RENDERED: AUGUST 31, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-002156-MR

JAN LEA MOSS — APPELLANT

v.

APPEAL FROM BALLARD CIRCUIT COURT
HONORABLE WILLIAM L. SHADOAN, JUDGE
ACTION NO. 03-CI-00048

BARRY KENT MOSS — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: THOMPSON AND VANMETER, JUDGES; PAISLEY,[1] SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: The former wife appeals from what the trial court titled a "supplemental decree of dissolution" which divided the assets and debts between the parties. The marriage was dissolved on August 1, 2003 but the final disposition of the assets and debts was continued to a hearing on May 19, 2004. The trial court found that the "Moss Family Farm" with a value of $150,000 was non-marital property and assigned

[1] Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

that property to the husband. The $150,000 mortgage on the farm was also assigned to the husband but was listed as a marital debt. The wife argues it was error to classify the debt on the farm as marital debt and that the case should be remanded for a hearing because no witnesses were sworn prior to the taking of testimony. We disagree and affirm.

Both parties acknowledged that at the time of the marriage, the husband owned real estate known as the "Moss Family Farm". At that time, there was a $100,000 mortgage against the property. During the marriage, the $100,000 mortgage was paid off but the farm was then re-mortgaged in the amount of $150,000. That debt was listed by both parties as the husband's non-marital debt. The trial court attributed all of the listed marital debts to the husband, including the $150,000 mortgage on the "Moss Family Farm", a $40,000 debt on a double-wide mobile home, a $30,000 debt on the box van and a $20,000 debt on a tractor. The only marital debts assigned to the wife were those that were incurred by the wife after the dissolution of the marriage.

The trial court is granted great discretion in assigning debt between the parties. *See Spratling v. Spratling*, 720 S.W.2d 936 (Ky.App. 1986). We will not disturb a ruling of the trial court regarding the allocation of assets or debts unless the decision is clearly erroneous. *See Wells v. Sanor*, 151 S.W.3d 819 (Ky.App. 2004). The trial court allocated the debts and assets in a fair manner and we will not disturb that ruling. We will not substitute our judgment for that of the finder of fact. There was no error.

Our review of the record discloses that neither party was sworn prior to providing testimony at the final hearing on May 19, 2004. Testimony should be taken in open court and under oath. CR 43.04. Although this hearing was held prior to the creation of a family court in Ballard County, the trial judge conducted the hearing in a professional yet slightly more relaxed, family court manner. Both parties were able to adequately provide testimony. Neither objected at any time to the failure to have the witnesses sworn. Failure to object and provide the trial court with the opportunity to cure any error waives that error unless it will result in manifest injustice. *See Dep't of Highways v. Stamper,* 345 S.W.2d 640 (Ky. 1961).

In this particular case, both sides were represented by counsel. The testimony was not contentious. There was no dispute between the parties about the facts relating to the "Moss Family Farm" and the debt associated with it. This is not a situation where one party provided testimony that significantly conflicted with the testimony of another witness. In this limited situation we find that the failure to swear the witnesses prior to receiving testimony did not affect the substantial rights of the parties. *See* CR 61.01.

Our own review of this issue discloses that an oath is not always required. The unpublished case of *C. H. v. Commonwealth,* 2005 WL 2467781 (Ky.App. 2005) held that when confronted with a situation where a young child is a witness, it is within the discretion of the trial court to determine whether a formal oath is appropriate. Similarly, failure to administer an oath to a six-year-old sodomy victim did not preclude the use of a videotaped deposition at trial. *Hardy v. Commonwealth,* 719 S.W.2d 727

(Ky. 1986). In an action seeking to overturn an election where the election officials were never administered an appropriate oath, it was held that an election will not be invalidated by mere irregularities which do not affect the fairness and equality of the election. *Hodges v. Hodges,* 314 S.W.2d 208 (Ky. 1958). In a case where an expert witness testified without being sworn regarding the physical traits and injuries of a murder victim there was no palpable or structural error. *Peak v. Commonwealth,* 197 S.W.3d 536 (Ky. 2006). Where a trial judge failed to administer an oath to a bailiff who was charged with keeping a jury segregated and apart during deliberations, it was error but reversal was not authorized because the jury's integrity had been preserved even absent the oath. *Mason v. Commonwealth,* 463 S.W.2d 930 (Ky. 1971).

It was error to accept the testimony without the witnesses being administered an appropriate oath. In the limited situation surrounding the facts of this case and primarily because the testimony was not conflicting, we find the error does not require a reversal of the trial court's decisions regarding the disposition of property and debt. The judgment of the Ballard Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Vicki R. Holloway
Paducah, Kentucky

NO BRIEF FILED FOR APPELLEE.