

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-001630-MR

JOHN A. HUMPHRESS

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT
HONORABLE DOUGHLAS M. GEORGE, JUDGE
ACTION NO. 97-CI-00384

PATRICIA ANN HUMPHRESS

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND DYCHE, JUDGES.

BARBER, JUDGE: Appellant John A. Humphress appeals from alleged errors in a decree of dissolution.

John Humphress, (hereinafter John), was the owner of several corporations at the time of the dissolution. These corporations were formed during the marriage. In addition to these Corporations, John and Appellee Patricia Humphress, (hereinafter Patricia), had several joint bank accounts and there were CDs and savings accounts in the names of the corporations. At the inception of the action, counsel for John notified the trial court that he did not know the exact value of

the corporations and that a CPA would be needed to value the corporations.

Patricia provided the trial court with a document entitled "Petitioner's List of Property" which included real estate, horses, the corporations and corporate property. No value of the property was provided on that list. During the final hearing on the matter Patricia provided a verified list of assets and liabilities. John provided a "Notice of Compliance" in response to the Court's request that he provide a similar listing of all property, individual and marital. John provided values for the property where same were known to him. He also provided balances for accounts owned by the corporations and expressly disputed the valuation for these accounts previously provided by Patricia.

In July, 1999, at the request of the parties, the trial court appointed two appraisers and a CPA to value the property. The court directed counsel to work with these experts in valuing the property. John's lawyer withdrew from the case in December, 1999, prior to the court-requested evaluation being performed. The hearing on the case was set for January 11, 2000. John retained new counsel on January 7, 2000. John requested a continuance of the hearing date to allow his new counsel time to become familiar with the complexity of the case. The hearing was continued until February 15, 2000.

Conflicts developed between John and his new lawyer. These conflicts escalated during the hearing and included name calling by John's lawyer. John's counsel provided the trial court with an inventory listing a value for each asset. John denies that he provided the information contained in the report and disputed any finding that the values were correct. During the hearing, John's lawyer abruptly withdrew from representation. John moved for a continuance and informed the trial court that there was a need for appraisals and valuation of the real estate and corporations. The trial court denied John's motion. Following the hearing, but a year prior to the entry of the decree of dissolution, John filed a trial brief giving values for real estate, automobiles, personal property and corporate stock. The trial brief also listed marital and nonmarital debt. Similarly, Patricia provided a verified listing of assets and liabilities.

John objects to the trial court's refusal to continue the February 15, 2000 hearing. John asserts that he did not receive adequate representation during that hearing and this lack of representation harmed his case. John also argues that the failure of the court to continue the hearing until a full appraisal was done of the real estate and corporations was in error. John appealed the denial of his request for continuance. The Court of Appeals dismissed his request for intervention.

Almost a year passed between the date of the hearing and the entry of the decree of dissolution. John did not obtain new counsel during that time. He provided his "trial brief" and list of assets and liabilities during that time period. The record shows that ample evidence was provided by both parties with regard to value of the assets and liabilities and that John had time in which to supplement his responses had he chosen to do so. Where there is no abuse of discretion shown, this court cannot reverse the trial court's determination. Drake v. Drake, Ky. App., 809 S.W.2d 710, 714 (1991).

The trial court's judgment stated that both parties had filed disclosures of assets. John objects to this finding claiming that no full and fair disclosure had been made by either party. The record contains Patricia's verified listing of assets and liabilities and John's trial brief containing a similar listing. In addition, John's counsel provided the court with an amended listing of properties at the February 11, 2000 hearing. The trial court assigned values to the personal property based on the documentation in the record which had been provided by the parties over a three year period. The trial court repeatedly warned the parties during the almost four years before entry of the final decree of dissolution that each party had a duty to provide a correct valuation. The trial court even went so far as to appoint individuals to work with the parties

in creating such a valuation. Neither party worked with the court appointed assessors and CPA, choosing instead to create their own valuations.

The trial court also found marital debt in the sum of \$58,500.00. John notes discrepancies between his "Notice of Compliance" and Patricia's list of assets, and the findings of the trial court. John does not address the fact that many of the values used by the trial court came from the list of assets provided by his former counsel at the February 11, 2000 hearing. John continues to assert that because he did not agree to counsel's provision of this information to the trial court or Patricia, the court could not properly review that information.

The trial court awarded Patricia in excess of \$400,000.00, household furniture and belongings, her new vehicle, and her IRA account. The court granted John the marital residence, an additional \$125,000.00 piece of real estate, and the balance of funds in various corporate accounts. The trial court required John to pay all marital debt. John objects to the trial court's findings, but does not show that he provided evidence upon which the trial court could have based a different ruling. John does not show reversible error in the trial court's division of assets and liabilities. For this reason, the judgment must be affirmed. Russell v. Russell, Ky. App., 878 S.W.2d 24, 25 (1994).

The Decree states that the values for the various properties were based on the documentation submitted early on in the hearing by John's counsel, who withdrew. John asserts that he did not authorize that valuation; he did not agree to those valuations; he did not verify that they were correct, and the values are incorrect. However, the record shows that John worked with his counsel in preparing those valuations and also provided counsel with evidence supporting the listing. John argues that this documentation should not have been considered part of the record in this action, and was improperly relied upon by the trial court. The record shows that the parties were given ample time to provide the trial court with dispositive evidence and the record supports the trial court's findings.

John asserts that the trial court's ruling should be reversed due to the trial court's determination that the law required a 50/50 division of all marital property, regardless of contribution. John argues that KRS 403.190 holds otherwise. The record does not reveal that the trial court required a 50/50 division of assets. The trial court accomplished what appears to be a fairly equal division of assets but did not indicate that it was required to make a completely even distribution. There was no abuse of discretion in the division.

John asserts that his retirement IRA, valued at \$61,390.00, was improperly found by the trial court to be

marital property and was improperly divided with Patricia. John asserts that as Patricia was entitled by law to the entirety of her teacher's retirement IRA, his retirement fund should be considered solely his own. The record does not contain evidence showing that the account at issue was John's IRA account rather than a marital IRA account. In the absence of such documentation, the account must be treated as marital property. Further, John's contention that the trial court should take the value of Patricia's teacher retirement funds into account when dividing property is in error. KRS 161.700(2) prohibits such action by the trial court. The trial court's refusal to make the consideration demanded by John was in accordance with law.

This Court cannot disturb the findings of a trial court in a case involving dissolution of marriage unless those findings are clearly erroneous. Cochran v. Cochran, Ky. App., 746 S.W.2d 568, 569 (1988). Appellant has not shown clear error in the trial court's rulings. For this reason, the judgment of the Taylor circuit court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Elizabeth C. Woodford
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Michael D. Meuser
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BRIEF FOR APPELLEE:

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