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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000668-MR

DAVID LYNN SCHRECKER

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, JUDGE
ACTION NO. 02-CR-00568

SHERRI PARKER SCHRECKER

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR AND THOMPSON, JUDGES; BUCKINGHAM, SENIOR
JUDGE.¹

BUCKINGHAM, SENIOR JUDGE: David Lynn Schrecker appeals from an order of the Daviess Circuit Court that adopted the Recommended Order on Remand of the Circuit Commissioner. This is a second appeal in the dissolution of marriage proceedings between David and his former wife, Sherri Parker Schrecker. At issue is the manner in

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

which the trial court assigned the equity and debt associated with the marital residence.

We affirm.

David had owned the home in question for several years before he married Sherri in 1992. At that time, the value of the property was \$132,500, with a debt of \$47,500. Hence, David's nonmarital share on the date of the marriage was approximately \$85,000. After the marriage, David and Sherri jointly reduced the mortgage indebtedness by approximately \$12,000. In August 2000, they refinanced the loan by borrowing \$111,000. From August 2000 through December 2000, they made various improvements to the real estate at a cost of \$44,500. At the time of the dissolution, the fair market value of the home was \$210,000, with a debt of \$116,000 and equity of \$94,000.

When the case was initially before the trial court, it calculated the amount of marital equity using percentages of 47% nonmarital and 53% marital. It then determined marital equity of \$49,820 based on the calculations, and it divided the marital equity equally between David and Sherri. It also assigned the entire debt to David. David appealed.

In that appeal,² this court held that the trial court had employed the wrong percentages in calculating the marital and nonmarital portions of the equity under the *Brandenburg* formula. See *Brandenburg v. Brandenburg*, 617 S.W.2d 871 (Ky.App. 1981). On remand, the trial court was directed to recalculate the division of the real estate equity using the percentages of 60% (nonmarital) and 40% (marital). More significantly for purposes of this appeal, the opinion also directed the trial court to reconsider the issue of the marital debt:

² *Schrecker v. Schrecker*, 2004-CA-001804-MR and 2004-CA-001971-MR, rendered February 17, 2006.

Then the trial court shall determine whether it is equitable to assign all of the marital debt on the real estate to David and still give Sherri a portion of the marital equity, when the marital debt clearly outweighs the marital equity. We are unsure of the reasoning behind the trial court's division of the marital real estate interest and debt. From the wording of the Commissioner's findings, it appears that there could be some belief that David is in no different position than if the parties had not refinanced his non-marital debt on the real estate and made it marital debt. This is clearly not the law of Kentucky and the debt is clearly marital. However, as stated previously, we are constrained from remanding for more specific findings as to this issue since it was not raised by David on appeal. However, we would strongly caution the trial court that this would not be an equitable ground for making such division of the parties' marital assets and debts.

The Commissioner and the trial court complied with our directive and recalculated the amounts of marital and nonmarital equity (\$37,600 and \$56,400, respectively). As it had in the original judgment, the trial court again adopted the Commissioner's recommendation awarding each party 50 percent of the marital interest and assigning the entire debt on the residence to David. The Commissioner provided the following explanation for this decision:

The second area which the Court of Appeals directs this Court to review is "whether it is equitable to assign all of the marital debt on the real property to David, and still give Sherri a portion of the marital equity, when the marital debt clearly outweighs the marital equity." This matter was considered by the Commissioner when this division was made in the original report. While the mortgage is considered as a marital debt, it is a debt owed on property awarded solely to David. It was originally a debt from property owned and used by both parties. If the parties had paid this mortgage in full prior to the dissolution, every dollar paid on this principal would have increased the marital interest/equity in the real property. This increase would have increased the amount owed to Sherri. It is inequitable to make her pay a portion of this debt after their dissolution since each dollar she pays would be increasing David's interest in this property without any offset in property being given to Sherri. It is also found

that this debt was incurred for their marital benefit when incurred, i.e. improvements in the marital home which they were both residing and enjoying, and these benefits will only be used and enjoyed by David in the future. They agreed to pay for these improvements through periodic monthly payments while they use them in the future. Sherri lost the right to use these improvements in the future with the awarding of this property to David. David will have the continued use of all these improvements in the future and should therefore be responsible for the indebtedness remaining on them after the dissolution, just as they jointly paid for their use during the period of time they jointly used them.

The same division of equity and debt would occur if this Court ordered the property sold and/or the parties agreed to sell it to a third party for \$210,000.00. The mortgage would have to be paid in full and the division of non-marital/marital equities would be the same as set forth above.

Under the division of property, David is the same as any third party purchaser of this property. By assigning him the entire debt, he is required to pay for only the equity remaining. This equity was divided into non-marital and marital interest and he is only paying one-half of the marital interest to Sherri. Further, it is found that David is in a better financial position to pay this debt since it is secured by property awarded solely to him and is payable for an extend[ed] period of time. He also has more resources to pay this obligation.

Finally, the Commissioner has reviewed all the debts and assets divided in this case and the division of this debt was part of the overall division of the assets and debt. The Commissioner finds that this division is equitable and within the discretionary authority of this court in the division of property. Sprating v. Sprating, Ky. App. 720 S.W.2d 936 (1986). Therefore no further modification of the Court's prior decision needs to be made.

David thereafter filed a motion for findings of fact and conclusions of law pursuant to Kentucky Rules of Civil Procedure (CR) 52.01 and 52.04. The motion was denied, and this appeal followed.

We address as a preliminary matter David's argument that the trial court erred in failing to make findings of fact and conclusions of law as he had requested. In denying the motion, the court stated that the recommended order which the court had adopted articulated the reasoning utilized by the Commissioner and reflected an adequate basis for the decision in order to allow the reviewing court to readily understand the Commissioner's view and the view of the trial court. "One of the principal reasons for the rule [CR 52.01] is to have the record show the basis of the trial judge's decision so that a reviewing court may readily understand the trial court's view of the controversy." *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986). We agree with the trial court that the content of the Commissioner's report was more than adequate for purposes of appellate review, and we fail to see what further findings of fact or conclusions of law were necessary. *See also Brown v. Brown*, 462 S.W.2d 201 (Ky. 1970).

David's substantive argument is that the trial court erred in assigning him the entire marital debt because the amount of the debt (\$116,000) exceeds the total amount of marital equity (\$37,600). A similar argument was addressed by this court in the first appeal, where we stated as follows:

David contends that because the debt against the real estate at the time of the divorce, totaling approximately \$116,000.00, substantially outweighed the marital contribution totaling \$56,500.00, all the equity in the real estate should be his non-marital property. However, this approach does not properly account for the marital contributions to the mortgage principal reduction and home improvements. Since the mortgage was reduced during the parties' marriage from 1992 to 2004, some of the equity in the real estate during that period was attributable to their marital contributions. The fact that the parties encumbered the property in 2000 does not wipe out the marital contribution made to that point.

It appears, therefore, that this court considered and rejected an argument very similar to the one being made in the present appeal. Arguably, the matter is the law of the case. However, since this court also specifically directed the court below to consider whether it was equitable to assign all of the marital debt on the real estate to David while giving Sherri a portion of the marital equity, we believe that we should afford David the opportunity to have this issue reviewed.

David's argument is premised on the assumption that debt must be offset against equity in determining the assignment of a particular asset upon dissolution of marriage. The assignments of equity and debt are separate determinations, however, which are to be made within the broader context of the entire settlement.

Debts incurred during the 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. . . . Nor is there any presumption that debts must be divided equally or in the same proportions as the marital property.

Neidlinger v. Neidlinger, 52 S.W.3d 513, 523 (Ky. 2001) (citations omitted).

In our earlier opinion, we cautioned that it would be error to assign the entire debt to David if the reason for such an assignment was a belief that it was not truly marital debt. In the remanded opinion, however, the court provided legally sound grounds to support its decision. David was assigned the entire debt because he was also awarded the property and would therefore receive all future enjoyment of it and the improvements that had been made to it using marital funds. The court also found that

David was in a better financial position to pay this debt and that the division was equitable within the overall division of the assets.

“[I]ssues pertaining to the assignment of debts incurred during the marriage are reviewed under an abuse of discretion standard.” *Id.* The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). Applying this standard, it is clear that the trial court did not abuse its discretion. It assigned the debt to David in reliance on the factors listed in *Neidlinger*, including a consideration of the purpose for which the debt was incurred and the economic circumstances of the parties.

We therefore affirm the order of the Daviess Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Philip G. Abshier
Owensboro, Kentucky

BRIEF FOR APPELLEE:

Joseph R. Flaherty
Owensboro, Kentucky