

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001495-MR

NONA GAIL LAMB ASHER

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT  
HONORABLE JAMES L. BOWLING, JR., JUDGE  
ACTION NO. 01-CI-00261

JAMES ASHER

APPELLEE

OPINION  
AFFIRMING IN PART,  
REVERSING IN PART, AND  
REMANDING

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BEFORE: BUCKINGHAM, McANULTY, AND PAISLEY, JUDGES.

BUCKINGHAM, JUDGE: Nona Gail Lamb Asher appeals from the portion of a divorce decree establishing the value of a mobile home and the value of items of clothing and personal property. We affirm in part, reverse in part, and remand.

Nona Gail Lamb Asher and James Asher were married on July 3, 1981, and were divorced on May 16, 2002. Among other things, the divorce decree valued their mobile home and valued

items of clothing and personal property which the court found that Mr. Asher had taken from Mrs. Asher. Mrs. Asher appealed from the portion of the decree dividing the property on the ground that the valuations of the above items were clearly erroneous.

Mrs. Asher filed a brief with this court, but Mr. Asher did not. CR<sup>1</sup> 76.12(8)(c) provides as follows:

If the appellee's brief has not been filed within the time allowed, the court may: (i) accept the appellant's statement of the facts and issues as correct; (ii) reverse the judgment if appellant's brief reasonably appears to sustain such action; or (iii) regard the appellee's failure as a confession of error and reverse the judgment without considering the merits of the case.

See also Callahan v. Callahan, Ky. App., 579 S.W.2d 385, 386 (1979).

The parties owned a mobile home which was placed on a one-acre lot owned by Mr. Asher's mother. During the divorce proceedings, Mrs. Asher obtained an appraisal of the mobile home. That appraisal stated the fair market value of the lot at \$15,000 and the fair market value of the mobile home located on the lot at \$43,500.<sup>2</sup> Mr. Asher did not have the lot and mobile

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<sup>1</sup> Kentucky Rules of Civil Procedure.

<sup>2</sup> Mrs. Asher stated in her deposition that the appraisal was to be admitted as a part of her testimony. Although the deposition states that the 14-page appraisal was attached and made a part of the deposition, the appraisal was not physically attached to the

home appraised. Further, he testified in his deposition that he had "no idea" as to the value of the property. He also testified that \$20,000 was owed on the property to a mortgage company.

Regarding the valuation of the property, the court stated as follows in its decree:

The appraisal submitted is of no use to the Court since it did not value the mobile home separately from the lot on which it is located. Since the mobile home cannot be considered as real estate and must be considered as personal property subject to reasonable depreciation the Court finds the value of the mobile home to be \$30,000. The parties agreed that there is a \$20,000 mortgage on the property and the marital equity would therefore be \$10,000.

Mrs. Asher's first argument on appeal is that the trial court erroneously and arbitrarily ignored the uncontradicted evidence of the value of the mobile home and valued it at \$30,000 rather than \$43,500. She notes that the trial court erroneously stated that the appraisal did not value the mobile home separately from the lot. She further notes that the appraisal valued the mobile home at \$43,500 and valued the lot separately at \$15,000.

Relying on the Callahan case, she argues that the trial court was bound to accept the valuation set forth in the appraisal since it was the only proof of the mobile home's value.

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deposition. Further, we were unable to locate it anywhere in the record.

We agree with Mrs. Asher. First, the trial court apparently mistakenly believed that the values of the mobile home and the lot had not been determined separately in the appraisal. Secondly, the valuations set forth in the appraisal were uncontradicted by any testimony or other proof from Mr. Asher. Furthermore, in light of Mr. Asher's failure to file a brief in this appeal, we accept Mrs. Asher's statements as to the facts as being correct. On remand, the trial court must value the mobile home at \$43,500.

Mrs. Asher's second argument relates to the valuation of items of clothing and personal property taken from her by Mr. Asher. During the divorce proceedings, Mrs. Asher claimed that Mr. Asher had taken items of clothing and personal property belonging to her and had not returned them. Although Mr. Asher denied doing so, the court found that he was responsible for the loss. Further, the court directed Mrs. Asher to itemize the missing items and their values for the court's consideration in its award of property.

Mrs. Asher provided an itemization of the property in her deposition and valued the missing property at \$6,645. Mr. Asher denied having taken the property and maintained that he knew nothing about the loss. The court stated in its decree that the inventory and valuation provided by Mrs. Asher "may be

inflated and excessive." Thus, the court awarded her only \$3,000 for the loss of her clothing and personal items.

Again citing the Callahan case, Mrs. Asher argues that the valuation of the missing property was uncontradicted and that the court erred in awarding her only \$3,000 in this regard. We do not agree that the principle in the Callahan case concerning uncontradicted testimony regarding valuations of property is applicable. The court obviously felt that Mrs. Asher had exaggerated the amount and value of clothing and personal items taken from her. "A trial court's valuation in a divorce action will not be disturbed on appeal unless it is clearly contrary to the weight of the evidence." Underwood v. Underwood, Ky. App., 836 S.W.2d 439, 444 (1992), *overruled in part on other grounds by* Neidlinger v. Neidlinger, Ky., 52 S.W.3d 513, 523 (2001). As it was within the purview of the trial court to judge the credibility of Mrs. Asher's self-serving testimony concerning items that could not be produced for independent valuation, we conclude the court did not err in its findings.

The judgment of the Bell Circuit Court is affirmed as to the valuation of the items of clothing and personal property and is reversed and remanded for the entry of an amended judgment reflecting the value of the mobile home.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEE

Gerald L. Greene  
Pineville, Kentucky