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NO. COA05-1459

NORTH CAROLINA COURT OF APPEALS

Filed: 01 August 2006

WANDA C. HILL,

Plaintiff,

v.

Robeson County
No. 02 CVD 04598

WILLARD HILL, DONALD T. ARNETTE AND ALICE FAYE ARNETTE,

Defendants.

Appeal by defendants from judgments dated 27 April 2005 and 13 May 2005 by Judge John B. Carter in Robeson County District Court. Heard in the Court of Appeals 7 June 2006.

*Huggins, Pounds & Davis, L.L.P., by Bruce W. Huggins, for defendants-appellants.*

*Locklear, Jacobs, Hunt & Brooks, by Arnold Locklear, for plaintiff-appellee.*

ELMORE, Judge.

Wanda Hill (plaintiff) and Willard Hill (defendant) met in December of 1998 and lived together beginning in April 1999. Plaintiff and defendant were married on 22 April 2001. During the time while they were living together prior to marriage, plaintiff and defendant decided to build a home. After the marriage of the parties, defendant purchased from his brother, Garron Hill, a one-half undivided remainder interest in a 66-acre parcel of land.

Defendant already owned the other one-half undivided remainder interest, which was subject to the life estate of defendant's mother, Catherine Bass Hill. The 66-acre tract of land, referred to in the record as the Highway 904 tract, had been devised to defendant and his brother in the Last Will of Luther Hill, subject to the life estate of Catherine Bass Hill.

Plaintiff and defendant were separated on 2 July 2002. On 2 December 2002 plaintiff filed a complaint seeking divorce and equitable distribution. Defendant filed an answer on 7 February 2003. The trial court entered an order of equitable distribution dated 27 April 2005. The court then entered an amended order on 16 May 2005. Defendant filed notice of appeal to this Court from both of these orders.

On appeal, defendant contends that the trial court erred in determining (1) that the Highway 904 tract of land should be classified as marital property; and (2) that plaintiff is entitled to a one-fourth interest in the tract of land, subject to a life estate, in the amount of $33,696.00.

Defendant argues that the transfer of his brother's interest in the 904 tract of land was a partial gift to him. Therefore, defendant asserts, the entire property is his separate property. "Bargain sales, or those where some small consideration is received in exchange for the transfer, if accompanied with donative intent, are treated as partial gifts." *Burnett v. Burnett*, 122 N.C. App. 712, 715, 471 S.E.2d 649, 652 (1996) (citing Brett R. Turner, *Equitable Distribution of Property* § 5.16 at 195 (1995)). The

record establishes that the value, at the date of the parties' separation, of the portion of land purchased by defendant from his brother was $68,750.00. But defendant paid his brother $20,000.00 for the portion of land. Thus, we now consider whether defendant's brother expressed donative intent in his sale of the tract of land to defendant at an artificially low price. The following testimony by defendant sets forth the circumstances surrounding the transfer:

> Q. . . . how did you hear that Garon was running around trying to sell his property?
>
> A. My half brother Tony told me that Garon was gonna sell it and being I had half ownership in it, he said you better buy it or somebody else'll get it and then you'll have to sell your part.
>
> Q. So you went to see him?
>
> A. Yes, Sir.
>
> Q. And asked him if he was gonna sell.
>
> A. Yes, Sir.
>
> Q. And what did you do about how much?
>
> A. I just asked him what he wanted for it. He said--he had a tax paper and he showed it, and he said I'll take this for it tomorrow. That's the exact words he said. So that's when I come and made a transfer.
>
> Q. So, you got your deed drawn and you gave him--he gave you a deed for his interest? And then he also gave you a note for part of it, didn't he, or you gave him a note?
>
> A. I gave him a note, Sir.
>
> Q. Tell the Court how you worked that out with your brother and why.
>
> A. Well, I knowed he was gonna throw it away, because I give him ten thousand dollars ($10,000) in a check and when I started home

> we deposited it in the bank for him. And in less than a week he was back at the house wanting the rest of it. He blew it. And I was wanting him to not throw it all away that way.

Defendant argues the sole fact that he purchased the land interest from his brother for one-third of its value converts the transfer into a partial gift. We disagree. Evidence relevant to donative intent includes the donor's own testimony, the testimony of the donee, the documents surrounding the transaction, and whether a gift tax return was filed or excise tax paid. *Burnett*, 122 N.C. App. at 715, 471 S.E.2d at 651. Documents surrounding the transaction that characterize the transfer as a gift are strong evidence of donative intent. *Id.* Here, defendant has not established evidence of donative intent. He does not refer to any documents in which the transfer is characterized as a gift from his brother to him. Neither is there evidence of a gift tax return or excise tax paid. The testimony of defendant is not indicative of any particular intent on the part of the transferor, his brother, other than the desire to sell the property and obtain some money quickly. We reject defendant's argument that the transfer of property from his brother to him was in the nature of a partial gift.

Defendant next argues that the 904 tract should be classified as his separate property because it was purchased with his separate funds. We note initially that the 904 tract was purchased during the marriage. As such, a presumption arises that the property is marital. *See* N.C. Gen. Stat. § 50-20(b)(1) (2005) ("It is presumed

that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property . . ."). The spouse challenging the classification of marital property may overcome the presumption by the greater weight of the evidence. *See* N.C. Gen. Stat. § 50-20(b)(2) (2005).

Here, defendant contends that he bought the interest in the 904 tract of land for $20,000.00 from his separate funds. Defendant introduced into evidence a check for $10,000.00 drawn from his personal account at BB&T. But there is also evidence that defendant used marital funds to purchase the property. In particular, defendant testified that he did not know how much money he drew out of the parties' joint lock box:

> Q. You heard Ms. Hill say that you got--you talked about buying the . . . land while both of you were building the house; that's true, isn't it?
>
> A. Yes, Sir.
>
> Q. Things were tight; were they not? Financially?
>
> A. No, Sir.
>
> Q. Plenty of money?
>
> A. No, Sir. I didn't have plenty of money, but I mean I wasn't gonna--I was gonna stop the house to buy the land.
>
> Q. And you didn't stop the house, did you?
>
> A. Yes, Sir. I stopped it--pretty close.
>
> Q. And that was because of taking twenty thousand, (20,000)--ten thousand dollars ($10,000) out of the box; didn't you?

> A. Ah, well I had money.
>
> Q. But you did take ten thousand out of the box; didn't you Sir?
>
> A. I don't know how much I took out of it at one time, no, Sir.

Plaintiff testified that the parties had both made contributions to the lock box, and that it was maintained for the purpose of withdrawing cash to make payments for the construction of the house. Plaintiff further testified that she was paid $888.00 bi-monthly and would cash every other paycheck and then place that cash in the box. Plaintiff stated that in addition to her paychecks she also deposited a total of $3,000.00 in cash from her bonus checks into the box. Plaintiff also testified that she agreed with defendant to use the "house money" to purchase the land interest from defendant's brother:

> [Defendant] came home and told me that his brother Garon Hill wanted to see his portion of a sixty-six acre tract of land on Highway 904. . . . And since [defendant] already owned an undivided interest in it, he wanted to buy the other part. So I--we talked about it, that if--it was twenty thousand dollars ($20,000) but [defendant] had worked it out to where he was to pay ten thousand (10,000) when the paperwork was done and another ten thousand (10,000) three to six months later.
>
> And we knew it would slow--it would take our money, our house money, slow down the construction on the home if we did it, but I understood him wanting to buy it so I agreed to it.

Defendant's testimony on direct examination regarding where he got the money to buy the interest from his brother was unspecific beyond stating that ten thousand dollars of the twenty thousand

came from his account at BB&T. He testified that his mother had some CD's and that she cashed them in and gave them to him. Defendant stated that his mother did this because she was living with him and under his care. The testimony of plaintiff conflicted with defendant's testimony on the source of funds in the BB&T account. Plaintiff testified as follows:

> Q. Is it a fact that [defendant] gave Garon a check from his BB&T account dated 11/21/01, in the amount of ten thousand dollars ($10,000)?
>
> A. Yes, Sir that's correct.
>
> . . . .
>
> Q. Were you aware that [defendant] had that BB&T account?
>
> A. Yes, Sir.
>
> Q. Did you ever put any money into that BB&T account?
>
> A. I made deposits into that account for the house.
>
> Q. From his money?
>
> A. From his money, my money, whichever. If we needed money in the BB&T account because we had to write checks for construction on the house, then we would, ah, we moved money back and forth. . . .
>
> Q. Now is it your position that [defendant] did not use his separate funds to buy this piece of property from Garon?
>
> A. He used funds that we both had, in the box.

The trial court inquired further into the amount taken from the joint funds in the lock box for the purpose of clarification:

> THE COURT: Well, his question is, do you know where the twenty thousand dollars ($20,000)

> came from, what accounts or the cash box. What was the source of the twenty thousand dollar ($20,000) basically?
>
> A. The original source of it?
>
> THE COURT: Yes, Ma'am.
>
> A. I know ten thousand (10,000) was taken from the cash box.
>
> THE COURT: Okay.
>
> A. I cannot be for sure whether the other ten thousand came out of the cash box or not.

The credibility of the witnesses and the weight to be given their testimony was a determination for the trial court. *See Grasty v. Grasty*, 125 N.C. App. 736, 739, 482 S.E.2d 752, 754, *disc. review denied*, 346 N.C. 278, 487 S.E.2d 545 (1997). Indeed, [t]he trial judge [in an equitable distribution action] is the sole arbiter of credibility and may reject the testimony of any witness in whole or in part." *Fox v. Fox*, 114 N.C. App. 125, 134, 441 S.E.2d 613, 619 (1994). The trial court here could have found the testimony of plaintiff regarding the use of money from the lock box to purchase the tract of land more credible than the testimony of defendant that he used money from CD's that his mother cashed in. The record contains competent evidence to support the trial court's finding that a one-half remainder interest in the 66-acre parcel was marital property, and we therefore hold the trial court did not err in failing to classify the interest as separate property. *See Embler v. Embler*, 159 N.C. App. 186, 191, 582 S.E.2d 628, 632 (2003) (trial court's finding on classification as marital or

separate will be upheld where there is any competent evidence to support it).

Next, we address defendant's argument that the trial court erred in awarding plaintiff a one-fourth interest in the 66-acre parcel, subject to a life estate. Defendant does not explain in his brief how the trial court erred in its determination. Rather, he seems to argue again that the trial court erred in classifying the one-half remainder interest in the tract purchased by defendant from his brother as marital property. As discussed *supra*, the trial court did not err in its classification. It follows that dividing up the 66-acre parcel, one-half of which was defendant's separate property and one-half of which was marital property, according to these classifications was not in error. The trial court properly granted plaintiff a one-fourth interest in the parcel, subject to the life estate. Defendant does not challenge the appraisal value the court assigned to the parcel. We hold the trial court did not err in awarding plaintiff the value of her one-fourth interest in the amount of $33,696.00.

Affirmed.

Judges McGEE and STEELMAN concur.

Report per Rule 30(e).