

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000894-MR

BETTY LARIMORE

APPELLANT

v. APPEAL FROM BRECKINRIDGE CIRCUIT COURT
HONORABLE ROBERT A. MILLER, JUDGE
ACTION NO. 13-CI-00052

CHARLES LARIMORE

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: MAZE, TAYLOR, AND K. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: Betty Larimore appeals from the Breckinridge Circuit Court's judgment entered May 11, 2015, adopting the report of the Domestic Relations Commissioner (DRC). We affirm.

Betty was sixty-three years old and Charles was eighty when they married on April 30, 2011. After less than two years of marriage, they separated on December 15, 2012. Betty petitioned for dissolution of marriage on March 4,

2013, and the trial court entered a limited decree of dissolution on September 6, 2013. The limited decree reserved the division of all property for a future ruling.

Betty's only sources of income before the marriage came from her monthly social security checks and work as a caregiver. Charles had accumulated assets through his employment with General Electric Company and was receiving a pension in addition to his social security benefits. He owned several real estate properties and had accumulated over \$200,000 in mutual funds and stocks. At the time of dissolution, almost all his cash assets had been depleted in the short duration of their marriage.

Before their wedding, Betty and Charles attended an auction together. Betty registered as a bidder and successfully made the highest bid on several items, including: two sheds, a van, and a piece of property located at 141 Ater Heights in Irvington, Kentucky (the Ater Heights property). The Ater Heights property consists of less than two acres located in a subdivision with an uninhabitable double-wide mobile home and a few outbuildings. Charles wrote a series of checks to purchase the items and then mortgaged one of his other properties to pay the remaining portion of the \$40,000 total owed for all the auction items, including the Ater Heights property. Three days before their wedding, Betty signed the deed as the sole owner of the Ater Heights property. Throughout the divorce

proceedings, both parties claimed the Ater Heights property as their own nonmarital property.

The domestic relations commissioner (DRC) oversaw the division of all the couple's assets and debts, including the Ater Heights property. After a hearing held on July 9, 2014, the DRC entered a report on September 24, 2014, which assigned the Ater Heights property to Charles. Although Charles moved to confirm the report in its entirety and for a ruling on an omitted piece of property, Betty filed objections to the report. The trial court held its ruling in abeyance until the DRC made the additional finding on the omitted property. The DRC entered its report on this final piece of property on January 22, 2015. Charles then moved the trial court to adopt and confirm the second DRC report. Betty did not file a motion regarding the second DRC report. The trial court adopted the second DRC ruling according to Charles's motion and then took the matter of the first DRC report under submission on April 22, 2015. The trial court issued its ruling adopting the first DRC report, including the award and assignment of the Ater Heights property as nonmarital property to Charles on May 11, 2015. This appeal followed.

Betty raises a single issue relating to the trial court's classification as nonmarital and assignment of the Ater Heights property. Classifying property as marital or nonmarital "involves an application of the statutory framework for

equitable distribution of property upon divorce and therefore constitutes a question of law[.]” *Holman v. Holman*, 84 S.W.3d 903, 905 (Ky. 2002). Accordingly, we review trial court rulings regarding the classification of marital property *de novo*. *Young v. Young*, 314 S.W.3d 306, 308 (Ky.App. 2010).

For her sole issue on appeal, Betty alleges the trial court erroneously adopted the DRC report assigning the nonmarital property interest in the Ater Heights property to Charles. Betty asserts the property was a gift and thereby should have been awarded to her as nonmarital property. Betty contends the trial court erred in finding Charles did not gift the Ater Heights property to her although she signed the deed in her name alone. Charles argues the trial court correctly denied Betty’s motion because he did not intend to gift the Ater Heights property to Betty.

When dividing property in a marriage dissolution, the trial court must apply the definitions of marital and nonmarital property according to the statutory guidelines, which provide:

(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. . . .

....

(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 during the marriage . . . ;

(b) Property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

. . . .

(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.

Kentucky Revised Statutes (KRS) 403.190. The Kentucky Supreme Court examined the method used to divide property consistent with the statute at length in *Travis v. Travis*, 59 S.W.3d 904 (Ky. 2001), and *Sexton v. Sexton*, 125 S.W.3d 258, 265 (Ky. 2004).

Trial courts must use a three-step process in determining the status of property during a divorce. *Travis*, 59 S.W.3d at 908-09. First, the trial court must characterize “each item of property as marital or nonmarital[.]” *Id.* at 909 (footnotes omitted). Second, the trial court “assigns each party’s nonmarital

property to that party[.]” *Id.* “[F]inally, the trial court equitably divides the marital property between the parties.” *Id.*

To characterize the marital or nonmarital interest in property, trial courts in Kentucky apply the “source of funds” rule. *Sexton*, 125 S.W.3d at 265. This rule requires the trial court to characterize the status of property by evaluating evidence tracing the funds used to purchase the property, rather than relying strictly on the title or form in which the property is held. *Id.* at 265-66. After the trial court characterizes the status by applying the “source of funds” rule, then it must assign the nonmarital property to each party. *Id.*

As was emphasized in *Sexton*, the first step in the three-step process is the characterization of the property as marital or nonmarital. The trial court applied the statutory analysis and found the Ater Heights property was nonmarital. Neither party disputes the trial court’s nonmarital determination. Because neither party disputes the nonmarital status of the Ater Heights property, we do not need to consider its nonmarital status, whether there was any marital interest in the property, or how it would be divided if there was a marital portion.

Following the established analytical structure, the trial court next assigned the nonmarital interest in the Ater Heights property to Charles. In so concluding, the trial court relied on Charles’s adamant testimony he did not intend to offer the Ater Heights property to Betty as a gift and supported its finding by

observing Charles did not file a gift tax return for his purchase. Betty disputes the trial court's assignment of the Ater Heights property to Charles and argues although Charles used his nonmarital funds to purchase the property, she is the only one who signed the deed because the property was a gift to her. Charles testified he was not sure why his name was excluded on the deed, other than speculating it may have been because Betty was the registered bidder at the auction.

Although the trial court may consider several factors when deciding whether a gift has been made, the intent of the donor is the primary factor. *Sexton*, 125 S.W.3d at 268. “[T]he intention of the donor may not only be expressed in words, actions, or a combination thereof, but may be inferred from the surrounding facts and circumstances, including the relationship of the parties, as well as the conduct of the parties.” *Id.* at 269 (internal quotation marks and citation omitted).¹

We conclude the trial court did not err in finding Charles's purchase of the Ater Heights property was not a gift to Betty despite her name alone appearing on the deed. Although “it has long been the law in Kentucky that ‘[r]ecord title or legal title is an indicia sufficient to raise a presumption of true

¹ We note that the factors set out in *O'Neill v. O'Neill*, 600 S.W.2d 493, 495 (Ky.App. 1980), regarding gifting are used to determine when a gift is made between spouses during their marriage while the trial court here had to determine if Charles made a gift to Betty before their marriage. Therefore, they do not all apply here.

ownership[,]” *Rakhman v. Zusstone*, 957 S.W.2d 241, 244 (Ky. 1997) (quoting *Tharp v. Security Ins. Co. of New Haven*, 405 S.W.2d 760, 765 (Ky. 1966)), under KRS 403.190, record title to property is not controlling when dividing property between spouses on dissolution of marriage, *Sexton*, 125 S.W.3d at 265. The trial court found although Betty held title in her name alone, this did not outweigh the source of the funds used to purchase the property and the donor’s intent in buying the property. In evaluating the source of funds, the trial court relied on the undisputed fact Charles used his nonmarital funds to purchase the Ater Heights property. Even if Betty as Charles’s fiancée could be considered the natural object of his bounty, that does not outweigh Charles’s testimony he did not intend to gift the property to Betty. *See Davis v. Davis*, 343 S.W.3d 610, 616 (Ky.App. 2011) (explaining where parents established they did not intend to make a gift to son, “they successfully rebutted any presumption associated with his status as their son”). The trial court has the authority to evaluate the credibility of the witnesses and although Betty disagrees with the trial court’s finding, it did not abuse its discretion in ruling against her. Kentucky Rules of Civil Procedure 52.01. Because the trial court found Charles’s testimony persuasive and the intention of the gift donor is the most significant factor in deciding the nonmarital status of a gift, the trial court did not err in assigning the Ater Heights property to Charles.

Accordingly, we affirm the trial court's award of the Ater Heights property to Charles.

For the foregoing reasons, we affirm the Breckinridge Circuit Court's judgment.

ALL CONCUR.

BRIEF FOR APPELLANT:

Earlene Whitaker Wilson
Leitchfield, Kentucky

BRIEF FOR APPELLEE:

Margaret L. Matney
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