Cite as 2023 Ark. App. 532

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-22-742

	Opinion Delivered November 15, 2023
JOHN TOWNSHEND APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT
V.	[NO. 66FDR-22-40]
	HONORABLE SHANNON L. BLATT, JUDGE
NANCY TOWNSHEND APPELLEE	
	AFFIRMED

KENNETH S. HIXSON, Judge

This is a divorce case between appellant John Townshend and appellee Nancy Townshend, and the only issues on appeal pertain to the division of the parties' property. During the parties' five-year marriage prior to separation, they lived in a house located at 2119 Camelot Drive (hereinafter "the Camelot property"). In the divorce decree, the trial court awarded the Camelot property to Nancy as her sole and separate property, and on appeal John argues that this decision was clearly erroneous, asserting that the Camelot property was jointly owned by the parties pursuant to a written agreement executed by the parties prior to marriage. John also argues that the trial court clearly erred in dividing the parties' personal property. We affirm.

On appeal, this court reviews divorce cases de novo on the record. *Taylor v. Taylor*, 369 Ark. 31, 250 S.W.3d 232 (2007). We will not reverse a trial court's finding of fact in a divorce case unless it is clearly erroneous. *Id.* A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with a definite and firm conviction that a mistake has been made. *Chekuri v. Nekkalapudi*, 2020 Ark. 74, 593 S.W.3d 467. We also give due deference to the trial court's determination of the credibility of the witnesses and the weight to be given to their testimony. *Id.*

John and Nancy were married later in life on November 20, 2016.[1] Leading up to the marriage, the parties had been engaged at least twice, but the engagements had been broken off for reasons not disclosed in the record. The parties were again discussing an engagement and were contemplating purchasing a house for their marital residence. Nancy owned her own residence and John owned his own residence. While still unmarried, John and Nancy negotiated an agreement whereby each of them would contribute $40,000 toward the down payment of the house. The agreement contained two pertinent caveats. One caveat was that if John backed out of this engagement, reconciliation would be out of the question. The second caveat was that if John backed out of this engagement, Nancy would return John's $40,000 contribution, and John would no longer have any connection to the property. This agreement was reduced to writing and is referred to herein as the "Camelot Agreement." The Camelot Agreement was initially drafted by John and was then

[1]At the final hearing, it was established that Nancy had a previous marriage of forty-seven years before being divorced and that John was then seventy-seven years old.

substantially edited and typed by Nancy. The parties executed the Camelot Agreement on April 27, 2016. The Camelot Agreement provides:

> John Townshend and I, Nancy McDowell, are buying a house together located at 2119 Camelot Drive, Lot 7, Wedgewood Heights, Fort Smith, Arkansas. We will each pay a portion of the down-payment. If after I have received and deposited a check for John's part of the down-payment and the check has cleared in the bank either of us break the engagement I will return to John Townshend a check in the amount of $40,000 and he will no longer be connected to the property in any way. No further reimbursements shall be asked for or received by either party at the time or in the future. Let it be known that if the engagement is broken by either person there will be no reconciliation in the future between John Townshend and Nancy McDowell.

Before the purchase of the Camelot property was closed and while the parties were still unmarried, the parties executed a second agreement captioned "Pre-Nuptial Agreement." Nancy testified that John wanted the prenuptial agreement because he did not want to combine properties, and so she went to an attorney to have it prepared. John testified that he had previously been a tax accountant and that he went over the prenuptial agreement with his attorney and that his "attorney talked to me about it and everything." The Pre-nuptial Agreement was signed on May 16, 2016 and provides, in relevant part:

> [T]he parties to this agreement contemplate being married in the near future and it is the desire of the parties to make certain agreements concerning their property rights and the rights of each other in relation to such property rights and therefore, for and in consideration of the mutual promises made one to the other, the parties hereby agree as follows:
>
> I.
>
> The parties hereto agree that all property, both real and personal, together with any intangible property, including bank accounts, mortgages, retirement accounts, pensions, IRA accounts and brokerage accounts, stocks and bonds and any other assets of whatsoever nature, owned by either party, including any accumulations

and appreciation, shall remain the separately owned property of such party at all times during the marriage of the parties hereto; that attached hereto and referred to as Exhibit "A" is a list of all property belonging to Nancy McDowell. Attached Hereto as Exhibit "B" is a list of all property belonging to John Townshend.

. . . .

II.

. . . . The parties further agree that by mutual agreement of the parties hereto, the parties may, if they so desire, own property jointly or as tenants by the entirety with right of survivorship and agree herein that if at any time it becomes their desire to own property jointly or as tenants by the entirety with right of survivorship, that such ownership shall be clearly indicated and designated so that it will be clear to any person that such property is owned jointly or as tenants by the entirety with right of survivorship and in the event the parties do decide to own any such property or assets jointly or as tenants by the entirety, then the survivor of the parties hereto shall be the owner of such property or asset.

. . . .

In the event of the termination of this marriage by divorce, annulment or other legal action, the parties hereto agree that the separately owned property of either party, whether acquired before, or after the marriage, or acquired separately shall not constitute marital property so long as acquired separately and shall remain the property of such person owning or acquiring such property for all purposes. That the parties agree that all such separately owned property shall be awarded to the party separately owning such property.

Exhibit "A," attached to the agreement, contained a list of property belonging to Nancy, which included real property at 9601 Weddington Road, a car, a checking account, a savings account, and an IRA. Exhibit "B," attached to the agreement, contained a list of property belonging to John, which included a house at 2010 Dodson, a condominium at 1500 South Albert Pike, two vehicles, furniture and office equipment, and various financial accounts.

The Camelot property was not mentioned in the Pre-Nuptial Agreement nor was it identified in the exhibits attached to the agreement.

A week after the Pre-Nuptial Agreement was executed, on May 23, 2016, still prior to the marriage, the purchase of the Camelot property was closed.[2] The warranty deed to the Camelot property was conveyed to "Nancy C. McDowell, a single person." The real estate transfer tax stamp indicated that the grantee was "Nancy C. McDowell." And the mortgage in favor of Arvest Bank listed the borrower as "Nancy C. McDowell, a single person."

The parties' engagement was not broken, and six months later, John and Nancy were married on November 20, 2016. After the marriage, the parties lived together at the Camelot property for over five years, and they separated on January 17, 2022. During the marriage, John and Nancy deposited money into a joint account, and the Camelot house payments were made from that joint account.[3] Also, repairs and renovations were made to the Camelot house during the marriage.

Unfortunately, irreconcilable differences arose. Nancy testified that the straw that broke the camel's back was when John, without her knowledge, borrowed over $1.5 million to purchase a house and a campground in Tahlequah, Oklahoma. On January 21, 2022, Nancy filed a complaint for divorce. In paragraph 4 of her complaint, Nancy alleged:

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[2]The record does not indicate the date that John tendered his $40,000 to Nancy.

[3]Nancy testified that she was receiving around $600 a month in Social Security benefits at the time of the marriage. However, several months after her marriage to John, her Social Security benefits were reduced to around $150 a month. Nancy testified that she stopped making contributions to the joint account at that time.

> The parties have a Pre-Nuptial Agreement specifically setting out that each party owns any real property titled separately in their own name. Each party should be awarded the real property titled in their own name free of any interest in the other.

In John's answer to Nancy's complaint, John stated:

> Plaintiff's complaint paragraph 4 is admitted to the extent the parties did execute a prenuptial agreement, however, the balance is denied as the terms of the agreement and effect on the various property interests speak for themselves.

The final divorce hearing was held on August 9, 2022. As relevant to the issues presented in this appeal, Nancy and John were the only witnesses to testify.

Nancy testified that prior to the parties' marriage, she was contemplating buying the Camelot property. Also prior to the marriage, the parties entered into a written agreement concerning the Camelot property as well as a separate prenuptial agreement. The Camelot property was purchased approximately six months prior to the parties' marriage, and the property was titled in Nancy's name alone. The mortgage was also in her name. Nancy testified that she was solely responsible for the debt associated with the Camelot property and that John was not obligated on the mortgage "in any way, shape, or form."

Nancy testified that she and John each contributed a $40,000 down payment for the purchase of the Camelot property and that she never returned to John his $40,000 because neither party broke the engagement as set forth in the Camelot Agreement. Nancy stated that, during the parties' marriage, the $600 mortgage payment on the Camelot property as well as the utility bills were paid from a joint account to which both parties contributed. Nancy also testified that the parties equally shared in the costs of repairs and improvements to the Camelot property, which she thought totaled about $17,000 during the marriage.

Nancy testified that the Camelot property was her separate property and that she never intended for John to have any interest in it. Nancy testified that the parties' Camelot Agreement was not about the ownership of the property but was instead about the parties' wedding engagement. Nancy testified that the Camelot Agreement

> was drawn up because we had already broken the engagement twice, and this was before the prenup and before buying the house or anything like that. It was strictly because of the engagement and we kept breaking up all the time. . . . Like I said, that was just for the engagement and because we both paid some money down. And the prenup was drawn up later. And we both discussed it and that's the way that we wanted it. We didn't want any property together.

Nancy testified that when the purchase of the Camelot property was finalized, the Camelot property was deeded to her, that the engagement had not been broken, and that the Camelot property has been her separate nonmarital property ever since the date of purchase.

During Nancy's cross-examination, John introduced four Facebook social-media posts created by Nancy. The first of these Facebook posts contains a photograph of the house on the Camelot property with the words, "It's officially ours! John Townshend and I are very happy with our new home!" In the remaining Facebook posts, Nancy posted additional photographs concerning the property and made comments referencing "our backyard" and "our pool." When asked about these Facebook posts, Nancy explained:

> I don't know how else to refer to it. I would not embarrass him and say "here is my husband in my pool" or "here is my husband in my house." That's where we lived. That's where our furniture was so we called it our home.

Nancy testified and provided documentation that the parties had accumulated about $26,088.25 in joint bank accounts during the marriage and stated that John had personally

withdrawn these funds during the parties' separation. As a result, Nancy asked to be awarded half of this amount, or $13,044.12. Nancy also testified that the parties had acquired two vehicles during the marriage and that these vehicles were titled in both parties' names. The vehicles included a 2018 Honda Pilot, which was in Nancy's possession, and a 2017 Buick, which was in John's possession.

John testified. In his exhibit to the Pre-Nuptial Agreement, John indicated he owned an office house located on Dodson Avenue and a condo apartment on South Albert Pike in Ft. Smith. He stated that, prior to their marriage, the parties talked about buying the Camelot property together. John stated that he thought they were buying it together, that he thought that was what the parties' Camelot Agreement accomplished, and that he thought he owned half of the Camelot property. John stated, "[during the marriage] I felt like we always treated it as our joint home and told everybody we knew it was our house." John stated that the parties jointly contributed to the mortgage payments, utilities, and household expenses. John also provided documentation showing that he had incurred expenses totaling $11,465.42 for home repairs and improvements.

With respect to the two cars acquired during the parties' marriage, John testified that the parties each paid $18,400 to purchase the Honda Pilot. John stated that the Buick was purchased with assets from one of his nonmarital corporate accounts.

At the conclusion of the final hearing, John's counsel argued, "It's our position that he's entitled to a half-interest in the home and he's entitled to keep the accounts that were in the joint accounts in return for which she got the Honda." The trial court ruled from the

bench that the Camelot property would be awarded to Nancy, that Nancy would be awarded half of the bank withdrawals in the amount of $13,044.12, and that each party would be awarded the personal property in his or her possession as his or her separate property. With respect to the Camelot property, the trial court stated from the bench:

> I think it's pretty clear from the agreement that the trigger of fact of the $40,000 on the house was an engagement being broken. And that property was clearly deeded and mortgaged in [Nancy's] name. And I think had they broken off an engagement and not gotten married, [John] would be entitled to that $40,000.

On August 15, 2022, the trial court entered a divorce decree wherein the court made these pertinent findings:

> 5. [Nancy] is awarded $13,044.12, representing one-half (1/2) of the amount in joint accounts at the time the accounts were substantially emptied by [John]. [John] shall pay this amount to [Nancy] within thirty (30) days of the entry of this Decree of Divorce. Each party is hereby awarded all other personal property in their possession and all debt in their own name.
>
> 6. Each party is awarded any real property in their own name free of any interest of the other. Specifically, [Nancy] is awarded the real property located on Camelot Drive in Fort Smith, Arkansas as her sole and separate property, and [John] is awarded any property he may have purchased in Oklahoma in his own name as his sole and separate property.[4]

John now appeals from the divorce decree, arguing that the trial court clearly erred in awarding the Camelot property solely to Nancy. John also argues that the trial court clearly erred in dividing the parties' personal property.

I. *The Camelot Property*

[4]It is uncontested that the Oklahoma property referenced by the trial court was bought with John's nonmarital assets.

The primary issue in this appeal pertains to the Camelot property, which the trial court awarded to Nancy as her separate property. The parties essentially disagree on the meaning of the Camelot Agreement, with John arguing the agreement was proof of joint ownership of the property and Nancy arguing that the agreement pertained to only their engagement and not ownership. Nancy asserts that the Camelot property was placed solely in her name and that it belonged solely to her consistent with what the parties intended. We observe that both parties agree that the Camelot Agreement and the later-executed Pre-nuptial Agreement are completely separate agreements and that the Pre-Nuptial Agreement did not modify the terms of the Camelot Agreement.

Arkansas Code Annotated section 9-12-315(a)(1) (Repl. 2020) provides that all marital property shall be distributed one-half to each party unless the court finds such a division to be inequitable, in which event the trial court must state its basis and reasons for not dividing the marital property equally. Arkansas Code Annotated section 9-12-315(a)(2) provides that all property shall be returned to the party who owned it prior to marriage unless the court shall make some other division that it deems equitable, in which event it must state its basis and reasons for the unequal distribution. Here, the trial court awarded the Camelot property to Nancy as her separate nonmarital property, and it is evident that in dividing all the parties' property, the trial court endeavored to make an equal distribution.

Although this is a domestic-relations case, because the parties' Camelot Agreement is at issue, our standard of review for contract interpretation is implicated as well. When a contract is free of ambiguity, its construction and legal effect are questions of law for the

court to determine. *Poff v. Peadin*, 2010 Ark. App. 365, 374 S.W.3d 879. Language is ambiguous if there is any doubt or uncertainty as to its meaning and it is fairly susceptible to more than one equally reasonable interpretation. *Id.* When contracting parties express their intention in a written instrument in clear and unambiguous language, it is the court's duty to construe the writing in accordance with the plain meaning of the language employed. *Id.*

John argues that the plain terms of the Camelot Agreement established joint ownership of the Camelot property. He asserts that the Camelot Agreement provides that the parties "are buying a house together" in anticipation of their marriage, and he contends that it would be unreasonable to conclude that the agreement provided for anything other than joint ownership.

We disagree with John's argument and hold that there was no clear error by the trial court in awarding the Camelot property to Nancy as her separate property. We note that John had previously been employed as a tax accountant and owned at least two parcels of real estate in Ft. Smith. Further, during the marriage, John purchased a house and campground in Tahlequah, Oklahoma, in his own name for $1.5 million. Again, the Camelot Agreement provides:

> John Townshend and I, Nancy McDowell, are buying a house together located at 2119 Camelot Drive, Lot 7, Wedgewood Heights, Fort Smith, Arkansas. We will each pay a portion of the down-payment. *If after I have received and deposited a check for John's part of the down-payment and the check has cleared in the bank either of us break the engagement I will return to John Townshend a check in the amount of $40,000 and he will no longer be connected to the property in any way*. No further reimbursements shall be asked for or received by either party at the time or in the future. *Let it be known*

> *that if the engagement is broken by either person there will be no reconciliation in the future between John Townshend and Nancy McDowell.*

(Emphasis added.) The italicized sentences above plainly answer the question of what would happen if either party had broken the engagement. In that event, Nancy would have returned John's $40,000 to him, he would have no interest in the Camelot property, and there would be no reconciliation between the parties. But the engagement was not broken, and the Camelot Agreement does not answer—nor does it contemplate—what happens to the Camelot property if the parties do get married. The trial court found that the "trigger" in the Camelot Agreement was the engagement being broken. Because the engagement was not broken, the Camelot Agreement was no longer relevant. Then the trial court found that the Camelot property was clearly deeded and mortgaged in Nancy's name prior to the marriage, and the court awarded each party any real property in his or her own name free of any interest in the other. Because the Camelot Agreement did not resolve the issue of ownership of the Camelot property in the event the parties did marry; the Camelot property was subsequently deeded and mortgaged in Nancy's name alone; and the parties married six months later, we conclude that there was no error in awarding the Camelot property to Nancy as her separate nonmarital property.[5]

[5]John also cites *Hickman v. Kralicek Realty and Construction Co.*, 84 Ark. App. 61, 129 S.W.3d 317 (2003), and argues that to the extent there is any ambiguity in the Camelot Agreement, it should be resolved against Nancy because she prepared the document. However, it is evident that the trial court found no ambiguity in the contract; therefore, this rule of contract interpretation is inapplicable.

We observe that under this point, John also argues that the trial court erred in dividing marital property—i.e., the Camelot property—unequally without stating the court's basis and reasons for the unequal division as required by Ark. Code Ann. § 9-12-315(a)(1)(B); and that even assuming the Camelot property is Nancy's nonmarital property, the trial court is authorized under Ark. Code Ann. § 9-12-315(a)(2) to divide nonmarital property unequally, and the trial court should have done so here to make a division that was fair and equitable under the circumstances. However, John did not raise these arguments to the trial court below. In order to preserve an issue for appeal, the appellant must specifically raise the argument relied on to the trial court, develop the argument there, and obtain a ruling on the argument. *Evans v. Carpenter*, 2022 Ark. App. 83, 642 S.W.3d 235. Because these arguments were not raised below and are not preserved for our review, we decline to address them.

For these reasons, we affirm the trial court's decision to award the Camelot property to Nancy.

II. *Division of Personal Property*

John next challenges the trial court's division of the parties' personal property. John does not challenge the trial court's finding that Nancy is entitled to $13,044.12 as her one-half interest in the parties' marital accounts. However, he contends that the trial court erroneously awarded Nancy the 2018 Honda Pilot, stating that the Honda Pilot was marital

property and that the trial court did not make any findings to support an unequal distribution of the marital property.

Having considered the testimony at the final hearing, we find no clear error in the trial court's distribution of the parties' marital property. The trial court awarded the parties the personal property in his or her possession. Nancy testified that during the marriage, the parties acquired a 2018 Honda Pilot, which was in her possession, and a 2017 Buick, which was in John's possession. John testified that the 2017 Buick was purchased with his nonmarital funds; however, Nancy testified that both cars were titled in both parties' names. There was no other evidence in the record regarding the ownership of these vehicles.

Once property is placed in the names of both husband and wife without specifying the manner in which they take, such property is presumed to be held by them as tenants by the entirety. *Thomas v. Thomas*, 68 Ark. App. 196, 4 S.W.3d 517 (1999). Moreover, it is the trial court's duty to assess the credibility of the witnesses, *see Chekuri*, *supra*, and Nancy testified that both automobiles were titled in both parties' names. The trial court awarded each party the automobile in his or her possession, and we hold on this record that the trial court's division of the parties' personal property was not clearly erroneous.

III. *Conclusion*

In conclusion, we hold that the trial court committed no error in awarding the Camelot property to Nancy nor did it err in its division of the parties' personal property. Therefore, we affirm the divorce decree in its entirety.

Affirmed.

ABRAMSON and WOOD, JJ., agree.

Bradley D. Hull, for appellant.

Walters, Allison, Parker & Estell, by: *Derick Allison*, for appellee.