

misconduct may be relevant in deciding issues of custody, maintenance and division of property. *See Brosick v. Brosick*, 974 S.W.2d 498, 500 (Ky. App. 1998). But we must emphasize that any misconduct is relevant only as it directly affects these issues and not as a basis for punishing the offending party.

We do not suggest that the trial court intended to punish Steven for his misconduct. However, the court's adoption of language and discussion from Greta's trial brief seems to incorporate her personal grievances against Steven. Rather than being helpful, the trial court's inclusion of this language tends to obfuscate the factual and legal bases for its rulings.

We also agree with Steven that there was no expert testimony to support Greta's characterization that Steven is "addicted" to pornography. The trial court also adopted a rather speculative discussion about the possibility of the children walking in on Steven while he viewed internet pornography. Although Greta was concerned about this possibility, there was no evidence that this had ever happened or was likely to happen.

To this extent, the trial court's adoption of this discussion from Greta's brief was not supported by the evidence and any reference to an "addiction" should be deleted from the trial court's subsequent judgment.

Even if some of the characterizations in the trial court's findings are overstated, the court did not clearly err by finding that Steven has habitually engaged in viewing pornography and that this habit had a negative influence on his life. However, Steven correctly notes that a trial "court shall not consider conduct

of a proposed custodian that does not affect his relationship to the child." KRS 403.270(3). Under KRS 403.270(3), the trial court may consider the misconduct of a proposed custodian as a factor in the determination of custody, but it must first conclude "that such misconduct has affected, or is likely to affect, the child adversely." *Krug v. Krug*, 647 S.W.2d 790, 793 (Ky. 1983). Nevertheless, the court is "not required to wait until the children have already been harmed before he can give consideration to the conduct causing the harm." *Id. See also Powell v. Powell*, 665 S.W.2d 312, 313 (Ky. App. 1984).

The trial court did not explicitly find that Steven's behavior has affected or is likely to affect the children. The trial court's mere disapproval of his behavior is not sufficient to infer such a finding. Nevertheless, the trial court's findings indicate that Steven's use of pornography has often been reckless and irresponsible. The court was also concerned that he had been less than fully truthful about his current habits. While we remained concerned about the trial court's adoption of certain discussions from Greta's brief, there was sufficient evidence in the record to justify the trial court's consideration of Steven's behavior in making its determination of custody.

Moreover, we find more than ample evidence to support the trial court's award of sole custody to Greta, even discounting the evidence about Steven's practice of viewing pornography. The evidence is undisputed that Greta has been the children's primary caretaker since their births. The trial court found that Steven has had very little involvement with the children. Furthermore, Greta

testified that Steven has missed visitation with the children on numerous occasions. In fact, Steven initially left the state while this action was pending, during which time he had no contact with the children.

In addition, Greta also testified that he has discussed the divorce in front of the children and has been short-tempered with the children during his visitation. The trial court had previously ordered Steven to enroll in anger management classes and stated that his continued visitation with the children was dependent on his participation and completion of the program. The trial court noted that Steven had not produced a certificate of completion for the class as of the date of its judgment. Finally, Steven testified that he lives in a one-bedroom apartment and does not have separate rooms for the children. Steven does not challenge the sufficiency of any of these findings. Given this evidence and the applicable factors in KRS 403.270(2), we cannot say that the trial court abused its discretion by awarding sole custody of the children to Greta.

But having reached this conclusion, we are concerned about the extremely limited parenting time which the trial court granted to Steven. Given the trial court's findings and the restricted visitation schedule, it is apparent that the trial court believed that Steven's contact with the children should be limited. However, the trial court did not expressly find that visitation would seriously endanger the children's mental, physical or emotional health. KRS 403.320(1). Nevertheless, Steven has not appealed from the trial court's judgment regarding visitation. Moreover, the trial court has ongoing jurisdiction to grant additional

parenting time to Steven upon a showing of a change in circumstances. We would urge the parties and the trial court to work together to resolve the problems which have led to the significant restrictions on the time which the children are allowed to spend with Steven.

Imputation of Income for Child Support and Maintenance Purposes

Steven next argues that the trial court improperly imputed income to him in setting his maintenance and child support obligations. KRS 403.212(2)(d) allows a court to base child support on a parent's potential income if it determines that the parent is voluntarily unemployed or underemployed. While the maintenance statute does not explicitly include a similar provision, this Court has held that KRS 403.200 implicitly permits a court to impute income to a voluntarily unemployed or underemployed spouse. *McGregor v. McGregor*, 334 S.W.3d 113, 117 (Ky. App. 2011).

For purposes of setting child support, a trial "court may find a parent to be voluntarily unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation." KRS 403.212(2)(d). The statute further specifies that "[p]otential income shall be determined based upon employment potential and probable earnings level based on the obligor's or obligee's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community." The court may consider the totality of the circumstances in determining whether a parent is voluntarily unemployed or underemployed. *Polley v. Allen*, 132 S.W.3d 223, 226-227 (Ky.

App. 2004). We find no reason to apply a different standard when imputing income for maintenance purposes.

However, the court's authority to impute income does not serve to punish a spouse for reductions in his or her income during the marriage. Indeed, the court should recognize that a person's earning capacity may fluctuate and may affect the parties' standard of living regardless of whether the marriage continues. Rather, the court's authority to impute income serves to maintain the *status quo* established during the marriage, and to discourage a party from voluntarily reducing his or her income to reduce or avoid a support obligation.

Steven argues that the trial court improperly imputed income to him based on his misconduct, rather than his actual earning capacity. Steven has worked various jobs temporarily and has worked as a handy-man full time. Steven testified that he is only capable of earning $9.50 per hour and he currently has a net income of $1,420 per month. He further notes that, in its April 7, 2009, order the trial court imputed an income of $35,000 per year, even though his highest income during the marriage was $33,000. He also argues that Greta is capable of employment and the trial court should have imputed income to her.

We find substantial evidence to support the trial court's conclusion that Steven is voluntarily underemployed. Steven was forced to resign his position as a police officer after being charged with misconduct. That misconduct and his subsequent misdemeanor conviction have effectively precluded his future employment in that field. Although the trial court should not impute income to

Steven as punishment for the misconduct, we are not convinced that it did so. Rather, the trial court simply considered that the reduction in Steven's income was due to his voluntary actions and not because of circumstances beyond his control.

We are more concerned that the trial court imputed a greater income to Steven that he has historically earned. The trial court did not set out its reasons for imputing $2,000 per year more to Steven than he earned while employed as a police officer. The trial court's findings indicate that Steven has not made good faith efforts to complete his commercial pilot's training and obtain his pilot's license. Steven has also discussed the possibility of joining the Army.

These findings suggest that the court believed Steven to be capable of earning at least slightly more than his highest prior income. While this assumption is not entirely unreasonable, there was no evidence in the record to support this conclusion. Therefore, we must conclude that the trial court clearly erred by imputing more than $33,000 per year in income to Steven. Consequently, we must remand this matter for recalculation of Steven's child support obligation based on this lower imputed income. But for the reasons stated below, we find no reason to remand this matter for adjustment of Steven's maintenance obligation.

Amount and Duration of Maintenance Awards

Steven next argues that the trial court's temporary and final maintenance awards were excessive. An award of temporary maintenance is "interlocutory in nature and generally [is] not subject to appeal." *Atkisson v. Atkisson*, 298 S.W.3d 858, 864 (Ky. App. 2009). Steven does not argue that the

trial court failed to properly consider its award of temporary maintenance in making its final maintenance award. Consequently, the issue is not properly presented in this case.

We further find no abuse of discretion in the trial court's final maintenance award. Steven has a college degree in criminal justice. Although Steven's misdemeanor conviction has limited his employment in the field of criminal justice, he has a much longer work history than Greta. Even with that conviction, Steven has had the opportunity to pursue additional training as a commercial pilot and may still join the military.

On the other hand, Greta has a high school degree and approximately a year and one-half of college credits. Greta has not worked outside the home since the birth of their first child. The trial court found that she should be able to seek full-time employment once the youngest child started school in August 2010. Greta testified to $2,924 in monthly living expenses. The trial court imputed a minimum-wage income to Greta, but also suggested that she should be expected to earn more within the near future. Although Steven argues that the trial court should have imputed more income to Greta, he does not point to any evidence showing that she was capable of earning a greater income at the time the decree was entered.

The trial court's award of maintenance is a matter of discretion based on the factors set out in KRS 403.200(2)(a)-(f). While we previously found that the trial court erred by imputing a greater income to Steven than he has historically

earned, we conclude that a slight adjustment in Steven's imputed income is unlikely to affect the trial court's consideration of these factors. As noted above, the trial court awarded Greta maintenance in the amount of $1,000 per month from December 1, 2008, through March 2009, and $500 per month from April 1, 2009, until November 1, 2010. "As an appellate court, . . . this Court is [not] authorized to substitute its own judgment for that of the trial court on the weight of the evidence, where the trial court's decision is supported by substantial evidence." *Leveridge v. Leveridge*, 997 S.W.2d 1, 2 (Ky. 1999), *quoting Combs v. Combs,* 787 S.W.2d 260, 262 (Ky. 1990). Given the trial court's findings, we find no abuse of discretion in the amount or duration of its award of maintenance to Greta. *Gentry v. Gentry*, 798 S.W.2d 928 (Ky. 1990).

Classification of non-marital property

Steven challenges the trial court's classification and allocation of the parties' non-marital property. The trial court found that "all of the household furniture, furnishings, jewelry, furs, art, china, silver, silverware and tangible personalty, including the golf cart and lawn mower" were Greta's non-marital property. Consequently, the trial court awarded all of this personal property to Greta "free and clear of any claim of [Steven]". Steven argues that Greta offered no evidence, other than her own testimony, to establish that the household goods were acquired before the marriage or that they were acquired in one of the ways set

out in KRS 403.190(2). He also argues that the trial court clearly erred by classifying the golf cart and the lawn mower as non-marital even though they were purchased during the marriage.

The trial court specifically found that most of the remaining household goods and furnishings were "family heirlooms handed down from generation to generation from" Greta's family. The trial court was within its discretion to accept Greta's testimony on this issue. Consequently, the trial court's finding was supported by substantial evidence and was not clearly erroneous. CR 52.01.

On the other hand, we agree with Steven that the trial court clearly erred in finding that the lawn mower and the golf cart were Greta's non-marital property. In reaching this conclusion, the trial court focused on Greta's use of these items. She testified that the parties purchased the lawn mower in May of 2008 because Steve was gone so much and she needed something to mow the grass. Similarly, Greta testified that the golf cart was primarily used on her parent's property for the children's benefit.

However, the uses of these items are not relevant to determine whether they are marital or non-marital. All property acquired during the marriage is presumed to be marital unless it was acquired in a manner set out in KRS 403.190(2)(a) – (e). The lawn mower and the golf cart were both acquired during the marriage. There is no evidence that they were given exclusively to Greta. Therefore, they must be presumed to be marital property.

The parties agree that the lawn mower was purchased in May of 2008. The parties also agree that the lawn mower was purchased with Steven's father's credit card and the parties used that card for a number of expenses throughout the marriage. Steven testified that he purchased the golf cart in 2008 with his father's credit card and he used the cart in his handy-man business. In support of this testimony, Steven introduced receipts for the golf cart and an affidavit from his father. Greta and Greta's parents testified Steven had given them a different story, telling them that he obtained the golf cart in exchange for labor in his handy-man business. The trial court found their testimony to be more credible than Steven's.

However, the disputed facts are not relevant to a determination of whether these items are marital or non-marital. Furthermore, in both cases, the trial court's conclusions were inconsistent with its own findings on other issues. The trial court rejected Steven's claim that the parties owed a debt to Steven's father for the credit card balance. The court found that the parties had made payments on the credit card bill both before and after their separation, and that Steven had failed to prove that any additional amounts were owed. But there is no dispute that the lawn mower was financed on Steven's father's credit card. Portions of that debt were paid with marital funds. Any remaining balance was forgiven by Steven's father, which would be considered a marital gift. Consequently, the lawn mower is marital property.

The same reasoning applies to the golf cart, regardless of how it was acquired. If the golf cart was financed on Steven's father's credit card, then it is

marital property for the same reasons that apply to the lawn mower. If the golf cart was acquired in exchange for Steven's labor, then the golf cart was essentially acquired as a substitute for marital income. In either case, the golf cart must be considered as marital property. Therefore, the trial court clearly erred by finding that the lawn mower and the golf cart were Greta's non-marital property.

We emphasize that the trial court has the discretion to award this property to Greta. But while a just division of marital property does not require an equal division, the trial court must include the lawn mower and the golf cart as marital property as part of its overall division of marital property. Since the trial court clearly erred by finding them to be non-marital, we remand this matter for entry of a new judgment allocating them as part of its distribution of marital property.

Finally, Steven complains that the trial court failed to restore his non-marital gun collection to him. The trial court found that the collection was Steven's non-marital property, but declined to order them returned because they were no longer in Greta's possession. Greta states that she asked her father to remove the guns from the house. He later decided to hold them as collateral for the back rent. While the court found that the collection was Steven's non-marital property, it held that it lacked jurisdiction to order Greta's father to return the guns.

While we agree that the court did not have any authority over Greta's father, the trial court basically ignored Greta's action. Greta testified that Steven left the collection in an unlocked gun safe and she asked her father to remove the

guns so the children would not be at risk. The trial court found this explanation to be credible. Nevertheless, by her own admission, Greta transferred Steven's non-marital property to her father. While Greta may not have foreseen that her father would hold onto the guns as collateral for the back rent, she must bear some responsibility for that outcome.

Under the circumstances, Greta's actions constitute a dissipation of Steven's non-marital property. *See Brosick v. Brosick*, 974 S.W.2d at 500. Although the trial court does not have any authority to require Greta's father to return the collection, it does have the authority to charge that dissipation against Greta's share of the marital estate. Since the trial court did not consider this option, we must remand this matter for additional proceedings to determine the appropriate remedy.

Division of Debt

Steven next argues that the trial court abused its discretion in regarding the parties' debts. He first objects to the trial court's findings that the parties owe a marital debt to Greta's parents, but did not owe a debt to his father. When the parties were first married in 2001, they lived in a house owned by Greta's parents. They lived there until April 2008. Greta's parents agreed that the parties did not have to pay rent for the first six months and would then pay rent at the rate of $500 per month. There was no written lease. However, the parties agree that they never made any rent payments while living at this property. The trial court found that the parties owed $38,000 in back rent to Greta's parents and

that this debt is marital. The court directed that each party pay one-half of this indebtedness.

Steven argues that there was no documentary evidence supporting the existence of an enforceable debt owed to Greta's parents. He also contends that the alleged oral lease agreement would be unenforceable under the statute of frauds and the statute of limitations. In response, Greta maintains that any issue regarding the enforceability of the debt is outside of the scope of a dissolution proceeding. She argues that there was substantial evidence to support the trial court's finding that a marital debt existed and that the trial court did not abuse its discretion by equally dividing the debt between the parties.

We agree with Greta that a dissolution action is not the proper forum to determine the validity of third-party claims against either or both spouses. However, as the proponent of the debt, Greta bore the burden of proving that there is a valid marital obligation owed by the parties to her parents. *Neidlinger v. Neidlinger*, 52 S.W.3d 513, 523 (Ky. 2001). The trial court took this approach with regard to the debt which Steven claimed was owed to his father. As discussed above, the parties used Steven's father's credit card to finance certain expenses during their marriage. The trial court found that the parties had made payments on this credit card during the marriage. However, the trial court found that Steven had failed to prove the remaining balance on the credit card or that Steven's father expected repayment of that amount. Since there was insufficient evidence to find

any valid obligation owed to Steven's father, the trial court implicitly concluded that Steven had failed to prove the existence of a debt, marital or otherwise.

In contrast, the trial court found that the parties had orally agreed to pay Greta's parents $500 in rent from January 2002 through April 2008. The trial court was within its discretion to accept the testimony regarding the existence of this agreement. Likewise, there was substantial evidence to support the trial court's finding regarding the amount owed. And since the parties incurred the obligation to provide housing for their family, the trial court reasonably concluded that the debt was marital. *Neidlinger*, 52 S.W.3d at 523.

The more difficult question is whether Greta has proven that her parents would be able to enforce this obligation against the parties. We agree with Steven that the statute-of-frauds and statute-of-limitations issues present serious impediments to any enforcement of this debt. However, these issues are ultimately beyond the scope of a dissolution proceeding. Since Greta's parents were not parties to the proceeding, the trial court could not decide if they would have a right to enforce the debt. Rather, the only issues before the court were whether the parties owed a debt to Greta's parents, whether that debt was marital, and the amount of the debt. The trial court's conclusions on these issues were supported by substantial evidence and will not be disturbed.

We are concerned that the trial court's judgment specifically requires Steven and Greta each to pay one-half of the indebtedness. The trial court could only determine the parties' respective obligations for any debt which Greta's

parents may be entitled to collect. The court could not require the parties to waive any defenses to the debt. Furthermore, Greta's parents are not parties to this action and have no standing to enforce the judgment. Greta does not have standing to enforce the judgment on her parents' behalf. She may only enforce the claim against Steven to the extent that she is required to pay more than her share. If Greta's parents cannot enforce the debt, then neither party is obligated to repay the loan. To the extent that the trial court's judgment suggests otherwise, we reverse and remand for modification of the language in its judgment.

Steven also raises concerns that Greta's parents may forgive or decline to enforce the obligation against their daughter. He maintains that the judgment obligates him to pay his half of the debt even if Greta's parents cannot or will not enforce the debt against her. But since the debt is a marital obligation, Greta's parents would be required to obtain a judgment against both Steven and Greta. Any potential problems with collection of such a judgment are speculative at this time. Given the limited scope of the trial court's holding, we cannot find that the trial court abused its discretion by equally dividing the debt between the parties.

Attorney Fees

Finally, Steven objects to the trial court's order directing him to pay $1,500 toward Greta's attorney fees. KRS 403.220 authorizes a trial court to order one party to a divorce action to pay a "reasonable amount" for the attorney fees of the other party, but only if there exists a disparity in the relative financial resources

of the parties in favor of the payor. But even if a disparity exists, the trial court retains broad discretion under KRS 403.220 to determine the appropriate amount of attorney fees. *Neidlinger*, 52 S.W.3d at 519; *see also Gentry*, 798 S.W.2d at 938.

Considering Steven's greater earning capacity, there is clearly a disparity between the parties' financial resources. This disparity is not entirely erased by the trial court's division of property and debt. Furthermore, the trial court awarded Greta only $1,500 out of the nearly $8,000 which she claimed for attorney fees. Even accounting for any adjustments in the allocation of property, we cannot find that the trial court's award of attorney fees amounted to an abuse of its discretion.

Conclusion

Accordingly, the judgment of the Oldham Family Court is reversed with respect to its calculation of Steven's child support obligation based on imputed income of $35,000 per year, its classification of non-marital property, its ruling accounting for Steven's non-marital gun collection, and its order directing the parties to pay a marital debt to Greta's parents. These issues are remanded to the Family Court for entry of a new judgment as set out in this opinion. In all other respects, the judgment of the Oldham Family Court is affirmed.

TAYLOR, CHIEF JUDGE, CONCURS IN RESULT ONLY.

MOORE, JUDGE, CONCURS IN RESULT ONLY.

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