

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001968-MR

CLYDE HARRISON

APPELLANT

v. APPEAL FROM HARDIN FAMILY COURT
HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 02-CI-01538

SANDRA L. HARRISON

APPELLEE

OPINION
AFFIRMING IN PART,
VACATING IN PART,
AND
REMANDING

** ** * * * **

BEFORE: COMBS, CHIEF JUDGE; BUCKINGHAM AND KNOPF, JUDGES.

BUCKINGHAM, JUDGE: Clyde Harrison appeals from a portion of a judgment of the Hardin Circuit Court disposing of the property rights between him and Sandra L. Harrison at the conclusion of their dissolution of marriage proceeding. Although there were many contested issues before the trial court, the dispute between the parties has finally narrowed to issues relating to Sandra's interest in a mobile home park owned by Clyde prior to

marriage and to the award of the entire proceeds in a bank account to Sandra. We affirm in part, vacate in part, and remand.

Clyde was originally married to Ok Sun Harrison. During their marriage they joined as partners with Hillis and Sue Raiser and purchased a mobile home park in Radcliff, Kentucky. Under the terms of the partnership, the Harrisons owned one-half of the mobile home park and the Raisers owned the other half.

The Harrisons and the Raisers purchased the mobile home park on October 1, 1980, for \$79,000. Each couple made down payments of \$2,000, for a total down payment of \$4,000. The balance of the purchase price, \$75,000, was financed by the sellers.

Clyde testified that when they originally purchased the mobile home park, there were twenty mobile homes which were divided between the Harrisons and the Raisers. He further testified that after the mobile home park was purchased, additional mobile homes were purchased by the parties, with the Harrisons separately purchasing and owning their mobile homes and the Raisers purchasing and owning theirs. Clyde also

testified that all mobile homes were purchased before his marriage to Sandra.¹

Ok Sun and Clyde had a daughter, Peggy. In 1987, Ok Sun died intestate. Following her death, Clyde filed an inheritance and estate tax return listing the value of the mobile home park at \$48,000, with Ok Sun's interest being \$24,000.

Clyde and Sandra married on August 3, 1989. They separated in August 2002, and they were divorced on November 20, 2002. All issues involving property rights were reserved in the divorce decree for further orders of the court.

At some point prior to the divorce, the mobile home park was sold for \$516,500 and Clyde's share of the sale proceeds was \$241,032.53.² The proceeds of the sale became a major point of disagreement between the parties as the litigation continued following the entry of the divorce decree. Eventually, the domestic relations commissioner (DRC) made a determination that Sandra was entitled to \$83,557.73 as a one-

¹ Clyde did testify that one mobile home was purchased after the marriage, but he stated that it was subsequently sold.

² Although it is unclear in the record, it appears that the mobile home park was sold in 2000. Also, according to Clyde, he received less than one-half of the sale proceeds because the value of the mobile homes owned by the Raisers was more than the value of his mobile homes. Furthermore, there is no evidence or documentation in the record showing the specifics of the mobile home transaction. The only evidence as to the sale price of the park and how much money Clyde received is Clyde's testimony.

half share of the marital interest in the sale proceeds.³ The court adopted the DRC's report, and this appeal by Clyde followed.

In her determination of Sandra's marital interest in the proceeds from the sale of the mobile home park, the DRC employed the Brandenburg formula. See Brandenburg v. Brandenburg, 617 S.W.2d 871 (Ky.App. 1981). First, based on the inheritance and estate tax return filed by Clyde following the death of his first wife, the DRC determined that Clyde's nonmarital contribution in the property when he and Sandra married was \$24,000. Then, the DRC added \$2,000, representing Clyde's portion of the down payment when the park was purchased, bringing Clyde's interest when he and Sandra married to \$26,000. The court then subtracted \$26,000 from the sale proceeds of \$241,032 received by Clyde, leaving a sum of \$215,032. The DRC concluded that this was the equity in the property available for distribution.

The DRC next determined that out of the \$75,000 initial debt owed by Clyde and his original partners, \$37,500 of which was Clyde's, \$8,354.29 on the principal had been paid by Clyde before his marriage to Sandra and \$29,143.71 had been paid

³ The DRC initially found Sandra's marital interest in the shares of the mobile home park to be \$14,571.48. However, the court remanded the matter to the DRC for reconsideration, although it neither gave the DRC directions or guidance nor did it conclude that the DRC's original ruling was wrong.

on the principal by him and Sandra following their marriage. The DRC divided \$29,143.71 by \$37,500 and then multiplied the resulting percentage times \$215,032, leaving a marital interest of \$167,115.47. The DRC then determined that Sandra is entitled to one-half of that amount, or \$83,557.73. See page 330 of the record where the DRC makes these calculations.

On appeal, Clyde argues that the court's award of \$83,557.73 to Sandra from the sale of the mobile home park was clearly erroneous. He asserts that the court erred in determining the value of his nonmarital contribution in the mobile home park at the time he and Sandra married to be \$26,000. In support of his argument, he cites evidence that he spent over \$98,000 purchasing additional mobile homes of his own to put in the park and that he and his partners in the park made capital expenditures totaling \$127,720, \$63,860 of which was his share, in the park prior to his marriage to Sandra. He maintains that these figures demonstrate the DRC was clearly erroneous in her valuation of the property at the time of marriage.

The DRC accepted the figure of \$24,000 because that was the figure Clyde used in the inheritance and estate tax return for his first wife's estate. The DRC stated that "[t]his is the best evidence presented as to the value of the property at the time of the marriage." Also, as noted by Sandra in her

brief, Clyde did not present any expert witness testimony concerning the value of the mobile home park at the time of marriage. Nevertheless, we conclude that the DRC clearly erred in determining Clyde's nonmarital interest in the mobile home proceeds.

Clyde's first attorney argued to the DRC that Clyde was entitled to the entire proceedings from the mobile home park sale on the ground that it was all nonmarital property. His attorney argued that the increase in the value of the mobile home park during the marriage was "passive appreciation." KRS⁴ 403.190(2)(e) excepts from marital property "[t]he increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during marriage."

"An increase in value of marital property may be marital or nonmarital depending on *why* the increase in value occurred." Goderwis v. Goderwis, 780 S.W.2d 39, 40 (Ky. 1987). "[W]here the value of property increases after marriage due to general economic conditions, such increase is not marital property, but the opposite is true when the increase in value is a result of the joint efforts of the parties." Id. "The efforts of the parties may include the contribution of one

⁴ Kentucky Revised Statutes.

spouse as a primary operator of the business and the other spouse as a homemaker." Id.

The DRC in this case did not accept Clyde's argument that the increase in the value of his interest in the mobile home park was nonmarital property, although the DRC did not specifically address Clyde's arguments in this regard. Further, Sandra's testimony supported the DRC's determination that the increase in value was due to the parties' joint efforts. At any rate, Clyde has not appealed this determination. Rather, he has only appealed the issue of whether the DRC properly determined Sandra's marital interest in accordance with the Brandenburg formula.

The DRC first determined that the value of Clyde's nonmarital contribution (nmc) at marriage was \$24,000 because that was the figure he used in the inheritance and estate tax return of his first wife. We find no error in the DRC's use of information Clyde provided in the inheritance and estate tax return as evidence in computing Clyde's nonmarital contribution. See KRS 395.250. However, the figure of \$24,000 is not correct.

Clyde valued the mobile home park at the time of his first wife's death in the inheritance and estate tax return at \$48,000. Based on that figure, he valued her marital interest at \$24,000. Using that figure, the DRC determined that Clyde's

interest in the park was \$24,000 at the time he married Sandra. That figure is incorrect for several reasons.

Accepting the DRC's use of the information in the inheritance and estate tax return, Clyde's nonmarital interest in the park at the death of his first wife was \$36,000, not \$24,000. At his wife's death, he owned his one-half interest, and he inherited one-half of his wife's interest. See KRS 391.010 and KRS 392.020. Thus, after Ok Sun's death, he owned three-fourths of their interest in the park, not one-half of that interest as determined by the DRC.

Furthermore, that amount established only Clyde's nonmarital contribution as of his first wife's death in 1987 and did not account for any mortgage reduction, capital expenditures, or additional mobile homes purchased by Clyde between his wife's death in 1987 and his marriage to Sandra in August 1989. While it appears Clyde introduced evidence as to these amounts, it is within the trial court's purview to make findings as to these matters. Therefore, when the DRC computes Clyde's nonmarital contribution (nmc) on remand, she should begin with the figure of \$36,000 and add to it any mortgage reduction, capital expenditures, and additional mobile home purchases Clyde can prove were made following his first wife's death and before his marriage to Sandra.

As for the marital contribution (mc) for use in the Brandenburg formula, the DRC computed it to be \$29,143.71. That amount represents the mortgage reduction during the marriage. We find no error in this regard. The DRC will then add the marital contribution to the nonmarital contribution to determine the total contribution (tc).

Next, the DRC will determine the equity (e) in the park/proceeds available for distribution to parties. The DRC also erred in her computation in this regard. The DRC took the sale proceeds (\$241,032) and subtracted \$26,000 from it, leaving equity of \$215,032. The figure of \$26,000 represented what the DRC believed to be Clyde's nonmarital contribution of \$24,000 plus his \$2,000 down payment when the park was purchased.

It was error to deduct the \$26,000 figure. Equity represents the equity in the property at the time of distribution. See Brandenburg, 617 S.W.2d at 872. The nonmarital contribution is computed separately, as noted above. The equity available for distribution is \$241,032.⁵

⁵ Clyde also claims he paid \$72,000 in capital gains taxes as a result of the mobile home park sale. He introduced tax returns for the year 2000 indicating the payment of some capital gains taxes. However, the figures in those returns include other income and do not support Clyde's testimony to the extent of \$72,000. At any rate, Clyde has not argued on appeal that the amount of capital gains taxes paid should have been subtracted from the sale proceeds in determining the equity available for distribution. Also, assuming the capital gains taxes were paid, they were obviously paid as a marital debt.

Once these determinations are made, the following formula should be used:

$$\frac{nmc}{tc} \times e = \text{nonmarital property}$$

$$\frac{mc}{tc} \times e = \text{marital property}$$

See id. at 873. Furthermore, as we have noted **mc = \$29,143.71** and **e = \$241,032** for use in the above formula. We vacate and remand for further proceedings to determine the respective interests of the parties in the mobile home sale proceeds.

The second issue raised by Clyde in this appeal concerns \$17,000 that was withdrawn from a Bank One account by Sandra during the litigation. Clyde states that \$20,000 from the proceeds of the sale of the mobile home park had been deposited into the account and that the money withdrawn by Sandra was a portion of these proceeds. He asserts that, as proceeds from the sale of the mobile home park, the money should be accounted for by Sandra in accordance with the Brandenburg formula used by the court in its ruling. The DRC, however, determined that Clyde had not traced the \$20,000 that was deposited into the account as being money from the sale proceeds.

Clyde cites Chenault v. Chenault, 799 S.W.2d 575 (Ky. 1990), and Allen v. Allen, 584 S.W.2d 599 (Ky.App. 1979), to

support his argument. In Chenault, the Kentucky Supreme Court stated that the "precise requirements for nonmarital asset-tracing may be appropriate for skilled business persons who maintain comprehensive records of their financial records, [but] may not be appropriate for persons of lesser business skills or persons who are imprecise in their record-keeping abilities." Id. at 578. Thus, the court "relax[ed] some of the draconian requirements" for tracing nonmarital assets. Id. at 579.

We believe the facts in Terwilliger v. Terwilliger, 64 S.W.3d 816 (Ky. 2002), are more akin to those herein, however. Like Mr. Terwilliger, Clyde is an experienced business person. As such, he should be expected to keep detailed and accurate records, rather than ask the court to rely on the veracity of his testimony and a deposit slip that proves nothing. See id. at 820-21. In short, the DRC did not err in finding that Clyde did not adequately trace these alleged nonmarital funds. We affirm this portion of the judgment.

The judgment of the Hardin Family Court is affirmed in part, vacated in part, and remanded.

ALL CONCUR.

BRIEF FOR APPELLANT:

James T. Kelley
Elizabethtown, Kentucky

BRIEF FOR APPELLEE:

Willie M. Neal, Jr.
Elizabethtown, Kentucky