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NOT TO BE PUBLISHED

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

NO. 2018-CA-000554-ME

JEREMY L. CHAPMAN

APPELLANT

v. APPEAL FROM HARDIN FAMILY COURT  
HONORABLE PAMELA ADDINGTON, JUDGE  
ACTION NO. 16-CI-01491

JAMIE L. CHAPMAN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; KRAMER AND D. LAMBERT,  
JUDGES.

CLAYTON, CHIEF JUDGE: Jeremy L. Chapman appeals from a series of orders entered by the Hardin Family Court in this dissolution of marriage case. He argues that the family court erred in adopting findings of fact tendered by his former wife, Jamie L. Chapman, and in its rulings relating to child custody and the division of marital property.

Jeremy and Jamie were married in 2007 and separated eight years later, on December 23, 2015. Jamie filed a petition for dissolution of marriage on September 15, 2016. They have one child, T., whom they adopted shortly after her birth in 2013. T. suffers from many developmental delays. Jeremy has joint custody of his two sons, aged fourteen and seventeen, from a previous marriage.

Jeremy served in the United States Army. While in Iraq, he suffered a combat-related brain injury and was diagnosed with PTSD. He was honorably and medically discharged on November 20, 2014. Jeremy has a serious, longstanding substance abuse problem. When Jamie met Jeremy in 2006, he was using pain pills following a motorcycle accident. He subsequently switched to opioids and then to heroin in 2012. According to Jamie, their home life became chaotic due to Jeremy's illegal drug use and she had to assume most of the responsibility for looking after T. At some point, Jeremy granted Jamie his power of attorney (POA) for her to manage the family's financial affairs while he was incapacitated by his substance abuse. Jeremy unsuccessfully tried rehabilitation programs on six different occasions in 2014, 2015 and 2016. He was arrested in 2015 and again in 2017 on drug-related charges. At the time of the final hearing on August 18, 2017, he was participating in Veterans' Treatment Court, as part of his diversion program. His current income consists of Social Security, VA disability and military retirement totaling \$5,597 per month. At the time of the final hearing he

resided with his mother in Radcliff, Kentucky, but later moved to Elizabethtown where he resides with his girlfriend and one of his sons.

During the marriage, Jamie was employed as an ARNP (advanced registered nurse practitioner) at Fort Knox, earning an annual salary of \$96,530.

An emergency protective order (EPO) was entered on January 23, 2017, on behalf of Jamie and T., and the child was placed in Jamie's temporary custody. Since then, Jeremy has completed mental health assessments, parenting classes and BIP (Batterer Intervention Program) classes as ordered by the court in the DVO proceedings.

In 2017, Jamie purchased property in Florida, where she found a new job earning \$108,800. She filed a motion seeking permission to relocate to Florida with T. which the family court granted in an order entered on September 21, 2017.

Following the final hearing on August 18, 2017, the family court entered findings of fact, conclusions of law and decree of dissolution of marriage tendered by Jamie. The family court subsequently entered supplemental findings of fact, conclusions of law and decree of child custody, also tendered by Jamie, awarding sole custody of T. to Jamie. The family court subsequently denied Jeremy's motion to alter, amend or vacate and to make additional findings of fact. Jeremy then moved to expand his visitation with T. A hearing on that motion was held on March 27, 2018. Jeremy filed an appeal of the court's previous orders.

The family court subsequently entered an order on April 16, 2018, remanding the visitation modification motion for consideration while the case was on appeal.

As a preliminary matter, we address Jeremy's contention that the family court committed reversible error in adopting Jamie's tendered findings of fact and conclusions of law and supplemental findings of fact. He contends that Kentucky Rules of Civil Procedure (CR) 52.01 and Kentucky Revised Statutes (KRS) 403.270 require a trial court to make such findings independently. He cites *Keifer v. Keifer*, 354 S.W.3d 123, 125-26 (Ky. 2011), for the proposition that independent findings are particularly important in cases involving the custody and welfare of children. The question of whether a trial court may adopt findings tendered by a party in a family law case was recently addressed by a panel of this Court, which stated as follows:

[I]n *Bingham v. Bingham*, 628 S.W.2d 628, 628-30 (Ky. 1982), the Kentucky Supreme Court rejected the notion that a trial court is prohibited from adopting proposed findings tendered by a party. *Id.* at 629. An appellate court will affirm an order supported by substantial evidence in the absence of a showing that "the decision-making process was not under the control of the judge" or "that these findings and conclusions were not the product of the deliberations of the trial judge's mind." *Id.* at 629-30. Our Supreme Court reiterated this point in *Prater v. Cabinet for Human Res.*, 954 S.W.2d 954, 956 (Ky. 1997).

The Supreme Court has not overruled *Bingham* or *Prater*. . . . *Keifer* merely held that KRS Chapter 403 and CR

52.01 require that trial courts include all necessary factual findings in a *written* order. *Id.* at 125.

*Keith v. Keith*, 556 S.W.3d 10, 13-14 (Ky. App. 2018).

The family court in this case adopted the tendered findings only after conducting a full and lengthy evidentiary hearing. There is no evidence that the court was not in control of the decision-making process or that the findings did not reflect what was in the trial judge's mind. Under these circumstances, the family court did not abdicate its duties in adopting the tendered findings.

We turn first to his Jeremy's arguments concerning the family court's division of the parties' property. When disposing of property in a dissolution of marriage action, the trial court is required by KRS 403.190 to follow a three-step process: "(1) the trial court first characterizes each item of property as marital or nonmarital; (2) the trial court then assigns each party's nonmarital property to that party; and (3) finally, the trial court equitably divides the marital property between the parties." *Travis v. Travis*, 59 S.W.3d 904, 908-09 (Ky. 2001) (footnotes omitted).

KRS 403.190(3) creates a presumption that all property acquired after the marriage is marital property unless it comes within one of the exceptions listed in KRS 403.190(2). *Sexton v. Sexton*, 125 S.W.3d 258, 266 (Ky. 2004) (citations and quotation marks omitted). "A party claiming that property acquired during the

marriage is other than marital property, bears the burden of proof.” *Terwilliger v. Terwilliger*, 64 S.W.3d 816, 820 (Ky. 2002).

On appeal, we review the trial court’s findings of fact only to determine if they are clearly erroneous. CR 52.01. A trial court’s findings “are not clearly erroneous if supported by substantial evidence, which is ‘evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men.’” *Eagle Cliff Resort, LLC v. KHBBJB, LLC*, 295 S.W.3d 850, 853 (Ky. App. 2009) (quoting *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky.1998)). The trial court’s division of the marital property is reviewed for an abuse of discretion. *Young v. Young*, 314 S.W.3d 306, 308 (Ky. App. 2010).

We are also mindful that:

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).

In its characterization and division of the property, the family court noted that Jamie and Jeremy had sold their marital residence and divided the proceeds. Neither party sought maintenance. One of the remaining assets subject

to characterization and division was Jamie's TSP retirement account which contained a total of \$202,861. At the time of the marriage, Jamie had an Edward Jones account containing \$115,271 which was rolled over into the TSP account. This amount of the TSP was awarded to Jamie as her non-marital property. The remaining funds in the TSP account, \$87,590, were also awarded to Jamie. The family court justified this decision by stating that Jeremy would be awarded other assets to balance out the TSP account. The court also pointed that Jeremy by his own admission had spent at least \$73,000 on illegal drugs during a two-year period of the marriage. This amount did not include the sums spent on his rehabilitation. The family court also noted the anxiety Jamie went through as the sole provider for the family during this time.

Jamie received a 2017 VW Jetta with a debt of approximately \$30,000 and a value of approximately \$15,000. Jeremy received a 2011 Ford F250 truck with a value of \$38,000 which was encumbered with an unspecified debt. He also received a 2004 Mazda with a value of \$2,873 (this car had been given to one of his teenage sons) and a 2008 Harley Davidson motorcycle with a value of \$11,625. The family court ordered a 2011 VW Jetta with a value of \$7,683 to be sold and the proceeds to be split. Jeremy was awarded a 2004 Tracker Marine Tahoe Series Boat which the court valued at \$15,495, although there was testimony at trial that

the boat had little value because the engine had failed. Jamie was awarded \$5,000 she put up for Jeremy's bond when he was arrested for drug offenses.

The parties owned a business together until 2014. They sold the business for \$7,000 up front and \$1,600 per month thereafter, although it is unclear how long these payments were to continue. The court awarded the continuing payments to Jamie, finding that Jeremy had stolen money from the business to fuel his drug habit and it would be inequitable to allow him to benefit from the sale of the business as he had already used proceeds from the business for a non-marital use. The family court directed the parties to keep the credit card debt in their names. Jeremy accused Jamie of dissipating \$25,000 of his back Social Security income. Jamie provided an accounting which showed the funds had been used for marital purposes and the family court concluded that no dissipation had occurred.

Jeremy argues that the trial court's property division was an abuse of discretion because, according to his calculations, Jamie was awarded 93% of the marital property. "A trial court is to divide marital property in just proportions considering all relevant factors. However, just proportions does not necessarily mean equal proportions." *Croft v. Croft*, 240 S.W.3d 651, 655 (Ky. App. 2007) (internal citations omitted).

Jeremy argues that the trial court's award to Jamie of the entire marital portion of the TSP account was an improper attempt to punish him for his



substance abuse, the funds he spent on drugs, the cost of his rehabilitation, and the anxiety he caused Jamie. He contends that marital misconduct cannot be the basis for a just division of marital assets. Jeremy is correct that, in general, the trial court may not consider the fault of the parties in dividing marital property. *Brosick v. Brosick*, 974 S.W.2d 498, 500 (Ky. App. 1998). A party may not, however, “spend marital assets or funds for non-marital purposes, and then expect to receive an equal share from the diminished marital estate.” *Id.* Much of Jeremy’s spending was directed not to marital purposes but to supporting the drug habit that was having a devastating effect on his family. Jeremy testified he spent approximately \$100 per day or approximately \$73,000 on drugs in a two-year period. Under the circumstances, the family court’s decision to award the entire TSP account to Jamie was equitable and not an abuse of discretion.

Jeremy further contends that after he and Jamie separated, she misused her POA to take all his past Social Security benefits of almost \$30,000 and his TSP account containing \$22,500 while he was away in rehabilitation. He argues that her actions are a classic case of dissipation of marital property after separation.

In its findings, the family court stated that Jamie was able to provide an accounting which showed that the Social Security funds were used for a marital

purpose. Jeremy does not explain why this finding was erroneous nor does he specify the allegedly non-marital purposes for which Jamie used the funds.

The family court did not mention Jeremy's TSP account beyond observing only that he did not appear to have any active retirement accounts. Jeremy provides no reference to the record to show where his allegations that Jamie misused her POA and dissipated the funds from the account were brought to the court's attention. In his statement of facts, not in the argument section as required under CR 76.12(4)(c)(v), he provides one citation to the video record which contains some testimony by Jamie which does not reference this claim. "[I]t is not our responsibility to search the record to find where it may provide support for [Jeremy's] contentions[,]" *Smith v. Smith*, 235 S.W.3d 1, 5 (Ky. App. 2006), *as modified* (Feb. 10, 2006), and we refuse to do so.

Jeremy also contends that Jamie should pay the USAA credit card she opened in his name while he was in rehabilitation. The family court ordered each party to pay credit cards in their own name. Jeremy acknowledges that debts incurred after separation but before the final dissolution are presumed marital but contends that this presumption was rebutted because the debt was improperly created by Jamie as his POA. Again, Jeremy makes no specific reference to the record to indicate how this claim was presented or preserved. We note also that Jeremy testified that he could have withdrawn the POA from Jamie at any time and

that he gave it to her because he knew he could not do “what he needed to do.”

Under these circumstances, we affirm the family court’s assignment of credit card debt.

Jeremy’s final argument regarding the property division concerns statements made in Jamie’s response to his motion to alter, amend or vacate the family court’s findings of fact and conclusions of law. The passage states:

It’s apparent from the award of [Jamie’s] TSP, the business sale proceeds and the bond money, that the Court considered [Jeremy’s] criminal activity to be a relevant factor. All of these awards had something to do with [Jeremy’s] drug habit. The Court never stated that [Jeremy] dissipated any assets, but simply awarded [Jamie] a large chunk of assets based upon [Jeremy’s] extreme criminal behavior and the effect it had on his family.

Jeremy contends that this statement constitutes an admission by the family court’s part that Jamie’s tendered findings of fact, conclusions of law and decree used his alleged misconduct as justification for awarding Jamie a “large chunk” of the marital assets. He contends that this statement precludes any argument that his misconduct did not affect the family court’s division of the parties’ assets. A circuit court “speaks only through written orders entered upon the official record.” *Kindred Nursing Centers Ltd. Partnership v. Sloan*, 329 S.W.3d 347, 349 (Ky. App. 2010). The family court’s adoption of Jamie’s

tendered findings does not mean that it agreed with the assertions made in her subsequent pleadings. To presume that it did would be speculative at best.

Next, Jeremy argues that the family court committed reversible error in allowing Jamie to move to Florida and in granting her sole custody of their daughter. The trial court granted Jamie's motion to relocate to Florida on September 21, 2017, after the final hearing at which relocation was addressed but before the entry of its findings of fact, conclusions of law and decree of dissolution on January 16, 2018. At that time, T. was temporarily in Jamie's sole custody due to the operation of the DVO. The order granting the motion to relocate kept in place the existing basic visitation schedule of one supervised hour per month for Jeremy. On February 23, 2018, the family court entered supplemental findings of fact, conclusions of law and decree of child custody awarding sole custody to Jamie.

KRS 403.270(2) requires a trial court to determine custody in accordance with the best interest of the child and provides a list of relevant factors for the court to consider in making this determination. "A trial judge has a broad discretion in determining what is in the best interests of children when he [or she] makes a determination as to custody." *Krug v. Krug*, 647 S.W.2d 790, 793 (Ky.1983). An abuse of discretion occurs when a trial court enters a decision that

is “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.”

*Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

The court concluded that sole custody was in T.’s best interest based on its consideration of the following subsections of KRS 403.270(2):

(c) The interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child’s best interests;

(d) The motivation of the adults participating in the custody proceeding;

(e) The child’s adjustment and continuing proximity to his or her home, school, and community;

[and]

(f) The mental and physical health of all individuals involved[.]

The family court found that Jamie and T. have a very good relationship and Jamie does most of the caretaking. A family friend testified that Jamie and T. have an “extraordinary” relationship. T. resided primarily with Jamie since she was granted the DVO against Jeremy in February 2017. The order stemmed from an incident in which Jeremy started acting violently towards Jamie in a car. Jeremy eventually gained one hour of supervised visitation per week with T. The family court described Jeremy and T.’s relationship as fair but observed that they often had little contact due to Jeremy’s ongoing drug problems. One of

Jeremy's sons testified that he used to see T. every other weekend but at the time of the trial had not seen her at all for three months.

In making its custody determination, the family court expressed skepticism regarding Jeremy's ability to overcome his drug problems. Although the court recognized that he was participating in drug court regularly, it also noted that he had attended rehabilitation unsuccessfully on several previous occasions, and had admitted to using speedballs, a combination of heroin and methamphetamine, for several years.

The family court found that Jamie is the parent who is primarily responsible for helping T. to overcome her developmental delays. Jamie is the parent who takes T. to her therapy sessions three to four times per month and to the doctor once a month. Evidence was presented at the hearing that Jeremy was not even present on occasions when the child was undergoing medical procedures because he was using or buying drugs.

The family court concluded that T.'s most important interaction and interrelationship was with Jamie. The court recognized that Jeremy's motivation was positive but his mental health as it relates to his substance abuse disorder means that he is not reliable, as illustrated by his past behavior.

Jeremy has emphasized that T. has strong relationships with his two sons, and with his mother, whom he describes as an integral part of his support

system. He argues that Jamie could easily have found a job locally rather than moving far from T.'s family, home and current school. Jamie testified, however, that she would have some difficulty locating employment locally. According to the affidavit accompanying her motion to relocate, the job in Florida offered better pay, benefits and flexibility than her previous employment; the climate would be beneficial for the child's allergies and eczema, and there was an available pre-school and local medical practice providing speech and occupational therapy for T.

The family court's decision to award sole custody to Jamie and allow the relocation to Florida was based on its recognition of her crucial role in the child's life and on a realistic assessment of Jeremy's reliability as a parent. The family court's findings are supported by substantial evidence in the record and its decision was not an abuse of discretion.

Finally, Jeremy argues that his one hour of supervised visitation per month is inadequate and effectively denies him visitation since Jamie's move to Florida. Jeremy's motion to increase visitation was pending when he filed his appeal on April 5, 2018, from the following: the order granting Jamie's motion to relocate, entered on September 21, 2017; the findings of fact, conclusions of law and decree of dissolution of marriage entered on January 16, 2018; the supplemental findings of fact, conclusions of law, and decree of child custody entered on March 6, 2018 and the order denying Jeremy's CR 59.01 motion signed

on March 27, 2018. The hearing on Jeremy’s motion to expand visitation was held on March 27, 2018. The family court did not rule orally on the motion at that time and there is no written ruling on the motion in the record. The family court did enter an order on April 16, 2018, remanding the visitation modification motion for consideration because the case was on appeal. “A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02.” CR 54.01. For this Court to acquire jurisdiction, the order from which an appeal is brought must be a final. *Jacoby v. Carrollton Federal Savings & Loan Ass’n.*, 246 S.W.2d 1000 (Ky.1952). There is no final order regarding visitation before us. Consequently, we may not address Jeremy’s arguments regarding visitation.

For the foregoing reasons, the family court’s order granting Jamie’s motion to relocate, its findings of fact, conclusions of law and decree of dissolution of marriage, its supplemental findings of fact, conclusions of law, and decree of child custody and its order denying Jeremy’s CR 59.01 motion are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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