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# Commonwealth of Kentucky

# Court of Appeals

NO. 2012-CA-001810-MR

GLENN MARTIN HAMMOND — APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT
HONORABLE O. REED RHORER, JUDGE
ACTION NO. 08-CI-01358

ELENA JILL HAMMOND,
BRITTANY KOCH AND
DAVID GUARNIERI — APPELLEES

OPINION
AFFIRMING IN PART, REVERSING IN PART,
AND REMANDING

** ** ** ** **

BEFORE: CAPERTON, DIXON AND VANMETER, JUDGES.

DIXON, JUDGE: Glenn Martin Hammond appeals from the Pike Family Court's findings of fact, conclusions of law, and order of distribution concerning the parties' assets following the dissolution of their marriage, the award of maintenance, and attorney's fees to Elena Jill (Jill) Hammond. In addition, Glenn

appeals from the trial court's denial of his motion to disqualify Jill's counsel due to an alleged conflict of interest. After a thorough review of the record, the parties' arguments, and the applicable law, we must conclude that the court erred in its mathematical valuation of the parties' marital estate; we reverse and remand this matter for the court to reassess the calculation thereof. However, we affirm the trial court's findings related to marital property, its award of attorney's fees, and its determination as to temporary maintenance. Accordingly, we affirm in part, reverse in part, and remand this matter for further proceedings.

The facts of this matter were presented to the trial court below on multiple occasions, culminating in a voluminous record. Of import, the parties were married in 2001, were separated in 2008, and the dissolution of the marriage was entered on November 18, 2010. Prior to the marriage and thereafter, Glenn owned his own law firm, and was a solo practitioner. Jill worked in the broadcast industry and for the local school board. During the marriage, Glenn received substantial legal fees and deposited the money into brokerage accounts. After the separation the parties maintained separate financial accounts; Glenn had the exclusive use and control of virtually all of the parties' marital assets. After the parties separated in 2008, Glenn transferred financial accounts into other accounts without consulting with Jill. The court ordered Glenn to pay temporary maintenance to Jill in the amount of $1,500.00 per month in June of 2009.

The trial court was presented evidence in great detail. Since 1996 Glenn has been the sole owner of the Law Offices of Glenn H. Hammond. Glenn

practices his cases on a contingent fee basis. He is paid at the end of a successful case. His cases last from several months to several years. His business is set up so that Glenn pays taxes when he receives the fees and not when he earned the fees. Thus, Glenn received payment of legal fees after the marriage for work he performed before the marriage and received payment of legal fees for work he performed during the marriage, after the dissolution of marriage was entered.

Glenn used the services of certified public accountants and bookkeepers to help manage his law office. Glenn's CPA testified that when the parties separated, Glenn's law office had a value of $34,808.00, including the automobile owned in the name of the law office and driven primarily by Glenn. In April 2011, Glenn verified in his financial disclosure statement that his total gross monthly income was then $29,468.00. At the February 14, 2012, final hearing Glenn testified that the gross receipts from his law practice between 2001 and 2009 were from $1.273 to $1.4 million.[1] Glenn's 2008 and 2009 federal income tax returns indicate that he reported income of $478,379.00 and $398,240.00 respectively. Glenn argued that his firm lost money each year since 2009. Glenn produced balance sheets by CPA Mark Enderle for 2009, 2010, and 2011 which showed a net income for 2009 to be $140,876.00; for 2010 to be $24,692.00; and for 2011 to be $9,579.00. Jill did not provide an independent expert to value Glenn's business.

[1] We acknowledge that this is not Glenn's actual income that he receives but instead what the firm brought in and such funds would necessarily be used for business obligations in addition to providing Glenn income.

Jill came into the marriage with very few assets. Glenn asserted that Jill provided no duties as a homemaker and contributed nothing financially or otherwise to the marriage for the entire eight years. Glenn testified that in addition to making all the income from his law practice he was also responsible for the yard work, "outside chores," laundry, housecleaning and grocery shopping. However, the court found that during the marriage both parties contributed to the household chores and both enjoyed an extravagant lifestyle.

During the marriage Jill worked as a news anchor at WYMT from 1997 to 2002. She made about $21,500.00 per year. She then worked for the Pikeville Independent Board of Election where she earned about $21,500.00 per year as the Public Relations Director. Jill was then employed as a salesperson for East Kentucky Broadcasting where she earns about $30,000.00 per year. Jill testified that she has Type-1 diabetes, which requires strict attention to medications and can have long-term debilitating effects on her health.

The court found that the parties' date of separation was the appropriate date to value the assets as Glenn made numerous financial transactions after July 2008, whereby he transferred funds from account to account and withdrew monies without Jill's consent or knowledge.

During the marriage Glenn had financial accounts at various institutions throughout Kentucky with balances that fluctuated throughout the marriage. Most of the accounts were started by Glenn prior to marriage but during the marriage they were changed to different accounts and marital monies were

added to them. Marital and nonmarital expenses were paid out of them. All of the accounts had balances that were allowed to decrease below their premarital balance at some point during the marriage. The court listed the accounts as follows:

Merrill Lynch Account: value of $73,248.14

2nd Merrill Lynch Account: value of $260.98

3rd Merrill Lynch Account: value of $8.76

JP Morgan Account: value of $110,000.00

Family Bank Account: value of $7,250.84

In April of 2005, Glenn moved the accounts and consolidated them at JP Morgan Chase where they were managed by David Demarest. The approximate amount consolidated was $206,856.00. After deposits from marital funds, the account grew until, in September of 2008, they totaled $493,000.00. There was also a small IRA account at JP Morgan of $33,000.00.

In July of 2004, the parties purchased a home in Pikeville for $492,500.00 from David Demarest. The down payment on the home included $23,000.00 from the sale of Glenn's camper he had purchased prior to marriage. While Glenn claimed the entire down payment of $50,000.00 was nonmarital, the court found that Glenn had only adequately traced $23,000.00 of nonmarital assets. The parties sold the residence on October 29, 2010, for $485,000.00, which, after payment of all outstanding liens, resulted in a net payment to the parties of $95,287.89. The court had previously ordered that each party receive $20,000.00

and the rest had been deposited into an escrow account. The court then had to distribute the remaining $55,100.94.

Glenn has an ownership in Condor Properties that has a value of $25,000.00. Glenn had an ownership interest in various oil and gas wells operated under the name J&R Fuels valued at $20,000.00.

Glenn also had a 50% ownership in Green Partners, LLC, which owns 46% of a commercial building on South Broadway in Lexington, Kentucky. Green Partners, LLC was originally incorporated in 2009; Glenn and David Demarest are the only shareholders. Jill had originally signed the note with Forcht Bank when the South Broadway property was purchased. However, she was never a shareholder or employee of the corporation and the note she signed has been satisfied and retired when the Community Trust Bank became the primary mortgagee. The fair market value of the Green Partners' 46% ownership in the commercial building is $1,150,000.00. The outstanding debt owed on the building in $954,397.76. Therefore, the equity in the building is $195,600.00 and Glenn's half interest is $97,800.00.

Glenn owned a life insurance policy with a cash value of $13,511.49.

The court concluded that all legal fees received by Glenn between the date of the marriage and the date of separation were marital assets. The court concluded that Glenn had failed to trace any claimed nonmarital assets in the brokerage accounts, given the commingling of the funds. Glenn added marital funds to and withdrew from these accounts during the course of the marriage,

causing their balances to fluctuate to very low levels at times and very high levels at other times. The court deemed it impossible to determine that all or any specific part of the accounts contained nonmarital money.

The value of the marital estate subject to division, as found below, was $768,300.00, comprised of:

| | | |
|---|---|---|
| Brokerage/Investment Accounts | $585,300 | (Demarest) |
| Condor Properties 3.75% | 2,500 | (Wallen) |
| JR Fuels | 20,000 | (Wallen) |
| JA East Partners 6.25% | 3,900 | (Wallen) |
| Green Partners 50% | 97,800 | (Glenn) |
| Hammond Law Office | 34,800 | (Griffith) |
| Life Insurance | 13,500 | (Glenn) |
| Marital residence escrow (net) | 32,100[2] | (court) |
| Family Bank Account | 7,200 | (Glenn) |
| US Bank | 3,100 | (Jill) |
| BMW automobile | 10,700 | (Jill) |

Total: $768,300.00.

During these proceedings, Glenn paid marital taxes in 2008 in the amount of $84,000.00 and the court gave him credit for the taxes he paid on behalf of Jill in the amount of $42,000.00.

[2] On remand we ask the trial court to clarify this finding as earlier in the order the court stated that the amount to be divided was $55,100.94.

The court ordered that Jill be awarded her bank account at US Bank and her BMW automobile. Glenn was awarded all the remaining property owned by the parties, including any interest in Green Partners, LLC, Condor Partners, JA East Partners, J&R Fuels, and the Law Office of Glenn M. Hammond, and was ordered to pay Jill $377,300.00 for her marital interest in this property. The court ordered that each party was responsible for any debt associated with the property awarded them.

Additionally, the court found that there was an extreme disparity of income between the parties as Glenn reported that his gross monthly income was over $28,000.00 and Jill earned about $30,000.00 per year. The court found Glenn's argument that Jill's income had exceeded his the last two years to be ludicrous. However, the court did not order maintenance to continue after Glenn had transferred her allotment of the marital estate to her. The court reasoned that the portion of the marital estate awarded to Jill was sufficient to provide for her reasonable needs, but until she received her share of the assets, she was unable to provide for her needs. Thus, the court ordered Glenn to pay maintenance in the amount of $1500 per month until Glenn had transferred her allotment of the marital assets to her.

Jill had been represented in the proceedings since late 2009 by McBrayer, McGinnis, Leslie & Kirkland. She had been unable to pay anything toward her legal bill which was about $92,000.00. The court found that Glenn had pursued a course of obstructive behavior in the litigation which caused it to be

protracted. He repeatedly changed counsel and caused Jill to have to defend against frivolous motions. He made multiple motions to terminate temporary maintenance in the face of unequivocal denials from the court. He caused Jill's counsel to file multiple motions to pay his overdue temporary maintenance. Given the financial disparity between the parties, the court awarded Jill $75,000.00 in attorney's fees. It is from this order that Glenn now appeals.

On appeal, Glenn presents basically four arguments, namely: conflict barred representation by Jill's counsel; the trial court erred in its findings related to marital property; Jill is not entitled to an award of attorney's fees; and Jill is not entitled to further maintenance.

STANDARD OF REVIEW

At the outset, we address the various standards of review for the issues before us. We note that in dividing marital property a trial court has wide latitude and, absent an abuse of discretion, we shall not disturb the trial court's ruling. *See Smith v. Smith*, 235 S.W.3d 1, 6 (Ky. App. 2006), and *Neidlinger v. Neidlinger*, 52 S.W.3d 513, 523 (Ky. 2001). Similarly, in maintenance awards, the trial court is afforded a wide range of discretion, which is reviewed under an abuse of discretion standard. *See Platt v. Platt*, 728 S.W.2d 542, 543 (Ky. App. 1987). The amount of an award of attorney's fees is committed to the sound discretion of the trial court. *Gentry v. Gentry*, 798 S.W.2d 928, 938 (Ky. 1990). Abuse of discretion is that which is arbitrary or capricious, or at least an unreasonable and unfair decision. *See Sexton v. Sexton*, 125 S.W.3d 258, 272 (Ky. 2004). However,

the trial court's conclusions of law are reviewed *de novo*. *Stipp v. St. Charles*, 291 S.W.3d 720, 723 (Ky. App. 2009).

## DISQUALIFICATION OF COUNSEL

As his first basis of appeal, Glenn argues that conflict barred representation by Jill's counsel for three reasons and that the trial court erred in denying his motions to disqualify counsel. First, Glenn argues that the entire McBrayer firm is disqualified in this matter as the central issue before the court was the valuation of the law practice and Glenn's CPA, Griffiths, obtained a legal opinion letter from Paul Craft, a McBrayer attorney. This letter was relied upon by Griffiths in determining the value of Glenn's law firm. Glenn argues that the entire firm is disqualified from representation of parties whose interest is adverse to him, particularly with respect to financial issues. Glenn argues that the attorney-client relationship does not require payment or an express agreement; instead, the relationship is clear where the client relies on the attorney's advice. Glenn does not consent to McBrayer representing Jill. Second, Glenn asserts that McBrayer attorneys were hired by his father in a prior case and they became aware of Glenn's law practice assets from that representation. Third, Glenn asserts that a conflict exists between McBrayer and Jill as her current attorney is acting as counsel for her prior attorney's estate. Thus, her current attorney has placed himself in a

position where he represents the estate to which Jill owes money for legal fees, which Glenn believes to be excessive fees, and at the same time represents Jill.

In response, Jill argues that the trial court properly concluded that there was no conflict of interest. First, as to Paul Craft, Jill argues that the Craft letter simply gives general legal advice and in no way shows that Craft was made aware of any particulars of Glenn's case. We agree. Our review of the Craft letter to CPA Griffiths shows a generalized statement of the law concerning the sale of a law practice. Craft in his affidavit averred that he had never been given specific facts regarding Glenn or even knew Glenn's name.[3] The information gleaned from the Craft letter and used by Griffiths is not in dispute between the parties, namely, that the sale of Glenn's law practice is restricted by our Kentucky Supreme Court

[3] We fail to see how Glenn could be considered a client of Craft with such a generalized legal question asked by his retained expert Griffiths and said expert never divulging *its* client's name or any particulars about the case. *See Edwards v. Land, infra:*

> We are not convinced that merely providing a general statement of the law to parties with whom an attorney-client relationship has not previously been established will result in the establishment of that relationship, and consequently result in an attorney rendering "legal advice without compensation." Without the establishment of an attorney-client relationship, an attorney cannot be said to render legal advice by simply providing a party with a statutorily required statement of the law. In such a situation there would not exist "that relation of confidence and trust so necessary to the status of attorney and client. This is the essential of legal practice—the representation and the advising of a particular person in a particular situation." *New York County Lawyers' Assoc. v. Dacey*, 28 A.D.2d 161, 171, 283 N.Y.S.2d 984, 988 (N.Y.App.Div.1967). And *see State Bar of Michigan v. Cramer*, 399 Mich. 116, 249 N.W.2d 1, 8–9 (1976); *State v. Winder*, 42 A.D.2d 1039, 348 N.Y.S.2d 270, 272 (N.Y.App.Div.1973). We therefore hold that KRS 411.188 does not require an attorney to render "unfounded legal advice without compensation."

*Edwards v. Land,* 851 S.W.2d 484, 490 (Ky. App. 1992), *overruled on other grounds by O'Bryan v. Hedgespeth,* 892 S.W.2d 571 (Ky. 1995).

Rules. "[D]isqualification is a drastic measure which courts should be hesitant to impose except when absolutely necessary." *Zurich Ins. Co. v. Knotts*, 52 S.W.3d 555, 560 (Ky. 2001), citing *University of Louisville v. Shake*, 5 S.W.3d 107 (Ky. 1999). The trial court did not err in failing to disqualify counsel on this basis.

In support, Glenn asserts that McBrayer attorneys were hired by his father in a prior case and they became aware of Glenn's law practice assets at that time. Jill argues that Glenn did not bring this perceived conflict to the court's attention until nearly four years into the case herein and does not present anything beyond vague references to valuation methods utilized. Counsel for Jill believes that Glenn is referring to his father's federal criminal case and does not believe that any relevant information concerning Glenn is at issue. Moreover, the attorney that Glenn alleges represented his father, the Hon. Brent Caldwell,[4] left McBrayer in 2008, prior to Jill's current McBrayer attorneys arriving at the firm. Glenn asserts that he repeatedly raised the conflict issue with the trial court and has consistently not waived the conflict. Again, without further evidence that an actual conflict exists,[5] we must affirm the trial court's determination that no conflict existed.

Glenn also asserts that a conflict exists between McBrayer and Jill as her current attorney is acting as counsel for her prior attorney's estate. Thus, her current attorney has placed himself in a position where he represents the estate to

[4] Interestingly, Glenn alleges that Terry McBrayer also represented his father but makes no citation to the record to support this assertion.

[5] We note that the problem with Glenn's arguments concerning disqualification is that he has never been a client of McBrayer.

which Jill owes money for legal fees, which Glenn believes to be excessive fees, and at the same time, represents Jill. Glenn refers this Court to *Kentucky Bar Ass'n v. Profumo,* 931 S.W.2d 149 (Ky. 1996), which we find to be distinguishable. In *Profumo* counsel was acting as the estate's executor and the estate's attorney. This does not appear to be the case herein. Yet again, Glenn wishes to assert a conflict by alleging that the conflict arises with a former client, when he has in fact never been a former client of McBrayer. Therefore, we find no error with the trial court's determination that a conflict of interest did not exist.

MARITAL PROPERTY

Glenn next makes multiple arguments concerning the trial court's findings and distribution of the parties' assets and liabilities. He complains that 1) the court was required to find for him on all issues related to the value of marital assets; 2) the brokerage account is nonmarital and that he properly traced his claimed nonmarital interest; 3) there is no evidence of dissipation of the marital assets;[6] 4) the court used the wrong date to value the marital estate; 5) the Green Partners oil and gas wells are marital property and Jill should, therefore, be responsible for her share of marital debt; and 6) the trial court used the wrong values for the parties' assets.

1) Evidence of Value

[6] There was no finding by the trial court that Glenn dissipated the parties' assets. Thus, we believe this argument to be without a basis in the record and decline to address it further.

First, Glenn argues that the trial court was required to accept the evidence provided by him given that Jill failed to produce any expert witnesses.[7] We find this argument to be disingenuous as the trial court did rely on the evidence presented by Glenn. We perceive Glenn's argument to be that he is dissatisfied that the trial court relied on some of Glenn's expert valuations but not all. The trial court as finder of fact is given great deference to judge the creditability of witnesses and the evidence presented to it. *See Adkins v. Meade,* 246 S.W.2d 980 (Ky. 1952); *Ghali v. Ghali*, 596 S.W.2d 31 (Ky. App.1980). Moreover,

> A family court operating as finder of fact has extremely broad discretion with respect to testimony presented, and may choose to believe or disbelieve any part of it. A family court is entitled to make its own decisions regarding the demeanor and truthfulness of witnesses, and a reviewing court is not permitted to substitute its judgment for that of the family court, unless its findings are clearly erroneous.

*Bailey v. Bailey*, 231 S.W.3d 793, 796 (Ky. App. 2007). The trial court *sub judice* was free to believe or disbelieve the testimony proffered. Therefore, we find no error.

2) Brokerage Account

The division of marital property is controlled by Kentucky Revised Statutes (KRS) 403.190 which states:

> In a proceeding for dissolution of the marriage or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse

[7] We remind Glenn that Jill did not have to provide her own expert witnesses. Instead, this Court reviews the entire record to determine if the trial court's findings are supported by the record.

> or lacked jurisdiction to dispose of the property, the court shall assign each spouse's property to him. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including:
>
> (a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;
> (b) Value of the property set apart to each spouse;
> (c) Duration of the marriage; and
> (d) Economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

Our courts have interpreted KRS 403.190 to require a three-step process. As stated in *Hunter v. Hunter*, 127 S.W.3d 656, 659-660 (Ky. App. 2003), "The trial court's division of property involves a three-step process: (1) characterizing each item of property as marital or nonmarital; (2) assigning each party's nonmarital property to that party; and (3) equitably dividing the marital property between the parties." (Internal citations omitted). The equitable division of property is not necessarily equal. *See Lawson v. Lawson*, 228 S.W.3d 18, 21 (Ky. App. 2007) (KRS 403.190 requires a court to divide the marital property in "just proportions" which is not necessarily equally).

The party claiming that the property acquired during the marriage is nonmarital has the burden of proof and must establish this by clear and convincing evidence. *Sexton* at 266-267, n.31. "Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a

probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people." *Rowland v. Holt*, 253 Ky. 718, 70 S.W.2d 5, 9 (1934). This is accomplished with the concept of tracing.

Tracing allows the party claiming a nonmarital interest in property to prove its nonmarital character. The "source of funds rule" is often used to achieve tracing when the property before the court includes both marital and nonmarital components. *See Travis v. Travis*, 59 S.W.3d 904, 909 (Ky. 2001). "The source of funds rule simply means that the character of the property, i.e., whether it is marital, nonmarital, or both, is determined by the source of the funds used to acquire property." *Travis* at 909, n.10 (internal citations omitted). Moreover, "[i]n the context of tracing nonmarital property, when the original property claimed to be nonmarital is no longer owned, the nonmarital claimant must trace the previously owned property into a presently owned specific asset." *Sexton* at 266.[8]

The concept of tracing does not require mathematical certainty. *Chenault v. Chenault*, 799 S.W.2d 575 (Ky. 1990). Instead, the party claiming such an interest may persuade the family court through testimony how the property owned at the time of the dissolution had been acquired. *Terwilliger v. Terwilliger*, 64 S.W.3d 816 (Ky. 2002). This often requires showing that the nonmarital asset was spent in a traceable manner during the marriage. *Kleet v. Kleet*, 264 S.W.3d 610 (Ky. App. 2007).

[8] *Sexton* explains that tracing "arises from KRS 403.190(3)'s presumption that all property acquired after the marriage is marital property unless shown to come within one of KRS 403.190(2)'s exceptions." *Id*. at 266.

Pertinent to the case herein, commingling of assets presents two related issues for the party claiming a nonmarital interest in the property to overcome. First, did the nonmarital property lose its exempt status; and second, has the commingling of assets rendered tracing ineffective? *See Bischoff v. Bischoff*, 987 S.W.2d 798 (Ky. App. 1998), and *Travis* at 910. We agree with the trial court that Glenn did not overcome these two issues.

While Glenn argues that he presented sufficient evidence to trace his nonmarital claims, we disagree. Glenn presented the trial court evidence that he established the brokerage accounts prior to marriage. The trial court was presented with evidence that Glenn had deposited marital funds into the accounts, transferred accounts, removed funds from the account to pay expenses during the marriage, after which time he presented the trial court with account balances post-marriage. The trial court was correct that such evidence did not sufficiently trace Glenn's claimed nonmarital interest given the commingling of assets.

3) Date of Valuation

Glenn next argues that the trial court erred in valuing the assets of the parties as of the date of their actual separation instead of the date of dissolution of their marriage.[9] We disagree. An appellate court shall not disturb a trial court's

[9] While not argued by Glenn, we presume that he is relying on *Stallings v. Stallings*, 606 S.W.2d 163 (Ky.1980), which we find to be distinguishable from the facts herein. As discussed in *Gaskill v. Robbins,* 361 S.W.3d 337, 340 (Ky. App. 2012):

> Although Gaskill argues that the Courts in *Stallings v. Stallings*, 606 S.W.2d 163 (Ky.1980), and *Clark*, 782 S.W.2d at 56, concluded that the trial courts abused their discretion by valuing assets on dates other than the dates of the decrees, we agree with the trial court that those cases are factually and legally distinguishable. *Stallings* questioned whether

valuations in a dissolution action unless the decision is contrary to the weight of the evidence. *Gaskill v. Robbins*, 361 S.W.3d 337, 339-340 (Ky. App. 2012). Valuing and dividing property are within the sound discretion of the trial court. *Cochran v. Cochran*, 746 S.W.2d 568, 569-70 (Ky. App. 1988). Because Glenn had control of the accounts and freely withdrew and deposited funds from these accounts, both during the marriage and after the separation but prior to the dissolution of the marriage, we discern no error in the court's choice to value the account on the date the parties physically separated rather than on the date of judgment. Moreover, Glenn provided the trial court with the valuation through his testimony and his experts' testimony. We find it disingenuous that he now takes issue with the trial court relying on Glenn's proffered testimony. Therefore, we find no error.

4) Oil and Gas Lease

Glenn further argues that the Green Partners oil and gas wells are marital and Jill should be responsible for her share of marital debt therefrom. Glenn claims that the trial court erred when it assigned each party the debt

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property acquired after separation but prior to dissolution should be considered marital property. In *Clark*, the Court concluded that a pension and profit sharing plan should have been valued at date of dissolution rather than the date of the qualified domestic relations order. However, as the Court in *Clark* acknowledged, there is no bright-line method used to evaluate property. *Clark*, 782 S.W.2d at 59. "The task of the appellate court is to determine whether the trial court's approach reasonably approximately (sic) the net value[.]" *Id.* Our review indicates that the court's decision to value the oral surgery practice based upon the 2003 evaluation was well-reasoned and based upon ample evidence.

associated with the property they received. We disagree. As stated in *Guffey v. Guffey,* 323 S.W.3d 369, 373 (Ky. App. 2010):

> Although Kentucky Revised Statute[s] (KRS) 403.190 creates a presumption that property acquired during a marriage is marital, no such presumption exists for debt acquired during a marriage. *Bodie v. Bodie,* 590 S.W.2d 895, 896 (Ky.App.1979). When assigning marital debt, trial courts should consider:
>
> > 1) whether the debt was incurred purchasing marital assets; 2) whether it was necessary for maintenance and support of the family; 3) economic circumstances of the parties; 4) extent of participation and receipt of benefits. *Neidlinger v. Neidlinger*, 52 S.W.3d 513, 523 (Ky.2001) (internal citations omitted).

An appellate court reviews a trial court's division of debts under an abuse of discretion standard. *Neidlinger* at 523. As the Kentucky Supreme Court has explained, there is no "presumption that debts must be divided equally or in the same proportions as the marital property." *Id.* This Court has stated "In dividing marital property, including debts, appurtenant to a divorce, the trial court is guided by Kentucky Revised Statute (KRS) 403.190(1), which requires that division be accomplished in "just proportions.'" *Lawson v. Lawson*, 228 S.W.3d 18 at 21.

Herein, the trial court clearly undertook an assessment of factors set forth in *Neidlinger* and reiterated by this Court in *Guffey.* The trial court divided the parties' debt, incurred by Glenn in his business ventures, in just portions and was not bound to divide the debt in the same proportions as the marital property.

Therefore, we find no error in the trial court's assignment of debt between the parties.

5) Valuation of Assets

Glenn argues that the trial court used the wrong values for the parties' assets as evidenced by the different figures within the order.[10] We agree. Upon our review of the trial court's order it is apparent that the court utilized inconsistent figures, without explanation, in its findings of fact and then in dividing the marital property.

In dividing the marital property the court stated that the brokerage/investment accounts were worth $585,300. Earlier in its order the court had set forth that the parties had various accounts with the values of:

Merrill Lynch Account: value of $73,248.14

2nd Merrill Lynch Account: value of $260.98

3rd Merrill Lynch Account: value of $8.76.00

JP Morgan Account: value of $110,000.00

Family Bank Account: value of $7,250.84

[10] Glenn states that the trial court did not account for Jill's IRA in its division. If there was an oversight, it may be corrected on remand. Additionally, the trial court may reconsider Jill's income findings if it determines that Glenn's argument that Jill's income tax returns were fraudulently made is meritorious of consideration.

Then, the court noted in April of 2005, Glenn moved the accounts and consolidated them at JP Morgan Chase where they were managed by David Demarest. The approximate amount consolidated was $206,856.00. After deposits from marital funds, the account grew until in September of 2008 they totaled $493,000.00. There was also a small IRA account at JP Morgan of $33,000.00.

In light of these findings, we cannot produce the same calculation that the brokerage accounts were worth $585,300.00. We believe remand to be appropriate for the court to explain its calculations or to correct any inadvertent miscalculations. Therefore, we must reverse and remand the trial court's division of marital property for further reconsideration.[11]

ATTORNEY'S FEES

Next, Glenn argues that the trial court committed reversible error in its award of attorney's fees. The court, in light of the financial disparity between the parties and Glenn's course of obstructive tactics that extended the litigation, awarded Jill $75,000 in attorney's fees out of the accumulated bill of $92,000. We do not find such an award to be an abuse of the court's discretion.

At issue, KRS 403.220 states:

> The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for attorney's fees, including sums for legal

[11] We reiterate that the trial court's ultimate distribution plan of the parties' assets and liabilities, as set forth in Paragraphs 2, 3, 4, and 5 of its October 2012 Order of Distribution, was not in error; only the actual dollar amount to be paid to Jill by Glenn under Paragraph 4 of the Order may be subject to change, given the seemingly inconsistent figures used in that Order.

> services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Per statute, a court may award attorney's fees but must consider the financial resources of both parties.

An award of attorney's fees under KRS 403.220 is only supported by an imbalance in the financial resources of the parties. *Lampton v. Lampton*, 721 S.W.2d 736, 739 (Ky. App. 1986) (internal citations omitted). Herein, the trial court clearly considered the parties' financial resources prior to awarding Jill attorney's fees.[12] Additionally, the trial court noted Glenn's obstructive tactics extending litigation. In *Lampton, supra* this Court noted the inherent power of the court to assess attorney's fees under Kentucky Rules of Civil Procedure 37 in a dissolution of marriage proceeding:

> An allowance of attorney's fees is authorized by KRS 403.220 only when it is supported by an imbalance in the financial resources of the respective parties. *Sullivan v. Levin*, Ky., 555 S.W.2d 261, 263 (1977). *Accord, Bishir v. Bishir,* Ky., 698 S.W.2d 823, 826 (1985). Since the resources of the parties here were approximately equal, an award of attorney fees under the statute was an abuse of discretion under the circumstances.
>
> However, the circuit court's award of attorney fees appears to have been motivated, at least in part, by appellant's obstruction of and refusal to cooperate with discovery. On remand, the circuit court should determine what portion of appellee's attorney fees were the result of such obstruction and make an appropriate award under CR 37.

[12] We note that the trial court awarded Jill less attorney's fees than what she sought.

*Lampton* at 739.[13]

As the trial court correctly noted an imbalance in the financial resources of the parties, we find no error in the award of attorney's fees to Jill and, accordingly, affirm the award.

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[13] We find *Rearden v. Rearden*, 296 S.W.3d 438, 444 (Ky. App. 2009), in which this Court stated "KRS 403.220 does not authorize a trial court to consider fault or willful disobedience, or anything beyond the financial positions of the parties…" to be distinguishable from the case herein. In *Rearden,* the appellant appealed from the denial of an award of attorney's fees arguing that the appellee's contempt of court entitled him to attorney's fees under KRS 403.220. This Court held that the only consideration of KRS 403.220 was the financial positions of the parties in awarding attorney's fees and not the fault of the parties. As the appellant was in a financially superior position to the appellee, the court correctly denied the motion for attorney's fees. This Court further noted that the appellant was actually awarded attorney's fees under the accompanying contempt proceeding and appeared to be attempting to "double-dip" and receive attorney's fees for both the contempt action and the dissolution of marriage action.

In further support of the propriety of this award *see also Gentry v. Gentry,* 798 S.W.2d 928, 938 (Ky. 1990), wherein the Kentucky Supreme Court discussed KRS 403.220 and CR 37.01:

> The amount of an award of attorney's fees is committed to the sound discretion of the trial court with good reason. That court is in the best position to observe conduct and tactics which waste the court's and attorneys' time and must be given wide latitude to sanction or discourage such conduct….
>
> We agree that many of the costs and fees were unnecessary in the sense that a good deal of the court's time and a substantial part of the costs and fees assessed could have been avoided by candor and cooperation. Under such circumstances, there is no abuse of discretion nor any inequity in requiring the party whose conduct caused the unnecessary expense to pay it. CR 37.01.
>
> In *Bishir v. Bishir*, Ky., 698 S.W.2d 823 (1985), this court specifically held it was proper to award fees incurred by the wife in a post judgment CR 60.02 proceeding, even though, in that case, the wife's motion was overruled. The disparity of financial resources was sufficient grounds. In this instance, financial inequality justifies the award, KRS 403.220. Tom's obstructive tactics and conduct, which multiplied the record and the proceedings, justify both the fact and the amount of the award. KRS 403.220, CR 37.01.

*Sexton v. Sexton*, lists other considerations for a trial court: In addition to the parties' financial resources, the trial court should consider other relevant factors, including those set forth by our

Finally, Glenn argues that Jill is not entitled to further maintenance. As noted, the court found that there was an extreme disparity of income between the parties as Glenn reported that his gross monthly income was over $28,000.00 and Jill earned about $30,000.00 per year. Despite the disparity in income, the court determined that the marital estate awarded to Jill was sufficient to provide for her reasonable needs. However, until she received her share of the assets, she was unable to provide for her needs. Consequently, the court ordered Glenn to pay Jill maintenance in the amount of $1500 a month until Glenn had transferred her allotment of the marital assets to her.

Maintenance is a matter which comes within the sound discretion of the trial court. *Browning v. Browning,* 551 S.W. 2d 823, 825 (Ky. App. 1977). KRS 403.200(2) provides "[t]he maintenance order shall be in such amounts and

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predecessor in *Boden v. Boden*:

> (a) Amount and character of services rendered.
> (b) Labor, time, and trouble involved.
> (c) Nature and importance of the litigation or business in which the services were rendered.
> (d) Responsibility imposed.
> (e) The amount of money or the value of property affected by the controversy, or involved in the employment.
> (f) Skill and experience called for in the performance of the services.
> (g) The professional character and standing of the attorneys.
> (h) The results secured.
>
> Additionally, "obstructive tactics and conduct, which multiplied the record and the proceedings" are proper considerations "justify[ing] both the fact and the amount of the award."

*Sexton v. Sexton*, 125 S.W.3d 258, 272-73 (internal citations omitted).

for such periods of time as the court deems just, and after considering all relevant factors . . . ." In view of the facts as previously outlined, we cannot say the trial court abused its discretion by awarding maintenance.

In light of the aforementioned, we affirm in part, reverse in part, and remand for further proceedings.

ALL CONCUR.

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