

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002360-MR

ALLIE JEANETTE GARDNER

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE KEVIN L. GARVEY, JUDGE
ACTION NO. 99-FC-006505

LAMONT GARDNER

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, KNOPF, and TACKETT, Judges.

COMBS, JUDGE. This is an appeal from an order of the Jefferson Family Court in the dissolution of marriage action of Allie Jeanette Gardner and Lamont Gardner. We affirm.

The parties married in March 1995. No children were born of the marriage, and a petition for dissolution was filed in June 1999. After an extensive evidentiary hearing, the family court made findings of fact and conclusions of law

resolving various property issues. A judgment and decree of dissolution were entered on July 17, 2001.

Jeanette challenged the court's findings and conclusions regarding the restoration of the parties' non-marital property as well as the division of the marital assets. The family court denied her motion to alter, amend or vacate, and this appeal followed.

As a prefatory observation, we are compelled to note that Jeanette's brief was prepared in complete disregard of CR 76.12 (4)(c)(iv), which provides that a brief must contain:

An "ARGUMENT" conforming to the Statement of Points and Authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law and which shall contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

The several purposes of this rule are readily apparent.¹ Lamont has complained that the failure of Jeanette's brief to make even one citation to the record to support her factual allegations has made his task enormously more difficult. He urges us to dismiss the appeal or alternatively to dispose of the appeal solely upon the contents of the briefs. We have elected not to dismiss the appeal. However, we have no

¹Even after Lamont attacked the noncompliance of Jeanette's initial brief, no attempt was made to correct the error by way of the reply brief.

obligation to conduct an exhaustive search of the record in an effort to discover support for Jeanette's factual arguments or to supply omissions that were incumbent upon the appellant to provide.

Jeanette first contends that the family court erred in its calculation of the parties' non-marital interest in their real property. We disagree.

The record indicates that Lamont worked at General Electric Corporation for thirty-seven years. He retired in the summer of 1995 -- just months after the parties married. At the time of the marriage, Lamont owned a residence at 126 Hazelawn Drive in Jefferson County. He had purchased the property in September 1993 for \$36,000.00 with a non-marital down payment of \$7,200.00. By the time of the marriage, Lamont had reduced the mortgage balance by \$1,346.00. In October 1994, Lamont obtained a second mortgage on the Hazelawn Drive property in the amount of \$25,000 for purposes of extensive renovation. At the time of the marriage, he had paid down the second mortgage balance by \$1,378.

The Hazelawn property sold in December 1995 for \$78,000.00, yielding a net proceed of \$24,515.00. After reviewing the evidence, the court concluded that Lamont had made improvements and contributions to the Hazelawn property totaling \$33,673.00. The court concluded that Jeanette had made a non-

marital contribution of \$6,529.00 to the improvement of the property and that the marital contribution totaled \$915.00. Because the parties' contributions exceeded the equity realized from the sale of the home, the court was unable to award each party a dollar-for-dollar contribution toward the improvements. Instead, the court calculated the parties' respective marital and non-marital contribution in proportion to the net proceeds. Thus, the court determined that Lamont had a non-marital interest of \$19,505.00 in the Hazelawn property and that Jeanette had a non-marital interest of \$3,995.00 in the property.

In August 1995, the parties purchased property at 1699 Fisherville Road in Jefferson County for \$29,380.00. They made a marital down payment of \$5,880.00 and secured a mortgage for the balance of the purchase price. After the Hazelawn property was sold, they paid off the outstanding mortgage balance of \$23,500 on the new property. Following the parties' separation, the Fisherville Road property was sold, yielding net proceeds of \$65,763.00.

After examining the evidence, the family court concluded that the total marital contribution to the Fisherville Road property consisted of nearly \$14,000.00. It determined that Lamont had adequately traced his non-marital investment in the Fisherville Road property from his non-marital investment in

the Hazelawn property (\$19,505) and that Jeanette also had invested her non-marital share of the Hazelawn proceeds (\$3,995) in the Fisherville Road property. In order to distribute the remaining proceeds of the sale of the Fisherville Road residence, the court once again evaluated the parties' respective contributions in proportion to the net proceeds. Making this calculation, the court awarded Lamont a non-marital interest of \$34,196.76 in the property with Jeanette receiving a non-marital interest of \$7,233.93. The parties were ordered to divide equally the marital equity of \$24,332.31.

The division of marital property is committed to the sound discretion of the trial court. Johnson v. Johnson, Ky. App., 564 S.W.2d 221 (1978). We are not persuaded that the family court abused its discretion when it apportioned the marital and non-marital interests in the parties' Fisherville Road property. Jeanette has failed to direct us properly to any evidence contradicting the court's finding that Lamont had expended more than \$33,000.00 in non-marital funds toward the acquisition and improvement of the Hazelawn property. However, Lamont has carefully documented the evidence in his favor.

In light of our limited ability to review a scant record, we have no basis to conclude that the trial court erred. Jeanette contended that Lamont had absolutely no funds of his own to invest in the Hazelawn property improvements. Therefore,

she claimed that she made an additional non-marital contribution of \$8,000 toward the improvements -- a sum which the calculations of the family court erroneously omitted. However, the court's findings of fact are adequately supported by the record. No legal arguments relative to the court's distribution of the property have been made. Therefore, we affirm the court's allocation of the value of the marital residence.

Next, Jeanette contends that the trial court erred by holding her responsible for the value of a carport that she removed from the Fisherville Road property, for the value of items she removed from their Florida residence, and for a withdrawal of \$3,500 from their bank account. We shall address each of these contentions in turn.

Lamont testified at trial that he had a carport built at the Fisherville Road property at a cost of \$2,100.00. He complained, however, that Jeanette had arranged to have the structure removed from the residence while Lamont was away from home. The trial court assigned one-half of the value of the carport to Lamont.

In her brief, Jeanette admits that she had the structure removed but insists that she did so because the carport detracted from the overall appeal and value of the property. She argues that the trial court erred by assigning

any value to the carport.² Under the circumstances, we cannot conclude that the family court abused its broad discretion by attributing value to this asset and dividing that value between the parties.

Lamont also testified that Jeanette wrongfully removed various items of marital property from the couple's Florida residence. Jeanette admitted that she broke into the Florida home and took away the items identified by Lamont. She did not contend that the items were non-marital. Lamont claimed that the approximate value of the pilfered property was \$1,000.00 and that he also spent \$687.00 to replace the door that Jeanette had damaged in her effort to gain access to the home. Based on this testimony, the family trial court accordingly assigned \$1,687.00 to Lamont. We find no error.

Finally, concluding that Jeanette had failed to account for a withdrawal of \$3,500.00 from the parties' checking account, the trial court assessed one-half of this sum against her. Jeanette contends that the family court erred by concluding that she had received these funds since the check was made payable to Republic Bank. Regardless of the arguable fate

²Jeanette equivocated on this point in her reply brief by arguing that Lamont agreed to the removal of the carport. This suggestion appears to contradict direct testimony that she offered at trial. The family court found that the parties had not agreed to the removal of the carport. Since the family court heard the evidence and observed the witnesses, it was in the best position to make such a finding. We shall not disturb that finding.

of the funds, Jeanette argues that she was nonetheless justified in making the withdrawal since her monthly income exceeded Lamont's - a fact that entitled her to a proportionately larger share of the account. She argues that the trial court erred by charging her with any part of the sum withdrawn. We disagree.

KRS³ 403.190(3) provides that "[a]ll property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property. . . ." The distribution of marital property is committed to the sound discretion of the trial court. Neidlinger v. Neidlinger, Ky., 52 S.W.3d 513 (2001). The family court did not err by concluding that these funds were marital property to be equally divided. At trial, Jeanette admitted that the disputed \$3,500.00 check had probably been made payable to Republic Bank as a deposit to another account. She admitted that it was even possible that she had purchased a certificate of deposit with the funds withdrawn from the joint account. Under these circumstances, we cannot agree that the family court abused its discretion by charging Jeanette for one-half of the sum withdrawn.

Finally, Jeanette contends that the trial court erred by failing to credit her with the value of three months of mortgage payments. Following the parties' separation, Jeanette

³ Kentucky Revised Statutes.

claims to have made these mortgage payments for a total of \$1,769.67. She argues that she is entitled to additional credits toward the expenses of the real property under the terms of the parties' mediation agreement. However, Jeanette conceded at trial that Lamont "may have made" two of the disputed monthly mortgage payments. Consequently, the family court did not err by refusing to credit Jeanette for payment of these expenses.

We affirm the decree of July 17, 2001, of the Jefferson Family Court.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
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