

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001213-MR

ROGER MINIX

APPELLANT

v.

APPEAL FROM MAGOFFIN CIRCUIT COURT
HONORABLE JULIE PAXTON, JUDGE
ACTION NO. 02-CI-00343

JACKIE MINIX

APPELLEE

OPINION AFFIRMING

** ** *

BEFORE: ABRAMSON AND DIXON, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

ABRAMSON, JUDGE: Roger Minix appeals from a March 14, 2006 Decree of the Magoffin Family Court dissolving his marriage to Jackie Minix, dividing the couple's property and debts, and awarding Jackie maintenance. Roger contends that the property division was not "in just proportions," as required by KRS 403.190, that the maintenance award was excessive both in amount and duration, and that he was unfairly assigned the entirety of a marital debt. We affirm.

¹ Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

The parties were married in January 1967 and separated in September 2001. Their marriage produced two children, both of whom had reached adulthood prior to these proceedings. Jackie devoted herself during the early part of the marriage to raising the children. She later worked as a retail clerk and as a motel clerk and obtained licenses as a cosmetician and as a barber. She apparently worked in those capacities for a few years until back and arm conditions as well as psychological problems forced her to quit. She presented medical and vocational evidence tending to show that her physical and psychological impairments rendered her essentially incapable of earning any income. Roger's earning capacity appeared significantly better. During the marriage he worked as a welder and as a union electrician/pipefitter. His income during the years immediately before and after the separation was approximately \$3,400.00 per month (about \$40,800.00 per year).

During the marriage the parties acquired a mobile home and its furnishings, which served as the marital residence; several vehicles and a camper; four tracts of real property; and Roger's union pension. They also had a debt of several thousand dollars for a car that had been repossessed. Prior to the final hearing in August 2005, Jackie sold one of the tracts of realty. That tract had been valued at about \$22,000.00. The court awarded Roger's half of that value to Jackie as a setoff against Roger's approximately \$11,000.00 temporary maintenance arrearage. Otherwise, the court attempted to divide the property equally, awarding the marital residence to Jackie and all the vehicles and the camper to Roger. The remaining tracts of land, valued at about \$60,000.00, were to be

sold and the proceeds evenly shared. Finally, the court ordered an even split of Roger's pension. Roger contests this division on the grounds that he was not credited for his half of the realty Jackie sold prior to the hearing and that the mobile home awarded to Jackie was worth more than the vehicles and camper awarded to him.

To the extent that Roger's contentions are based on alleged deficiencies in the trial court's findings—alleged failures to assign values to particular pieces of property or to determine whether one of the vehicles awarded to Roger was a marital asset—we note that Roger failed to move for additional findings and so must be deemed to have waived these objections. CR 52.04; *Cherry v. Cherry*, 634 S.W.2d 423 (Ky. 1982). To the extent that Roger's contentions are based on an alleged lack of evidentiary support for the trial court's findings, we note that in violation of CR 76.12(4) Roger has failed to include in his brief any reference whatsoever to either the evidentiary record or the circuit clerk's record (except for the Decree) to support his factual assertions. Nor does Roger's brief provide a single citation to supporting legal authority. Confronted by a similarly deficient brief, this Court in *Robbins v. Robbins*, 849 S.W.2d 571 (Ky.App. 1993), declined to search the record and instead ruled that:

Given the serious deficiencies of appellant's brief, we would be justified in ordering his brief stricken. CR 76.12(8)(a). Rather than imposing such a severe sanction, however, we elect instead to dispose of this appeal based solely upon the contents of the parties' briefs.

Id. at 572. We shall adopt the same approach.

From the briefs, therefore, and the decree, it is patent that for more than two-and-a-half years while the matter was pending Roger simply disregarded Jackie's \$300.00 per month temporary maintenance award. Jackie was compelled to sell the parcel of realty valued at \$22,000.00 to obtain funds to live on. The trial court did not abuse its discretion by awarding Roger's half of the value of that parcel to Jackie to offset the \$11,000.00 maintenance arrearage. That is all the credit Roger was due.

Nor do the briefs suggest that the trial court clearly erred or abused its discretion when it awarded the mobile home to Jackie and the vehicles and camper to Roger. As Roger correctly notes, the disposition of property in a dissolution-of-marriage action is governed by KRS 403.190. Under that statute, the trial court is to assign each party his or her nonmarital property and to divide equitably the marital property. *Sexton v. Sexton*, 125 S.W.3d 258 (Ky. 2004). The division of marital property is to be equitable, not necessarily equal, and this Court reviews the division only for clear error and abuse of discretion. *Id.* The briefs indicate that there was testimony to the effect that the vehicles and camper awarded to Roger were worth more than the mobile home. Given Roger's failure to refer us to the alleged countervailing evidence, we cannot say the trial court clearly erred or abused its discretion by deeming his vehicle award the rough equivalent of, and the equitable counterpart to, Jackie's mobile home award.

Roger also contends that the trial court abused its discretion when, in a May 19, 2006 Order amending decree, it awarded Jackie maintenance of \$1,000.00 per month "until such time as Jackie Minix remarries or enters into extended cohabitation." Clearly,

however, the property awarded to Jackie is not sufficient to provide for her reasonable needs, and there was medical and vocational evidence tending to show that Jackie is unable to earn more than a small portion of her living expenses. An award of maintenance was therefore justified. KRS 403.200(1). There was also evidence, apparently, that Jackie's reasonable expenses were in the neighborhood of \$1,000.00 per month and that Roger had an established earning capacity of about \$3,400.00 per month. Given the more than thirty year duration of this marriage, the parties' ages, Jackie's apparently permanent physical and psychological infirmities, and Roger's earning capacity, we cannot say that a permanent maintenance award of \$1,000.00 per month constituted an abuse of discretion. KRS 403.200(2). If Jackie should obtain federal disability benefits, however, this award may be reviewed under KRS 403.250.

Finally, Roger insists that he should not have been assigned the entire debt remaining on the repossessed automobile. In *Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001), our Supreme Court explained that absent a statute to the contrary there is no presumption that debts incurred during marriage are marital, that debts incurred after separation are nonmarital, or that marital debts should be divided equally between divorcing spouses. The *Neidlinger* Court noted that

[d]ebts incurred during marriage are traditionally assigned on the basis of such factors as receipt of benefits and extent of participation . . . ; whether the debt was incurred to purchase assets designated as marital property . . . ; and whether the debt was necessary to provide for the maintenance and support of the family Another factor, of course, is the economic circumstances of the parties bearing on their respective abilities to assume the indebtedness.

Id. at 523 (citations omitted). As with the maintenance and property division issues discussed above, this Court reviews “issues pertaining to the assignment of debts incurred during the marriage . . . under an abuse of discretion standard.” *Id.* at 523.

We cannot say that the trial court abused its discretion by assigning the car-loan debt to Roger. Although the car appears to have been marital property, Roger’s far greater earning capacity makes his ability to assume the indebtedness significantly greater than Jackie’s. Under *Neidlinger*, this is an adequate reason for the trial court’s ruling.

In sum, Roger has failed to demonstrate that the trial court’s property division, debt assignment, or maintenance decisions either lacked evidentiary support or amounted to unreasonable exercises of the court’s broad discretion. Accordingly, we affirm the March 14, 2006 Decree of the Magoffin Family Court as amended by that court’s May 19, 2006 Order.

ALL CONCUR.

BRIEF FOR APPELLANT:

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