

RENDERED: DECEMBER 8, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000905-MR

TAMMY Y. MCKINNEY TRUDE

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE JEFF MOSS, JUDGE
ACTION NO. 13-CI-50007

WILLIAM TRUDE, JR.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KRAMER, CHIEF JUDGE; DIXON AND NICKELL, JUDGES.

DIXON, JUDGE: Tammy Trude appeals from the supplemental findings of fact and conclusions of law rendered by the Madison Circuit Court in this dissolution of marriage action. Finding no error, we affirm.

In a previous appeal of this matter, an unpublished opinion of this Court set forth the following factual and procedural history:

Tammy and William Trude, Jr. (Bill) were married in December 2005. At that time, Tammy owned a house and lot located on Forest Hills Drive in Irvine, Kentucky. She owned the home free and clear, and had no indebtedness of any kind. Bill also owned a home which he sold after the marriage, receiving approximately \$30,000 in proceeds. These funds were used to pay Bill's credit card debts.

Shortly after getting married, the parties bought a home together on Dry Branch Road, in Irvine. They obtained a \$133,000 loan secured by Tammy's Forest Hills property. Of that loan, \$95,000 was used as half the purchase price of the Dry Branch residence. The parties dispute how the remainder of that loan was spent. Both parties signed the notes for the mortgages on each residence. In 2012, they refinanced the existing mortgage on the Dry Branch residence and increased the debt to the sum of \$162,000.

In 2006, Bill lost his campaign for re-election as a circuit judge. He stopped working in the legal profession until 2009, when he reopened his private practice. According to Tammy, who had resigned her job as a flight attendant to assist with Bill's campaign, she had to hold multiple jobs during this period and sell much of her nonmarital property to keep the marital finances afloat. When Bill resumed work as an attorney in 2009, he was able to earn over \$100,000 per year. He ran unsuccessfully for election again in 2010.

The couple separated in November 2012, and Bill petitioned for a decree of dissolution in January 2013. At that time, Tammy was fifty-five years of age, and Bill was sixty years of age.

Following a hearing, the trial court awarded the Dry Branch Road home with its associated debt to Bill and ordered him to pay Tammy \$32,000 in order to "equalize the division of this marital asset between the parties."

Tammy was awarded the home at Forest Hills Drive with its associated debt. Apart from referring to the Dry Branch home as a marital asset, the trial court order does not characterize any of the property or debt as marital or nonmarital, nor does it assign a value to the property or the debt. Bill was awarded a wedding ring, and the trial court terminated Tammy's monthly maintenance of \$2,500, which had been paid pursuant to a temporary order for the preceding five months. The order states that the maintenance obligation was considered by the court to be a setoff to any of Tammy's other claims.

Trude v. Trude, 2013-CA-002153-MR, 2015 WL 6560633 at *1 (Ky. App. 2015).

Tammy appealed the judgment, challenging the court's division of marital property and debt. This Court determined it was unable to review the merits of Tammy's appeal due to the inadequacy of the lower court's factual findings; consequently, the matter was remanded to the circuit court for it to make additional findings of fact and conclusions of law.

On remand, after reviewing the final hearing, the court issued supplemental findings of fact and conclusions of law. The court awarded Bill the Dry Branch property and assigned him the associated \$162,000 debt. The court determined the parties had equity of \$63,000 in the Dry Branch property and ordered Bill to pay Tammy \$32,000 as her share of the equity. The court awarded the Forest Hills home to Tammy as her non-marital property. The court determined the mortgage on the Forest Hills property was marital debt and assigned it to Tammy.

On appeal, we will not disturb the trial court's findings of fact unless they are clearly erroneous, bearing in mind that the lower court was in the best position to weigh the evidence and assess witness credibility. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). We review *de novo* the court's application of the law to the facts. *Carroll v. Meredith*, 59 S.W.3d 484, 489 (Ky. App. 2001).

Tammy contends the court abused its discretion by assigning the entire Forest Hills marital debt to her. She opines Bill should have been assigned half of the Forest Hills debt because it was undisputed \$95,000 of the mortgage loan was used as the down payment for the Dry Branch property. She further contends the Forest Hills debt should have been assigned to Bill because he used a substantial amount of marital funds on his judicial campaigns and on a failed property investment in Panama.

In *Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001), the Kentucky Supreme Court explained:

Debts incurred during the marriage are traditionally assigned on the basis of such factors as receipt of benefits and extent of participation; whether the debt was incurred to purchase assets designated as marital property; and whether the debt was necessary to provide for the maintenance and support of the family. Another factor, of course, is the economic circumstances of the parties bearing on their respective abilities to assume the indebtedness.

Id. at 523 (internal citations omitted).

In the case at bar, the parties' primary asset was the Dry Branch property. The parties also had two significant marital debts, the Dry Branch mortgage, and the mortgage on Tammy's non-marital Forest Hills property.¹ While we acknowledge \$95,000 of the Forest Hills debt was used as a down payment on Dry Branch, it is well-settled there is no "presumption that debts must be divided equally or in the same proportions as the marital property." *Id.* Furthermore, the court was presented with conflicting testimony regarding the circumstances surrounding many of the marital debts. In its supplemental order, the trial court addressed the assignment of debts, stating, in relevant part:

The Court specifically rejects Wife's argument that the \$55,000.00 spent during the Parties' marriage in an effort to have Husband elected judge and the \$30,000.00 that was lost in an attempt to purchase property in Panama should be attributed as debts that are the sole responsibility of Husband. Had Husband been elected, each of the parties would have shared in the benefits of said employment. While it is unfortunate that the Panama property situation ended as it did, the proof submitted did not show this error should be rendered the Husband's responsibility thereby freeing Wife from any responsibility.

After careful review, we conclude the trial court's findings of fact were supported by substantial evidence. Despite Tammy's argument to the

¹ Neither party introduced evidence at trial regarding the current balance of the Forest Hills mortgage.

contrary, we are not persuaded the court abused its broad discretion by assigning her the entire Forest Hills mortgage debt.

Tammy next contends the court erred by ordering her \$32,000 property award to be offset by the temporary maintenance she received. Our review indicates the court did not address this issue on remand, and Tammy failed to bring it to the court's attention by requesting additional or more specific findings of fact. Kentucky Rules of Civil Procedure (CR) 52.04; *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982). "Failure to bring such an omission to the attention of the trial court by means of a written request will be fatal to an appeal." *Eiland v. Ferrell*, 937 S.W.2d 713, 716 (Ky. 1997). Accordingly, we decline to address this unpreserved issue.

ALL CONCUR.

BRIEF FOR APPELLANT:

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