

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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000993-MR

ROBERT E. JAMES

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE GEORGE W. DAVIS III, JUDGE
ACTION NO. 13-CI-01100

KIMBERLY B. JAMES (now Woods)

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: KRAMER, CHIEF JUDGE; ACREE AND JONES, JUDGES.

ACREE, JUDGE: Robert James appeals the Boyd Circuit Court's June 13, 2016 order which, in effect, modified a directive in the final decree of dissolution of Robert's marriage to Kimberly James (now Woods). The decree indicated that the marital residence should be listed and sold in an arms-length transaction. The order from which the appeal is taken allows Kimberly, contrary to the decree, to

keep the marital residence and purchase Robert's share of the property. The decree, and its requirement to list and sell the property, became final before Kimberly filed her motion to amend. As a matter of law, the decree could not be modified except upon grounds established in CR¹ 60.02 and neither the motion nor the order identifies the rule or any ground recited therein as the reason for the modification. Therefore, we vacate the circuit court's order and remand with instructions to enforce the decree as entered.

PROCEDURAL BACKGROUND

The decree of dissolution of Robert's and Kimberly's marriage was entered by the Boyd Circuit Court on September 17, 2014. Among other things, the decree ordered the parties' marital residence to be sold and the net proceeds to be applied to the marital debt with any balance divided between the parties.

The last date to file a post-decree motion was September 29, 2014. CR 6.01; CR 59.05. No such motion was filed. The last date to file a notice of appeal was October 17, 2014. CR 73.02(1)(a). No notice of appeal was filed.

In fact, the next relevant docket activity occurred when Robert filed a motion on October 21, 2014. He asked the court to order Kimberly to cooperate in listing and selling the residence – a motion, in effect, in aid of execution of the decree. Kimberly responded by stating she was seeking an appraisal with a mind to keeping the property and purchasing Robert's share, rather than selling it as the decree ordered.

¹ Kentucky Rules of Civil Procedure.

The court's November 12, 2014 order provided, in relevant part, "that [Kimberly] shall cooperate with the preparation and the signing of a listing agreement to facilitate the offering of the parties['] marital residence for sale consistent with orders of the court." (R. 76). In effect, this order granted Robert's motion, denied Kimberly's motion, and instructed the parties to carry out the terms of the decree regarding the listing and sale of the marital property.

A week later, Kimberly filed a motion to alter, amend or vacate the court's November 12, 2014 order. In effect, she asked that the order compelling execution of the decree provision to list and sell the property be amended to allow her to purchase Robert's share of the marital residence. Robert responded that the issue was previously decided by the court on the merits and a final decision entered in September 2014; therefore, he argued, her motion should be denied.

On January 20, 2015, the circuit court granted Kimberly's motion to amend its previous order. The court issued other orders calculated to determine the value of the property. Eventually, an appraisal was filed valuing the residence at \$28,000, although the record indicates evidence of value from \$18,000 to \$55,000.

Based on the appraisal presented to the court, Kimberly filed another motion asking the court to establish the gross value of Robert's share at \$14,000, to allow her to present proof of her payments on the marital debt, and to deduct one-half that amount from the gross purchase price for Robert's share of the residence.

Robert responded, again arguing that the court lacked jurisdiction to amend the decree of dissolution which ordered the marital residence to be sold in

the open market, that the proceeds be paid against the marital debt, and any amount remaining be divided among the parties. Before the matter was heard, Robert filed another motion, this time requesting he be allowed to purchase the property “so that it goes for a fair price or value in regards to the distribution of the martial [sic] estate.” (R. 190). However, he continued to maintain that any deviation from the decree regarding the sale of the marital estate was improper. Notwithstanding Robert’s objections, on November 20, 2015, the court entered an order permitting Kimberly to pay \$14,000 into escrow as consideration for Robert’s share.

On December 30, 2015, Robert filed another motion with the circuit court addressing several matters. Among them, he again noted the court lacked jurisdiction to alter the decree as to the listing and sale of the marital residence. Kimberly filed her own motion to compel Robert to convey to her his interest in the property. The parties asked the circuit court for a hearing on the matter.

After the hearing, on June 13, 2016, the court entered an order permitting Kimberly to purchase the parties’ marital residence for \$28,000. The court further ordered that the proceeds were to be paid on the marital debt and the remainder to be deposited in escrow pending further orders of the court. It is from this order that Robert now appeals.

STANDARD OF REVIEW

Whether a court has acted outside its jurisdiction is a question of law. *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004). We review such issues *de novo*. *Hisle v. Lexington-Fayette Urban County Government*, 258

S.W.3d 422, 428 (Ky. App. 2008); see *Commonwealth v. Gross*, 936 S.W.2d 85, 87 (Ky. 1996) (“[T]rial court acted beyond its jurisdictional authority [because] the ten-day time limit of CR 59.05 had expired.”).

ANALYSIS

“A court loses jurisdiction ten days after the entry of final judgment, and such jurisdiction can only be renewed or extended by statute or rule.” *Rollins v. Commonwealth*, 294 S.W.3d 463, 466 (Ky. App. 2009) (citing *Silverburg v. Commonwealth*, 587 S.W.2d 241, 244 (Ky. 1979) (“The court had lost jurisdiction of the case and the entry of the order modifying the sentence is void.”)). In this case, because no motion was filed within ten days of the decree to continue jurisdiction (e.g., motions pursuant to CR 59.02 or CR 52.02), the circuit court lost jurisdiction to modify the decree on September 29, 2014. Therefore, all subsequent orders modifying the decree provision to sell the marital residence are void. We must vacate the order from which the appeal is taken.

As noted, however, jurisdiction can be renewed or extended by statute or rule. *Rollins*, 294 S.W.3d 466. The applicable statute in domestic cases is KRS² 403.250(1) which says: “[t]he provisions [of a decree] as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.” KRS 403.250(1). “The law of this state relating to the reopening of decrees is found in CR 60.02.” *Fry v. Kersey*, 833 S.W.2d 392, 394 (Ky. App. 1992). We have

² Kentucky Revised Statutes.

carefully examined the record. No motion pursuant to CR 60.02 was made and this Court sees nothing in the record that would justify reopening the case on any ground listed in that rule.

CONCLUSION

For the foregoing reasons, the June 13, 2016 order of the Boyd Circuit Court is VACATED, and this case is REMANDED with instructions to enforce the decree as entered.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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