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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA10-1016

JOHN LOUIS McCLURE
APPELLANT/CROSS-APPELLEE

V.

TRACY KARA SCHOLLMIER-McCLURE
APPELLEE/CROSS-APPELLANT

Opinion Delivered November 9, 2011

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SIXTEENTH DIVISION
[NO. DR 2009-3129]

HONORABLE ELLEN B. BRANTLEY, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Tracy Schollmier-McClure was granted a divorce from John Louis McClure by decree entered on July 9, 2010. John appealed from the court's order, and Tracy cross-appealed. We granted John's motion to dismiss his appeal and have before us only Tracy's cross-appeal. On cross-appeal, Tracy contends that the trial court erred in finding that the parties' home was marital property and in requiring her to pay a portion of John's credit card debt. We find no error and affirm the court's order.

The parties married in 1999 and lived together in New Orleans in a duplex purchased by Tracy before the marriage with funds provided to her by her father, Ken Schollmier. The parties moved to Little Rock in 2002 and bought a home, which was titled in both of their names. The purchase price for the house was $195,000, of which $100,000 was provided by Mr. Schollmier and $95,000 came from the proceeds of Tracy's New Orleans duplex that sold

about a year after they purchased the Little Rock home. John and Tracy signed a promissory note to Mr. Schollmier for the funds he provided. Shortly after they purchased the home, John and Tracy borrowed $100,000 from Twin City Bank to repay Mr. Schollmier. In February 2008, Mr. Schollmier paid off this loan, and Tracy executed a promissory note for the amount of the pay-off plus an additional $10,000 to pay off credit card debt, for a total amount of $103,000.

The parties separated in April 2009, and on June 9, 2009, Tracy filed a complaint for divorce. Testimony at trial revealed that the parties' house was worth approximately $270,000. The parties were also joint owners of a brokerage account at Ameriprise Financial Services, worth about $201,000 at the time of the trial. The testimony revealed that the parties owed money to Mr. and Mrs. Schollmier. This included the note signed by Tracy for $103,000 when Mr. Schollmier paid off the mortgage on the parties' home and some credit card debt; a note signed by both parties for $200,000 (plus interest of over $50,000) for a loan to purchase the securities in the account at Ameriprise; and $4,000 for the balance owed on a promissory note signed by the parties on May 12, 2005. Finally, John testified that he had credit card debt of $53,000. The parties disputed how the house should be divided, with Tracy arguing that it was non-marital property because all of the funds used to pay for it came from her or her family. John argued that the house was marital property and should be split equally between the parties. Tracy also contended that she should not be responsible for any of John's credit card debt because it was not marital debt.

The court divided up various checking accounts and retirement accounts, which are not in issue here. Additionally, the court found that the home was owned by the parties as tenants by the entirety, which it converted to a tenancy in common. The court ordered the property to be sold, with the proceeds to be applied to the cost of the sale and then to the existing debt plus interest owed to the Schollmiers on the $103,000 note, the $4,000 note, and the $200,000 note. The court also ordered the parties to liquidate the Ameriprise account and apply the proceeds toward the payment of the $200,000 promissory note, which, including interest, had a balance due of $255,254 at the time of trial. Finally, the court found that $35,000 of John's $53,000 in credit card debt was marital debt and that $13,012 loaned to the parties by the Schollmiers through various checks marked as "loans" was also marital debt. The court found John and Tracy equally responsible for the payment of these debts.

I.

For her first point on cross-appeal, Tracy contends that the trial court clearly erred in failing to recognize that the Little Rock home was non-marital property. She argues that the evidence overwhelmingly established that the home was purchased with her separate funds or those of her family. Thus, she claims, the court should have awarded the home to her.

We review division-of-marital-property cases de novo; however, we will affirm the trial court's findings of fact unless they are clearly erroneous or against the preponderance of the evidence. *Grantham v. Lucas*, 2011 Ark. App. 491, at 6, ___ S.W.3d ___, ___. Turning to the facts in this case, we recognize that, except for a small amount the parties paid on their loan to Twin City Bank, the funds used to pay for the parties' Little Rock home came from

the sale of Tracy's duplex in New Orleans and from money loaned to the parties by Tracy's father, Mr. Schollmier. But more important than how the house was purchased is how it was titled. The title to the Little Rock home was in the name of Tracy and John McClure, husband and wife. Property placed in the names of persons who are husband and wife, without any specification otherwise, is presumed to be owned by them as tenants by the entirety. *Powell v. Powell*, 82 Ark. App. 17, 20, 110 S.W.3d 290, 292 (2003). Clear and convincing evidence is required to overcome this presumption. *Id.* Moreover, when a husband and wife hold real property as tenants by the entirety, it is presumed that the spouse who furnished the consideration made a gift in favor of the other spouse, and this presumption must also be rebutted by clear and convincing evidence. *Collins v. Collins*, 2010 Ark. App. 506, at 2. While Tracy might have intended to maintain the status of her separate property, she did not. The deed to the house is to the parties jointly, as husband and wife. The trial court did not clearly err in finding that Tracy failed to overcome the presumption of a gift. Therefore, we affirm the trial court's finding that the home was marital property subject to equal division pursuant to Ark. Code Ann. § 9-12-315 (Repl. 2009).

II.

For her second point on appeal, Tracy contends that the trial court erred in finding that a portion of John's credit card debt was marital and in allocating half of that debt to her. There was very little evidence regarding this debt. John testified that he had accumulated $53,000 of credit card debt in his own name over the three-year period before the hearing in March 2010. He attributed the debt to his difficulty in building his new business during

the two years before the hearing. On cross-examination, John testified that he had used the credit card over the past year and a half to pay the bills on the house. However, he admitted that he had no receipts, no credit card statement, and no other evidence to show what was purchased with the credit card.

With regard to John's credit card debt, the trial judge opined from the bench that she "suspect[ed] that a lot of that was marital debt, but such that he's run up since the time that the parties separated isn't, and there's not been any proof on that. So, I mean, my thought would be to just roughly say that probably thirty-five thousand dollars of it is marital[.]" In its order, the court found that $35,000 of John's credit card debt was marital and found the parties equally responsible for its payment.

Arkansas Code Annotated section 9-12-315 does not apply to the division of marital debt. *Williams v. Williams*, 82 Ark. App. 294, 308, 108 S.W.3d 629, 638 (2003). Thus, there is no presumption that an equal division of debts must occur. *Id.* But the trial court has authority to consider the allocation of debt in the context of the distribution of all of the parties' property, and its decision to allocate debt to a particular party or in a particular manner is a question of fact and will not be reversed on appeal unless clearly erroneous. *Id.* at 309, 108 S.W.3d at 638. In this case, part of the debt was incurred before the parties separated and part was incurred after. The parties had been separated for a year at the time of the hearing, and John testified that he had incurred the debt during the three years before the hearing. He also testified that he used the credit card to pay the bills on the parties' home for the year and a half before the hearing. Thus, his testimony was that the debt incurred

during their separation benefitted Tracy, who lived in the parties' home. While no credit card statements were provided to confirm this, we note that Tracy did not request this information in discovery and provided no evidence at trial to refute John's testimony. The court found that only $35,000 of the $53,000 debt was marital debt and allocated only half of that, or $17,500, to Tracy. We cannot say that the trial court clearly erred. Therefore, we affirm the court's order.

Affirmed.

HART and BROWN, JJ., agree.