

RENDERED: MAY 13, 2005; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-000369-MR

VADA ANN CONLEY

APPELLANT

v. APPEAL FROM JOHNSON CIRCUIT COURT  
HONORABLE JULIE PAXTON, JUDGE  
ACTION NO. 03-CI-00023

DANNY KEITH CONLEY

APPELLEE

OPINION  
AFFIRMING IN PART, VACATING IN PART  
AND REMANDING

\*\* \*\* \* \* \*

BEFORE: KNOPF AND TACKETT, JUDGES; EMBERTON, SENIOR JUDGE.<sup>1</sup>

TACKETT, JUDGE: Vada Ann Conley (Ann) appeals from an order of the Johnson Family Court dissolving her marriage to Danny Conley (Danny) and awarding him their home and the business the parties operated together. Ann argues that the trial court erroneously determined that the real property on which the marital home was

---

<sup>1</sup> Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

located was Danny's nonmarital property, and that their marital property was not equitably divided. Further, Ann asserts that the trial court refused to address her request to be restored to her maiden name of Kendrick. We agree that the real property in question was a nonmarital gift to Danny pursuant to our reasoning in Angel v. Angel, 562 S.W.2d 661 (Ky. App. 1978). Also, the trial court did not err in awarding Danny the marital home and business and assigning him the debt thereon. Therefore, we affirm the Johnson Family Court's order in part and vacate in part on the issue of the court's failure to address Ann's request to be restored to her maiden name.

Ann and Danny were married in December 1995, and Danny's mother deeded them a tract of land the following September. The couple subsequently bought a mobile home and made other improvements to the property. During their marriage, the parties ran a pool service and water business and cleaned industrial equipment. Some of the equipment used in the business was purchased by Danny prior to his marriage. The couple obtained a \$78,000.00 mortgage secured by both the property where their home was located and the equipment owned by their business, Aqua Industries. Danny and Ann separated in January 2003 and she later filed for dissolution of the marriage. The trial court's order dissolving their marriage found that the real property where the marital residence was

located was Danny's nonmarital property by virtue of the fact that it was given to the couple by his mother. Danny was also awarded the business and assigned the remaining mortgage. Ann filed exceptions to the trial court's order with regard to its disposition of the couple's property and the failure to restore her maiden name. The trial court overruled the exceptions, and this appeal followed.

Kentucky Rule of Civil Procedure 52.01 states that a trial court's findings of fact shall not be set aside unless they are clearly erroneous. Ann argues that the trial court erred in determining that the real property where their mobile home was located was Danny's nonmarital property. The deed conveying the real property to Danny and Ann states that it is conveyed for the sum of "Love & Affection" and further states that the property is a gift "without consideration." When considering the disposition of real property conveyed to spouses as a gift from one spouse's family member, we previously stated as follows:

When the trial court assigns "each spouse's property" pursuant to [Kentucky Revised Statute] 403.190(1), record title should not be controlling. Therefore, the tract conveyed in 1961 by gift from the wife's brother should be considered as the wife's nonmarital property unless the trial court finds that Ester Angel was named as a grantee for a reason other than his marriage to Mossie Lee.

Angel at 665. Ann has offered no evidence that Danny's mother included her name on the deed for any reason other than her marriage to Danny. Consequently, the trial court's decision to restore the real property to Danny as his nonmarital property is not clearly erroneous. Ann also points to improvements which were made to the property using marital funds; however, the property is security for a mortgage that exceeds its value. Since the trial court has assigned the mortgage to Danny, we find no error in its failure to award Ann a portion of the property's alleged increase in value.

Ann next asserts that the trial court failed to equitably divide the parties' business, Aqua Industries. The business incorporated a year after the marriage. Ann was listed as the company president. Her duties included keeping the books, billing, and scheduling jobs. Danny performed the actual work of cleaning industrial equipment, filling pools, etc. with the seasonal help of part-time employees. At the time of their divorce, Ann had obtained employment with Kentucky Environmental Network at an annual salary of \$28,000.00, while Danny continued to operate Aqua Industries. The company's property consisted of a checking account and some equipment, which was included as security for the couple's \$78,000.00 mortgage. Some of the equipment was actually purchased by Danny before his marriage and was his nonmarital property. During her deposition, Ann

testified that the business had a net income of \$4,171.00 during 2000, but a loss of \$224.00 in 2001. Danny stated in his position paper that the entire value of the corporation lay in his ability to get out and work.

The trial court's order states that the mortgage payoff in November 2003 was \$72,809.00. The mobile home and real property were valued at \$66,000.00, and the value of the business was \$25,200.00. The trial court found that the value of the business consisted of its equipment and vehicles which were encumbered by the mortgage. Since the mortgage on their home and business equipment was assigned to Danny, the trial court also awarded him the business, and we are unable to say that this was erroneous.

Finally, Ann asserts that the trial court failed to address her repeated requests to be restored to her maiden name. She made this request during the hearing, in her position paper, and in her exceptions to the trial court's order. The trial court never ruled on this request. KRS 403.230(2) states as follows:

Upon request by a wife whose marriage is dissolved or declared invalid, the court may, and if there are no children of the parties shall, order her maiden name or a former name restored.

In this case, there is one minor child born to the parties, so the trial court has discretion to determine whether or not to

restore Ann to her maiden name of Vada Ann Kendrick. The trial court failed to make any decision regarding this issue despite repeated opportunities to do so. Therefore, the judgment granting dissolution of the marriage is vacated to the extent that it fails to address Ann's request to have her maiden name restored, and this case is remanded for the court to determine whether to restore Ann's maiden name.

For the forgoing reasons, the judgment of the Johnson Family Court is affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Earl Martin McGuire  
Prestonsburg, Kentucky

BRIEF FOR APPELLEE:

John David Preston  
Paintsville, Kentucky