

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000484-MR

GARY E. ROBINSON

APPELLANT

v. APPEAL FROM LOGAN CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 91-CI-00426

MARGARET ROBINSON

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BAKER, GUIDUGLI, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. This is an appeal from an order entered ten years after the decree of dissolution dividing a parcel of real property owned by the parties during the marriage. The husband argues that the trial court erred in awarding the ex-wife an undivided one-half interest in the property when he paid off all the debt on the property after the dissolution and she filed bankruptcy discharging her debt on the property at the time of the dissolution. Because the issues of property distribution

were reserved for a later date and the lease on the property paid the mortgage and costs associated with the property, the trial court did not err in awarding each party a one-half undivided interest in the property as tenants in common. We defer to the lower court's discretion in weighing the equities of the respective parties and concluding that none outweighed the other's interest. Hence, we affirm.

In 1988, appellant, Gary Robinson, and appellee, Margaret Robinson, then husband and wife, purchased a 157-acre farm for \$138,780 which was 100% financed by Farmer's Home Administration ("FmHA"), of which only \$1,500 of principal had been paid by the parties in 1991. Gary testified that besides the mortgage on the farm property and funds borrowed to purchase equipment for Gary's trucking business, during the marriage the parties also obtained an \$80,000 loan apparently related to other farm property in which the parties had an interest.

After being married for 25 years, the parties were divorced by decree of dissolution entered on November 11, 1991. In the decree, the court stated that "[a]ll matters relative to property rights are hereby reserved." On the same date, Margaret filed a petition declaring Chapter 7 bankruptcy. (The petition was filed by Margaret individually and not jointly with Gary.) In Schedule A of her petition, Margaret lists as her only real property asset her one-half interest in the parties'

farm which she assigned a value of \$90,000 and secured indebtedness of \$137,277.93. The \$80,000 loan was not listed as a debt on the petition. Due to the debt on the farm property, the bankruptcy trustee ultimately abandoned the property.

In February of 1992, Margaret moved from the parties' farm into a house she purchased in Russellville. According to Margaret, at that time, Gary told her that he was going to sell the farm because he could not afford to keep making payments on all the debts. Nevertheless, Gary moved back into the farm residence and lives there now with his present wife.

The evidence established that during the parties' marriage, the parties leased the farming acreage of the property to James Starks to conduct farming operations and said lease has been in effect to date, although Michael Starks is now the lessee. In late 1999, Gary and his present wife entered into an agreement with Michael Starks to sell 135 acres of the farm property for \$283,500. However, the sale was unable to proceed when it was discovered that Margaret's potential interest constituted a cloud on the title. When Margaret learned of this attempted transaction, she moved the court to make a division of the property pursuant to the decree.

After a full hearing on the matter, the court entered its final judgment on February 13, 2002 dividing the parties' real and personal property. As to the farm, the court found

that Gary had expended several thousand dollars on maintenance of the farm buildings after the dissolution, but he also paid no rent to Margaret for the years he lived on that property. The court also found that while the income from the farm lease was sufficient to pay the mortgage payments, taxes and insurance on the property over the years, there was no evidence that the farm had generated a profit since the dissolution. The court acknowledged, and it appears to be undisputed, that there was little or no equity in the property in 1991 and that most of the increase in equity in the farm was due to its increase in value over the years from \$900 an acre to \$2,000 an acre. Finally, the court found that Gary alone received the benefit of claiming the depreciation of the farm buildings on his taxes during the years subsequent to the dissolution.

In adjudging that the parties had an equal interest in the property as joint tenants in common, the court stated:

The difficult issue is the farm. In 1991 there was little or no equity. Had there been any, the court would have awarded one half of the value to each of the parties but also would likely have assigned the \$80,000 marital debt in the same proportions - at least to the extent of the value of the equity in the farm.

Gary was forced to pay this entire \$80,000 marital debt because it was secured by the trucks he was using to make his livelihood. Had any part of this debt been assigned to Margaret, Gary still would have had to pay it all since she did not have the means to pay it, or would not have the

motivation to do so, even if she had not filed bankruptcy. The payment of Margaret's portion of this marital debt by Gary and his maintenance of the house and buildings over eight years should be considered by the court as offsetting the monetary claims by Margaret against Gary. The facts do not all lend themselves to precise mathematical calculation of the monetary value of all of the various factors. Nevertheless, the equities in favor of Gary roughly offset those favoring Margaret.

The court concludes that the parties either expressly or by implication through their actions agreed not to dispose of the farm and to permit its income to pay for itself. Considering all relevant factors, the court believes that the farm should be divided equally between the parties.

From that order, Gary now appeals. Gary insists that the trial court erred in dividing the farm property equally between the parties, claiming such a division was wholly inequitable given that Margaret obtained a discharge on the debt on the property pursuant to the bankruptcy and that he paid off all the debt related to the property.

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). As to Gary's assertion that he paid off all the debt related to the property, the evidence established that the lease of the property, which was initially executed before the parties' dissolution, was sufficient to pay the mortgage, the insurance, and the taxes on the property. Relative to Margaret's discharge of the farm mortgage debt

through the bankruptcy, we agree with the trial court that this did not affect her interest in the property. Although Gary continually referred to Margaret's "abandonment" of the property by her discharge of the mortgage debt, that was an erroneous assumption on Gary's part; the discharge would have only come into play if the property had been foreclosed upon, which it was not. The bankruptcy trustee did abandon the property; hence each party retained their interest therein. Margaret never subsequently did anything to affect her interest in the property, and the court expressly reserved the issue of property distribution in the decree for a later date.

Margaret testified at the hearing that the parties decided to keep the farm, hoping that the value would increase over time, while Gary denied that the parties had any such understanding about the property. The trial court found that the parties agreed to not sell the farm at the time of dissolution. Since the trial court heard the evidence and observed the witnesses, it was in the best position to make such a finding of fact, and we are loathe to disturb that finding unless it was clearly erroneous. Justice v. Justice, Ky., 421 S.W.2d 868 (1967). We cannot say that this finding was clearly erroneous.

As to the \$80,000 debt which Gary claims he should get credit for paying, the evidence was not clear, but apparently it

was a loan during the marriage to operate a different farm owned by the parties. Gary testified the loan was necessary because of financial difficulties the parties began experiencing in the 1980's. According to Gary, the parties ultimately lost that farm and were forced to deed it back to FmHA. Hence, although the debt was a marital debt, it was not related to or secured by the farm property at issue in this appeal. It is undisputed that Gary paid the entire \$80,000 debt after the parties' dissolution.

The court specifically considered Gary's payment of Margaret's portion of the \$80,000 debt in weighing the equities of the parties. It weighed that debt and the repairs and maintenance paid for by Gary for the farm against the fact that Gary lived and operated his own business on the farm rent-free for ten years and took the depreciation on the farm buildings over the years. We cannot say that the court abused its discretion in weighing these equities and equally dividing the property. In our view, the property was divided in "just proportions." KRS 403.190.

Finally, Gary insists that the trial court should have divided the property as it would have in 1991. However, as noted earlier, the issue of property division was properly reserved for a later date, and consequently the matter was not brought before the court again until Margaret moved for a

division of the property which, by that time, had greatly appreciated in value. Since each party still had the same interest in the property at that time, there was no justification for the lower court to have divided the property as it would have in 1991.

For the reasons stated above, the judgment of the Logan Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Daniel C. Hicks
Hopkinsville, Kentucky

BRIEF FOR APPELLEE:

Jesse L. Riley, Jr.
Russellville, Kentucky