

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001317-MR

BARBARA SMITH

APPELLANT

v. APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT, III, JUDGE
ACTION NO. 08-CI-00439

RONNIE SMITH

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, LAMBERT, AND VANMETER, JUDGES.

LAMBERT, JUDGE: Barbara Smith appeals the Letcher Circuit Court's final decree of dissolution of marriage entered on June 16, 2010. After careful consideration of the record and the parties' arguments, we affirm the circuit court's judgment.

Barbara Smith and Ronnie Smith were married on October 27, 2007, and separated on November 3, 2008. On April 10, 2009, a partial decree of

dissolution of marriage was entered returning the parties to the status of single persons and reserving all other issues between them for later determination. The remaining issues came before the trial court for a final hearing on September 3, 2009, which was continued through November 3, 2009. The trial court issued its findings of fact, conclusions of law, and judgment on January 15, 2010. Barbara filed exceptions to the judgment, which were overruled by the trial court on June 16, 2010. This appeal now follows.

Barbara makes two arguments on appeal. First, she alleges that the trial court erred in finding that the 2001 Jeep Cherokee was non-marital property belonging to Ronnie. She argues that the Jeep was actually a gift to her and thus is her non-marital property. Barbara also argues that the trial court erred in determining that Ronnie had a marital interest in the increase in value of Ovenfork Merchantile, a business Barbara owned prior to the marriage.

Kentucky law has long recognized that the findings of the trial court in a case involving the dissolution of marriage may not be disturbed unless clearly erroneous. *Aton v. Aton*, 911 S.W.2d 612 (Ky. App. 1995). However, “[o]n appellate review of a trial court's ruling regarding the classification of marital property, we review *de novo* because the trial court's classification of property as marital or non-marital is based on its application of KRS 403.190; thus, it is a question of law.” *Heskett v. Heskett*, 245 S.W.3d 222, 226 (Ky. App. 2008). The trial court's ultimate distribution of marital property is reviewed under an abuse of discretion standard. *Herron v. Herron*, 573 S.W.2d 342, 344 (Ky. 1978).

In the instant case, Barbara argues that the trial court erred in its classification of the Jeep as Ronnie's non-marital property, and thus our review is *de novo*. Kentucky Revised Statutes (KRS) 403.190(2) defines marital property as all property acquired by either spouse subsequent to the marriage except “[p]roperty acquired by gift, bequest, devise, or descent during the marriage and the income derived therefrom unless there are significant activities of either spouse which contributed to the increase in value of said property and the income earned therefrom[.]”

In support of her argument that the Jeep was her non-marital property, Barbara argues that Ronnie gave her the Jeep as a gift for her birthday. During the hearing on this matter, Barbara presented the court with a card allegedly signed by Ronnie and stated that Ronnie presented the Jeep to her at a birthday party. The trial court held that Barbara had the burden of proving that the Jeep was a gift to her, and specifically stated that Barbara failed to overcome this burden. In its findings of fact, the trial court stated:

The burden of proof is on [Barbara] to prove that the Jeep was a gift to her and should be treated as her nonmarital property. KRS 403.190. In support of her contention, [Barbara] testified that the vehicle was given to her by [Ronnie] at a party held for her birthday, and she produced a card purportedly signed by the Petitioner making reference to the Jeep as a present. [Ronnie] specifically denied that the writing in the card was his handwriting and that he had given that card to the Respondent. The Court notes that the writing on the card is unusual in form, and not consistent with the manner in which [Ronnie] testified that he regularly signed his name. Furthermore, [Barbara] failed to produce any corroborating evidence from anyone at the party that

such a card or gift was given to [her] by [Ronnie]. [Barbara] has failed to carry her burden of proof. The Court therefore FINDS that the Petitioner's testimony is credible, the 2001 Jeep was nonmarital property belonging to [Ronnie], having been purchased solely from nonmarital assets, and shall be returned and restored to him.

Ronnie presented testimony at the hearing that he purchased the Jeep in an even trade for a 1980s model Corvette which he owned prior to the marriage. Given the evidence of record and Barbara's failure to produce any evidence to the contrary, the trial court's finding that Ronnie purchased the Jeep from non-marital funds is supported by the evidence and is therefore not clearly erroneous. Based on these findings of fact, the trial court determined that the Jeep was Ronnie's non-marital property. Because the burden of proof was on Barbara to prove that the Jeep was a gift, and she failed to meet this burden, we cannot discern any error in the trial court's classification of the property as non-marital. We therefore affirm the portion of the trial court's order holding that the Jeep was Ronnie's non-marital property.

Barbara next argues that the trial court erred in determining that Ronnie had a marital interest in the increase in value of Ovenfork Merchantile, a business she owned prior to the parties' marriage. It was undisputed by the parties that prior to the marriage, Barbara owned real property upon which her business was located, and an adjoining tract, which were both mortgaged. It was also uncontested that the parties decreased the amount of the mortgage on this property by \$7,382.52 during the marriage. Additionally, Ronnie testified that he made

substantial improvements to Barbara's non-marital property. This included completing two rooms, adding a porch and glass front display, and making several other improvements. Barbara testified that the appraised value of the tract upon which her business was located was \$45,000.00 at the Letcher County Property Valuation Administrator's Office. However, Ronnie presented evidence that Barbara's appraisal was done in 2004, prior to the parties' marriage and prior to the improvements he made to her business property. Barbara offered no evidence as to the property's value at the time of the divorce, but Ronnie testified that at the time of the partial decree, the value was \$65,000.00, which amounted to an increased value of \$20,000.00.

Before the trial court, Barbara argued that the improvements to the property were funded from the receipts of her business and paid from her checking account, to which Ronnie was not a party. Ronnie testified however, that in July 2008 and immediately prior to him filing for bankruptcy, Barbara withdrew cash advances from his personal credit card accounts in the amount of approximately \$6,000.00 and placed those funds in her personal account, which she then used to pay the expenses of her business. Barbara did not deny or refute this testimony. Furthermore, the deposits in her personal account show an increase from June 19, 2008, to July 22, 2008, of just in excess of \$6,000.00. The combined total withdrawals from this same account in 2008 exceed the combined total of her income and gross receipts from her business by more than \$6,000.00. Thus, the

trial court concluded that the improvements and mortgage payments made during the marriage were funded by marital assets.

We agree with the trial court that the mortgage payments and improvements Ronnie made to Barbara's property were funded by marital assets. Under Kentucky law, improvements made by joint effort of the parties to a party's non-marital property and mortgage payments on non-marital property are marital assets subject to distribution by the court. *See Goderwis v. Goderwis*, 780 S.W.2d 39, 40 (Ky. 1989). Accordingly, we find no error with the trial court's holding that the reduction in the mortgage and the value of the improvements were marital property to be divided between Ronnie and Barbara.

Having been presented with no reversible error on appeal, we affirm the judgment of the Letcher Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

James W. Craft, II
Whitesburg, Kentucky

BRIEF FOR APPELLEE:

Gene Smallwood, Jr.
Whitesburg, Kentucky