

Supreme Court of Kentucky

2025-SC-0077-DG

MARCIA ANN DALL

APPELLANT

V. ON REVIEW FROM THE COURT OF APPEALS
NO. 2024-CA-0003
JEFFERSON CIRCUIT COURT NO. 20-CI-500458

ROGER WAYNE DALL; LOUIS P.
WINNER; AND MICHELLE L.
EISENMENGER

APPELLEES

OPINION OF THE COURT BY JUSTICE GOODWINE

REVERSING AND REMANDING

Appellant Marcia Ann Dall (“Marcia”) appeals the Court of Appeals' decision affirming in part, reversing in part, and remanding the Jefferson Family Court’s findings of fact, conclusions of law, judgment, and decree. After careful review, we reverse the Court of Appeals' opinion and remand for further proceedings.

BACKGROUND

Marcia and Appellee, Roger Wayne Dall (“Roger”), were married on December 29, 1984. At the time, the parties resided in Cincinnati, Ohio. Roger had recently earned his Bachelor of Science degree in chemistry and worked as a quality control chemist. Marcia had also recently earned her Bachelor of

Science degree and worked as an accountant. The parties earned comparable salaries.

In 1990, Marcia earned a degree in certified public accounting. That same year, Marcia gave birth to the parties' first child. By 1993, Marcia received the first of many promotions and accepted the role of Senior Business Analyst for General Electric Capital Railcar Services ("GE"). Marcia's promotion required the family to relocate to Connecticut. As a result, Roger resigned as a quality control chemist and secured a position in Connecticut as Corporate Safety Director at U.S. Surgical.

In 1994, Marcia gave birth to the parties' second child. Both parties continued working full-time and shared household and child-care responsibilities. In 1995, GE promoted Marcia to Executive Vice President of Customer Operations, requiring the family to relocate to Naperville, Illinois. Roger again resigned from his employment. After the move, Roger worked as the Environmental Health and Safety Director for Diageo. The parties subsequently hired a full-time nanny.

In 2002, GE promoted Marcia again, this time requiring a move to Raleigh, North Carolina. Roger resigned from his position at Diageo, where his annual salary had reached approximately \$120,000. Roger did not work outside the home again, opting instead to be a stay-at-home father while Marcia focused on her career. Marcia's career growth led to several more relocations. In 2008, the family briefly relocated to Hartford, Connecticut, after Marcia accepted an executive position at Cigna Insurance. Then, in 2009, the

family moved to Erie, Pennsylvania, where Marcia served as Chief Financial Officer for Erie Insurance Group.

By 2012, the parties' children were both emancipated and no longer lived in the marital residence. In 2015, the parties relocated again for work. This time, they relocated to Louisville, Kentucky, because of Marcia's new role as Chief Financial Officer and Executive Vice President of Churchill Downs Incorporated ("CDI").

In February 2020, Roger left the marital home to live with his mother in Indiana, and Marcia petitioned the family court for a decree of dissolution. At the time, the marital estate was valued at approximately \$11,944,834, including, but not limited to, the marital residence, vehicles, checking and savings accounts, investment accounts, retirement accounts, and stock accounts.

Litigation ensued over property classification, the division of marital property, and Roger's claim for spousal maintenance. The parties engaged in three separate mediations to no avail. A two-day trial commenced on November 29, 2022. Marcia sought to retain the post-separation increase in the marital estate's value, which had grown to approximately \$19,158,834. The post-separation property at issue included the increased value of the marital home, a checking account funded solely by Marcia's employment earnings, and an account containing Marcia's CDI deferred stock holdings. Marcia claimed that the post-separation property was non-marital and that the operative valuation date of the marital estate was February 2020. Regarding property division,

Marcia sought a sixty-forty split, while Roger requested an equal division of the marital estate. Roger also sought \$44,000 per month in spousal support, in addition to an equalization payment and attorneys' fees and costs.

At trial, Roger testified to being sixty-five years old and having been unemployed since 2002. Roger further testified that Marcia's continuous interstate job relocations and her request that he commit to being a stay-at-home father stifled his career development. Roger claimed that in 2012, after the children became emancipated and ceased living in the marital residence, he continued contributing to the marital estate by providing upkeep, maintenance, and repairs for the marital residence, in addition to hosting and entertaining Marcia's colleagues.

Marcia testified that she was fifty-nine years old, employed by CDI, and earned an annual base salary of \$800,000, plus additional compensation. Marcia did not argue that in 2002 she and Roger agreed that he would serve as a stay-at-home father. However, Marcia recalled that Roger's unemployment was temporary and that he would rejoin the workforce once the children were older.

On May 25, 2023, the family court issued its findings of fact, conclusions of law, judgment, and decree ("Judgment"). In addition to the factual recitation above, the family court's findings of fact included the following: The parties were married for thirty-eight years; both parties were diligently "climbing ladders along their respective career paths ([Marcia] in finance and [Roger] as

an engineer¹"); after the children left the marital residence Roger "continued in a role that assisted with both maintaining the family and assisted [Marcia] in her career"; Roger is most likely "no longer employable," having been out of the workforce for twenty years in his chosen profession. Record on Appeal ("ROA"), pp. 888-89.

The family court's conclusions of law found that Marcia's post-separation contributions to the marital estate constituted marital property. The family court explained that under Kentucky law, "[p]roperty is deemed marital unless proven otherwise, and must be divided and valued as of the date of decree." ROA, p. 892 (citing *Shively v. Shively*, 233 S.W.3d 738 (Ky. App. 2007)). The family court noted that Marcia failed to provide evidence that the contested property was not earned or acquired during the marriage and before the dissolution decree. Furthermore, the family court found that while Roger "may not technically have assisted [Marcia] in working [at CDI] during this time period, his prior efforts in the marriage, and his sacrifice in abandoning his own career at her requests, contributed to [Marcia's] ability to acquire these assets post separation." ROA, p. 894.

Next, the family court concluded that the only way to ensure an equitable distribution of the marital estate was to divide it equally between the parties. To support its conclusion, the family court cited Kentucky Revised Statutes ("KRS") 403.190 and stated that it "must consider not only the language

¹ The record lacks any evidence indicating that Roger ever worked as an "engineer."

contained in the statute but also the intent of the legislature in creating the same.” ROA, p. 894. In doing so, the family court concluded the following:

[I]n situations such as the one at bar where the parties enter their union and operate as a functioning, commingled unit over time, the Court believes the intention is to separate the parties and their accumulated assets/debts equally and restore them to the status of single individuals. In this way, both parties leave the marriage in the same position, with neither gaining an advantage or disadvantage as a result of the decision to go their separate ways.

ROA, p. 894.

Finally, the family court awarded Roger maintenance of \$15,000 per month until Marcia reaches age 65 or retires, whichever comes later. The family court cited KRS 403.200(1), which requires a finding that the party seeking maintenance lacks sufficient property to meet his reasonable needs and cannot support himself through employment. The family court reasoned that Roger’s age, along with the time he had been absent from the workforce, prevented him from being able to support himself through employment. The family court did not account for the substantial amount of marital property it awarded Roger. Instead, the family court simply stated that the law “does not require a person to rely solely on the assets awarded to them through marital division to [sic] meet those needs.” ROA, p. 905. Thus, given his age and lack of recent employment history, the family court concluded that \$15,000 per month is required to help Roger meet his reasonable needs.

The family court made several other conclusions that are not the subject of this appeal. For context, however, the family court concluded that Marcia’s

performance and restricted stock units, which she earned as compensation at CDI, were marital property to be divided equally. The family court also ordered Marcia to make a property equalization payment representing the amounts she paid to her alleged live-in boyfriend over two years, totaling more than \$135,000. In addition, when dividing the marital estate, the family court refused to offset Roger's property division by \$133,035.05, representing the amount advanced to Roger from the parties' joint account. Finally, the family court awarded Roger his attorneys' fees and costs in the amount of \$110,630.99.

Both parties filed timely motions to alter, amend, or vacate the Judgment pursuant to Kentucky Rules of Civil Procedure 59.05. On December 21, 2023, the family court issued an order overruling both parties' motions but amended the Judgment to identify the marital residence's equity. Both parties appealed the Judgment to the Court of Appeals.

In December of 2024, the Court of Appeals affirmed the Judgment in part, reversed in part, and remanded for additional proceedings. *Dall v. Dall*, 2024-CA-0003-MR, 2024 WL 5099053 (Ky. App. Dec. 13, 2024). On the issues before this Court, the Court of Appeals affirmed the family court's equal division of marital property, including Marcia's post-separation compensation and the increased value of the marital residence. The Court of Appeals opined that the family court sufficiently considered the factors enumerated in KRS 403.190(1) and that its discussion of the legislative intent underlying the statute, while unnecessary, did not amount to an abuse of discretion requiring

reversal. Regarding maintenance, the Court of Appeals supplied a brief analysis and held that the family court acted within its discretion.

Additionally, the Court of Appeals reversed the family court's Judgment in part and remanded with instructions that the family court: (1) reclassify portions of Marcia's non-vested performance stock units as non-marital; (2) offset Roger's property award to account for the \$133,035.05 advance; and (3) reassess Roger's requested attorney's fees, as duplicative entries were not supported by evidence of record.

Marcia subsequently petitioned this Court for discretionary review, which we granted. Importantly, Roger did not seek further review of the Court of Appeals' decision. Thus, the Court of Appeals' instructions to the family court on remand stand to the extent they are consistent with this opinion.

On appeal, Marcia argues that the family court erroneously divided the marital property equally under the mistaken belief that the governing statute presumes an equal division of assets in certain factual scenarios. Marcia further submits that the family court erred in equally dividing marital estate assets acquired post-separation and attributable to Marcia's employment compensation. Marcia also challenges the family court's award of spousal maintenance on the ground that it failed to consider the statutory criteria.

STANDARD OF REVIEW

Statutory interpretation is a matter of law subject to *de novo* review. *Ford v. Perkins*, 382 S.W.3d 821, 824 (Ky. 2012) (citing *Commonwealth v. Gaitherwright*, 70 S.W.3d 411, 413 (Ky. 2002)). This Court reviews a trial

court's division of marital property for abuse of discretion. *Thielmeier v. Thielmeier*, 664 S.W.3d 563, 573 (Ky. 2022) (citing *Smith v. Smith*, 235 S.W.3d 1, 6 (Ky. App. 2006)). Similarly, we review an award of maintenance for an abuse of discretion. *Powell v. Powell*, 107 S.W.3d 222, 224 (Ky. 2003) (citation omitted). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

ANALYSIS

I. Division of Marital Property

Marcia's first assignment of error challenges the family court's division of the marital estate. As mentioned, Marcia requested sixty percent of the marital estate, with Roger receiving the remaining forty percent. Marcia argued that she was entitled to a larger portion of the marital estate because her earnings contributed more than Roger's. Marcia further asserted that Roger had made no appreciable contribution to the marital estate since 2012, the year both children were emancipated and ceased residing in the marital home.

Turning to the family court's judgment, Marcia takes aim at its unnecessary examination of the General Assembly's intent in enacting KRS 403.190. More specifically, the family court stated that it "must consider not only the language contained in the statute but also the intent of the legislature in creating the same," and concluded that "in situations such as the one at bar where the parties enter their union and operate as a functioning, commingled unit over time, the Court believes the intention is to separate the parties and

their accumulated assets/debts equally and restore them to the status of single individuals.” ROA, p. 894. Marcia argues that the family court was prohibited from construing the statute beyond its plain meaning. Marcia believes that the family court’s improper construction of KRS 403.190 led to the equal division of the marital estate. The Court of Appeals affirmed the family court’s decision on this issue, holding that although the family court engaged in a superfluous examination of the General Assembly’s intent, it still considered the necessary factors outlined in KRS 403.190(1).

To begin, we remark that our review of the family court’s interpretation of KRS 403.190 is a matter of law subject to *de novo* review, as it “involves an application of the statutory framework for equitable distribution of property upon divorce” *Holeman v. Holeman*, 84 S.W.3d 903, 905 (Ky. 2002). On the merits, we agree with Marcia that the family court’s interpretation of KRS 403.190 was error.

Pursuant to KRS 403.190(1), marital property must be divided in “just proportions” after consideration of “all relevant factors including:”

- (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.

Merely citing KRS 403.190(1) is not enough; a court must demonstrate that it considered the factors when equitably dividing the marital property.

Thielmeier, 664 S.W.3d at 574.

Where a statute is unambiguous, a court must apply the statute's language without resorting to unwarranted statutory construction. *See, e.g., Stephenson v. Woodward*, 182 S.W.3d 162, 170 (Ky. 2005) (quoting *Commonwealth v. Plowman*, 86 S.W.3d 47, 49 (Ky.2002)). (“[S]tatutes must be given their literal interpretation unless they are ambiguous and if the words are not ambiguous, no statutory construction is required.”). In the framework of the statute at issue, this Court has previously stated that “[t]he law is clear that there is no presumption of a 50–50 division without regard to the evidence.” *Gaskill v. Robbins*, 282 S.W.3d 306, 316 (Ky. 2009). This Court has also recognized that “courts have a legislative mandate to divide marital property in accordance with the standards set out in [KRS 403.190]” without resorting to legislative interpretation. *Herron v. Herron*, 573 S.W.2d 342, 344 (Ky. 1978).

In *Herron*, the trial court considered the KRS 403.190(1) statutory factors and distributed the marital estate on a one-third to two-third split. *Id.* 573 S.W.2d at 343. The Court of Appeals reversed, holding that pursuant to KRS 403.190, there is “a presumption of an equal distribution under the circumstances of this case in the absence of evidence to the contrary.” *Id.* This Court reversed the Court of Appeals’ opinion and remanded with directions for it to reevaluate the trial court’s decision by exclusively applying the standards

delineated in KRS 403.190. Again, this Court held that in evaluating the division of property pursuant to KRS 403.190, a court may not indulge in statutory interpretation that creates presumptions. *Id.* at 344.

Based on the plain language of KRS 403.190 and *Herron*, we agree with Marcia that the family court’s interpretation of KRS 403.190 was error. However, we must still consider whether the error is reversible. This inquiry turns on whether the family court abused its discretion by applying the erroneous presumption to the facts before it. Roger maintains that the trial court’s presumption does not constitute reversible error and points this Court to *Gaskill*, 282 S.W.3d 306.

In *Gaskill*, the wife, an oral and maxillofacial surgeon who owned her oral surgery practice, earned ninety percent of the income received during the marriage. *Id.* at 309. The husband was employed during the marriage, yet at a lower salary, assisted the wife in “carrying out” her practice, and contributed equally in the home and child-caring duties. *Id.* at 316. The family court divided the marital assets equally between the spouses. *Id.* at 311. Notably, the family court did not expressly construe KRS 403.190(1) or formulate a presumption based upon legislative intent.

On appeal to this Court, we analyzed the family court’s ruling and held that it did not abuse its discretion in dividing the marital estate in equal proportions. *Id.* at 317. This Court concluded it “will not infer that the trial court believed it *must* divide the marital estate 50–50 in light of the express statement in its opinion that ‘Just proportions does not require equal division,’

and that ‘a presumption of equal division absent evidence to the contrary is improper.’” *Id.* at 317.

Our understanding of *Gaskill* is that the trial court did not engage in any statutory construction; rather, the trial court applied the KRS 403.190(1) factors and relied on the evidence of record, which supported a division of assets in equal proportions. In contrast, the Judgment on appeal demonstrates the trial court’s mistaken belief that KRS 403.190 presumes an equal division of the marital estate. For example, the family court explained that the intent behind the General Assembly’s enactment of KRS 403.190 was to divide the marital assets *equally* in situations “where the parties enter their union and operate as a functioning, commingled unit over time.” ROA, p. 894. The family court also expressed that the General Assembly’s “intention is to separate the parties and their accumulated assets/debts equally and restore them to the status of equal individuals.” ROA, p. 894. Unlike *Gaskill*, the family court failed to acknowledge that a presumption of equal division or placing the parties in an equal financial position is not the legal standard. In fact, the family court demonstrated that it applied the erroneous presumption by finding that Roger’s decision not to work after the children were emancipated does not “affect[] his *right to an equal division* of the marital estate.” ROA, p. 893 (emphasis added). Consequently, we cannot infer that the family court engaged in a proper evaluation of the KRS 403.190 factors independent from the erroneous belief that the statute presumes an equal division of the marital estate.

Because this Court finds that the family court's faulty presumption served as the decisional basis for its ultimate decision to equally divide the marital estate, we reverse the Court of Appeals on this issue and remand to the family court with instructions to divide the marital estate in conformity with the plain language of KRS 403.190(1), keeping in mind that it may not indulge in statutory interpretation.

II. Division of Post-Separation Marital Property

Marcia's second argument is that the family court erred in awarding Roger fifty percent of the post-separation marital estate without consideration as to whether Roger provided a continuing contribution to the marital estate. Again, the marital estate gained more than seven million dollars in value between the date of the parties' separation and the date of Judgment. The increased value of the marital estate is attributable to Marcia's compensation as an employee of CDI.

As the preceding section of this opinion explains, KRS 403.190 provides a three-step process in awarding property in a marital dissolution action. That is, the family court was required to first identify the marital property, then divide it in just proportions, including marital property acquired post-separation and prior to a divorce decree. *Thielmeier*, 664 S.W.3d at 573 (citing *Travis v. Travis*, 59 S.W.3d 904, 908-09 (Ky. 2001)).

Turning to the first step, the trial court did not err in finding that the post-separation increases in value constituted marital property. On appeal, Marcia does not contest the family court's categorization of her post-separation

earnings, whether it be the increased value of the marital residence, the checking account holding her earnings, or the account holding her employment stock. However, based on our review of the record, it appears Marcia originally claimed that her post-separation earnings constituted non-marital property. ROA, p. 889.

To prevent this issue from arising on remand, we do not perceive error in the family court's classification of the increased value of the marital home and financial accounts as marital property. Indeed, KRS 403.190(2) provides, in part, that property acquired subsequent to marriage is marital property except, *inter alia*, property acquired by a spouse after a decree of legal separation or property excluded by agreement of the parties. On this point, physical or actual separation is not the equivalent of legal separation. *Stallings v. Stallings*, 606 S.W.2d 163, 164 (Ky. 1980) (“Separation’ means a legal one granted by a decree entered pursuant to KRS 403.140(2).”).

Here, it is undisputed that Roger and Marcia physically separated in February of 2020, but at no point prior to the Judgment did the family court enter a decree of legal separation. Further, Marcia has failed to identify any applicable exception as set forth in KRS 403.190(2). Thus, the trial court was within its discretion to find that the increased value of the marital estate via equity in the marital home and accumulated funds in financial accounts constituted marital property subject to equitable division as of the date of the parties' dissolution.

Once the family court categorized the subject property as marital, the trial court was then tasked with applying the factors enumerated in KRS 403.190(1)(a)-(d). Since this Court has already remanded this case to the family court for a new property division analysis, Marcia's allegation of error concerning the family court's division of post-separation marital property is now moot. Nonetheless, we will comment on Marcia's claimed error in order to provide guidance to the family court upon remand.

In reviewing of the Judgment, the family court identified the length of the parties' marriage, the tangible and intangible contributions of each spouse in accumulating the property, and the parties' financial circumstances. Nonetheless, Marcia posits that the family court was required to identify Roger's continuing contributions that assisted Marcia in earning her post-separation compensation, which in turn increased the value of the marital estate. Marcia relies on two cases that arguably stand for the proposition that marital property acquired by one spouse post-separation should not be divided unless the non-earning spouse provided a continuing contribution aiding in the acquisition of marital property. See *Thielmeier*, 664 S.W.3d at 573-574; *Shively*, 233 S.W.3d 738.

Prior to discussing the precedential value of both cases to the appeal before us, we underscore our predecessor Court's opinion in *Stallings*, which held that property acquired from the date of separation and prior to a dissolution decree is marital unless it fits within an exception set forth in KRS 403.190(2). *Stallings*, 606 S.W.2d at 164. If an exception is not applicable, the

marital property is distributed like other marital property, which requires the trial court to consider the factors listed in KRS 403.190(1), including the factor weighing the “contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker.” *Id.* at 164.

Having discussed the confines of KRS 403.190 as applied in *Stallings*, we turn our focus to *Shively*. In that case, the appealing spouse, Mary, challenged the family court’s division of post-separation property accumulated within the one-year period between the couple’s physical separation and the family court’s dissolution decree. 233 S.W.3d at 739. In particular, Mary appealed the family court’s decision to award her former spouse, Ben, a greater division of the post-separation property. *Id.* The family court followed the directives of *Stallings* by evaluating the factors delineated in KRS 403.190(1). *Id.* The family court concluded that “it is ‘just’ to divide the marital property by allowing each party to keep the income each party *earned* after [the date of physical separation] and the assets purchased with those earnings.” *Id.* at 740 (emphasis in original). The factors leading to the family court’s property division included findings that the marriage spanned the course of ten years, the parties were awarded equal division of the marital property acquired pre-separation, both parties held financially fruitful careers, and the parties shared the responsibilities of maintaining the marital residence and caring for the minor children. *Id.* at 739-40. Additional consideration was given to the fact that Ben’s compensation during the period of separation was unusually high due to his employer’s winding up of business in the Louisville area. *Id.* at 739. The

Court of Appeals held that based on *Stallings*, the family court did not abuse its discretion in dividing the post-separation property in an unequal fashion.

Like the family court, we agree that *Shively* is distinguishable from the case before us. Here, we are presented with a marriage that persisted for thirty-eight years during which one spouse forfeited his career to become a homemaker, and as a result, was not employed and had not received employment compensation for over two decades at the time of Judgment. Unlike the alleged non-contributing spouse in *Shively*, Roger does not enjoy the prospect of a “financially fruitful” career. Accordingly, *Shively* does not squarely support Marcia’s argument.

Marcia also relies on our opinion in *Thielmeier*, 664 S.W.3d 563. at 573-574. *Thielmeier* addressed, in pertinent part, the division of a 401(k) account, including division of contributions made during the parties’ physical separation. *Id.* This Court held that the family court erred in finding that the wife did not contribute to the 401(k) during the period of separation and was thus not entitled to share in the increased value. *Id.* at 574. Our holding was based on the family court’s inconsistent conclusions. *Id.* Specifically, the family court’s conclusions were at odds with its findings that the appealing spouse was unable to work due to the medical needs of the parties’ child. *Id.* Consequently, this Court reversed and remanded the family court’s decision, reasoning that the family court abused its discretion as it had found that the appealing spouse enabled the husband in funding the 401(k) during the period of separation by not working and serving as the primary caretaker of their

child. *Id.* What we garner from *Thielmeier* is that the trial court erred in rendering inconsistent findings, not that the continuing contribution of each spouse in acquiring marital property is necessarily a dispositive factor in dividing post-separation marital property. Said differently, while a trial court must consider whether a spouse is assisting the other spouse in his or her ability to acquire marital property, the law does not require the trial court to afford any specific factor decisive weight.²

To conclude, the family court maintains wide discretion in dividing marital property. On remand, the family court may consider and weigh Roger's tangible and intangible contributions during the marriage, some of which may have helped Marcia earn compensation during the parties' physical separation. Additionally, we have found no precedential authority placing decisive weight on a spouse's contributions, or lack thereof, made during the parties' physical separation.

III. Spousal Maintenance

Marcia's final assignment of error concerns the family court's spousal maintenance award of \$15,000 per month until Marcia reaches the age of sixty-five or retires, whichever comes later. Marcia argues that the trial court failed to make the required findings pursuant to KRS 403.200(1). As this Court

² Marcia supplies the Court with an opinion from the Appellate Court of Connecticut in *Wendt v. Wendt*, 757 A.2d 1225 (Conn. App. 2000). In applying Connecticut's version of KRS 403.190, which requires consideration of "the contribution of each of the parties to the acquisition" of marital property, the Appellate Court of Connecticut held that the non-earning spouse was not entitled to share in the post-physical separation earnings. *Id.*; Conn. Gen. Stat. § 46b-81. We decline to utilize *Wendt* as instructive guidance, as our case law is clear.

has already instructed the family court to reevaluate the division of marital property upon remand, Roger's request for spousal maintenance must also be reassessed. Nonetheless, this Court must remind the family court that, before evaluating the amount and duration of spousal maintenance, it must first find that Roger lacked sufficient property, including marital property, to provide for his reasonable needs *and* is unable to support himself through appropriate employment. We emphasize the language promulgated in KRS 403.200(1), which states the following:

(1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of a marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse *only* if it finds that the spouse seeking maintenance:

(a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; *and*

(b) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(Emphasis added). As such, on remand the family court must provide findings and conclusions as to the required criteria, including whether Roger can provide for himself through appropriate employment, and whether Roger's share of the marital estate may provide for his reasonable needs.

CONCLUSION

For the foregoing reasons, the Court of Appeals' decision is reversed and remanded to the Jefferson Family Court for additional proceedings consistent with this opinion.

All sitting. Lambert, C.J.; Bisig, Conley, and Nickell, JJ., concur.
Thompson, J., dissents by separate opinion which Keller, J., joins.

THOMPSON, J., DISSENTING: I disagree with reversing the family court's division of the marital property because "the family court's interpretation of [Kentucky Revised Statutes (KRS)] 403.190 was in error." The family court correctly recited the statutory requirement that its responsibility was to equitably divide the marital property. I agree with the Court of Appeals that the family court's statements regarding the legislative intention to separate the parties' marital assets and debts equally were mere surplusage.

I am convinced that the family court correctly understood its duty and appropriately exercised its discretion in this case by concluding that an equitable division could properly be reached through a roughly equal division of the marital property between Marcia Dall and Roger Dall. The order which the family court produced in response to the motions to alter, amend or vacate supports this conclusion. Therein, the family court repeatedly noted that it had engaged in an equitable division of the marital property as of the date of dissolution. The family court also concluded that its division of the marital property did not have to offset the money advanced to Roger, stating "the Court is charged with making an equitable, not equal, division of assets of the

parties[,]” it had “fashioned an equitable resolution” and was “comfortable and confident that the disposition represents an equitable division of all assets of the parties.” Such conclusions firmly refute the majority opinion’s concern that the family court believed it was obligated to equally divide the marital property under these circumstances. The family court properly acted within its discretion in concluding that, in this case, an equal division of the marital assets (other than not allowing an offset for an advance to Roger and awarding attorney fees to Roger) was an equitable division.

It is within the family court’s discretion to divide marital assets “as it deems equitable.” *Thielmeier v. Thielmeier*, 664 S.W.3d 563, 572 (Ky. 2022). That can be an equal division. *Gaskill v. Robbins*, 282 S.W.3d 306, 317 (Ky. 2009).

The family court is left to make such a determination within its sound discretion, and our only role is to review such a decision for abuse of discretion. *Rice v. Rice*, 336 S.W.3d 66, 68 (Ky. 2011). We should affirm where “there is absolutely no indication that the family court considered factors other than the statutory criteria in its division of the marital estate or that it abused its discretion in any other manner.” *Hempel v. Hempel*, 380 S.W.3d 549, 553 (Ky. App. 2012).

I disagree with the majority that there has been any abuse in that discretion where the family court did what it was allowed to do decide that a mostly equal division of the marital property was equitable. I am satisfied that there was ample evidence to support the family court’s determination that the

marital estate should roughly be divided equally based on how Marcia and Roger each contributed to the family unit, and that the family court properly considered the statutory factors before reaching this conclusion. I would affirm. “While other reasonable courts may have weighed the evidence differently,” that is insufficient to establish that the family court “abused its discretion in dividing the marital estate as it did.” *Gaskill*, 282 S.W.3d at 317.

However, even if the family court’s interpretation of KRS 403.190 was in error, I would determine that this error is harmless. I believe the majority opinion goes too far in concluding that “the family court’s faulty presumption served as the decisional basis for its ultimate decision to equally divide the marital estate[.]” The family court could properly divide the marital property evenly, and its findings provided ample support for why such a division was equitable. I interpret the family court’s discourse surrounding this equal division as establishing why it was inappropriate to award Marcia 60% of the marital property, which she proposed was equitable simply because she was the one who generated its value through her earnings. The family court concluded a nearly equal division would be equitable because Roger sacrificed his own professional career and potential future earnings to support Marcia’s career advancement, helping her to succeed by raising the children, following her from city to city, providing housing repairs, and contributing in other ways, essentially making her success their success.

As to the division of the post-separation marital property, this is still marital property as the parties did not enter into a legal separation. *Stallings v.*

Stallings, 606 S.W.2d 163, 164 (Ky. 1980); *Thielmeier*, 664 S.W.3d at 573.

While the family court could divide this post-separation marital property differently than the pre-separation marital property, it was not obligated to do so. *See Shively v. Shively*, 233 S.W.3d 738, 740 (Ky. App. 2007). I would affirm the family court's decision to divide the post-separation marital property in the same manner as the pre-separation marital property. The family court acted within its discretion in concluding that Roger's prior contributions enabled Marcia's continued career success and subsequent growth in the marital estate, and that dividing this property in just proportions in this case meant an equal division.

I also disagree with the majority opinion that the award of maintenance should be vacated. While the family court could have done a better job explaining why the marital award was insufficient to provide for Roger's reasonable needs, the explanation is obvious. The bulk of the award was tied up in retirement funds which would not be available until Marcia retires; that is why the end of maintenance is linked to her retirement; this is something of which both parties were well aware as evidenced by their proposed findings of fact and conclusions of law.

KRS 403.200(1) specifies in relevant part:

[T]he court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and

(b) Is unable to support himself through appropriate employment[.]

The family court focused its analysis on KRS 403.200(1)(b), whether Roger was unable to support himself through employment, and KRS 403.200(2), which controls how much maintenance and for what duration is appropriate considering specified factors. The family court determined that “[Roger] is in need of some maintenance to meet his reasonable needs” and concluded “it is not appropriate for [Roger] to expect [Marcia] to continue to be responsible for him at the same high level to which he enjoyed while being married to [Marcia].”

The portion of the marital property tied up in retirement accounts was substantial. According to Marcia’s proposed findings of fact and conclusions of law, as of the September 30, 2022 valuation of these accounts, Marcia had \$3,121,757.31 in these accounts,³ and Roger had a retirement account with \$312,100. In the intervening time between these valuations and the date of the divorce, these accounts have likely grown substantially in value. Because the bulk of the marital estate was concentrated in Marcia’s retirement accounts, which could not be accessed without a substantial tax penalty at this time, it was appropriate for Roger to receive maintenance to meet his reasonable needs

³ These were her Churchill Downs Incorporated 401K Plan (\$289,787.96), Roth IRA Morgan Stanley (#1793) (\$5,201.55), Traditional IRA Morgan Stanley (#1796) (\$1,440,280.97), Traditional IRA Morgan Stanley (#5318) (\$613,787.03), GE Deferred Compensation Plan (\$13,228.00); Erie Deferred Compensation Plan (\$15,423.26); the Churchill Downs Incorporated Deferred Compensation Plan (\$266,041.87), and 2,595.748 shares of Churchill Downs Incorporated Deferred Stock (which according to Roger’s reference to Marcia’s own exhibit was worth \$478,006.97).

until this money could be accessed without penalty. It does appear that Roger will need a place to live, as Marcia was awarded the marital home.

I further write to express my concern that because the majority is reversing and remanding, this dissolution matter could drag on interminably and continue to incur substantial attorney fees which are detrimental to both parties and impede their ability to move on with their lives. The family court recounted that at the time of the judgment, Roger had incurred \$110,630.99 in attorney fees, and Marcia admitted that her attorney fees were significantly higher than his.

I urge the family court on remand to resolve matters as expeditiously as can reasonably be done. It appears to me that an amended judgment can properly be issued forthwith based on the existing evidence in the record.

Accordingly, I dissent.

Keller, J., joins.

COUNSEL FOR APPELLANT:

Jonathan T. Salomon
E. Lee Veazey
John S. Lueken
Dentons Bingham Greenebaum LLP

COUNSEL FOR APPELLEES:

Paul Hershberg
Paul Hershberg Law, PLLC

Michelle L. Eisenmenger
Eisenmenger Family Law

Louis P. Winner
Winner Law Group, LLC