

RENDERED: AUGUST 9, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001089-MR

D’JUAN GARY WHITE

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT
FAMILY DIVISION

v.

HONORABLE KATHY STEIN, JUDGE
ACTION NO. 15-CI-01808

MONICA LYNN GARY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GOODWINE, LAMBERT, AND MAZE, JUDGES.

GOODWINE, JUDGE: D’Juan Gary White (“White”) appeals from the findings of fact, conclusions of law, and decree of dissolution of marriage, entered by the Fayette Family Court on June 18, 2018. White argues the family court abused its discretion in awarding Monica Lynn Gary (“Gary”) an equal distribution of the marital property. After careful review, finding no error, we affirm.

White and Gary were married on December 31, 2001, in Fayette County. They separated on December 31, 2010. On June 18, 2018, the family court entered findings of fact, conclusions of law, and a decree of dissolution of the marriage. Pertinent to this appeal, the family court found that four parcels of real property were purchased during the marriage and constituted marital property. The family court considered the evidence presented by the parties and found White failed to present credible evidence regarding the value of the marital property. It further found that Gary presented credible evidence regarding the value of the real property through an expert witness's appraisal of the four properties. The family court weighed the factors of KRS¹ 403.190(1) and concluded that all four parcels should be sold, and the proceeds divided equally between the parties. This appeal followed.

Classification of marital property is an issue of law, which we review *de novo*. *Cobane v. Cobane*, 544 S.W.3d 672, 676 (Ky. App. 2018). “Once classified, the division of marital property is within the sound discretion of the trial court. We review a trial court’s determinations of value and division of marital assets for abuse of discretion.” *Id.* (internal quotation marks and citations omitted). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary,

¹ Kentucky Revised Statutes.

unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

Before we address the merits of White’s claim, we note that he failed to include a statement of preservation pursuant to CR² 76.12(4)(c)(v) and did not request review for palpable error pursuant to CR 61.02. “There are rules and guidelines for filing appellate briefs. Appellants must follow these rules and guidelines, or risk their brief being stricken, and appeal dismissed, by the appellate court.” *Koester v. Koester*, 569 S.W.3d 412, 413 (Ky. App. 2019) (citing CR 76.12). An appellant’s compliance with CR 76.12 allows us to undergo “meaningful and efficient review by directing the reviewing court to the most important aspects of the appeal[,] [such as] what facts are important and where they can be found in the record[.]” *Hallis v. Hallis*, 328 S.W.3d 694, 696 (Ky. App. 2010).

White’s failure to comply with this rule hinders our ability to review his arguments. *See id.* at 695-97. “Our options when an appellate advocate fails to abide by the rules are: (1) to ignore the deficiency and proceed with the review; (2) to strike the brief or its offending portions, CR 76.12(8)(a); or (3) to review the issues raised in the brief for manifest injustice only[.]” *Id.* at 696 (citation

² Kentucky Rules of Civil Procedure.

omitted). Because White’s brief fails on the merits, we ignore the deficiency and proceed with the review of his claim.

On appeal, White argues the family court abused its discretion in equally dividing the value of the four parcels of real property between the parties. There is no dispute that all four of the parcels were purchased during the parties’ marriage, and that they constitute marital property pursuant to KRS 403.190(2). *See Stallings v. Stallings*, 606 S.W.2d 163 (Ky. 1980).

Although White “is obviously dissatisfied with the trial court’s decision, threadbare recitals of the elements of a legal theory, supported by mere conclusory statements, form an insufficient basis upon which this Court can grant relief.” *Jones v. Livesay*, 551 S.W.3d 47, 52 (Ky. App. 2018). Apart from reciting applicable law regarding setting aside a family court’s decision to equitably divide marital property, White advances nothing of substance in support of his contention. We will not scour the record to construct White’s argument for him.

Furthermore, the family court weighed the KRS 403.190(1) factors in making its decision. When determining how to equitably divide marital property, the family court must consider, “without regard to marital misconduct” the following factors:

- (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.

KRS 403.190(1). The family court based its decision to equally divide the property on Gary's contributions to the marriage, not only including her financial contributions but her contributions as a homemaker pursuant to KRS 403.190(1)(a). "Trial courts are faced with the difficult task of weeding through emotionally-charged testimony and often slanted evidence to reach a fair and equitable result. Because of this, trial courts are afforded broad discretion in dividing marital property and marital debt." *Jones*, 551 S.W.3d at 51. In the absence of "an unreasonable and unfair decision[.]" there can be no abuse of discretion. *Id.* (quoting *Rice v. Rice*, 372 S.W.3d 449, 452 (Ky. App. 2012)). Here, the family court was presented with substantial evidence that equal division of the proceeds from the sale of the four properties was equitable under the circumstances based on the factors of KRS 403.190(1). *See id.* Thus, we hold the family court did not abuse its discretion in equally dividing the parties' marital property.

For the foregoing reasons, we affirm the judgment of the Fayette Family Court.

ALL CONCUR.

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