

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-002273-MR

MICHAEL JOHN LITCHKOWSKI

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE ELISE GIVHAN SPAINHOUR, JUDGE
ACTION NO. 07-CI-01521

JILL A. LITCHKOWSKI

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, KELLER, AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Michael J. Litchkowksi appeals from the Bullitt Circuit Court's November 3, 2008, order establishing the division of the parties' marital assets and designating property as non-marital and marital. For the following reasons, we affirm.

In December 2005, Michael Litchkowski and Jill Lichkowski (then known as Jill Guilfoyle) met online. They soon met in person and their relationship quickly developed. In February 2006, Jill's grandmother, Cecil Betty Wollins, gave Jill money to purchase a home, with the intention that she and Jill would live in the home together. On February 11, 2006, Mike and Jill signed a contract to purchase a home in Bullitt County, Kentucky. On March 23, 2006, the above property was deeded to "Michael Litchkowski, unmarried, and Jill Guilfoyle, unmarried..." Jill testified at trial that she placed her name and Mike's name on the deed at the advice of her real estate agent because of their upcoming marriage, and Ms. Wollins had no knowledge whatsoever of the language on the deed. The entire \$203,900.00 used to purchase the home was a gift from Ms. Wollins.

On May 20, 2006, Mike and Jill married in Bullitt County, Kentucky. Mike, Jill, and Ms. Wollins continued to live in the house together until Jill was deployed to Iraq at the end of August, just three months after Mike and Jill married. While Jill was in Iraq, Ms. Wollins and Mike purchased a new vehicle and a check found in the record and introduced as evidence in the case indicates that on September 6, 2007, Ms. Wollins purchased a 2007 Chevrolet Avalanche for \$43,710.64. On October 27, 2007, Ms. Wollins gave Mike \$45,000.00, which he used to purchase a certificate of deposit in both Ms. Wollins' and Mike's names. Ms. Wollins also gave Mike approximately \$27,500.00 by several checks from September 2007 to November 2007. Mike argues that these checks, as well as the

certificate of deposit and the vehicle, were gifts to him from Ms. Wollins; however, Jill argues that Ms. Wollins' intended for Mike to use portions of the money for home repairs, taxes on the home, etc.

On December 20, 2007, approximately two months after her return from Iraq, Jill filed a petition for dissolution of marriage in Bullitt Circuit Court, Family Division Two. A trial was conducted on August 18, 2008, and on September 17, 2008, the trial court entered findings of fact and conclusions of law dissolving Mike and Jill's marriage. Small modifications were made, and an amended decree of dissolution of marriage was entered on November 3, 2008.

The trial court found that Mike's receipt of money and personal property from Jill's grandmother was solely because of his marriage to Jill. The trial court determined that because the residence located in Bullitt County was acquired by Jill prior to the marriage, it was non-marital property and should be restored to Jill. The trial court also awarded Jill's personal US Bank account valued at \$321.00 to Jill. The court determined that a checking account at Eisenhower Bank valued at \$7,913.16 was marital property and should be divided equally between the parties. The court found that Mike's two educational loans totaling approximately \$11,000.00 were non-marital debt and Mike was responsible for repaying them. Further, the trial court found that Mike's joint checking account with Ms. Wollins valued at \$8,874.52 was marital property and should be divided equally between the parties. The court also found the following to be marital property and determined that it should be divided equally:

1. The 2008 Ford Escape XLT valued at \$18,700;
2. The 2007 Chevrolet Avalanche valued at \$32,450;
3. 2007 Federal and State Tax refunds in the total amount of \$701;
4. The Scottrade stock account maintained by Mike with a value of \$5,208.38;
5. Funds totaling \$27,500 transferred from Ms. Wollins to Mike's individual checking account with US Bank; and
6. The Certificate of Deposit at Stock Yards Bank in the amount of \$45,000.

Mike now appeals and argues that he is entitled to half the value of the residence in Shepherdsville, and that the Chevrolet Avalanche, the \$45,000.00 certificate of deposit, and the \$27,500.00 in cash were gifts to him and are not marital property.

Specifically, Mike argues that the trial court erred in applying KRS 403.190 and concluding that the real estate acquired by gift from Ms. Wollins was solely Jill's non-marital property. In support of this argument, Mike contends that the property was deeded to him and Jill jointly and therefore was not Jill's non-marital property. Further, Mike argues that the Chevrolet Avalanche, the \$45,000 certificate of deposit, and the \$27,500 were gifts made by Ms. Wollins to him directly after the marriage and were intended as gifts to him alone. Therefore, he claims that the trial court erroneously divided the values of such gifts as marital property.

The disposition of parties' property in a dissolution-of-marriage action is governed by KRS 403.190. *Travis v. Travis*, 59 S.W.3d 904, 908 (Ky. 2001). Under KRS 403.190, a trial court utilizes a three-step process to divide the parties' property: “(1) the trial court first characterizes each item of property as marital or non-marital; (2) the trial court then assigns each party's non-marital property to that party; and (3) finally, the trial court equitably divides the marital property between the parties.” *Id.* at 909.

Further, “[t]he determination of whether a gift was jointly or individually made is a factual issue, and therefore, subject to CR 52.01's clearly erroneous standard of review.” *Sexton v. Sexton*, 125 S.W.3d 258, 269 (Ky. App. 2004). *See also Ghali v. Ghali*, 596 S.W.2d 31, 32 (Ky. App. 1980) (“Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”). However, the ultimate legal conclusion denominating an item as marital or non-marital is reviewed de novo. *Smith v. Smith*, 235 S.W.3d 1, 6 (Ky. App. 2006).

We first evaluate whether the trial court's findings of fact were clearly erroneous regarding the parties' residence. A finding of fact is not clearly erroneous if it is supported by substantial evidence. *Black Motor Co. v. Greene*, 385 S.W.2d 954, 956 (Ky. 1965). A careful review of the record and the hearing in this case indicates that the trial court did not believe that in the brief time Ms. Wollins was acquainted with Mike prior to his marriage to Jill, she could have intended to give him a gift in the amount of \$100,000.00, which is approximately

half the value of the residence she and Jill purchased in Shepherdsville, Kentucky. Further, the evidence indicated that Jill unilaterally decided to put the house in both her and Mike's names, without consulting her grandmother in any way. Finally, the evidence indicated that Ms. Wollins never had any knowledge whatsoever of whose name was on the deed of the house.

As the fact finder, the trial court has the sole discretion to determine the quality, character, and substance of the testimony and evidence and to draw reasonable inferences from them. *See Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985); *see also Ghali*, 596 S.W.2d at 32 (The fact-finder has the sole duty to judge the credibility of the witnesses and may choose to believe or disbelieve any part of the witnesses' testimonies). The trial court drew reasonable inferences from the evidence presented, which was that Ms. Wollins met Mike once before Jill and Mike purchased the house and that the "house money" was intended as a gift to Jill. Because the trial court's findings are supported by substantial evidence, we cannot set them aside on appeal.

We now conduct a *de novo* review of the trial court's determination that the property at issue in this case was Jill's non-marital property. Mike argues that the language of the deed determines that the residence is his marital property and should be divided equally by the court. The marital or non-marital nature of a gift is not determined solely by the deed's documentary title or wording. *Hunter v. Hunter*, 127 S.W.3d 656, 660 (Ky. App. 2003). Other relevant factors include the source of any funds used to purchase the property, the marriage's status at the time

of the transfer, and, most importantly, the donor's intent in transferring the property. *Id.* at 660.

Clearly, in the instant case, the source of the funds used to purchase the residence was a gift from Ms. Wollins, and the parties were not married at the time of the transfer. Furthermore, the trial court determined that Ms. Wollins' intent was to purchase a home in which she and her granddaughter would live and that her granddaughter's marriage to Mike was incidental to this purchase. The trial court's findings regarding Ms. Wollins' intent were supported by substantial evidence, and there is nothing in the record to indicate that the property could have been anything but Jill's non-marital property, as it was purchased prior to the marriage with non-marital funds. Thus, we agree with the trial court's conclusion of law designating the residence in Shepherdsville as Jill's non-marital property.

Mike also argues that the personal property given to him by Ms. Wollins while Jill was in Iraq was his non-marital property. Property acquired by either spouse subsequent to the marriage is presumed to be marital property, except for certain enumerated exceptions including property acquired by gift. KRS 403.190(2). The party claiming property acquired after the marriage as his/her non-marital property through the gift exception bears the burden of proof on that issue. *Travis*, 59 S.W.3d at 912; *Adams v. Adams*, 565 S.W.2d 169 (Ky. App. 1978).

Mike argues that the truck and various other monetary gifts were given to him because he took care of Ms. Wollins and took her out to eat on the weekends while Jill was in Iraq. The bulk of Mike's proof at the hearing focused

on the fact that Ms. Wollins and Jill had a falling out after her return from Iraq. However, the trial court found that the vehicle and money were given to Mike prior to Jill returning from Iraq, and thus, Mike's explanation was not applicable to that property. Finally, it was significant to the trial court that Ms. Wollins granted all of her estate to Jill and Mike jointly in her will. On balance and after consideration of these unique circumstances, the trial court concluded that it was Ms. Wollins' intent to give both Mike and Jill monetary and personal items and that it was never her intent to give the items to Mike alone, to the exclusion of Jill. Again, the trial court is in the best position to judge the credibility of witnesses and to weigh the evidence. Because the trial court's findings of fact are supported by substantial evidence, we will not set them aside on appeal.

Furthermore, because the trial court determined that it was Ms. Wollins' intent to give the vehicle and personal property to Jill and Mike jointly, and Mike did not meet his burden of proving that the items were intended as gifts solely for him, it logically follows that the vehicle and the money were marital property. Thus, we find no error with the trial court's conclusions of law designating the property as marital property and dividing such property equitably between Mike and Jill.

Based on the foregoing, we affirm the trial court's November 3, 2008, order in its entirety.

ALL CONCUR.

BRIEF FOR APPELLANT:

Paul C. O'Bryan
Louisville, Kentucky

BRIEF FOR APPELLEE:

J. Scott Wantland
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