

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAURIE G. WOLINSKI,)
) No. 432, 2002
 Petitioner Below,)
 Appellant,) Court Below: Family Court of the
) State of Delaware in and
 v.) for New Castle County
)
 MICHAEL L. WOLINSKI,) File No. CN01-06477
)
 Respondent Below,)
 Appellee.)

Submitted: February 19, 2003

Decided: April 8, 2003

Before **VEASEY**, Chief Justice, **BERGER**, and **STEELE**, Justices.

ORDER

This 8th day of April 2003, it appears to the Court that:

1. This is an appeal from a decision and order of the Family Court of Delaware concerning a property division following the divorce of Laurie and Michael Wolinski. Following a hearing on January 29, 2002, the trial judge issued a Decision and Order on March 25, 2002. On June 28, 2002, the trial judge issued a Letter Decision and Order granting in part and denying in part Wife's Motion for Reargument. Wife raises two issues in this appeal: (i) the trial judge erred by finding that the home constituted a marital asset and (ii) the trial judge abused his discretion when he valued the marital home at \$57, 314.

2. Husband and Wife married on May 26, 1990 and divorced on March 29, 2001. They lived in a Cochran Street home for most of the marriage. Wife's mother owned the Cochran Street property. Husband and Wife paid rent to Wife's mother.

3. During the parties' marriage, Wife's name was added to the title of the Cochran Street property. In her testimony, Wife explained that the parties needed more room at the Cochran Street property, and wanted to construct an addition to the home. Wife claimed that her mother could not obtain financing to construct the addition. Consequently, they decided to add Wife's name to the title of the property so that her income could be considered in obtaining the \$50,000 needed for the addition. Despite the change in title, the parties continued to act as tenants. They paid no portion of the loan and did not claim deductions for interest or taxes on their income tax forms.

4. The \$50,000 Wife's mother borrowed did pay not the full costs of the addition. Husband and Wife secured an additional \$20,000 loan and repaid it during the marriage. During trial, Husband never asserted that the property constituted a marital asset. On the contrary, Husband limited his claim to a share of the \$20,000 loan.

5. The trial judge found that Wife's interest in the property constituted a marital asset subject to distribution because Wife acquired an interest during the

marriage. The trial judge noted that Wife purchased the property outright from her mother after the divorce and concluded that the “timing of the purchase implies that this transaction was not at ‘arm’s length.’”¹ In determining a value for the property, the trial judge noted the absence of evidence for valuation purposes, and used the value of the improvements to value that asset.

6. Wife now appeals the Family Court’s findings and judgment. She argues: (i) that the trial judge erred by determining that the Cochran Street property was a marital asset subject to division; and (ii) that the trial judge abused his discretion when he determined the home’s value to be \$57, 314.

7. This Court’s review of appeals from the Family Court extends to review of the facts and law as well as to a review of the inferences and deductions made by the trial judge.² This Court will not disturb findings of fact unless they are clearly wrong and justice requires that they be overturned.³ This Court will not substitute its own opinion for the inferences and deductions made by the trial judge if they are supported by the record and are the product of an orderly and logical deductive process.⁴

8. Wife claims that the trial judge erred when he determined the Cochran Street property to be a marital asset subject to division. Wife claims (and

¹ *Wolinski v. Wolinski*, Del. Fam. Ct., No. CN01-06477, Buckworth, J. (March 25, 2002)

² *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

³ *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983) (*citing Wife (J.F.V.)*, 402 A.2d at 1204).

⁴ *Solis*, 468 A.2d at 1279.

Husband does not dispute) that her name was added to the title for the purpose of obtaining financing and that she acquired no equitable interest in the property. Wife also complains that the trial judge's conclusion that the after-divorce purchase of the mother's home was not at arm's length surprised her at trial. Wife claims that with notice that the matter would be raised either by husband or *sua sponte* by the Court that she would have presented evidence to the contrary.

9. When Wife acquired a legal interest in 1995, the property became a marital asset pursuant to 13 *Del. C.* § 1513. 13 *Del. C.* § 1513 states in part: "All property acquired by either party subsequent to the marriage is presumed to be marital property regardless of whether title is held individually or by the parties in some form of co-ownership such as joint tenancy, tenancy-in-common or tenancy by the entirety."⁵ The Cochran Street property was presumed to be a marital asset when Wife, during the marriage, acquired a legal interest by having her name put on the title to secure the loan.

10. However, the presumption that the property was marital property pursuant to 13 *Del. C.* §1513(c) is a rebuttable presumption that may "[be] overcome by showing that the property was acquired by a method listed in paragraphs (1) through (4) of subsection (b) of this section."⁶ Wife could have rebutted the presumption that the Cochran Street property was a marital asset

⁵ 13 *Del. C.* §1513 (c).

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subject to a property division by establishing that she acquired her interest by one of the methods contemplated by §1513(b). Wife presented no evidence to show that the Cochran Street property met any of the criteria set out in 13 *Del. C.* §1513(b) that would have rebutted the presumption that property acquired during a marriage by either party was marital property subject to a marital property division order upon divorce. The trial judge's conclusory remarks that the wife's post-divorce purchase of her mother's interest was not at arms length has no bearing on the statute's declaration that acquisition of an interest during the marriage makes that interest fair game for a property division hearing. The statute itself put wife on notice to be prepared to rebut any inference that her acquisition of any interest in the Cochran Street property constituted marital property subject to division in the wake of a divorce.

11. The trial judge carefully discussed the different methods of valuation traditionally applied by the Family Court. The trial judge determined that the best method was to determine “deposit and down payment toward the purchase price, the cost of improvements, and the actual payments on any loan borrowed for improvements and mortgage payments.”⁷ However, the trial judge concluded that he could not accurately employ that method because he lacked any documentation of the value of the Cochran Street property. In his attempt to assign a fair and

⁷ See *Albanese v. Albanese*, Del. Fam. Ct., No. CN93-09486 (June 28, 1996).

reasonable value to the Cochran Street property, the trial judge used the method discussed in *In re D.K.H.*⁸ Without an appraisal or any direct evidence of the value of the property, other than the cost of the improvements made to the property, the *In re D.K.H.* court valued the property at the cost of the specific improvements to the residence.⁹

12. Here, the trial judge determined that improvements to the Cochran Street property totaled \$63,022.00. However, after re-argument, the judge deducted \$6,022.00 which represented the value of the non-fixtures and personality that would be divided as personal furnishings.

13. Valuations of real and personal property in marital property divisions ancillary to a divorce are highly discretionary exercises of equitable power. Where parties offer no evidence of value, we conclude that they must accept the trial judge's best efforts at determining a value. We will not disturb the findings and conclusions of a trial judge, where as here the trial judge used an orderly and logical deductive process to determine value. At the very least, given the evidence the trial judge had available, the trial judge did not abuse his discretion.

⁸ 2001 WL 1773595 (Del. Fam. Ct.)

⁹ *In re D.K.H.*, 2001 WL 1773595 *4 (Del. Fam. Ct.)

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice