

Cite as 2023 Ark. App. 217

ARKANSAS COURT OF APPEALS

DIVISION I

No. CV-22-330

KEITH ALAN DIXON

APPELLANT

V.

HOLLY ANN DIXON

APPELLEE

Opinion Delivered April 12, 2023

APPEAL FROM THE PERRY
COUNTY CIRCUIT COURT
[NO. 53DR-20-84]

HONORABLE AMY DUNN JOHNSON,
JUDGE

REMANDED TO SETTLE AND
SUPPLEMENT THE RECORD

KENNETH S. HIXSON, Judge

This is a divorce case that involves alleged errors in the distribution of the parties' marital and nonmarital property. Appellant Keith Alan Dixon (Keith) and appellee Holly Ann Dixon (Holly) were married on October 24, 2009, and after a bench trial, they were divorced on October 29, 2021. The divorce decree contained various provisions wherein the trial court divided the parties' property unequally in favor of Holly due, in part, to the trial court's finding that Keith brought substantial assets to the marriage that he will retain after the divorce. With respect to the parties' residence, the trial court awarded the residence to Keith but ordered Keith to pay Holly the full amount of equity in the home.

Keith now appeals from the divorce decree, raising two arguments for reversal. First, Keith argues that the trial court clearly erred in awarding Holly an unequal division of marital

property and in awarding her a portion of his nonmarital property without stating the basis and reasons for such division as required by Arkansas Code Annotated section 9-12-315(a)(1) & (2) (Repl. 2020). Next, Keith contends that the trial court erred in giving Holly the benefit of a \$199,350.36 reduction of debt against the house because there is no evidence in the record that the debt was “reduced by any amount and certainly not \$199,350.36.” However, we are unable to address the merits of Keith’s appeal at this time because of deficiencies in the record. Therefore, we remand to settle and supplement the record.

The background facts are these. Keith is a medical doctor and had attained substantial nonmarital property prior to the parties’ marriage, including \$1.9 million in a retirement account and ownership of Dixon Properties, LLC, and Dixon Tree Farms, LLC. Keith testified that he has medical issues and became disabled shortly after the parties’ marriage, but he still earns substantial income from the ownership of his companies. Holly is a dietician, and she had about \$44,000 in a retirement account when the parties married, which increased to about \$147,000 during the marriage. Holly also started a business called HD Nutrition Consultants, LLC, during the marriage. Keith brought a Cessna airplane into the marriage, and during the marriage, he bought an Audi vehicle and a Porsche vehicle. Holly testified that the Audi and Porsche were gifts to her from Keith, but Keith disputed this and claimed ownership of both vehicles. Documentation was introduced showing that Keith’s net worth is approximately \$32 million.

Keith had also acquired substantial real estate prior to the marriage. In 2017, the parties decided to build a house on a tract of Keith’s premarital land. According to Keith,

he made a \$50,000 payment to the builder, and the remaining \$546,000 cost to build the house was financed. Keith testified that the \$546,000 loan on the house was rolled into a larger loan of \$4.485 million from First Community Bank to one of his companies, Dixon Properties, LLC.

At the conclusion of the divorce hearing held on October 12, 2021, the trial court made findings from the bench regarding the distribution of the parties' property. With respect to the house, the trial court stated that Keith would have title to the house but would pay Holly the entire amount of equity in the house by deducting the remaining debt from the appraised value. At the conclusion of the hearing, the trial court stated, "[W]e have got a \$546,000 outstanding loan" and that "I guess we need to determine how much, if any of that, has been paid on." The trial court then asked Keith's counsel, "Is that something we can get documentation for and work out?" Keith's counsel replied, "We can do that, Your Honor."

On October 22, 2021, Keith's counsel wrote a letter to the trial court referencing the \$546,000 loan on the house and stating:

The Court inquired as to whether documentation could be obtained to determine how much had been paid on the loan and I thought that I had agreed that we would attempt to obtain that amount. . . . I know the Court referred to the fact that there was an advance to the builder and there was reference to a determination that documentation could be obtained regarding the amount paid on the loan *and [Keith] is working on getting that documentation for the Court.*

(Emphasis added.)

A week after Keith's counsel advised the trial court that Keith was working on getting the documentation to the court, the trial court entered a divorce decree that divided the parties' property. However, there are no documents or further communications from Keith's counsel in the record regarding the remaining balance on the loan or any amounts paid toward the loan. The divorce decree dated October 29, 2022, provides, in pertinent part:

The Court has considered the age, health, and abilities of the parties for the future and finds that: [Keith] is 66 years old, in poor health and disabled. [Holly] is 54 years old, employed and has a good earning potential based on the business she has established. The Court has also considered the amount of income of each party and the assets they brought into the marriage and their overall estates, the liabilities, and the needs of each party, their opportunities to acquire property, the monies and sources of funds spent during the marriage, as well as the intent of money spent by the parties during the marriage in an attempt to balance the equities between the parties. These considerations include the substantial assets that [Keith] brought to the marriage and will retain after the divorce, [Keith's] commingling of nonmarital and marital assets and liabilities during the marriage, and [Keith's] representations to [Holly] regarding the nature of their partnership. As such, the Court is deviating from what would otherwise be an equal division of marital property and awarding some nonmarital property to [Holly] in order to achieve a balance of the equities and the resources that are available to the parties. In so doing the Court orders the following division by the parties:

.....

As part of the Court's deviation with regard to the division of marital assets and award of some nonmarital assets, [Holly] is awarded the Cessna airplane; HD nutrition consultants, LLC; [Holly's] entire retirement account at Edward Jones in [Holly's] name; the Porsche and Audi vehicles, with [Holly] to get the Porsche and Audi titled in her name and to assume all present debt going forward, for which she will hold [Keith] harmless; and the equity in the new home on [Keith's] real property. The amount of equity to be determined as follows: each party shall select and engage, at his or her expense, a licensed appraiser to complete an appraisal of the home to exclude the real property, which the Court finds to be nonmarital and owned by [Keith]. [Holly] will select the appraisal that she considers most favorable to her for her purposes of calculating the equity to which she is entitled. The equity awarded to [Holly] will be calculated using the selected appraisal, less the outstanding portion

of the \$546,000 loan applicable to the house. That loan amount is to be further reduced by \$199,350.36, which represents all amounts paid toward the consolidated and refinanced First Community Bank loan of \$4,485,000, leaving a balance of \$346,659.64 to be subtracted from the appraised value of the home. [Keith] shall pay [Holly] the full amount of such equity,¹ if any, and [Holly] will simultaneously execute and deliver a quitclaim deed for the real property to [Keith] within Sixty (60) days of entry of the decree.

....

[Keith] is granted as premarital property all the real estate in his name, Dixon Properties, LLC and all its assets, Dixon Tree Farms, LLC and all its assets, all of [Keith's] Edward Jones accounts, and any and all other personal property and real property not divided specifically by this decree which may be in [Keith's] possession or in his name.

Keith appealed.

On appeal from the divorce decree, Keith argues that the trial court clearly erred in awarding Holly an unequal division of marital property and in awarding her a portion of his nonmarital property without stating the basis and reasons for such division as required by statute. He further argues that the trial court erred in giving Holly the benefit of a \$199,350.36 reduction of debt against the house because there is no evidence in the record to support that finding.

We are unable to reach the merits of the appeal at this time due to deficiencies in the record. At the conclusion of the divorce hearing, the trial court asked Keith's counsel to

¹The trial court included a footnote in the decree stating, "Because the \$546,000 in financing for the home was commingled with a larger loan intended to also cover purchases related to [Keith's] businesses, and because both marital and nonmarital funds were used throughout the marriage to make purchases for the benefit of the marriage, the Court is taking into account the equitable considerations set forth [above] in giving [Holly] credit for all payments made toward the consolidated loan, rather than a prorated share.

provide documentation of the reduced debt on the house, and Keith's counsel agreed. However, despite the subsequent letter from Keith's counsel to the trial court referred to above stating that he was "working on getting that documentation for the Court," no such documentation appears in the record. It is important to note that in Holly's brief, she asserts that Keith's counsel *did provide a letter to the trial court prior to entry of the divorce decree* wherein he stated that the total debt of \$4,485,500 had a remaining balance of \$4,286,149.64, which, if accurate, would mean that \$199,350.36 of the total debt had been paid. Holly, however, correctly states that this letter is not in the record that has been lodged with our court.

Although Keith's counsel designated the entire record for appeal, the record does not contain any written representations by Keith's counsel or any documentation with respect to the amounts that had been paid toward the loan under which the parties' house was financed. Such evidence is essential to our review of the appeal. Arkansas Rule of Appellate Procedure–Civil 6(e) provides that if anything material to either party is omitted from the record, this court may direct that the record be settled and supplemented and that a supplemental record be certified and transmitted. *Taper v. City of Forrest City*, 2017 Ark. App. 470. Accordingly, we order the record to be settled and supplemented pursuant to Rule 6(e). Keith has fifteen calendar days to settle and supplement the record.

Remanded to settle and supplement the record.

KLAPPENBACH and WOOD, JJ., agree.

Branscum Law Offices, by: *Herby Branscum*, for appellant.

LaCerra, Dickson, Hoover & Rogers, PLLC, by: *Traci LaCerra*, for appellee.