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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA09-459

	Opinion Delivered December 16, 2009
STEVE CHURCHILL APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. DR-2003-3991]
V.	HONORABLE MARY MCGOWAN, JUDGE
JEANETTE M. CHURCHILL APPELLEE	AFFIRMED

JOHN MAUZY PITTMAN, Judge

This is an appeal from the property-division provisions in a divorce decree. Appellant argues that the trial court erred in assessing the value of his retirement plan as of the time of the divorce decree rather than the time of a hearing held four years earlier. He also argues that the trial court erred in dividing the remainder of a fire-loss settlement equally between the parties. We affirm.

Appellant forthrightly acknowledges that both we and the Arkansas Supreme Court have held that marital property must be divided at the time that the decree is entered, rather than the time of the hearing. *Skokos v. Skokos*, 344 Ark. 420, 40 S.W.3d 768 (2001); *Allen v. Allen*, 99 Ark. App. 292, 259 S.W.3d 480 (2007). He argues, however, that it was unjust to compute the value of the retirement fund as of the date of the divorce decree because the

value of the fund increased during the four years that passed between the hearing on the merits of the divorce proper and the entry of the decree of divorce.

We find no error on this point. Without deciding whether injustice would be grounds for an unequal division based on the earlier values, we affirm because there was no showing of injustice in this case. At the initial hearing, it appeared that there were only a few property and support issues to be decided, and the trial judge requested briefs before deciding them. After the briefs were filed, the number of contested issues was expanded by motion and countermotion; both parties replaced their original attorneys with new counsel; and at no time did either party request that a decree of divorce be entered. On this record, the failure to enter an earlier order appears to be as much the result of appellant's own neglect as of any other factor.

The remaining issue involves the proceeds of an insurance settlement arising out of a fire that did substantial damage to the parties' marital home before the initial divorce hearing. Appellant testified that most of the items damaged in the fire belonged to appellee or the children because most of his personal items were kept in an area not damaged by the fire. Appellee testified that she spent the bulk of the proceeds to replace the items belonging to her and the children, and the remaining funds, approximately $21,000, were paid into the registry of the court.

Appellant argues that he should have been entitled to the entire $21,000 because appellee spent the other funds on personal items, such as her attorney's fees, and that the trial

judge erred in failing to so find. We do not agree that the trial judge was required to do so on the evidence presented. We review a trial judge's division of property in a divorce case under the clearly erroneous standard. *Cole v. Cole*, 82 Ark. App. 47, 110 S.W.3d 310 (2003). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. *See id.* When the evidence in a case is conflicting or evenly poised or nearly so, the judgment of the trial court is persuasive. *Henslee v. Ratliff*, 66 Ark. App. 109, 989 S.W.2d 161 (1999).

Here, it appears that appellant took little interest in replacing or repairing the personal items destroyed or damaged in the fire and left this task to appellee. Appellee did so, but the insurance proceeds became hopelessly commingled in the family checking account. Appellee did produce receipts to show that she had replaced many of the items and, given that the account in which the insurance funds were placed was held jointly with appellant, the commingling of the funds was as much the result of appellant's inattention as appellee's poor accounting practices. The trial judge was presented with the perhaps impossible task of tracing the commingled funds and ultimately decided to credit appellee's testimony that she spent the missing proceeds replacing lost personal property belonging to her and the children. On this record, we cannot say that the judge clearly erred in doing so.

Affirmed.

KINARD and BAKER, JJ., agree.

Dover Dixon Horne PLLC, by: *Gary B. Rogers*, for appellant.
Hilburn, Calhoon, Harper, Pruniski & Calhoun, LTD., by: *Traci LaCerra*, for appellee.