



1976

Kentucky Law Survey: Domestic Relations

Natalie S. Wilson

Eblen, Milner, Rosenbaum & Wilson

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

 Part of the [Family Law Commons](#), and the [State and Local Government Law Commons](#)
Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Wilson, Natalie S. (1976) "Kentucky Law Survey: Domestic Relations," *Kentucky Law Journal*: Vol. 65 : Iss. 2 , Article 9.
Available at: <https://uknowledge.uky.edu/klj/vol65/iss2/9>

This Special Feature is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

Domestic Relations

NATALIE S. WILSON*

INTRODUCTION

The Supreme Court of Kentucky was relatively active this year in the field of domestic relations. Significant decisions were rendered pertaining to child custody, adoption, modification of separation agreements and child custody awards, and marital property divisions. This article will delineate the major cases in each of these areas. Many of the cases discussed in this survey article were styled "memorandum per curiam" by the Supreme Court of Kentucky. This means that they have no precedential value and are not to be cited as authority in any court in Kentucky. Despite this lack of precedential value, this article will discuss several of them for they furnish an indication of the present Court's thinking on domestic relations issues. The footnotes will designate whether or not a case is styled "memorandum per curiam."

I. CHILD CUSTODY

It is not feasible to review all the Kentucky decisions pertaining to custody issues of the past year. However, some may be of special interest to the practitioner.

In the last year the Court has held that the reports of social workers on prospective homes for a child must be given to the parties so that they may have an effective right to cross-examine before an award of custody is given; that litigation concerning the custody of a child should take place in the jurisdiction in which the child and his family have the closest connection; that all facts and circumstances of a particular case will be examined to determine whether a child may move with one parent to another jurisdiction; and finally that the father of an illegitimate child is entitled to visitation privileges with the child absent a showing that such a privilege would be detrimental to the child's best interests.

* Partner, Eblen, Milner, Rosenbaum & Wilson, Lexington, Kentucky. A.B. Smith College, 1954; J.D. University of Kentucky, 1968.

A. *Lewis v. Lewis: Reports of Social Workers*

This case¹ involved an appeal from a circuit court judgment awarding custody of a child to the mother. The custody award was made on the basis of reports on the respective homes of the mother and father by social workers. However, these reports were not sent to the attorneys for the parties before the award was made. Citing Kentucky Revised Statutes § 403.300(3)² [hereinafter cited as KRS] the Court held that when reports on homes are ordered by a court, the court in turn must follow the statutory mandate and provide copies of the reports to the parties involved. To do otherwise would prevent effective cross-examination.³ Furthermore, KRS § 403.300(3) provides that a right to cross-examination cannot be waived before a hearing, and in this case no hearing was provided by the circuit court. In essence, *Lewis* holds that the statutory provisions will have to be adhered to scrupulously when the reports of social workers are used by a lower court to evaluate the quality of a child's prospective home.

B. *Barr v. Barr: The Appropriate Jurisdiction*

Two recent cases have held that proceedings to modify custody awards must be brought in the jurisdiction with which the child and his family have the closest connection. In *Barr v. Barr*,⁴ an action for modification of custody was brought in Kentucky by the mother, who was a Kentucky resident. The children had been residents of Indiana for the last 5 years, and their only connection with Kentucky was through periodic visitation with their mother. The Court examined the commis-

¹ *Lewis v. Lewis*, 534 S.W.2d 800 (Ky. 1976).

² KY. REV. STAT. § 403.300(3) [hereinafter cited as KRS] provides:

The clerk shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data, and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

³ *Lewis v. Lewis*, 534 S.W.2d 800 (Ky. 1976) at 802.

⁴ No. 75-503 (November 14, 1975) (mem. per curiam).

sioners' comment to Sections 1(a)(3) and 3(a)(2) of the Uniform Child Custody Jurisdiction Act⁵ and stated:

One of the general legislative purposes of KRS 403.260(1)(b) is to assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state.

*Wells v. Monti*⁶ involved a similar fact pattern where the father was seeking to modify the award of custody to the mother. Here the child had lived out of Kentucky for 10 years with the exception of periodic summer visits with the father. The Court held that:

A Kentucky court should not entertain a motion to change the custody of a child who has been a resident of another state for more than 6 months unless special circumstances exist. KRS § 403.260. None of these special circumstances are present in this case.⁷

Essentially, the lower court had found that even though the evidence showed that the child had emotional problems, no evidence existed proving that the problems were the result of mistreatment, abuse or neglect, and the Supreme Court adopted this finding.

Both *Barr* and *Monti* rest on the rationale that a court deciding whether to modify a custody award must have "optimum access" to all the facts of the particular action. This is why proceedings to modify custody awards must be brought in the jurisdiction with which the child and his family have the closest connection. If a child has lived outside of Kentucky for more than 6 months, only special circumstances will allow the

⁵ Uniform Child Custody Jurisdiction Act §§ 1(a)(3), 3(a)(2) (Commissioners' Comment) (emphasis added).

⁶ No. 75-1001 (March 19, 1976) (mem. per curiam).

⁷ *Id.* at 2. These "special circumstances" are outlined in KRS § 403.260(c)(2). The Court can assume jurisdiction if: "It is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent"

trial court to assume jurisdiction of the matter. Otherwise, the party seeking to modify the award must bring suit in the jurisdiction where the child resides.

In the preceding cases, the Kentucky courts were ruling on cases raised under KRS § 403.260(1)(a) which asserted jurisdiction to make a custody determination if this state had been the child's home state within 6 months before commencement of the proceeding. That statute was amended in 1976 to remove the requirement that the child must have been a resident within the past 6 months and to adopt statutorily the uniform goals of significant contacts or, as the commissioners put it, "closer connection."

C. *Early v. Early: Moving from the Jurisdiction*

Responding to the demands of an increasingly mobile population, the Supreme Court held⁸ that a mother who had previously been given custody of the children could, upon an adequate showing that it was beneficial to the children, move to another jurisdiction. Here the trial court had rather cryptically referred to the father's "not too impressive demeanor" on the witness stand, and to the fact that "the kind of life her ex-husband is living with Vicki Smith is not for the best interest of the children."⁹

The lower court also found positive reasons for such a move, including a desire on the part of the mother "[t]o get away from the people she and her ex-husband knew for a period of years and try to start life over;"¹⁰ that she had a good job waiting for her where she moved; and that her brother, who lived in the jurisdiction to which she would move, had agreed "to subsidize her financially in furthering her education."¹¹

Obviously, the trial court balanced the facts of the case and found that due to the negative influence of the ex-husband and the positive desire on the part of the mother to begin a new life outside of Kentucky, the move should be allowed. It should be noted that such a move had not been permitted 9 years

⁸ No. 76-38 (June 25, 1976) (mem. per curiam).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

earlier in *Brumleve v. Brumleve*.¹² However, in *Early* the Court distinguished that case on the grounds that there the mother did not have employment waiting for her when she moved from the jurisdiction.

It should also be pointed out that the Court in *Early* emphasized the role of the lower court as a fact finder:

The trial court considered all the facts. He found that there was sufficient evidence to sustain the findings on the motion for removal of the children. There was no abuse of discretion, nor were the findings of fact clearly erroneous. CR 52.01. Therefore, this court will not disturb the trial court's findings.¹³

Early obviously reaffirms the principle that great weight will be given the discretion of the trial court in matters affecting child custody, visitation privileges, and moving from the jurisdiction. Furthermore, it represents a laudable recognition of intangible factors such as the desire of the custodial parent "to start life over," in allowing that parent to move from the jurisdiction.

D. *Phillips v. Horlander*

The United States Supreme Court recently acknowledged the rights of unwed fathers,¹⁴ and this year the Kentucky Supreme Court followed suit.¹⁵ In an emphatic decision, the Supreme Court, speaking through Justice Jones, held that the putative father of an illegitimate child is entitled to visitation with the child.

Thus an illegitimate child is often exposed to a hostile environment. This may cause the child to develop symptoms of rejection and inferiority. Every supportive measure must be employed to protect such a child.

This Court recognizes that in any case involving visitation, neither the fact of illegitimacy nor the personal preference or prejudices of the parents should control the court's decision. The governing criterion and the thread that runs so

¹² 416 S.W.2d 345 (Ky. 1967).

¹³ *Early v. Early*, No. 76-38 (June 25, 1976) (mem. per curiam).

¹⁴ *Stanley v. Illinois*, 405 U.S. 645 (1972).

¹⁵ *Phillips v. Horlander*, 535 S.W.2d 72 (Ky. 1975).

true must always be the welfare and best interests of the child.¹⁶

Since this was a case of first impression in Kentucky, Justice Jones introduced cases from other jurisdictions to support the Court's holding. Significantly, he cited *Stanley v. Illinois*,¹⁷ a recent case in which the United States Supreme Court held that the biological father of children born out of wedlock has a constitutional right to a hearing before his right to custody is terminated. The Kentucky Court stated:

This court is of the opinion that now is the time to rend the veil of puritan precepts through which unwed fathers are viewed as nonpersons. To state as a matter of law that the visits of the putative father are always detrimental to the illegitimate child's best interests is to exalt rule over reality. There is a growing recognition in courts throughout the nation of the need to determine the welfare of each child in light of his own particular needs and circumstances.

If the biological father of children born out of wedlock has the constitutional right to a hearing before his right to custody is terminated, then it would follow that a biological father of a child born out of wedlock would have the right of visitation with his child.¹⁸

One might question whether the illegitimate father's new-found right of visitation in Kentucky actually follows from the illegitimate father's right to a hearing before custody of his children is terminated, but one cannot doubt the wisdom of the result. The crux of this case is found in the phrase "the welfare of each child in light of his own particular needs and circumstances." The presumption now is that the illegitimate child's welfare is furthered when the putative father has visitation rights. The burden is on the custodial parent to show that such a visitation privilege would be to the child's detriment.

Lest the practitioner become too alarmed at the prospect of numerous unwed fathers attempting to assert parental rights over natural children, we hasten to say that the facts of *Phillips* are unusual and demonstrate a strong parental tie. This father

¹⁶ *Id.* at 73-74.

¹⁷ 405 U.S. 645 (1972).

¹⁸ 535 S.W.2d at 74.

paid the expenses of the child's birth and made attempts to support the child and attempts at visitation, all of which were refused by the mother.

II. ADOPTION

The Commissioner of Child Welfare, in reaching a decision as to whether a child may be adopted, "shall be guided by the ability of the persons wishing to receive the child to give the child a suitable home, and shall at all times consider the best interest of the child from a financial, medical, psychological and psychiatric standpoint."¹⁹ In *Department for Human Resources v. Basham*,²⁰ the appellees sought to adopt a child, but were denied permission by the Commissioner of Child Welfare. The reason for this denial was stated in a letter from the Commissioner to the appellees:

This decision is based on the knowledge that Jason's mother . . . does not consent to your adopting him and has requested that he be returned to her. We are also concerned about the strong possibility of hostile interference by Jason's mother in your family life in the future, which would not be conducive to the child's adjustment as a member of your family.²¹

The appellees filed an action in circuit court appealing the Commissioner's decision. The trial judge held that the Commissioner's determination was arbitrary and an abuse of discretion because it was based upon factors other than the fitness of the proposed adoptive parents to adopt the child.

The Supreme Court reversed the lower court, and in so doing broadened the scope of the applicable statute.²² In the Court's words, "[T]he issue before us is whether in making the investigation required by KRS § 199.473(1) the secretary is confined to an investigation of the suitability of the applicants as adoptive parents (appellees were found to be suitable) or whether the secretary may consider other matters which, despite the suitability of the applicants, might adversely affect

¹⁹ KRS § 199.473(1).

²⁰ 540 S.W.2d 6 (Ky. 1976).

²¹ *Id.*

²² KRS § 199.473(1).

the adoptive child and not be in its best interest."²³ The Court found that while the appellees apparently were "eminently suitable as adoptive parents," other factors affecting the child's welfare could be considered.²⁴ In this case the possibility of hostile interference by the child's natural mother was deemed sufficient to deny the appellees the privilege of adoption.

III. MODIFICATION OF SEPARATION AGREEMENTS AND CHILD CUSTODY AWARDS

In *Ehrman v. Ehrman*²⁵ the trial court modified a 1959 judgment of divorce and alimony, reducing the husband's payments to nothing, and denying the wife's claim for more alimony. The wife had not sought employment at any time subsequent to the grant of the divorce. In making the modification the trial court had stated:

. . . [T]he main thrust of the action seems to be whether or not there has been a change in circumstances sufficient to render said judgment unconscionable. . . .

. . . .
It would appear definitely out of character with KRS 403.200 for one spouse to receive an annuity for the rest of his life, after a relatively short marriage, and refuse to make a constructive effort to help himself. The unconscionable aspect of such an intolerable situation becomes self-evident after a prolonged period of time and clearly manifests in itself that there has been a change in circumstances.²⁶

The Court, however, reversed the trial court for the reason that the terms of the alimony clause in question were subject to review under KRS § 403.250, rather than KRS § 403.200.²⁷

²³ Department for Human Resources v. Basham, 540 S.W.2d 6 (Ky. 1976) at 7.

²⁴ *Id.*

²⁵ No. 75-516 (June 25, 1976) (mem. per curiam).

²⁶ *Id.*

²⁷ KRS § 403.200 provides:

(1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of a marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

The former statute states in part that a modification will not be permitted unless the changes are "so substantial and continuing as to make the terms unconscionable."²⁸

The husband alleged that the terms were presently unconscionable and the wife counterclaimed for an increase in her alimony. The basis for his complaint was that she had not bothered to seek employment and had squandered an estate of \$53,000. The basis of the wife's complaint was that her husband's income had increased over \$28,000 since they had been married.

The Court stated:

It is almost incredible to think that a wife must protect her alimony by going to work and becoming self-supporting, thereby running the risk of having her payments terminated, or remaining at home and running the risk of having her payments terminated because she wouldn't go to work. This approach to the question is "close akin" to the old game of "Heads, I win, tails, you lose."²⁹

In refusing to grant the wife's claim for an increase in alimony

(a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and

(b) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:

(a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) The standard of living established during the marriage;

(d) The duration of the marriage;

(e) The age, and the physical and emotional condition of the spouse seeking maintenance; and

(f) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

²⁸ KRS § 403.250(1).

²⁹ Ehrman v. Ehrman, No. 75-516 (June 25, 1976) (mem. per curiam).

due to the husband's increased income, the Court stated, "Furthermore, the mere fact that Frederick's income has increased would not in itself justify an increase in alimony payments. The ravages of inflation have taken their toll on both these parties and blame cannot be assigned to either of them."³⁰ Hence the Court reversed with directions that the alimony allowance as provided in the agreement of January 13, 1959, and the judgment of January 23, 1959 be reinstated.

An interesting question of retroactivity arose in *Scott v. Scott*,³¹ which involved KRS § 403.180(6). This statute provides that:

Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms if the separation agreement so provides. Otherwise, terms of a separation agreement are automatically modified by modification of the decree.³²

This statute was directly contrary to the rule previously adhered to in Kentucky that maintenance provisions which were an integral part of a full property settlement agreement could not be modified.³³ In *Scott* one of the critical questions was whether KRS § 403.180(6) could be applied retroactively because in this case the judgment incorporating the property settlement agreement was entered before the statute became effective. Certainly, as the Court noted, "Subsection (3) of Section 26 of the 1972 Act (Chapter 182 of the Acts of 1972) provides that the Act 'applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this Act' "³⁴

The Court, however, denied the validity of this provision "to the extent of impairing vested contractual rights."³⁵ The reason for this holding was that previous cases had held "that rights created by *contract* could not be impaired through modification by the court, even though the contract had been trans-

³⁰ *Id.*

³¹ 529 S.W.2d 656 (Ky. 1975).

³² KRS § 403.180(6).

³³ *Richey v. Richey*, 389 S.W.2d 914 (Ky. 1965); *Turner v. Ewald*, 162 S.W.2d 181 (Ky. 1942); *Renick v. Renick*, 57 S.W.2d 663 (Ky. 1933).

³⁴ *Scott v. Scott*, 529 S.W.2d 656 (Ky. 1975) at 657.

³⁵ *Id.*

lated into a court judgment. If the courts cannot impair the contract, neither can the legislature."³⁶

IV. DIVISION OF MARITAL PROPERTY

A. *Brown v. Brown: The Amount of Maintenance*

In *Brown v. Brown*,³⁷ the Court was asked to set aside a division of marital property. The issues presented included whether marital property includes funds dissipated for the husband's personal pleasure and certain tax refunds directly related to earnings during the period of the marriage; whether the award of maintenance in this case properly conformed to the mandates of the applicable statutes; and how an award of child support should be administered.

Brown had spent the sum of \$600 for a vacation trip with his girlfriend. This money had come from his earnings during the marriage, and the Court held that the sum was includible. It based its reasoning on the general thrust of KRS § 403.190³⁸

³⁶ *Id.* (emphasis in original).

³⁷ No. 75-560 (December 12, 1975) (mem. per curiam).

³⁸ KRS § 403.190 provides:

Disposition of property. (1) In a proceeding for dissolution of the marriage or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's property to him. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including:

- (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.

(2) For the purpose of this chapter, "marital property" means all property acquired by either spouse subsequent to the marriage except:

- (a) Property acquired by gift, bequest, devise, or descent;
- (b) Property acquired in exchange for property acquired by gift, bequest, devise, or descent;
- (c) Property acquired by a spouse after a decree of legal separation;
- (d) Property excluded by valid agreement of the parties; and
- (e) The increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during marriage.

and a case decided 2 years earlier, *Barriger v. Barriger*,³⁹ in which the Court affirmed the trial court's inclusion of a part of a sum which had been subjected to the husband's "profligate dissipation."⁴⁰

The fact that the state and federal tax refunds in question were directly related to earnings during the period of their marriage was sufficient for the Court to include them as part of the marital property. Again, the general language of KRS § 403.190 was cited for support.

Insofar as the determination of an amount of maintenance was concerned, the Court stated that its polestars were KRS § 403.200⁴¹ and *Chapman v. Chapman*.⁴² The record in *Brown* showed that the breakdown of the marriage was caused by Brown rather than his wife, and that under *Chapman* "we said that fault for the marital breakdown is a relevant factor and may be considered in determining the amount of the maintenance."⁴³

The Court noted that the circuit court's maintenance award consisted of the husband's assumption of all the house payments plus all taxes and insurance for the first year, and thereafter only one-half of the house payment each month, plus one-half of the taxes and insurance so long as the wife and children occupied the residence. The Court also noted that the wife was unemployed and that her health led to an ability only to hold menial employment. In actuality, the real property involved was owned jointly by the husband and wife, so that every mortgage payment increased the husband's equity as well as the wife's.

Therefore, during the first year Doyle is in reality paying to Dorothy only one-half of the mortgage, taxes, and insurance,

(3) All property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.

³⁹ 514 S.W.2d 114 (Ky. 1974).

⁴⁰ *Id.*

⁴¹ See *supra* note 27.

⁴² 498 S.W.2d 134 (Ky. 1974).

⁴³ *Brown v. Brown*, No. 75-560 (December 12, 1975) (mem. per curiam).

the other one-half he is paying to enhance his own equity. Thereafter, when Doyle makes one-half of the mortgage payments, taxes, and insurance, he is in effect only paying his portion of the obligation on the note which the court, by its decree had placed on him. On the other hand, during this subsequent period Dorothy would be paying the other one-half, for which she is liable.⁴⁴

It is impossible to say, since there is no clear-cut statement of a holding, whether the Court intended to hold that when property is jointly held, maintenance consisting solely of the payment or partial payment of the mortgage, insurance and taxes on that property will be inadequate. It is clear, however, that the facts of this case indicate a willingness on the Court's part to hold to this result provided that the wife is unable to contribute financially for her own maintenance. The bottom line of this case is its insistence that the guidelines of KRS § 403.200 on maintenance, and the holding of *Chapman* on fault in determining the amount of maintenance, should guide the trial court's determination.

The final issue handled by *Brown* is the manner in which the determination of child support shall be handled. On this issue the Court affirmed that it would follow KRS § 403.210⁴⁵ and consider the financial resources of both the custodial and the non-custodial parent. Essentially, *Brown's* importance lies not only in its holding that dissipated funds earned during the marriage and income tax refunds directly related to the property earned during the marriage are included in the marital property, but also in its discussion of the statutory provisions

⁴⁴ *Id.*

⁴⁵ KRS § 403.210 provides:

Child support. In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

- (1) The financial resources of the child;
- (2) The financial resources of the custodial parent;
- (3) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (4) The physical and emotional condition of the child, and his educational needs; and
- (5) The financial resources and needs of the non-custodial parent.

concerning the division of marital property, the award of maintenance, and the award of child support.

B. *Griffin v. Griffin: Division of Marital Property*

In this case⁴⁶ the trial court awarded the divorced wife maintenance in the sum of \$10,000 per year and the right to occupy a house in Florida purchased during the marriage for 5 years and then convey her one-half interest in the house back to the husband. This judgment by the trial court was based on the trial court's finding that the wife was primarily at fault due to an adulterous relationship 8 years earlier, and that her one-half interest in the marriage was acquired solely by virtue of the marital relationship.

The Supreme Court reversed this judgment on the grounds that it was "clearly erroneous." First the Court pointed out that the division of marital property is not to be done on the basis of fault. In speaking of KRS § 403.190 which deals with the division of marital property, the Court stated, "The statute requires that the court divide the marital property without regard to marital misconduct. . . ."⁴⁷

Furthermore, the Court found that the award of maintenance by the trial court was insufficient due to the wife's inability to work thereafter because of poor health, and the trial court's failure to consider any of the relevant facts set forth in KRS § 403.200 to be used to determine an award of maintenance. Note the distinction between *Griffin*,⁴⁸ which stated that fault is not to be examined in the *division* of marital property, and *Brown*, which reaffirmed a previously enunciated principle that fault could be examined in determining the amount of maintenance, though not the *award* of maintenance itself.

⁴⁶ *Griffin v. Griffin*, No. 74-844 (March 19, 1976) (mem. per curiam).

⁴⁷ *Id.*

⁴⁸ *Id.*