

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA09-251

JULIUS S. MOREHEAD,
APPELLANT

V.

VALERIE R. MOREHEAD,
APPELLEE

Opinion Delivered JANUARY 20, 2010

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[NO. DR-03-338-2]

HONORABLE MICHAEL R.
LANDERS, JUDGE

AFFIRMED AS MODIFIED

KAREN R. BAKER, Judge

Appellant Julius S. Morehead challenges the trial court's decision in favor of appellee Valerie R. Morehead for contempt alleging two points of error: (1) The trial court erred in entering a judgment against appellant in the sum of \$19,231.55 in response to appellee's petition for citation for contempt because appellee did not meet her burden of proving that appellant owed her any money from a marital bank account; (2) There is no monetary marital property to divide because Mr. Morehead properly paid the debts on other marital property out of the funds that had been ruled to be marital, and payment on those marital debts exceeded one-half of the sum of money that the trial court ruled were marital funds. We affirm as modified.

The marital bank account at issue in this case was the subject of a previous appeal to

this court: *Morehead v. Morehead*, CA05-510 (Ark. App. Jan. 18, 2006). In the first appeal, this court affirmed the trial court's finding that the funds in the account were marital and were to be divided equally. Appellee filed her petition for citation on February 4, 2008, seeking a ruling that appellant should be held in contempt for failure to abide by certain provisions of the decree, including the division of the funds held in the bank account.

The trial court issued an order holding that appellee was entitled to \$19,231.55 representing judgment against appellant for one-half of the proceeds in the account as of the date of July 10, 2003. The date of July 3, 2003, is the day the trial judge determined to be the date of separation of the parties. It was also the date designated by the trial court from which all marital debts remaining unpaid should be divided equally by the parties and should be paid from any public sale of marital property prior to the division of the net sale proceeds. The decree itself stated that the bank account funds were to be divided equally "as of the date of the separation of the parties" without reference to a specific date of separation.

On appeal, divorce cases are reviewed de novo. *Farrell v. Farrell*, 365 Ark. 465, 231 S.W.3d 619 (2006). With respect to the division of property, we review the trial court's findings of fact and affirm them unless they are clearly erroneous or clearly against the preponderance of the evidence. *Id.* A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Id.* We give due deference to the trial court's superior position to determine the credibility of the witnesses and the weight to be given their testimony. *Id.*

In appellant's first point of error, he argues that appellee failed to meet her burden of proving that appellant owed her any specific sum of money from a marital bank account. He states that the undisputed date of separation of the parties was July 3, 2003, and acknowledges the discrepancy between the balance in the account on July 3, 2003, of \$33,326.35 and the balance of \$38,518.11 on July 10, 2003. The difference between the two amounts is \$5,191.76. The trial court's decree of divorce omitted the specific date of separation stating that the proceeds of the account in the amount of \$38,463.11 "as of the date of separation" was to be divided. Therefore, the court's order erroneously identified the amount in the account on the date of separation. An equal division of the balance on July 3 would result in a judgment in appellee's favor of \$16,663.18, rather than the \$19,231.55.

While appellant claims the discrepancy in the amounts is moot, he apparently makes that concession based upon his argument that he spent the marital funds on marital debts. Appellant appears to make versions of this argument in his first and second points of error claiming that there were no marital funds to divide because he used the marital funds in the account to pay marital debts. However, the trial court's order specifically stated that net proceeds from the sale of marital property should be first applied to marital debts before distribution. The marital bank account was a separate distribution, unrelated to the division of the funds in the account.

Accordingly, we find no merit to appellant's claims that he was relieved from his court-ordered obligation to pay appellee one-half of the funds in the marital account on the

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date of separation. We do, however, modify the amount of judgment to reflect one-half of the balance of the account as of July 3, 2003, in the amount of \$16,663.18.

Affirmed as modified.

GLADWIN and MARSHALL, JJ., agree.