

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000332-MR

JEFF S. WILLIAMS

APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE JEFFREY L. PRESTON, JUDGE
ACTION NO. 18-CI-00183

GLENNA WILLIAMS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS AND LAMBERT, JUDGES; BUCKINGHAM,¹ SPECIAL JUDGE.

BUCKINGHAM, SPECIAL JUDGE: Jeff S. Williams appeals from the distribution of property portion of the findings of fact, conclusions of law, and

¹ Retired Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

decree of dissolution of marriage in a divorce action with Glenna Williams in the Greenup Circuit Court, Family Court Division. We affirm.

FACTS

Jeff and Glenna were married on November 4, 2003, and separated on April 3, 2018. Glenna filed for divorce on April 17, 2018. There were no children born of the marriage. The final hearing was held on October 17, 2018, and Jeff was 51 years old at that time, and Glenna was 57.

Jeff was employed by Martin Transport as a long-haul trucker, and he testified that his approximate annual income was \$55,000. Glenna did house cleaning with her sister, and she stated her monthly income was approximately \$300 to \$400. She had sought and obtained a domestic violence order shortly after the separation, and she stated she continued to live with her sister at the time of the hearing.

On January 25, 2019, the court entered its findings of fact, conclusions of law, and decree of dissolution of marriage. The court awarded Glenna items of personal property listed on her Exhibit #1 and one half of the money which Jeff had withdrawn from checking and savings bank accounts a few days after the parties separated.

Glenna made no claim to any part of the marital residence, and it was awarded to Jeff as he owned it prior to the parties' marriage. Regarding the

parties' vehicles, Glenna testified Jeff could have the Pontiac Firebird, the Toyota RAV4, the Chevrolet Blazer, the truck, and the motorcycle. She stated she would like to have the 2004 Chevrolet Cavalier. The court awarded those vehicles in that manner and also awarded a lawnmower and a four-wheeler to each party. Glenna waived any claim she may have had in all farm equipment, tractors, and tools. Jeff was ordered to pay Glenna \$300 per month for a period of six months to help defray her costs of obtaining her own health insurance.

While Glenna had been awarded \$600 per month as temporary maintenance, she was not awarded further maintenance. Glenna testified that she has diabetes and high blood pressure and that she buys her own insulin, which costs \$200 every 17 days. The court determined she did not need maintenance because of her employment and her entitlement to one half of the money Jeff had taken from the bank accounts, and it also denied her request that Jeff be required to pay attorney fees of \$2,500 to her. Glenna was awarded one half of any retirement that accumulated during the marriage, although no specific details were stated in the decree.

PROPERTY DIVISION

Jeff's first argument is the trial court failed to correctly divide the property. He cites the three-step process described in *Travis v. Travis*, 59 S.W.3d 904 (Ky. 2001), and contends the court failed to follow it. He argues the court (1)

failed to characterize items of property as either marital or nonmarital, (2) failed to assign nonmarital property to the proper party, and (3) failed to equitably divide the marital property. *Id.* at 908-09.

Concerning the items of personal property listed on Glenna's Exhibit #1 (household goods, furnishings, and kitchenware and appliances) that she introduced into evidence at the final hearing, Jeff contends the court failed to assign a value to the items and failed to award him his nonmarital items, including certain kitchen appliances he claims were gifts from his parents.

Glenna asked the court to award those items listed on the exhibit to her, and Jeff testified he "pretty much" did not object to Glenna having most of them. He did mention that some of the kitchen appliances may have been nonmarital property, but he neither identified specific items nor requested possession of them. Further, he does not state in his brief which items, if any, he specifically claims are nonmarital.

KRS² 403.190(3) states:

All property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a

² Kentucky Revised Statutes.

showing that the property was acquired by a method listed in subsection (2) of this section.

And, as our Supreme Court stated in *Travis*, “KRS 403.190(3) explicitly allocates the burden of proof to the party claiming property as nonmarital[.]” 59 S.W.3d at 912.

Glenna correctly states in her brief that any complaints Jeff may have with a lack of findings of fact by the trial court should be disregarded because he failed to request such findings. CR³ 52.04 states:

A final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by a written request for a finding on that issue or by a motion pursuant to Rule 52.02.

Jeff neither requested the court to make findings as to specific values of the items of personal property nor did he request the court to determine whether each item was marital property or nonmarital. Further, Jeff has not stated where in the record he attempted to sustain his burden of proof concerning the marital or nonmarital nature of any item of personal property.⁴ CR 76.12(4)(c)(v). His general statement

³ Kentucky Rules of Civil Procedure.

⁴ Jeff complains that the court did not determine the marital or nonmarital nature of any item of personal property, including not only the items listed on Glenna’s Exhibit #1 but also the retirement account, the vehicles, the lawnmowers, the four-wheelers, and the farm equipment and tools.

at the hearing concerning kitchen appliances is insufficient to prove the nonmarital nature of any specific item.

As we have noted, the court awarded Glenna one half of the amount withdrawn by Jeff from the checking and savings accounts. Jeff had avoided Glenna's discovery attempts to produce bank statements for the period of time near the parties' separation. Following the final hearing, however, the court ordered him to produce them. Those records revealed Jeff had withdrawn in excess of \$50,000 from the accounts in the days following the separation. The court determined the funds were marital property, and Jeff has pointed to nothing in the record to the contrary. In fact, Jeff admitted the checking account was marital. Further, there is nothing to indicate where the money went, *i.e.*, whether Jeff spent those funds or concealed them elsewhere.

Jeff contends that the trial court made no finding concerning the amount of money he withdrew from the two bank accounts shortly after the parties separated. While this is true, Jeff never requested a finding in this regard. Furthermore, the bank records the court required Jeff to produce following the hearing indicate those amounts, which exceed \$50,000. As for whether the amounts included any nonmarital interest of Jeff's, he has not directed our attention to where in the record he testified or introduced evidence of such interest

or whether he requested any specific finding of fact by the court. CR 76.12(4)(c)(v); CR 52.04.

In short, while it is true, as Jeff argues, that the court made no findings of fact concerning the values of certain property and made no findings of the nature of such property as being either marital or nonmarital (other than the bank accounts which the court determined to be marital property), Jeff has not pointed to any place in the record where either he or Glenna testified to such matters or requested the court to make any findings of fact in that regard. CR 76.12(4)(c)(v).

Jeff was awarded numerous vehicles; the residence, which was designated nonmarital; one half of any retirement; one half of the money in the bank accounts at the time of separation; all farm equipment, tractors, and tools; a lawnmower; and a four-wheeler. Glenna was awarded one vehicle; one half of the bank accounts; one half of the retirement; a lawnmower; a four-wheeler; and various household goods, furnishings, and appliances. Despite her low income from cleaning houses and her medical conditions, she was awarded neither maintenance nor attorney fees.

Other than the residence and Jeff's general statement concerning some kitchen appliances, our attention has not been directed to any portion of the record that indicates any other property may have been nonmarital. As for the court's division of the parties' marital property, we find no abuse of discretion. *Hempel v.*

Hempel, 380 S.W.3d 549, 553 (Ky. App. 2012) (“What constitutes a just division lies within the sound discretion of the family court and will not be disturbed absent an abuse of discretion.”).

MONEY FROM BANK ACCOUNTS

Jeff’s second argument is that the trial court erroneously awarded Glenna one half of the money he had withdrawn from the checking and savings accounts shortly after the separation of the parties without making a finding that he had dissipated any marital funds. As noted above, Jeff withdrew in excess of \$50,000 from the checking and savings accounts within days following the parties’ separation. Jeff does not deny this, and the bank records speak for themselves. The court found those accounts to be marital property. While those accounts were in Jeff’s name only, Jeff points to nothing in the record to indicate he had a nonmarital interest in either account.

Jeff also complains that he spent some of the money to pay for a roof on his house and some to a bank for his mother’s nursing home expenses. The payment of the roof expenses was prior to the date of separation, and Jeff provided no documentation concerning the payment to a bank for the nursing home expenses.

Jeff also asserts the court did not make any finding concerning the contribution of Glenna to any marital property and that in the absence of such a

finding she should not be entitled to any of it. Thus, he argues the court erroneously awarded Glenna a disproportionate share of the marital property.

KRS 403.190 states that marital property shall be divided in just proportions and that the “[c]ontribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker” is a relevant factor in this regard. KRS 403.190(1)(a); *see also Petersen v. Petersen*, 479 S.W.2d 892, 894 (Ky. 1972). Again, Jeff makes no mention in his brief as to where there is evidence in the record concerning this issue, and he apparently made no request to the court for a finding of fact on this issue. CR 76.12(4)(c)(v); CR 52.04.

The bottom line is that Jeff took money in excess of \$50,000 from the marital bank accounts and has not accounted for it. In other words, there is no proof as to where the money went, *i.e.*, whether he spent those funds or concealed them. Glenna had no obligation to prove Jeff dissipated the funds. The record reflects he took the money from marital accounts. The court ordered him to pay her one half of these marital funds, and we find no abuse of discretion in that regard. *Hempel*, 380 S.W.3d at 553.

PALPABLE ERROR

Jeff states in his reply brief that if this Court determines that error was not properly preserved for appeal, then the Court should nonetheless address the issues because “palpable error resulted from the trial court’s failure to make

specific findings prior to awarding Ms. Williams a large sum of money to the detriment of Mr. Williams.”

CR 61.02 states as follows:

A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

While Jeff characterizes the 50/50 split of the bank accounts as an award of a large sum of money to Glenna, it appears that it is nothing more than a fair and equitable division of a marital asset. For the reasons set forth above, we see neither error nor manifest injustice resulting in palpable error.

CONCLUSION

The findings of fact, conclusions of law, and decree of the Greenup Circuit Court, Family Court Division, are hereby affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Whitley Hill Bailey
Grayson, Kentucky

BRIEF FOR APPELLEE:

Tracy D. Frye
Russell, Kentucky