

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|---------------------------|---|----------------------------------|
| BLANCHE BATTAGLIA, | § | |
| | § | No. 86, 2005 |
| Respondent Below, | § | |
| Appellant, | § | Court Below: Family Court |
| | § | of the State of Delaware, in and |
| v. | § | for New Castle County |
| | § | |
| VICTOR F. BATTAGLIA, | § | No. CN00-08828 |
| Executor of the Estate of | § | |
| Nicholas Battaglia, | § | |
| | § | |
| Petitioner Below, | § | |
| Appellee. | § | |

Submitted: July 19, 2005
Decided: August 24, 2005

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 24th day of August 2005, on consideration of the parties' briefs, it appears to the Court that:

(1) The respondent-appellant, Blanche Battaglia, appeals a property division decision of the Family Court which denied her claims of interest in certain property owned by her late former husband, Nicholas Battaglia. Nicholas and Blanche Battaglia ("Husband" and "Wife") were married on May 26, 2000 and divorced by final decree of the Family Court on November 26, 2003. Husband died on January 24, 2004 and the petitioner-appellee, Victor F. Battaglia, executor of Husband's estate,

was substituted for Husband in this proceeding. Wife contends that the Family Court erred by not awarding her any interest in certain real estate, and that it further erred in its award of proceeds from the sale of certain personal property. We find no merit to her claims. Accordingly, we affirm the judgment of the Family Court.

(2) Husband, as sole owner of Brandywine Securities, Inc., purchased real property located at 100 Havernill Lane, Centerville, Delaware with the contract of sale executed on March 29, 1999 and the final settlement occurring on June 3, 1999. The parties, however, did not begin any discussion of marriage until April 1999 and Wife did not contribute any funds towards the purchase of the home. Nor did Wife ever serve as a homemaker for the Havernill property, since the parties never moved in or treated it as a marital residence. Husband, as part of his business, also purchased two other properties located on Washington Street and on Wood Road in Wilmington. During the marriage, Husband and Wife also purchased furnishings together, which were sold by Husband's estate for \$8,700.

(3) The Family Court concluded that the Havernill property was not purchased in contemplation of marriage and therefore denied Wife any interest in the proceeds from its sale. The Family Court further concluded that Husband's purchase of the other properties was part of his normal course of business, and that because Wife did not contribute financially to the purchase, she was not entitled to any portion

of the profits made from resale. Finally, Wife retained possession of the bedroom furnishings which were valued at \$2,500. As a result of Wife keeping this furniture, the Family Court deducted Husband's portion of the bedroom furniture's value from Wife's portion of the \$8,700 and awarded her only \$3,100.

(4) On appeal, Wife first argues that the Family Court erred as a matter of law in denying her any interest in the Havernill property. Wife contends that even though talk of marriage did not begin until after the purchase of the house, Husband purchased the property with the intention of sharing it with Wife. Wife also contends that she made equitable contributions to the house by buying and moving furniture into the house.

(5) Delaware law defines marital property as any property acquired by either party subsequent to the marriage.¹ In *Wilson v. Lynn*, however, the Family Court carved out an exception to that rule, stating that marital property may also include any property acquired prior to marriage but "in contemplation of the marriage."² Wife argues that the Havernill property should fall within that exception. *Wilson* sets forth a four-prong test to determine whether property is acquired in contemplation of marriage: 1) the property must have been acquired within three months of the

¹ DEL. CODE ANN. tit. 13, § 1513(b) & (c) (2005).

² 1993 WL 331899, at *2 (Del. Fam. Ct.).

marriage; 2) a wedding date must have been previously set; 3) there must be a compelling legal or financial reason for not placing title in both parties' names; and 4) both parties must have taken active involvement in the purchase.³

(6) Applying the *Wilson* test, it is clear that the Havernil property was not purchased in contemplation of marriage. The record shows that the house was purchased on March 27, 1999, yet the marriage did not occur until May 26, 2000, well past the specified three month period. Wife attempts to avoid the *Wilson* test by citing *Bennett v. Bennett*, a Family Court case which chose not to follow *Wilson* and instead advocated deciding such matters on a case by case basis.⁴ Even if we were to ignore the *Wilson* test, the Family Court did not abuse its discretion in deciding that the Havernill property was not purchased in contemplation of marriage. The parties never moved into the house, with each living in their own separate residence during their marriage, and the husband made all mortgage payments on the property. The only contribution Wife made to the improvement of the property was buying and moving furniture for the house, actions that the Family Court found legally insufficient. We find no error in that determination.

³ *Id.* at *3.

⁴ 1995 WL 775118 (Del. Fam. Ct.).

(7) Wife next argues that the Family Court erred in not awarding her any interest in the Washington Street and Wood Road real estate properties. Although Delaware law presumes that all property acquired subsequent to the marriage qualifies as marital property under 13 *Del. C.* § 1513 (c), the Delaware Divorce Statute provides factors for dividing marital property, specifically “[t]he contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker, husband, or wife”⁵ The record indicates that Husband purchased the two properties through separate business funds and that Wife did not supply any deposit money or contribute in any way to the purchase or preservation of the property, except for attending the sale with Husband and encouraging him to purchase the properties. The Family Court acted within its discretion in determining that Wife was not entitled to any equitable interest in the properties under the circumstances of this case.

(8) Finally, Wife argues that the Family Court erred in only awarding her \$3,100 of the marital furnishings and appliances from the entire estate. Wife claims that the \$8,700 determined by the Family Court as the value of the marital furnishings and appliances was undocumented and incorrect, and that their actual value was \$84,859. Wife, however, never submitted any appraisal value for the furnishings to

⁵ DEL. CODE ANN. tit. 13, § 1513(a)(6) (2005).

disprove the \$8,700 amount, nor did she seek leave to present documentation of the value of the furnishings subsequent to trial. The Family Court accepted the documented proceeds from the sale of the furnishings as their value and divided them on an equal 50/50 basis, deducting wife's portion of the bedroom furniture paid for by the estate. Thus, the Family Court did not err in finding that \$8,700 was the only documented value of the marital furnishings and appliances.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice