

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000055-MR

JOY RAY CARDWELL AND
NANCY OLIVER ROBERTS

APPELLANTS

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 97-CI-01371

JUDY ALENE CARDWELL AND
KENNETH A. MEREDITH II

APPELLEES

OPINION AND ORDER

(1) AFFIRMING

(2) DENYING ORAL ARGUMENT

** ** * * *

BEFORE: DYCHE, JOHNSON, AND SCHRODER, JUDGES.

DYCHE, JUDGE. The sole issue in this appeal is whether the trial court erred in ordering attorney Nancy Oliver Roberts to issue a check to appellee Judy Alene Cardwell in the amount of \$1,153.83. We affirm.

Roberts had represented Joy Ray Cardwell in the dissolution action between him and Judy. Litigation of the

issues took nearly four years, after which Roberts moved to withdraw as Ray's attorney. However, because the trial order included an item for which Roberts was held responsible, she has filed this appeal, apparently without Ray's authorization.

While the dissolution was pending, the parties' marital home sustained substantial damage from a hailstorm. Their insurer issued a check to the Cardwells for \$7,904.17. Some of the repairs were made to the residence, and another sum was spent catching up on the mortgage payments and other outstanding bills. \$2,307.66 remained, and that amount was issued to both parties and Trans Financial Bank by cashier's check on July 1, 1998. Roberts retained possession of the check rather than having it placed in escrow per the commissioner's report. The parties later were ordered to negotiate the check and apply same to the mortgage and home equity loan to avoid foreclosure on the house. This was not timely done, and the property was foreclosed. The family court ultimately ordered that Nancy Roberts reimburse Judy Cardwell one half the amount of the check (or \$1,153.83).

Roberts requests this court to hold that finding clearly erroneous and to remand the matter to the trial court for an award of attorney fees. We decline to do so. There is sufficient evidence in the record to support the trial court's finding, and we will not disturb it. Kentucky Rule of Civil

Procedure (CR) 52.02. Roberts's handwritten, undated receipt from the bank teller does not convince us otherwise. Furthermore, her request for attorney fees was not raised in the prehearing statement, and we will not consider it. CR 76.03(8).

Finally, we consider appellant's motion for oral argument. It is denied.

The order of the Warren Circuit Court is affirmed.

ALL CONCUR.

ENTERED: July 11, 2003

/s/ R. W. Dyché
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANTS:

Nancy Oliver Roberts
Bowling Green, Kentucky

BRIEF FOR APPELLEES:

Kenneth A. Meredith, II
Bowling Green, Kentucky