

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2015-CA-001267-MR

ERNEST MAY

APPELLANT

v. APPEAL FROM CLAY CIRCUIT COURT  
HONORABLE GENE CLARK, JUDGE  
ACTION NO. 13-CI-00227

LUCY MAY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, CLAYTON, AND J. LAMBERT, JUDGES.

CLAYTON, JUDGE: Ernest May appeals the Clay Circuit Court's marital dissolution decree dividing the marital property of he and his former wife, Lucy May. The Mays married more than four decades ago. They separated in 2013 and have not cohabitated since. Their marriage was dissolved on April 16, 2014, when the Clay Circuit Court entered a bifurcated decree of dissolution of marriage. A

hearing was then set to assign the parties their non-marital property and divide the marital property.

At the hearing, the parties presented an Agreed Stipulation of Values for many items of real and personal property, including the three tracts of land the parties owned and the two mobile homes that resided on the same. The parties also presented evidence that they each had acquired non-marital property during the marriage. On appeal, neither party disputes the non-marital assignments. It is sufficient to note that Ernest's non-marital assignment came from a disability settlement from the Veterans' Administration and Lucy's non-marital funds came from life insurance proceeds she received and later used to purchase the mobile home in which the parties lived. Lucy was thus assigned the mobile home as non-marital property. The parties then informed the trial court which items of personal and real property they wished to be awarded.

At the hearing's conclusion, the trial court orally announced what of the marital personal and real property each party would receive. The trial court stated its division was equitable, though not necessarily equal. Those terms were later reduced to a Final Decree that was entered on June 23, 2015, the details of which are discussed more fully below. In short form, the trial court awarded each party approximately \$30,000 worth of marital property.

Ernest then filed motions to alter, amend, or vacate, to re-open the case for additional proof, and to make an appraisal a part of the record. A hearing was held on those motions. The motion to re-open was granted in part as the trial

court entered an order requiring the parties to convey their respective interests in the real property to the proper parties. The remaining aspects of the motion to re-open and the entirety of the other motions were overruled, as the trial court found the parties had adequate opportunity to present all of their evidence at the evidentiary hearing, and the Final Decree “is an equitable division of the parties’ marital assets.”

Ernest timely appealed. He principally complains that the marital property division was not equitable. He also claims the trial court erred by not granting his motion to alter, amend, or vacate, his motion to re-open the case, and his motion to make the appraisal a part of the record. We begin our analysis with the legal standards to be applied.

A trial court dividing property in a marital dissolution follows a three-step process. First, the trial court must characterize each item of property as marital or non-marital. Second, the trial court must assign each party his or her non-marital property. And third, the trial court must “equitably” divide the marital property between the parties. *Hunter v. Hunter*, 127 S.W.3d 656, 659-660 (Ky. App. 2003) (citing Kentucky Revised Statutes [KRS] 403.190, and *Travis v. Travis*, 59 S.W.3d 904, 909 (Ky. 2001)).

Pursuant to KRS 403.190(1), the trial court’s equitable division of marital property should be made in just proportions and without regard to marital misconduct, taking into account the following relevant factors:

(a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;

(b) Value of the property set apart 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.

“It is important to bear in mind that a trial court is not obligated to divide the marital property equally.” *Smith v. Smith*, 235 S.W.3d 1, 5 (Ky. App. 2006) (citing *Davis v. Davis*, 777 S.W.2d 230, 233 (Ky. 1989)). “What constitutes a just division lies within the sound discretion of the family court and will not be disturbed absent an abuse of discretion.” *Hempel v. Hempel*, 380 S.W.3d 549, 553 (Ky. App. 2012) (citing *Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001)).

With these standards of review in mind, we turn now to Ernest’s claims. Ernest first claims the Clay Circuit Court erred by allegedly failing to award him sufficient marital property. By Ernest’s calculations, he was awarded \$28,390 of the marital property, and Lucy was awarded \$77,241 of the marital and non-marital property. Lucy disagrees. We begin our analysis with the trial court’s decree.

After reciting the applicable law, the trial court characterized numerous items of real and personal property as non-marital and assigned them to the respective parties. The trial court then awarded Ernest the following marital

personal property: goat, miniature pinscher, saws and circular saws, 200 CDs, stereo, cups, sheets, .357, 2013 Hyundai Sonata (which was indebted as much as it was valued), 1998 GMC Sonoma, tools, china cabinet, entertainment center, tiller, four wheeler, pool table, gun cabinet, 19” television and VCR, gas generator, exercise machine, coal and wood burning stove, 27” television, four poker machines, half of the bedding, half of the towels, half of the dishes and cookware, one set of tables, a broken washer, a dryer, half of the curtains, and two bedroom suites. The total value of those items was \$8,390.

The trial court also awarded Lucy the following marital personal property: 2008 Hyundai Sonata, grandfather clock, two curio cabinets, dinette table, chairs and hutch, deep freezer, master bedroom suite, 42” television and stand, scooter, nine lamps and shades, half of the bedding, half of the towels, half of the dishes and cookware, one set of tables, half of the curtains, a riding lawnmower, a couch and recliner, and a bedroom suite. The total value of those items was \$12,241. The trial court awarded to Ernest two tracts of land and a 14x70 mobile home, which had values of \$8,000, \$12,000, and \$4,000, respectively, for a total real property value of \$24,000.

Finally, the trial court awarded to Lucy the marital residence, which was a 32x80 Belmont mobile home resting on a 2.593-acre parcel of land, with a carport and barn. The property was a mixture of marital and Lucy’s non-marital property. The trial court noted, “It is a non-marital trailer sitting on a martial piece of property with marital funds being used to improve the non-marital trailer and

marital funds being used to improve the trailer.” The value of the land was stipulated to be \$10,500; the value of the utilities and hookup was stipulated to be \$6,000; the value of the carport and barn on the property was stipulated to be \$4,000; and the value of the mobile home was stipulated to be \$44,500. Ernest concedes in his Appellant’s Brief to this Court that the mobile home is “rightly . . . non-marital [and] was valued by an appraiser for \$44,500.” (Aplt’s Brf. at 6). Thus, the non-marital share of Lucy’s real property assignment was \$44,500, and the marital share of Lucy’s real property award was \$20,500.

Accordingly, of the marital property, both real and personal, Ernest was awarded \$32,390, and Lucy was awarded \$32,741.

Ernest argues this award is inequitable partially because he claims the trial court erroneously interpreted the parties’ stipulation that one of the tracts of land was worth \$12,000. The Agreed Stipulation of Values read as follows:

Adjoining property located on Mayfork Road      \$8,000  
in Manchester, Clay County, Kentucky, and  
being more particularly described in Deed  
Book 161, Page 573, of the records of the  
Clay County Court Clerk’s office, and  
14x70 mobile home which has a value of  
\$4,000.00, *if the Court determines it to  
be marital property.*

(Emphasis in original).

The trial court found the mobile home to be marital property, thus it added the mobile home’s \$4,000 value to the \$8,000 stipulated value of the real property for a total value of \$12,000. We cannot say this interpretation is clear

error. Both viewing the agreement as \$8,000 total for the real property including the \$4,000 mobile home, and as \$8,000 plus the \$4,000 mobile home are reasonable interpretations. Moreover, the trial court orally made its rulings from the bench, including the breakdown of the \$12,000 calculation, and no objection was made by either party as to the trial court's interpretation of the stipulated values.

But even if the trial court had committed clear error, the trial court did not abuse its discretion by choosing to equitably divide the property in a way that gave Ernest approximately \$28,000 in marital property and Lucy \$32,000 in marital property. The marital property division does not have to be equal. It only has to be equitable. Even if one party has substantial non-marital property, a nearly equal distribution of the remaining marital property can be equitable. *Cf. Sexton v. Sexton*, 125 S.W.3d 258, 262 (Ky. 2004) (awarding \$476,965 in non-marital interest to one party and splitting equally the remaining \$30,445 marital interest). Here, the trial court's Final Decree equitably divides the marital property so that each party was awarded a nearly equal amount of land and personal property. Being equitable and not an abuse of discretion, we affirm the trial court's Final Decree.

Ernest also argues that the trial court erred by failing to award a \$150-valued couch and other miscellaneous items that are housed at the various parcels of real property. Having reviewed the record, the hearings, the trial court's detailed decree, and the trial court's order on Ernest's motions to re-open and to

alter, amend, or vacate the decree, we can find no abuse of discretion in the property distribution. The parties were provided the opportunity to present all of their evidence at the final hearing, and the trial court equitably divided the property that was placed into evidence. This Commonwealth discourages piecemeal litigation and seeks to “prevent a defendant from being repeatedly hauled into court over the same or similar issues by the same person or persons.” *Rogers Group, Inc. v. Masterson*, 175 S.W.3d 630, 636 (Ky. App. 2005). The trial court rightly declined to re-open the proof to permit Ernest a second bite at the apple.

Accordingly, we affirm both the trial court’s Final Decree and its Order denying Ernest’s post-decree motions.

ALL CONCUR

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