

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000567-MR

PAULA N. TETIRICK

APPELLANT

v. APPEAL FROM CASEY CIRCUIT COURT
HONORABLE JAMES G. WEDDLE, JUDGE
ACTION NO. 00-CI-00186

MICHAEL A. TETIRICK

APPELLEE

AND

NO. 2002-CA-000579-MR

MICHAEL A. TETIRICK

APPELLANT

v. APPEAL FROM CASEY CIRCUIT COURT
HONORABLE JAMES G. WEDDLE, JUDGE
ACTION NO. 00-CI-00186

PAULA N. TETIRICK

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE, KNOFF, AND SCHRODER, JUDGES.
SCHRODER, JUDGE. These appeals arise from the dissolution of
the marriage of Paula N. Tetirick (hereinafter "Paula") and

Michael A. Tetirick (hereinafter "Michael") entered by the Casey Circuit Court. By order entered March 7, 2003, these appeals were to be heard together. Paula asserts four arguments on appeal: (1) that the court erred in awarding Michael certain items of personal property; (2) that the court erred in ordering a public sale of the marital property; (3) that the unequal division of the marital estate was improper; and (4) that she is entitled to reimbursement of her attorney fees and various other litigation costs. Michael's appeal challenges that portion of the judgment directing his contribution to Paula's student loan debt. We affirm on both appeals.

Paula and Michael were married for eighteen years when Michael initiated this divorce. There were no children born of this marriage, and both Paula and Michael were employed full-time outside the home. Early in the marriage, the couple purchased and lived on a farm in Casey County, upon which they placed a mobile home. At the trial, the central issue was the division of marital property, of which the largest asset was the real property. The trial court entered its findings of fact, conclusions of law, and decree of dissolution of marriage, which ordered that the real property, the mobile home, and the remaining unclaimed personal property be sold at public auction. Both parties now appeal.

Paula first alleges that the trial court erred in awarding Michael a disproportionate share of the personal property, without appropriate compensation to her. Michael was awarded books and an outdoor sauna, valuing a total of \$1,360. KRS 403.190 charges the trial court with the responsibility of dividing the marital property in just proportions after considering all relevant factors. In awarding Michael the books and the sauna, the trial court took into consideration that Michael had requested certain books be awarded rather than sold, and that Michael had built the sauna himself. It should also be noted that Paula was permitted to retain certain books as well, and those books were excepted from the public sale. The trial court is vested with the discretion to divide the marital property, and this Court will overrule the division only upon a showing of an abuse of discretion. Underwood v. Underwood, Ky. App., 836 S.W.2d 439 (1992), overruled on other grounds by Neidlinger v. Neidlinger, Ky., 52 S.W.3d 513 (2001). We see no evidence that the trial court abused its discretion in the present case; rather, the trial court based the division of the books and the sauna on relevant factors, including the fact that Michael had built the sauna himself. The award of books and the sauna to Michael was within the discretion of the trial court and, therefore, proper.

Paula next claims error where the trial court ordered that the real property, the mobile home, and the remaining unclaimed personal property be sold at public auction. Paula asserts that such a sale is not a "just division" as required by KRS 403.190. Both parties correctly note that KRS 403.190 does not mandate that the marital property be divided equally.

Russell v. Russell, Ky. App., 878 S.W.2d 24 (1994).

Furthermore, both parties accurately state that it is within the discretion of the trial court to order a public sale of marital property. Herron v. Herron, Ky., 573 S.W.2d 342 (1978).

It appears that Paula's only objection to the order of the trial court is that the parties should be entitled to have the assets divided in kind, rather than being sold at public auction. In essence, Paula makes the argument that, while the trial court's order is not an abuse of discretion, a more palatable division of the property exists. Again, this Court may overrule the order of the trial court only where an abuse of discretion is evidenced. Here, there is nothing in the record to support a conclusion that the trial court abused its discretion in ordering the property sold at auction. Paula and Michael had signed a joint note for the purchase of the real estate and the mobile home and a substantial indebtedness remains. A reasonable solution to the problem of the indebtedness is to sell the property, allowing Paula or Michael

to secure independent financing to repurchase the property if either so desires. We adjudge that the lower court did not abuse its discretion in ordering the real estate, mobile home, and personal property sold.

Paula's third claim is that the trial court erred in dividing the net marital estate equally, and that the trial court failed to accurately apply the factors of KRS 403.190. The court ordered that the proceeds of the aforementioned public sale be divided equally between Paula and Michael. Paula asserts that her financial and domestic contributions to the marital estate exceeded Michael's, warranting an unequal division of the marital property.

KRS 403.190 requires that a "just division" of property occur, and no presumption exists that the marital estate must be divided equally. Herron, 573 S.W.2d 342. Furthermore, KRS 403.190 sets forth factors that the court must consider in dividing the marital estate. Specifically, subsection (1)(a) requires that the financial and domestic contribution of each party be considered. However, this is not the only factor that the court may consider; rather, "all relevant factors" are to be taken into consideration including the "[v]alue of the property set apart to each spouse." KRS 403.190(1)(b). This Court has affirmed the trial court's wide discretion in the division of the marital estate. Johnson v.

Johnson, Ky. App., 564 S.W.2d 221 (1978). Considering that Paula was also awarded two vehicles, various items of personal property, two horses, and three dogs, in addition to one-half of the proceeds of the public sale, we are unable to conclude that the trial court abused its discretion.

Paula's final claim is that the trial court erred in failing to award her attorney fees or reimbursement for the costs of litigation. KRS 403.220 states that the trial court may order a party to pay the reasonable fees and costs of the other party, taking into consideration the financial resources of both parties. Here, there is virtually no disparity in the financial resources of the parties. Both Paula and Michael are employed full-time and have been so employed for the entire duration of the marriage. Paula earns approximately \$9,000 more per year than Michael, a fact that would tend to weaken Paula's request for reimbursement. Upon noting that the financial resources of the two parties were essentially equal, the trial court declined to award attorney fees. The trial court is granted wide discretion in awarding attorney fees and costs pursuant to KRS 403.220. Gentry v. Gentry, Ky., 798 S.W.2d 928 (1990). We deem there was no abuse of discretion in the trial court's denial of an award of attorney fees.

Michael appeals from that portion of the judgment directing him to pay a certain percentage of Paula's outstanding

student loans. During the marriage, both parties pursued masters' degrees. Michael used marital funds to pay for his graduate degree and continued to work while earning that degree. By mutual agreement, Paula had obtained a loan to pay for her educational expenses so that she would not have to work while completing the degree. At the time of divorce, a portion of that debt remained. The court ordered that the proceeds of the public sale be used to pay the remaining debt, with one-third of the debt being the responsibility of Paula and the remaining two-thirds being divided equally. Michael now appeals that award, arguing that the entire student loan debt should be the responsibility of Paula. We disagree.

Degrees, including funds borrowed to obtain the degree, are not considered marital property. Inman v. Inman, Ky., 648 S.W.2d 847 (1982). Furthermore, debts incurred during the marriage are traditionally assigned based on such factors as receipt of benefits and extent of participation. Neidlinger v. Neidlinger, Ky., 52 S.W.3d 513 (2001). Here, the trial court correctly applied the principles set forth in Inman and Neidlinger. The monies borrowed for Paula's graduate degree were used to pay tuition, related educational expenses, and living expenses for both parties. The one-third portion of the debt assigned to Paula individually reflects the costs of her degree, in accordance with Inman. The remaining two-thirds of

the debt was used to pay for joint living expenses and to offset the loss of Paula's salary while studying full-time. Therefore, because the benefits of that portion of the debt inured to both parties equally, the debt was assigned equally, as required by Neidlinger. We conclude that the order of the trial court concerning the repayment of the student loan was proper.

For the foregoing reasons, the judgment of the Casey Circuit Court is affirmed.

EMBERTON, CHIEF JUDGE, CONCURS.

KNOPF, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT/APPELLEE,
PAULA N. TETIRICK:

Robert R. Baker
Stanford, Kentucky

BRIEF FOR APPELLEE/APPELLANT,
MICHAEL A. TETIRICK:

Michael L. Judy
Frankfort, Kentucky