

Cite as 2023 Ark. App. 402
ARKANSAS COURT OF APPEALS
DIVISION III
No. CV-22-337

TRAVIS SCHERLING

APPELLANT

V.

JESSICA SCHERLING

APPELLEE

Opinion Delivered September 27, 2023

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. 04DR-21-768]

HONORABLE DOUG SCHRANTZ,
JUDGE

AFFIRMED IN PART; REMANDED IN
PART

RAYMOND R. ABRAMSON, Judge

This is an appeal of a divorce decree entered in the Benton County Circuit Court. Appellant Travis Scherling asserts that the circuit court wrongfully deprived him of his property interest in the home he had shared with his ex-wife, appellee Jessica Scherling, custody of their dog Abner, and his personal property. Travis contends the circuit court's ruling was clearly erroneous. We affirm the circuit court's ruling with respect to its disposition of Travis's personal property. However, because the circuit court's written order does not recite the basis and reasons for the unequal division of marital property as required

by Arkansas Code Annotated section 9-12-315(a)(1)(B) (Repl. 2020), we must remand for the court to enter an order consistent with this opinion and the statute.¹

The parties were married on November 23, 2019. They lived in Bella Vista. Jessica filed a petition for divorce on May 18, 2021, in which she alleged that they had been separated since May 11, 2021. On that same date, Jessica filed an ex parte motion for emergency possession of the marital home. In it, she alleged that Travis had created an “unsafe living environment” and that he was arrested two days prior for criminal mischief (damage to the home), two counts of first-degree terroristic threatening, assault of a family or household member, and resisting arrest. The petition further asserted that Travis had previously been civilly committed in 2020. On May 19, 2021, the ex parte order was granted.

On June 2, the court held a temporary hearing regarding the possession of the residence and other matters in the divorce case. Jessica appeared with counsel; Travis acted as his own attorney. The court heard testimony from the parties and Officer Blake Almond. Officer Almond and others had acted as “civil standby” officers while Jessica retrieved personal items from the marital home on May 15, 2021. Both Officer Almond and Jessica testified to Travis’s “elevated manic state” that led to confrontation, threats, and ultimately Travis’s arrest. At the hearing, Travis confirmed he was still incarcerated on those charges and had a \$15,000 bond he had not yet posted.

¹This court has consistently held that the circuit court is free to make an unequal division, but it is required to explain why an unequal division is equitable and state its basis and reasons in the written order. See *Branscum v. Branscum*, 2022 Ark. App. 126, 642 S.W.3d 270; *Bradford v. Bradford*, 2013 Ark. App. 615.

Background testimony was given to the court by the parties that Travis had a severe manic episode in 2020, and he was diagnosed with bipolar I disorder. Travis engaged in treatment for a time but ultimately discontinued all treatment--except for his medical marijuana--because he didn't like how the prescriptions made him feel. Since discontinuing all prescriptions around February 2021, Travis had a number of manic episodes. His lack of cooperation with treatment was what led to the separation. Travis testified that manic episodes are triggered by "stressors," of which Jessica was primary. He blamed his continued incarceration on her as well, arguing that "if my wife truly loved me, she would have gotten me out of jail."

On June 3, 2021, a no-contact order was entered prohibiting Travis from contacting Jessica, prohibiting him from the marital home, and requiring him to stay at least fifteen hundred feet from her at all times. On the same date, the court entered an order giving Jessica temporary possession of the marital home. It notes that Jessica had been the sole payor of the mortgage for the past year and that Travis was unemployed without the ability to post bond.

On June 30, Travis, through counsel,² filed an answer to Jessica's divorce petition along with a separate counterclaim for divorce alleging general indignities. On July 14, an amended motion for contempt was filed by Jessica, alleging that Travis attempted to contact her through the jail email system in violation of the no-contact order.

²His counsel later filed a motion to withdraw that was granted in July 2021.

On September 9, the circuit court held the final hearing in the divorce case. Jessica appeared with counsel; Travis acted as his own attorney. The court heard testimony from Jessica, with Travis making statements on his own behalf. Jessica testified that she bought the house in 2018 before the marriage. She refinanced in 2020, and she added Travis to the deed at that time.

Jessica submitted an appraisal done for the 2020 refinance that reflected the home's value as \$166,000. She asked to be awarded the home. Jessica testified that she was employed full time by Crayola, and Travis was unemployed. She submitted information about credit-card payments and loans that were obtained to pay off debts that accrued during the course of the marriage prior to separation.

A transcript of a June 17, 2020 video was entered into the record reflecting that Travis was combative, confrontational, and verbally abusive to Jessica. She requested ownership of the two dogs, Abner and Derby, and expressed concerns about Travis's ability to care for himself, much less an animal. Jessica further recounted an instance in which a neighbor had to corral Abner to keep him out of the street while he was running loose during one of Travis's manic episodes.

Jessica further testified that half of any equity built up in the house should be applied toward Travis's portion of the marital debts. She asked the court to equally split all non-home-related outstanding debt (totaling around \$18,717) and to be reimbursed \$3664.66 for payments she made on Travis's medical bills.

Travis, through questions and statements, indicated he believed the home should be sold and proceeds split between them. He believed his medical treatment should be considered “marital debt” because he was not responsible for voluntarily incurring the charges. He asked for possession of Abner as his “emotional support animal,” although he had no documentation as such. He admitted that he never answered interrogatories because he did not have access to his financial records. He alluded to financial accounts, but he provided no information about their values. He said his unemployment was first a “mutual decision,” but his continuing unemployment was due to his wife’s ultimatum that he receive treatment he did not want. He said that since the 2020 appraisal, he had landscaped the outside of the home, putting in around \$3500 worth of work. He objected to the 2020 appraisal due to the rising nature of real estate values in Northwest Arkansas. He asked for help retrieving his possessions.

At the close of testimony, the circuit court granted Jessica’s petition for divorce. It awarded her the home and stated from the bench:

As to the property, the plaintiff is awarded the marital residence subject to the purchase money mortgage and the second mortgage for these reasons: One, it was--prior to the marriage, it was her individual property, and she added the defendant’s name only at the time of a refinance of the property. She has made all the payments from her own income because the defendant has been unemployed and has not contributed to payment of the debt for the residence. So that unequal division is allowed.

Travis was ordered to sign a quitclaim deed within thirty days. Jessica was awarded possession of both dogs. Each person was awarded his and her vehicle and personal property, subject to any existing debt, with the court finding that Travis’s items “are to be removed within 30

days or the plaintiff may have the vehicle towed and the personal property sold for storage expenses.” To facilitate this, Travis was instructed to, within ten days, select a family member to pick up his items. The court denied Jessica’s request for reimbursement of Travis’s medical expenses, awarded her the 2020 tax refund, and apportioned all of the marital debt to her.

The divorce decree was entered on September 30, 2021. This timely appeal followed. This court reviews cases involving the division of marital property de novo. *Philmon v. Philmon*, 2023 Ark. App. 150, at 5, 662 S.W.3d 728, 732. We review the circuit court’s findings of fact and affirm them unless they are clearly erroneous or against the preponderance of the evidence. *Id.* A circuit court’s finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Id.*

In order to demonstrate that the circuit court’s ruling was erroneous, the appellant must show that the lower court abused its discretion by making a decision that was arbitrary or groundless. *Id.* We give deference to the circuit court’s superior position to determine matters of witness credibility and the weight to be given to their testimony. *Id.*

On appeal, Travis argues that the circuit court’s rationale for making an unequal division of this property is not “statutorily cognizable.” At the time a divorce decree is entered, all marital property shall be distributed one-half to each party unless the court finds such a division to be inequitable. Ark. Code Ann. § 9-12-315(a)(1)(A) (Supp. 2023). The court may deviate from this presumptive half split after taking into consideration factors enumerated in Arkansas Code Annotated section 9-12-315(a)(1)(A), including length of

marriage; age, health, and station in life of the parties; occupation of the parties; amount and sources of income; vocational skills; employability; estate, liabilities, and needs of each party and opportunity of each for further acquisition of capital assets and income; contribution of each party in acquisition, preservation, or appreciation of marital property, including services as homemaker; and the federal income tax consequences of the court's division of property.

When the property is divided pursuant to those factors, “the court must state its basis and reasons for not dividing the marital property equally between the parties, and the basis and reasons should be recited in the order entered in the matter.” Ark. Code Ann. § 9-12-315(a)(1)(B). Factors other than those statutorily listed can also be taken into account in determining equitable property distribution. *Pratt v. Pratt*, 2019 Ark. App. 264, at 8, 576 S.W.3d 511, 516.

In this case, the circuit court referenced in its comment from the bench the relevant section of the property-distribution statute in explaining its decision to award the house to Jessica. In addition, the court noted from the bench that Jessica had originally purchased the house in her sole name and that Travis's name was only added after the parties had been married for a few months and then in connection with Jessica's decision to refinance. The circuit court allocated the marital home to Jessica.

Travis also argues that the circuit court erred in awarding custody of the parties' dog Abner to Jessica. The decree specifies that “the plaintiff shall be and is hereby awarded the ownership and control of the parties' two (2) domesticated animals, dogs Abner and Derby.”

This language indicates that for purposes of property division, the court considered the animals to be marital property. At trial, Jessica asked for both dogs because she did not believe Travis was capable of taking care of himself, much less a dog, and the court granted her request. The circuit court stated from the bench that Travis was still in custody at the time of the divorce hearing and that Jessica was the only of the two in a position to take care of the dogs.

However, Arkansas Code Annotated section 9-12-315(a)(1)(B) provides: “When property is divided pursuant to the foregoing considerations the court must state its basis and reasons for not dividing the marital property equally between the parties, and the basis and reasons should be recited in the order entered in the matter,” and we must note that while the circuit court explained from the bench its reasoning in the record before us, the divorce decree does not provide written findings that support the unequal division. This court has consistently held that the circuit court may make an unequal division, but it is required to explain why an unequal division is equitable and state its basis and reasons in the written order. See *Branscum, supra*; *Bradford, supra*. Therefore, we remand the case to the circuit court for the purpose of entering an order that sets forth the reasons for an unequal division of the marital property—in this case, the marital home and the couple’s two dogs—as required by Arkansas Code Annotated section 9-12-315(a)(1)(B).

Travis’s final appellate argument is that the disposition of his nonmarital property (i.e., he must remove it within thirty days or Jessica may sell it) was “improper earmarking” of his property as Jessica’s. In support of his argument, he merely cites the provisions

addressing marital and nonmarital property found in section 9-12-315 of the Arkansas Code. Travis has failed to develop a convincing argument on this issue. It is axiomatic that our appellate courts will not consider arguments that are unsupported by convincing argument or sufficient citation to legal authority. *Mann v. Pierce*, 2016 Ark. App. 418, 505 S.W.3d 150. We decline to consider this argument. Therefore, we affirm the circuit court's disposition of Travis's nonmarital property.

In conclusion, we affirm the circuit court's order with respect to its disposition of Travis's personal property. However, because the circuit court's written order does not recite the basis and reasons for the unequal division of marital property as required by Arkansas Code Annotated section 9-12-315(a)(1)(B), we must remand for the court to enter an order consistent with the statute.

Affirmed in part; remanded in part.

VIRDEN and HIXSON, JJ., agree.

Kezhaya Law PLC, by: *Matt Kezhaya*, for appellant.

Putman Law Office, by: *William B. Putman*, for appellee.