

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2012-CA-001332-MR

TERRI SIGLER, NOW DEGNER

APPELLANT

APPEAL FROM FRANKLIN CIRCUIT COURT  
FAMILY COURT DIVISION  
v. HONORABLE SQUIRE N. WILLIAMS III, JUDGE  
ACTION NO. 99-CI-00933

BOYD T. SIGLER

APPELLEE

OPINION  
REVERSING AND REMANDING  
WITH DIRECTIONS

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BEFORE: J. LAMBERT, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: Terri Sigler, now Degner (hereinafter Degner), appeals from Orders of the Franklin Circuit Court, Family Court Division, entered June 5, 2012, and July 10, 2012. The July 10, 2012, Order denied Degner's request for relief

pursuant to Kentucky Rules of Civil Procedure (CR) 59.04.<sup>1</sup> For the reasons stated we reverse and remand with directions.

This appeal originates from a divorce action that took place in 2000 and involves the division of the parties' retirement accounts. The divorce decree was entered March 30, 2000, with various property issues being reserved for future ruling. On December 22, 2000, the family court entered findings of fact, conclusions of law and order distributing the marital property of Degner and Sigler.<sup>2</sup> The court stated in its findings as follows:

38. Both of the parties have retirement accounts by reason of their employment with the Commonwealth of Kentucky. Ms. Sigler's account is valued at \$9,705.85. Mr. Sigler's account is valued at \$42,257.44.
39. Both of the accounts were earned by the parties during the marriage and are, therefore, marital property subject to division.

In the family court's order distributing the retirement accounts, the court stated:

4. The total of the retirement accounts of the parties is \$51,963.29. That amount shall be equally divided between the parties. The effect of this Order is that Mr. Sigler shall be required to pay to Ms. Sigler an amount of money which equalizes the amount the

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<sup>1</sup> Kentucky Rules of Civil Procedure (CR) 59.04 allows the court, upon its own initiative, to order a new trial. We presume that Degner mistakenly cited to CR 59.04 in her motion, but intended to rely upon CR 59.05 as the basis for her motion to alter, amend, or vacate, which is the order on appeal in this case.

<sup>2</sup> The order distributing the parties' marital property was entered by Judge Reed Rhorer, who retired as Family Court Judge in 2009 before the present proceedings were commenced.

parties receive from the two marital retirement accounts.

The order did not indicate a specific amount that would equalize the accounts or state when the money was to be paid, although the order clearly states that Sigler was required to pay to Degner an amount equivalent to one-half of the value of the accounts. After entry of this order, neither party took any steps or action to effectuate the division. There is no dispute that Degner should have received \$16,275.79 to effectuate the court's order in 2000.

On April 30, 2012, Degner filed a motion for entry of a Qualified Domestic Relations Order (QDRO). Therein, she alleged that Sigler was receiving and had access to his retirement funds. Because the Kentucky Retirement Systems was now recognizing QDROs, she asked the court to enter a QDRO to enforce the original judgment.<sup>3</sup> See Kentucky Revised Statutes (KRS) 61.690(3). The circuit court, although recognizing that QDROs were now effective, declined to issue a QDRO. In its order of June 5, 2012, the court reasoned that entry of a QDRO would amend the prior judgment, which it had no authority to do. Instead, the court ordered Sigler to pay to Degner \$16,275.79 within thirty days.

In response to the court's order of June 5, 2012, Degner filed a motion to alter, amend, or vacate the order on June 15, 2012. CR 59.05. For the first time, Degner contended that, pursuant to KRS 360.040, she was entitled to interest on

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<sup>3</sup> When the order was entered on December 22, 2000, dividing the retirement accounts, Kentucky Retirement Systems did not recognize Qualified Domestic Relations Orders (QDRO). In 2010, Kentucky Revised Statutes (KRS) 61.690 was amended and KRS now honors QDROs to divide retirement accounts.

the amount of \$16,275.79 at the judgment rate of 12 percent per annum accruing from the date of the order in December 2000. Sigler responded that the court's order in 2000 did not specify a judgment amount and Degner made no attempt to collect the equalization amount for the retirement accounts, despite having made numerous court appearances on other matters relating to the divorce between 2000 and 2012.

On July 10, 2012, the circuit court entered an order denying an award of interest finding that the "equalization of retirement funds not bear interest is based upon an equitable consideration unique to the particulars of this case." The court went on to interpret the 2000 order as not requiring an equalization payment by Sigler for the retirement accounts until Sigler began drawing his retirement benefits. On July 11, 2012, Sigler paid Degner the sum of \$16,275.79.

#### STANDARD OF REVIEW

As a general rule, a circuit court's decision to grant or deny a CR 59.05 motion to alter, amend, or vacate a judgment looks to the discretion of the circuit court. *Emberton v. GMRI, Inc.*, 299 S.W.3d 565 (Ky. 2009). The test for abuse of discretion is whether the judge's decision was arbitrary, unfair, unreasonable, or not supported by sound legal principles. *Miller v. Eldridge*, 146 S.W.3d 909 (Ky. 2004). Additionally, as applicable to this case, to the extent the family court's ruling looks to the interpretation of a statute, this is a question of law for which our review is *de novo*. *William C. Eriksen, P.S.C. v. Ky. Farm Bureau Mut. Ins. Co.*, 336 S.W.3d 909 (Ky. App. 2010).

## ANALYSIS

The original findings of fact and conclusions of law in this case were entered in an order on December 22, 2000. That order was not appealed and, of course, is now final. The focus of our review is on the family court's order entered July 10, 2012, denying Degner's motion to alter, amend, or vacate the court's earlier ruling on June 5, 2012. This review looks to the interpretation of the provisions in the 2000 order regarding the division of the parties' retirement accounts and the award of post-judgment interest as provided for in KRS 360.040, on Degner's share of the accounts.

The family court focused its ruling on the substantive holding by the previous court in paragraph 4 of the December 22, 2000, order that reads, in part, as follows:

The effect of this Order is that Mr. Sigler shall be required to pay Ms. Sigler an amount of money which equalizes the amount the parties receive from the two marital retirement accounts.

In the family court's order entered July 10, 2012, the court interpreted the above language to mean that payment of the equalization sum by Sigler was triggered by a future condition precedent – the receipt of retirement benefits by Sigler. The court stated:

The court interprets this language and its verb tenses as requiring such payment to be made, not at the time of the Decree, but at the time that Mr. Sigler begins receiving his retirement. The language "shall be required" contemplates a future act, in this case, the future event of Mr. Sigler receiving his retirement.

We believe the conclusion reached above by the family court is not supported by sound legal principles under Kentucky law nor was it reasonable to interpret the 2000 order to require a condition precedent to trigger the payment of the equalization amount for the marital retirement accounts. The 2000 order clearly and succinctly states that Sigler was required to pay Degner an amount of money to equalize the amount that each party was entitled to receive from the retirement accounts as of that date, not some future date. It is undisputed from the record of this case that the amount owed as of December 22, 2000, by Sigler to Degner was \$16,275.79. This was a liquidated sum that was “[m]ade certain or fixed by agreement of the parties or by operation of law.” *Nucor Corp. v. Gen. Elec. Co.*, 812 S.W.2d 136, 141, (Ky. 1991); *see also* KRS 403.190. Thus, the amount owed by Sigler was at all times determinable where the mere computation was all that was necessary to establish the amount owed. There is nothing in the record to support the conclusion that payment of Sigler’s obligation to Degner was in any way deferred. Accordingly, the family court abused its discretion by failing to award some amount of post-judgment interest. Any other result would constitute a manifest injustice to Degner. *See* CR 61.02.

The order entered by the family court on December 22, 2000, dividing the parties’ marital property, became a final order like any other civil judgment, ten days after its entry. *Ping v. Denton*, 562 S.W.2d 314 (Ky. 1978); CR 52.02. Sigler was obligated by law at that time to pay Degner \$16,275.79, which he

declined to do. KRS 360.040 is clearly applicable to the judgment amount owed as of December 22, 2000. Sigler argues that Degner failed to take any actions to enforce the judgment for almost twelve years, thus effectively waiving her right to collect interest on the judgment pursuant to KRS 360.040. This argument is totally without merit as Degner was under no legal duty to initiate a collection action and absolutely no prejudice accrued to Sigler by this delay. To the contrary, Sigler arguably has reaped a windfall from having the benefit of Degner's funds in his retirement account for twelve years, without being accountable for interest accruing thereon. *See Hoskins v. Hoskins*, 15 S.W.3d 733 (Ky. App. 2000).

Upon entry of the order dividing the retirement accounts in 2000, Sigler could have paid the amount owed and extinguished any interest claim at that time. He failed to do so. There certainly was no neglect as a matter of law by Degner by delaying any action to collect the balance owed. Sigler clearly failed to do under the law what he was duty bound to do and should have done on his own volition, pay Degner her part of the retirement accounts as ordered by the family court. *Cf. Goffinett v. Goffinett*, 247 Ky. 698, 57 S.W.2d 674 (1933). And we are mindful, that as a matter of law, Degner had fifteen years from December 22, 2000, to initiate an action to collect this judgment indebtedness from Sigler. KRS 413.090.

Having concluded that Degner had an enforceable judgment against Sigler for \$16,275.79 as of December 22, 2000, we now address the interest issue in accordance with KRS 360.040. Degner seeks the maximum judgment rate of 12 percent per annum under the statute. On its face, the statute appears to require the

imposition of 12 percent interest. However, another panel of this Court has recently addressed this very issue in a divorce setting, and upon thorough analysis, concluded that under Kentucky law the trial court may conclude that the statutory interest rate is not appropriate, given the equities of the particular case. *Ensor v. Ensor*, 431 S.W.3d 462 (Ky. App. 2013). The result in *Ensor* was reached after an evidentiary hearing was conducted, which did not occur in this case.

Thus, we remand the matter to the family court for an evidentiary hearing to determine the appropriate rate of interest on the judgment debt from December 22, 2000, to the date of payment on July 11, 2012. The family court shall take into consideration that Sigler has retained and had the benefit of Degner's funds from December 22, 2000, until paid, which precludes the denial of post-judgment interest on the sum owed. In other words, the court must determine some rate of post-judgment interest in accordance with the equities of the case. *Ensor*, 431 S.W.3d 462.

For the reasons stated, the Orders of the Franklin Circuit Court denying post-judgment interest to Degner are reversed and remanded with directions for proceedings consistent with this opinion.

J. LAMBERT, JUDGE, CONCURS.

VANMETER, JUDGE, CONCURS IN RESULT ONLY.



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BRIEF FOR APPELLEE:

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