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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001637-MR

SUZANNE ETSCORN — APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE DEANA MCDONALD, JUDGE
ACTION NO. 11-CI-501207

WILLIAM ETSCORN — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: NICKELL AND TAYLOR, JUDGES; HENRY, SPECIAL JUDGE.[1]

NICKELL, JUDGE: In this dissolution of marriage action, Suzanne Etscorn ("Susie") has appealed from the findings of fact, conclusions of law, and judgment of the Jefferson Circuit Court, Family Division, entered on June 20, 2017. The

[1] Special Judge Michael L. Henry sitting by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

judgment divided the marital estate between Susie and her ex-husband, William Etscorn ("Billy"), awarded Susie maintenance for five years, and denied her request for attorney fees. Susie challenges the trial court's scheduling order for the final hearing as being unreasonable. She further contends the trial court failed to make necessary findings of fact and conclusions of law resulting in improper rulings. Following a careful review, we discern no error and affirm.

Billy and Susie were married on July 24, 1985. Each had children from prior marriages; no children were born of the union. The parties enjoyed great financial success during coverture. However, the marital bark foundered in a sea of discontent. Unfortunate difficulties in the personal relationship led to Susie filing for divorce in 2011. A lengthy and contentious period of litigation ensued, centered primarily on division of the marital estate. A proper understanding of the issues presently before this Court requires an abbreviated recitation of the complex historical facts and procedural history which precipitated this appeal.

Prior to the marriage, Billy had acquired, by gift or purchase, business ventures started by his father, and began his operations as a wholly owned entity known as Bill Etscorn, Inc. The primary business, an automotive body repair shop, was quite successful and expanded greatly during the marriage. In 1995, Billy began a series of transfers of ownership in this corporation to his three sons who had come to work in the body shop, resulting in each child holding a fifteen-

percent interest and Billy retaining fifty-five percent ownership. That same year, Billy partnered in the creation of C&E Properties, LLC, a commercial real estate holding company, and would eventually come to own the entire company after buying out his partner's interest. The following year, in partnership with other investors, Billy began TBP Properties, LLC, another commercial real estate holding company. The portfolio of commercial real estate holdings would prove very profitable. Billy also partnered in a landscaping business, Professional Prune and Mulch ("PPM"). In 1997, Billy partnered with his sons[2] to start another successful commercial real estate holding company, Bill Etscorn and Sons, Inc.[3] By 2000, Billy had ceased nearly all day-to-day operation of the body shop, passing the reins to his sons. His primary focus became management of the various commercial properties owned by not only his own business entities, but also those owned by his sons. He was paid a substantial salary for serving in this capacity.

Around that same time, Billy started work on a business succession and estate plan to transfer his interests to his three sons. To accomplish this task, Billy formed yet another corporate entity, My Three Suns, LLC. Over the course

[2] In 1999, the boys started their own commercial real estate holding company, Etscorn Brothers, LLC; Billy had no interest in this corporate entity.

[3] This entity would later become Bill Etscorn and Sons, LLC.

of 2001, Billy executed documents transferring all ownership interests in Bill Etscorn, Inc., and Bill Etscorn and Sons, LLC—including the various business and property holdings of each entity—to My Three Suns, LLC. Susie joined in executing the transfer documents to convey any interest she had in the businesses and accompanying assets. The estate plan was completed later that year when ninety-seven percent of the shares of My Three Suns, LLC, were transferred to the three boys, leaving Billy a three-percent interest. Billy and Susie executed and filed gift tax returns with the Internal Revenue Service related to the transferred assets.

Susie would later claim she was unaware of the estate plan and its consequences. However, evidence was produced during trial revealing Susie, then contemplating divorce, met with an attorney in 2001 and discussed the estate plan, its effect on the marital estate and division of the parties' assets in the event the marriage was dissolved. Documents from those meetings showed Susie was aware of the transfers of business interests and assets to Billy's sons. Ultimately, Susie decided against filing a divorce action at that time and remained in the marriage, reaping the financial benefits of the estate plan. Although relieved of the stresses of the day-to-day operation of the multiple business entities, Billy continued to earn a healthy salary which enabled the parties to maintain their very comfortable lifestyle.

Nearly a decade later, Susie filed for divorce in 2011 and a protracted period of litigation ensued.[4] While the matter was pending, many of the parties' assets were liquidated to satisfy their financial obligations and fund the litigation, greatly reducing the value of the marital estate subject to division. The parties were divorced by limited decree on July 22, 2016. However, disagreements over financial matters and property division lingered which were not resolved until the trial court convened a final hearing and subsequently entered its lengthy and detailed findings of fact and conclusions of law on June 20, 2017. This appeal followed.

Susie raises three allegations of error in seeking reversal. First, she contends the trial court set arbitrary and unreasonable limitations on the time permitted for the final hearing, depriving her of an adequate opportunity to present her case. Next, Susie asserts the trial court failed to make necessary findings of

[4] A substantial portion of the litigation centered on the estate and business succession plan which Susie characterized as fraudulent, dissipative, and intended solely to deprive her of her marital interest in the transferred assets. Susie amended her complaint to add claims against the three boys and six business entities seeking to reverse the transfers which had been completed more than ten years prior. The trial court subsequently dismissed the claims against the sons and business entities, only to later grant Susie's request to rejoin them as indispensable parties. In *Etscorn v. Etscorn*, 2016-CA-000233-MR, 2017 WL 1101126 (Ky. App. Mar. 24, 2017), *review denied* (Sept. 20, 2017) (hereinafter "*Etscorn I*"), a panel of this Court concluded the trial court was without jurisdiction to bring the sons and business entities back into the litigation. The panel held the dismissal was facially a judgment on the merits in favor of the sons and business entities; it was designated as final and appealable; and Ms. Etscorn did not appeal that order. Thus, the dismissal operated "as a judgment in favor of the sons and constitutes the cause *res judicata*." *Id*. at *3 (citation omitted). Susie restates many of the same arguments in this appeal, although now advanced against Billy and slightly revised.

fact and conclusions of law, the findings it did make were against the manifest weight of the evidence, and its legal conclusions did not properly take controlling precedents into consideration. Finally, she argues the trial court's findings of fact and conclusions of law were "utterly deficient," thereby adversely impacting resolution of her claim of dissipation of the marital estate, the maintenance award, and her request for attorneys' fees. Having reviewed the voluminous[5] and prolix evidence—much of it conflicting, repetitive, and indefinite—we discern no error and affirm.

First, Susie argues the trial court's scheduling orders related to the final hearing were arbitrary, unfair, and unreasonable, resulting in a constitutionally defective trial which violated her due process rights. She asserts the extreme time limitations forced her to present "almost the entirety" of her case by deposition while Billy was able to put on his entire case with live witnesses. Susie further contends the scheduling order caused her to truncate her expert proof and prevented her from adequately cross-examining witnesses or offering proper rebuttal testimony. We disagree.

On July 23, 2014, the trial court scheduled a two-day trial to commence in October 2014. Due to the number of unresolved pretrial issues and

[5] The record on appeal contains more than 6,000 pages, exclusive of depositions and hearing exhibits.

the impending retirement of the presiding judge, trial was continued indefinitely. By order entered in January 2015, the trial court scheduled two, twelve-hour days with the time to be divided equally between Billy and Susie; trial was to commence on October 21, 2015. Susie subsequently requested and was granted a continuance; trial was rescheduled to occur on May 31 and June 1, 2016. Approximately two months prior to the trial date, Susie moved the trial court for leave to take testimony in advance of the scheduled trial, requested an "individualized assessment of the time required for each party to properly present their respective cases," or alternatively to again continue the trial to a later date. In essence, over twenty months after the trial court first entered a trial order notifying the parties trial would be conducted on two days, Susie's motion sought to expand the allotted time for presentation of her case. The trial court denied the motion and trial commenced as scheduled.

On the first day of trial, the trial court informed the parties it had thoroughly reviewed all the deposition testimony which had been tendered and would not charge that time against either party. In the trial court's estimation, nearly six hours had been spent reviewing that portion of testimony. Near the close of the second day of trial, it became apparent to the parties and the trial court more time would be necessary to complete presentation of proof. An additional twelve hours of testimony was taken over two subsequent dates for a total of nearly

36 hours of trial time. Susie now contends the trial court's time management orders rendered the entire trial unfair and constitutionally defective.

Court time is a valuable and limited resource. Thus, the trial court, not the litigants, controls the docket. *Commonwealth v. Gonzalez*, 237 S.W.3d 575, 579 (Ky. App. 2007). A trial court has the inherent power "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Rehm v. Clayton*, 132 S.W.3d 864, 869 (Ky. 2004) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 166, 81 L.Ed. 153 (1936)). A trial court clearly has the power to impose reasonable time limits on the trial of actions before it in the exercise of its reasonable discretion. "[H]ow this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Id*. (quoting *Landis*, 299 U.S. at 245-55, 57 S.Ct. at 166). We will not disturb the court's decision as long as trial time limits are neither arbitrary nor unreasonable.

"The trial court 'is vested with a large discretion in the conduct of the trial of causes and an appellate court will not interpose to control the exercise of such discretion by a court of original jurisdiction, unless there has been an abuse or a most unwise exercise thereof.'" *Addison v. Addison*, 463 S.W.3d 755, 762 (Ky. 2015) (quoting *Transit Auth. of River City (TARC) v. Montgomery*, 836 S.W.2d 413, 416 (Ky. 1992)). Here, the trial court clearly encouraged the parties to

efficiently use their time in presenting their cases and avoid needlessly repetitious testimony and evidence. We do not find the prescribed time limits to be arbitrary, nor do they constitute an abuse of discretion. *See Hicks v. Commonwealth*, 805 S.W.2d 144 (Ky. App. 1990).

At the time of the final hearing, this matter had been pending over five years, comprehensive discovery had been completed, and one prior appeal had been prosecuted to completion. Further, the limitations on time had been known to the parties for nearly two years, so there was certainly adequate opportunity to tailor their respective cases to fit within the allotted time frame. There were no surprises and all parties had sufficient time to prepare and secure witnesses prior to the hearing. Susie has identified no evidence she was unable to present for the trial court's consideration. Her challenge is merely to the method by which a portion of the evidence was introduced—by deposition or live testimony.[6] We have reviewed the record and are unable to discern any prejudice to the parties relative to the trial court's scheduling of the hearing in this matter. While it was certainly within the authority of the trial court to allot additional time for the hearing—which it did on

[6] Susie's assertions she was forced to present "almost the entirety" of her case by "cold" depositions, prevented from fully cross-examining witnesses, and unable to present adequate rebuttal proof, are simply not borne out by the record. In fact, our review reveals she utilized well in excess of half of the trial time.

two separate occasions—it was just as certainly not one of the trial court's obligations. There was no error.

Second, Susie launches a multifaceted attack, contending the trial court failed to make necessary findings of fact and conclusions of law, failed to conduct its own independent fraud analysis, did not take controlling legal precedents into consideration, and rendered findings against the manifest weight of the evidence. She includes a lengthy and detailed recitation of facts in her effort to demonstrate error, interspersed with scant legal analysis and argument.

The well-settled standard of review of a trial court's legal findings in dissolution actions is *de novo*. *Hunter v. Hunter*, 127 S.W.3d 656, 659 (Ky. App. 2003); *Carroll v. Meredith*, 59 S.W.3d 484, 489 (Ky. App. 2001). An appellate court may set aside a trial court's factual findings

> only if those findings are clearly erroneous. And, the dispositive question that we must answer, therefore, is whether the trial court's findings of fact are clearly erroneous, i.e., whether or not those findings are supported by substantial evidence. "[S]ubstantial evidence" is "[e]vidence that a reasonable mind would accept as adequate to support a conclusion" and evidence that, when "taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men." Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses" because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the

> trial court. Thus, "[m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal," and appellate courts should not disturb trial court findings that are supported by substantial evidence.

Moore v. Asente, 110 S.W.3d 336, 354 (Ky. 2003) (footnotes omitted). *See also* CR[7] 52.01, *Reichle v. Reichle*, 719 S.W.2d 442 (Ky. 1986). A trial court's application of the law to the facts is reviewed *de novo*. *Lindley v. Paducah Bank & Trust*, 114 S.W.3d 259, 263 (Ky. App. 2002).

Susie initially accuses the trial court of failing to make necessary findings of fact and conclusions of law as required by CR 52. However, she does not indicate what findings the trial court failed to make. In fact, Susie offers little more than a conclusory assertion of error followed by a detailed recitation of facts related only to other theories of error. No effort is made to develop her position. Bald assertions, lacking any evidentiary support and deficient in legal and logical reasoning, carry no weight and form an insufficient basis for relief. We will not search the record nor the law to construct Susie's argument for her, nor will this Court undergo a fishing expedition to find support for underdeveloped arguments. "Even when briefs have been filed, a reviewing court will generally confine itself to errors pointed out in the briefs and will not search the record for errors." *Milby v. Mears*, 580 S.W.2d 724, 727 (Ky. App. 1979).

[7] Kentucky Rules of Civil Procedure.

Next, throughout the proceedings, Susie has alleged various theories of fraud and dissipation in seeking to unwind the 2001 business succession and estate plan in her effort to claw back what she perceives to be marital assets subject to division. In its final order, the trial court specifically concluded issues related to fraud and dissipation had been previously addressed on numerous occasions and Susie had provided theories to support her claims but no credible evidence. Thus, the trial court rejected her efforts to expand the marital estate. Susie now asserts the trial court failed to undertake an independent analysis pursuant to *Gripshover v. Gripshover*, 246 S.W.3d 460 (Ky. 2008), to determine whether Billy perpetrated a fraud on the marital estate and compounded the error when it relied on *Etscorn I* to find the issue had previously been decided. We disagree.

> In dividing assets in a dissolution action, the initial inquiry must necessarily be whether a particular asset is part of the marital estate. Only after this question has been answered in the affirmative may a court determine under KRS 403.190(1) that the asset is either marital or non-marital for purposes of division. It is elementary that if an asset does not belong to either of the parties, there is nothing to divide and thus, the inquiry should end.

Ensor v. Ensor, 431 S.W.3d 462, 469 (Ky. App. 2013) (footnote omitted). When issues arise in divorce actions concerning allegedly illicit or underhanded property transfers, Kentucky courts ascribe to the rule that

> fraudulent or dissipative transfers of marital property may be avoided or otherwise counteracted so as to

> vindicate a spouse's interest in support or in an equitable division of the marital estate. *Barriger v. Barriger,* 514 S.W.2d 114 (Ky. 1974); *Harley v. Harley,* 255 Ky. 370, 74 S.W.2d 195 (1934); *May v. May,* 33 Ky. L. Rptr. 193, 109 S.W. 352 (1908); *Solomon v. Solomon,* 383 Md. 176, 857 A.2d 1109 (Md. 2004); *Hofmann v. Hofmann,* 94 Ill.2d 205, 68 Ill.Dec. 593, 446 N.E.2d 499 (Ill. 1983). *See* Lee R. Russ, "Divorce—Dissipation of Assets," 41 A.L.R.4th 416 (1985) and J.R. Kemper, "Inter Vivos Trust—Impairing Spouse's Right," 39 ALR 3rd 14 (1971). Generally, however, a finding of fraud or dissipation requires that the challenged transfer be made in contemplation of divorce with the intent to impair the other spouse's interest. *See* Russ and Kemper, *supra. See also, Robinette v. Robinette,* 736 S.W.2d 351 (Ky. App. 1987) (dissipation).

Gripshover, 246 S.W.3d at 466. Dissipation of marital assets occurs when a spouse expends marital funds for nonmarital purposes. *Robinette,* 736 S.W.2d at 354. The funds must have been expended during a period when there was a separation or dissolution impending. *Id*. There must be a clear showing the expenditures were made with the intent to deprive the other spouse of their share of the marital property. *Id*.; *see also Heskett v. Heskett,* 245 S.W.3d 222, 227 (Ky. App. 2008). As we stated in *Ensor,*

> a party is free to dispose of his marital assets as he sees fit so long as such disposition is not fraudulent or intended to impair the other spouse's interest such that it may properly be classified as a dissipation of the marital estate. *See Brosick v. Brosick,* 974 S.W.2d 498 (Ky. App. 1998) (finding of dissipation requires showing the money was expended for non-marital purpose, was done in anticipation of divorce, and was done to deprive other party of his or her interest).

> While giving away valuable assets may almost assuredly cause marital strife—and for that reason alone is generally avoided by those who wish to remain happily or peacefully married—we cannot conclude in this instance that the transfer was inappropriate, especially in light of the substantial benefits which followed.

Ensor, 431 S.W.3d at 472-73.

The trial court here concluded Billy did not defraud Susie, did not force or coerce her into signing any documents, and divorce was not contemplated when the transactions related to the business succession and estate plan were completed in 2001. It found the parties continued with their high standard of living, reaped large financial gains following completion of the transfers, and continued to increase the size of the marital estate. The trial court was presented with mountains of documentary evidence throughout the course of the proceedings relative to the purported nefarious motives of various asset transfers, yet it found no fraudulent intent or plan to impair Susie's interest in the marital estate. Thus, as it had previously ruled on these issues on several occasions and no new, credible evidence to the contrary had been produced, the trial court concluded analysis of the facts under *Gripshover* was unnecessary. The trial court further found testimony of one of Susie's expert witnesses regarding what he considered "badges of fraud" was insufficient to carry the burden of proof, representing merely a theory without supporting proof. The trial court was correct.

Billy began his business succession and estate planning in 1995 and completed the plan nearly a decade before Susie filed for divorce in 2011. Susie joined Billy in executing the various warranty deeds, financial and tax documents necessary to effectuate the transfers. Although she now claims she was unaware of the full consequences of her actions, was not informed of the specifics of the business and estate planning, and lacked the mental and emotional capacity to fully understand the import of the transfers, testimony at trial clearly revealed she engaged in numerous conversations over many years with Billy, the boys, and even a divorce attorney,[8] regarding ownership and transfers of the various business entities and parcels of real property. Her own mental health experts testified their diagnoses related only to the present and specifically did not purport to address Susie's mental state at the time of the challenged transfers.

Further, the supposed "badges of fraud" testimony was plainly undermined by Susie's expert's own abject failure to understand or comprehend fundamental concepts essential to this action, including correct and appropriate definitions of marital property and dissipation, upon which he based much of his

[8] In 2001 Susie instructed her attorney to draft a motion to stop the estate planning process following discussions of the nature and consequences of the plan. She ultimately decided not to pursue this action, instead acquiescing and participating in execution of the estate plan documents.

testimony. The trial court was plainly permitted to give this testimony little credence or weight.

In sum, Susie has failed—from the beginning of this litigation—to present credible evidence supportive of her assertions of fraud and dissipation. Thus, no analysis under *Gripshover* was required. Resultantly, Susie's assertion the trial court improperly short-circuited the *Gripshover* analysis when it relied on *Etscorn I* in rendering its decision is inapposite. Susie's inability to proffer satisfactory evidence to carry her burden of proof was fatal to her claims.

Susie further claims the trial court's findings were against the manifest weight of the evidence. Although unclear from her brief, it appears Susie believes the trial court made only perfunctory findings and abdicated its fact-finding and decision-making responsibilities. No authority supportive of her position is cited nor is her argument pled with any sort of specificity. Susie recounts several portions of the testimony and evidence she presented at trial as support for her argument the trial court erred in its findings. Essentially, she contends the trial court's factual findings must be incorrect as they did not follow the testimony and evidence she presented. She appears to assert the trial court should have assessed the credibility of the witnesses and weighed the evidence presented differently.

"It is within the province of the fact-finder to determine the credibility of witnesses and the weight to be given the evidence." *Uninsured Employers' Fund v. Garland*, 805 S.W.2d 116, 118 (Ky. 1991) (citing *Gen. Tire & Rubber Co. v. Rule*, 479 S.W.2d 629 (Ky. 1972)). Further, an "[a]buse of discretion in relation to the exercise of judicial power implies arbitrary action or capricious disposition under the circumstances, at least an unreasonable and unfair decision." *Sherfey v. Sherfey*, 74 S.W.3d 777, 783 (Ky. App. 2002), *overruled on other grounds by Benet v. Commonwealth*, 253 S.W.3d 528 (Ky. 2008) (citation omitted). As stated previously, trial courts are given broad discretion to make factual findings. If the testimony before the trial court is conflicting, as in this case, we may not substitute our decision in place of the judgment made by the trial court. *R.C.R. v. Commonwealth Cabinet for Human Resources*, 988 S.W.2d 36 (Ky. App. 1998). The test is not whether we as an appellate court would have decided the matter differently, but whether the trial court's rulings were clearly erroneous or constituted an abuse of discretion. *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982).

We have reviewed the record and conclude the trial court's findings of fact were supported by substantial evidence. "While some of the evidence conflicted with the trial court's conclusions, and a different trial court or a reviewing appellate court might disagree with the trial court, the standard on

appellate review requires a great deal of deference both to its findings of fact and discretionary decisions." *Frances v. Frances*, 266 S.W.3d 754, 758 (Ky. 2008). We discern no clear error or abuse of discretion by the trial court.

Finally, Susie alleges the trial court's findings of fact and conclusions of law are "utterly deficient" in that they failed to consider evidence related to Billy's dissipation of the marital estate, statutory factors bearing on maintenance awards, and factors related to an award of attorney's fees. In essence, Susie again argues because the trial court did not simply accept any and all evidence proffered in support of her various positions—and reject the evidence Billy presented—the findings were against the manifest weight of the evidence, the trial court must have abdicated its fact-finding role, and reversible error must have occurred. We disagree.

In contravention of CR 76.12(4)(c)(v), Susie's initial brief did not state how she preserved any of these arguments in the trial court. Billy asserted the matters were not preserved for review. In her reply brief, Susie claimed she raised these issues in her motion to alter, amend, or vacate and therefore, the matters are ripe for review. Our examination reveals otherwise.

> CR 76.12(4)(c)[(v)] in providing that an appellate brief's contents must contain at the beginning of each argument a reference to the record showing whether the issue was preserved for review and in what manner emphasizes the importance of the firmly established rule that the trial court should first be given the opportunity to rule on

> questions before they are available for appellate review. It is only to avert a manifest injustice that this court will entertain an argument not presented to the trial court. (citations omitted).

Elwell v. Stone, 799 S.W.2d 46, 48 (Ky. App. 1990) (quoting *Massie v. Persson*, 729 S.W.2d 448, 452 (Ky. App. 1987)). We require a statement of preservation

> so that we, the reviewing Court, can be confident the issue was properly presented to the trial court and therefore, is appropriate for our consideration. It also has a bearing on whether we employ the recognized standard of review, or in the case of an unpreserved error, whether palpable error review is being requested and may be granted.

Oakley v. Oakley, 391 S.W.3d 377, 380 (Ky. App. 2012). Susie has not requested palpable error review.

Failing to comply with the civil rules is an unnecessary risk the appellate advocate should not chance. Compliance with CR 76.12 is mandatory. *See Hallis v. Hallis*, 328 S.W.3d 694, 696 (Ky. App. 2010).

> It is a dangerous precedent to permit appellate advocates to ignore procedural rules. Procedural rules "do not exist for the mere sake of form and style. They are lights and buoys to mark the channels of safe passage and assure an expeditious voyage to the right destination. Their importance simply cannot be disdained or denigrated."

Id. (quoting *Louisville and Jefferson County Metropolitan Sewer Dist. v. Bischoff*, 248 S.W.3d 533, 536 (Ky. 2007)).

Contrary to Susie's assertion of preservation, review of her motion to alter, amend, or vacate reveals only conclusory statements asserting the trial court's findings were perfunctory, inadequate, or otherwise lacked specificity. Relative to the matters now advanced on appeal, the motion merely sets forth a number of factual issues addressed in her proposed findings of fact and conclusions of law tendered to the trial court which she believes were not addressed in the final order. Her primary concern was a lack of pinpoint citations to the record supportive of every finding made by the trial court. There are absolutely no arguments presented regarding the award of maintenance or attorneys' fees.

Attempting to present new reasons supporting her position at this late date is improper. The time to make these arguments was in the trial court. "[A] party is not entitled to raise an error on appeal if he has not called the error to the attention of the trial court and given that court an opportunity to correct it." *Little v. Whitehouse*, 384 S.W.2d 503, 504 (Ky. 1964). It is axiomatic that a party may not "feed one can of worms to the trial judge and another to the appellate court." *Kennedy v. Commonwealth*, 544 S.W.2d 219, 222 (Ky. 1976), *overruled on other grounds by Wilburn v. Commonwealth*, 312 S.W.3d 321, 327 (Ky. 2010) (citations omitted). To the extent the trial court was not presented these additional

arguments, nor given the opportunity to rule thereon, we shall not consider them for the first time on appeal.

However, because Susie's argument tangentially challenges sufficiency of the evidence underlying some of the trial court's findings, a brief discussion is required. Errors of this type may be reviewed even absent a post-judgment motion. *Eiland v. Ferrell*, 937 S.W.2d 713, 715 (Ky. 1997). Susie presents only a repackaged version of her position from her previous argument regarding the trial court's alleged failure to make adequate findings. She again includes a detailed recitation of evidence presented during trial but offers no analysis or reasoning for her assertion the trial court's findings were unsupported. In fact, the only finding she challenges is the trial court's holding that Billy did not dissipate the marital estate. It is abundantly clear Susie disagrees with this ruling, but mere disagreement with a finding is insufficient to find error. We have already analyzed the trial court's factual findings, found them to be supported by substantial evidence, and refused to substitute our judgment for that of the trial court. Susie presents nothing to alter that determination. There was no error.

For the foregoing reasons, the judgment of the Jefferson Circuit Court, Family Division, is AFFIRMED.

ALL CONCUR.

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