

RENDERED: OCTOBER 2, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-001564-MR

WILLIAM D. VERST

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE D. MICHAEL FOELLGER, JUDGE
ACTION NO. 07-CI-00169

LINDSAY N. JACKSON

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CAPERTON, CLAYTON, AND DIXON, JUDGES.

CLAYTON, JUDGE: William Verst (Verst) appeals from a July 21, 2008, Campbell Family Court decree of dissolution and division of marital assets. Verst claims that the trial court erred by failing to reimburse him for his \$15,000 non-marital contribution to an investment account. Verst also claims that the trial court

erred by failing to find that Lindsay Jackson (Jackson) dissipated the marital assets in the investment account. We shall discuss each claim in turn.

During their brief marriage, Verst and Jackson opened a joint investment account with Phoenix Capital Investment, LLC (Phoenix), as a means to pay living expenses. Verst deposited \$15,000 of his non-marital funds into the joint account. Jackson invested \$23,000 of her non-marital funds into a personal investment account. Verst claims that it was his understanding that the accrued interest from the joint account would be used to pay living expenses and would be managed by Jackson and her parents. Although no additional funds were deposited by any party, the joint investment account earned \$10,418.15 in less than one year. Jackson's personal investment account earned \$44,980.79.

Both parties agree that a large portion of the joint account was used for utilities, tuition for Jackson, car expenses, and mortgage payments on a home owned by Jackson's parents. At the time of the couple's divorce proceedings, the joint account was depleted and Jackson's personal account was valued at \$48,109.45.

During the proceedings, Verst and Jackson did not reach an agreement concerning the division of an investment account at Phoenix. Verst claimed, as he does on appeal, that he should be reimbursed his \$15,000 non-marital contribution to the fund and that Jackson dissipated marital assets. The court found that no funds existed in that account and refused to reimburse Verst for his non-marital

contribution as the withdrawals were made for the benefit of Verst and Jackson.

This appeal follows.

First, we must consider whether Verst is entitled to a reimbursement of his \$15,000 contribution to the joint account. We see no evidence to contradict Verst's claim that his contribution was non-marital property. However, the joint account was depleted. Verst argues that the reimbursement should be taken from Jackson's personal account. Although Verst concedes that Jackson's initial contribution to her account was from non-marital funds, he argues that he is entitled to a portion of the interest earned on the account during their marriage. We disagree.

The increase in the value of non-marital property during a marriage may constitute a marital interest if the increase was a result of joint efforts between the spouses. *Godewis v. Godewis*, 780 S.W.2d 39, 40 (Ky. 1989). Verst admits that Jackson and her father managed both investment accounts. He does not claim that he took any action that resulted in the increase of Jackson's personal investment account. Our review indicates that Jackson's personal account was created from non-marital funds and maintained as a non-marital property. Because Verst did not take any action to manage the account or contribute to its success, we find that the increase in value of Jackson's personal investment account is non-marital property.

Regardless of Verst's non-marital contribution to the joint account, he cannot be reimbursed from the depleted account absent dissipation. Dissipation of

marital assets occurs when one party spends funds for non-marital purposes.

Robinette v. Robinette, 736 S.W.2d 351, 354 (Ky. App. 1987). In order to find that dissipation has occurred, a trial court must find two factors: (1) The party alleging dissipation has the burden to prove that dissipation occurred during a separation period or divorce proceedings. *Brosick v. Brosick*, 974 S.W.2d 498, 500 (Ky. App. 1998); and (2) The blaming party must also show that there was a clear intent on the part of the dissipator to deprive the other spouse of marital assets. *Id.*; *Bratcher v. Bratcher*, 26 S.W.3d 797, 799 (Ky. 2000).

At the outset, we find that Verst failed to prove dissipation because he did not allege that the money was dissipated during a separation or during divorce proceedings. He alleges that the funds were misused throughout their marriage. By failing to show that the account was managed differently during the end of the marriage than it was during the marriage, Verst failed to meet the first factor of the dissipation claim.

We also find that Verst failed to prove that Jackson spent the money in the joint account for non-marital purposes. The only expenses that were alleged to have been improperly paid were the mortgage payments and Jackson's car payment. While we recognize that a relative's mortgage may not ordinarily be considered an expense for marital purposes, Verst and Jackson lived on the mortgaged property. Their mortgage payment appears to be in lieu of rent. Therefore, the marital purpose served by the mortgage payment is clear. Further,

we find that reasonable and necessary transportation for a spouse may also be a marital purpose even though the transportation is intended only for one spouse.

Verst attempts to prove his dissipation claim by alleging that Jackson failed to provide a full accounting of the expenses paid by the joint account. Jackson was under no obligation to provide such evidence. Only after the alleging party shows dissipation does the burden shift to the spouse charged with the dissipation to account for the missing assets. *Brosick*, 974 S.W.2d at 502. Since Verst failed to provide evidence of dissipation, Jackson did not assume the burden to account for the expenses.

Finally, our review indicates that Verst did not provide any evidence or argument to indicate that Jackson intended to deprive him of the funds.

Accordingly, we affirm the judgment of the Campbell Family Court.

ALL CONCUR.

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