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TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001576-MR

NANCY J. EHRET

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DEANA C. MCDONALD, JUDGE
ACTION NO. 10-CI-501848

PAUL J. EHRET

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT, MAZE, AND K. THOMPSON, JUDGES.

LAMBERT, JUDGE: Nancy Ehret has appealed from the October 10, 2018, order of the Jefferson Circuit Court, Family Court Division, ruling that a qualified domestic relations order (“QDRO”) entered on January 30, 2018, did not allow for Nancy’s equalization payment to be subject to gains or losses. We affirm.

Nancy and Paul Ehret were married on April 2, 1983, in Missouri. They separated in March 2008, and Nancy, who by that time lived in Shelbyville, Kentucky, filed a petition to dissolve the marriage on May 20, 2010, in Jefferson County, Kentucky. Pursuant to court order, the parties participated in mediation and were able to reach a settlement agreement, which was incorporated by reference into the decree of dissolution entered on June 27, 2012. The settlement agreement was later amended, and a supplemental decree was entered on March 6, 2013.

The parties revisited the issue of Paul's retirement accounts beginning in 2017. The QDRO was prepared by an attorney, with each party paying half his fee, and entered into the record on January 30, 2018. The parties were able to agree on all but one issue. On May 1, 2018, the court entered an agreed order, which stated, in pertinent part:

1. The remaining asset to be divided between the parties is the State of Indiana Public Employee Deferred Compensation Plan, also known as the "S.T.A.R.T." plan.
2. The valuation date of the S.T.A.R.T. plan for purposes of division is July 20, 2012. The balance of the account on July 20, 2012 was \$88,292.
3. Pursuant to the Property Settlement Agreement dated June 25, 2012 and the Amended Property Settlement Agreement filed March 6, 2013, the parties agree to use the S.T.A.R.T. plan for the equalization of assets. After all other assets had been divided, it was

determined that Nancy is to receive \$26,790 additional monies to equalize the marital assets.

4. The parties agree that after equalization the remainder of the S.T.A.R.T. plan is to be equally divided.
5. As of the valuation date on July 20, 2012, the account balance was \$88,292. Nancy's portion of the account is 65.17%, derived by adding her \$26,790 equalization award plus one-half of the remaining funds in said account or \$30,751 ($\$88,292 \text{ less } \$26,790 = \$61,502 \text{ divided by } 2 = \$30,751$) then dividing Nancy's portion by the total account balance.
6. The current balance of the account is approximately \$185,000.
7. The issue is whether Nancy is entitled to receive gains and losses on her equalization portion of \$26,290 when the asset is divided.

Although the matter was initially set for a hearing, delays occurred, and the parties ultimately agreed to submit the issue for the court to decide after simultaneous briefs were filed.

In its October 10, 2018, ruling, the circuit court made the following specific findings:

The parties stipulated in their May 1, 2018 Agreed Order that the date of valuation for the division of the S.[T].A.R.T. account is July 20, 2012. They set forth a specific amount which was to be paid to [Nancy] representing the equalization of the marital assets divided between the parties.

....

The parties reached agreement in March 2013 and reiterated same in May 2018 that the date of valuation of the account to be divided was July 20, 2012 and that the fixed sum representing asset equalization was \$26,790.00. The Court cannot now order a new sum, resulting from either gains or losses due to the market. To do so would be revers[i]ble error as the multiple agreements of the parties have consistently maintained the amount of the equalization and the date of the valuation of the account to be divided. Thus, the Court orders that [Nancy] shall receive \$26,790.00 to be deducted from the S.[T].A.R.T. account prior to equal division of the remaining balance after subtracting said amount representing her equalization of the division of the marital assets of the parties.

Nancy has appealed, and she argues that the circuit court erred in so finding. The parties agree on the standard of review, namely:

We review a trial court's decisions regarding . . . the division of assets pursuant to a divorce decree for an abuse of discretion. *See Young v. Young*, 314 S.W.3d 306 (Ky. App. 2010); *McGregor v. McGregor*, 334 S.W.3d 113 (Ky. App. 2011). To amount to an abuse of discretion, the trial court's decision must be "arbitrary, unreasonable, unfair or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). Furthermore, the trial court's findings of fact will not be disturbed unless clearly erroneous. *Black Motor Co. v. Greene*, 385 S.W.2d 954 (Ky. 1965); CR^[1] 52.01. "Findings of fact are not clearly erroneous if supported by substantial evidence." *Janakakis-Kostun v. Janakakis*, 6 S.W.3d 843, 852 (Ky. App. 1999). Substantial evidence is that evidence, when taken alone or in the light of all the evidence, has sufficient probative value to induce conviction in the minds of reasonable people. *Id.* (citing *Kentucky State Racing Commission v.*

¹ Kentucky Rules of Civil Procedure.

Fuller, 481 S.W.2d 298, 308 (Ky. 1972)). However, the trial court’s conclusions of law are reviewed *de novo*. *Stipp v. St. Charles*, 291 S.W.3d 720, 723 (Ky. App. 2009).

Duffy v. Duffy, 540 S.W.3d 821, 826 (Ky. App. 2018). Furthermore, “a trial court retains broad discretion in valuing pension rights and dividing them between parties in a divorce proceeding[.]” *Duncan v. Duncan*, 724 S.W.2d 231, 234-35 (Ky. App. 1987).

Here, the parties agreed to not only the valuation of the asset and the date of its valuation, but most importantly a sum certain on Nancy’s specific share in that asset. There was no evidence to the contrary. The fact that the parties’ documents were silent regarding gains and losses of this asset supports rather than contradicts the circuit court’s finding that the parties intended for the asset to be divided in 2012 and at the specific sum contained in those documents. We decline to find error in this outcome. *Duffy, supra*.

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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