

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001193-MR

EDDIE D. MORGAN

APPELLANT

v. APPEAL FROM ROCKCASTLE CIRCUIT COURT  
HONORABLE ROBERT E. GILLUM, JUDGE  
ACTION NO. 03-CI-00199

REGINA G. MORGAN

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DYCHE, SCHRODER, AND VANMETER, JUDGES.

VANMETER, JUDGE: This is an appeal from an order entered by the Rockcastle Circuit Court dissolving the parties' marriage. We disagree with appellant Eddie D. Morgan's contention that the trial court abused its discretion by equally dividing between the parties the military retirement benefits which were earned during the marriage. Hence, we affirm.

Eddie and appellee Regina G. Morgan married in January 1996 and divorced in April 2004. They reached an agreement as

to the division of all marital debts and property other than Eddie's military retirement benefits, and they agreed to share joint custody of their daughter who was born in August 1997.

The record shows that Eddie enlisted in the Army in November 1985, and that he will be eligible to retire in November 2005. It is undisputed that throughout the marriage Eddie was stationed at various military posts, including Fort Campbell, and that on multiple occasions he was deployed to serve overseas. It is also undisputed that Eddie and Regina shared an apartment for only a few months during their marriage, and that Regina in fact lived with or near family members in Rockcastle County throughout most of the marriage. However, while Eddie asserts that Regina refused to share a residence with him and that they saw one another only occasionally during the marriage, Regina contends that they frequently visited on weekends and that Eddie did not want to lease an apartment rather than stay with family members. Further, although it is undisputed that Regina was employed only occasionally in minimum wage jobs, it is clear that she was the primary parental caretaker of the parties' young child throughout the marriage.

Eddie does not dispute that military retirement benefits earned during the parties' marriage constitute divisible marital property. However, Eddie asserts that the trial court failed to divide marital property "in just

proportions"<sup>1</sup> when it relied on *Poe v. Poe*<sup>2</sup> and equally divided the retirement benefits between the parties, as Regina made no contributions toward acquiring or enhancing the retirement benefits. We disagree.

KRS 403.190(1) provides that the trial court shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including:

- (a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;
- (b) Value of the property set aside to each spouse;
- (c) Duration of the marriage; and
- (d) Economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

In *Poe*, a panel of this court declared that the serviceman husband's nonvested military retirement pension was marital property which should be divided under a specific formula which in essence calculated the wife's share by multiplying one-half

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<sup>1</sup> 403.190(1).

<sup>2</sup> 711 S.W.2d 849 (Ky. 1986).

of the husband's disposable retirement pay by the "% of future monthly retirement payments earned during the marriage."<sup>3</sup>

Eddie argues that it was inequitable to apply *Poe* when dividing his retirement benefits in light of his and Regina's nontraditional marital living arrangements. As noted above, it is undisputed that the parties shared a full time residence for only a few months, although there is conflicting evidence about the amount of time they spent together during the remainder of their marriage. However, it is clear that Eddie frequently was overseas on military assignments, and that Regina returned to Rockcastle County to live with or near family members. Further, although Eddie complained that Regina was not available in his home to perform household tasks and to advance his military career during the marriage, Regina clearly did assume the primary responsibility for raising and caring for the parties' child during that time. It should also be noted that although Eddie filed dissolution petitions on two prior occasions, he chose to dismiss those petitions and to continue in the marriage despite any concerns he may have had about the unconventional nature of the parties' living arrangements. Having carefully reviewed the evidence, we cannot say that the trial court abused its wide discretion<sup>4</sup> by awarding the parties equal shares of the

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<sup>3</sup> *Id.* at 851.

<sup>4</sup> *Johnson v. Johnson*, 564 S.W.2d 221 (Ky.App. 1978).

military retirement benefits which were earned during their marriage. Further, contrary to Eddie's assertion, we are not persuaded that by finding that the benefits "should be divided in accordance with the formula set out in *Poe*," the court in any manner indicated either that it was adopting a presumption in favor of the equal division of property in violation of existing case law,<sup>5</sup> or that it was failing to consider the KRS 403.190 factors which were specifically mentioned in its order.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Daniel J. Venters  
Somerset, Kentucky

BRIEF FOR APPELLEE:

Kendall L. Duerson  
Berea, Kentucky

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<sup>5</sup> See, e.g., *Russell v. Russell*, 878 S.W.2d 24 (Ky.App. 1994); *McGowan v. McGowan*, 663 S.W.2d 219 (Ky.App. 1983).