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MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

CHRISTOPHER FRANCIS RENNERT,

Appellant,

v.

MELANIE CAMPOS RENNERT; CHRISTOPHER F. RENNERT, INC.; and CRG ASSOCIATES, INC.,

Appellees.

Case No. 2D18-3906

Opinion filed December 16, 2020.

Appeal from the Circuit Court for Pinellas County; Keith Meyer, Judge.

Mark F. Baseman of Felix, Felix & Baseman, LLC, Tampa, for Appellant.

K. Dean Kantaras and Roberta E. Blush of K. Dean Kantaras, P.A., Palm Harbor, for Appellee Melanie Campos Rennert.

No appearance for remaining Appellees.

KHOUZAM, Chief Judge.

Christopher Rennert, the Husband, timely appeals a final judgment of dissolution of his marriage to Melanie Rennert, the Wife. He challenges the equitable distribution scheme, the award of alimony, and the award of attorney's fees.

The Wife correctly concedes that the trial court reversibly erred in crafting the equitable distribution scheme by failing to identify and value much of the marital estate. The trial court also erred by ruling that certain premarital real property was a marital asset. Accordingly, we reverse and remand for the trial court to complete the equitable distribution scheme. Because completing the equitable distribution on remand will necessarily require the trial court to reconsider the awards of alimony and attorney's fees as well, the Husband's specific challenges to those awards are rendered moot.

This complex dissolution proceeding began in 2013 and was heard over eight days of trial spanning from April 2016 to January 2017, after which the trial court pronounced oral rulings in March 2017 and rendered final judgment in January 2018. Despite these extended proceedings, the parties agree—and the record reflects—that the trial court failed to clearly identify, value, and distribute the bulk of the parties' assets and liabilities.

"In fashioning an equitable distribution, a court is required to make specific written findings of fact that identify, classify, value, and distribute the parties' assets and liabilities." Pavese v. Pavese, 932 So. 2d 1269, 1270 (Fla. 2d DCA 2006); see also § 61.075(3), Fla. Stat. (2018). "A final judgment without such findings must be reversed." Pavese, 932 So. 2d at 1270. Accordingly, we reverse the final judgment and remand for the trial court to complete the equitable distribution.

Among the assets the trial court did value was real property referred to as Pinehurst. Although the Husband does not challenge the trial court's factual findings with respect to Pinehurst, he argues that the trial court erroneously classified it as a marital asset. On de novo review, we agree. See Dravis v. Dravis, 170 So. 3d 849, 852

(Fla. 2d DCA 2015) (explaining that a trial court's characterization of an asset as marital or nonmarital is reviewed de novo).

The trial court recounted a complex series of transactions over a course of years involving Pinehurst and other properties. But the salient facts for Pinehurst's classification as marital or nonmarital can be distilled as follows. Before the marriage, the Husband had acquired ownership interests in four relevant properties: Pinehurst, and Walgreens Parcels[1] 1, 2, and 3. By the date of the marriage, the debts on Pinehurst and Walgreens Parcels 1 and 3 had been consolidated into a single mortgage. During the marriage, the Husband purchased Walgreens Parcel 4 by increasing the debt against the consolidated mortgage. The consolidated mortgage was paid down during the marriage with marital income. During the marriage, the Husband sold all four Walgreens Parcels and used the proceeds to satisfy the mortgage.

Based on these facts, the trial court concluded:

> The Court finds this is a co-mingling case in accordance with Pfrengle v. Pfrengle, 976 So. 2d 1134 (Fla. 2d DCA 2008), as the co-mingling occurred when the 4th parcel—which was purchased after the date of the marriage—was added to the pre-marital lots and the pre-marital mortgages. The refinancing of the pre-marital Pinehurst mortgage with the 4th parcel, which was marital, resulted in co-mingling. Additionally, the mortgage payments on the re-financed Pinehurst mortgage were paid with income from the Husband's business, which were marital funds resulting from marital effort. The co-mingling effectively infected [Pinehurst], making it marital. Additionally, in accordance with Kaaa v. Kaaa, 58 So. 3d 867 (Fla. 2010), the Court finds that the servicing of the

[1]The parties and the trial court refer to the non-Pinehurst parcels this way because Walgreens ultimately purchased them. We adopt their nomenclature here for clarity and ease of reference.

> mortgage during the marriage with marital funds resulted in both active and passive appreciation.

We agree with the Husband that the trial court's factual findings do not establish that Pinehurst was commingled with marital assets or otherwise lost its nonmarital character. In that regard, this case is more like Higgins v. Higgins, 226 So. 3d 901 (Fla. 4th DCA 2017), than the Pfrengle decision that the trial court relied upon.

In Higgins, the wife owned an interest in nonmarital real property from a prior marriage. Id. at 905. During the marriage at issue, the couple borrowed against that premarital property to secure funds to build their marital home. Id. at 905-06. Then, they borrowed against their new marital home to satisfy the loan secured by the premarital property. Id. at 906. They sold the premarital property during the course of the marriage. Id.

The trial court in Higgins ruled that the premarital property had been commingled with marital assets, and thus the proceeds from the sale of the premarital property constituted a marital asset. Id. In so concluding, it relied upon the following four facts: (1) the wife used marital funds to pay down the mortgage, (2) she did not prove any enhanced value was exempt from distribution, (3) the equity in the premarital property was used to fund the marital home, and (4) the couple borrowed against the marital home to satisfy the loan on the premarital home. Id.

The Fourth District reversed, holding that these facts did not support the conclusion that the premarital property had "lost its nonmarital character." Id. at 907. In particular, "the use of marital funds to satisfy a marital debt secured by the nonmarital property did not transform the entire value of the [premarital] property into a marital asset." Id. (footnote omitted). Instead, the premarital property remained nonmarital,

although the husband was entitled to a share of any enhanced value and equity in the property. Id.

The same result should have occurred here. Neither borrowing against Pinehurst to obtain new marital property nor later paying down the mortgage with marital funds caused Pinehurst to lose its separate character. Thus, Pinehurst remains nonmarital property, and the trial court erred in concluding otherwise.

In contrast, Pfrengle v. Pfrengle, 976 So. 2d 1134 (Fla. 2d DCA 2008), addressed monies, not real property. There, we explained: "Money is fungible, and once commingled it loses its separate character." Id. at 1136. Consequently, "[w]hen Pfrengle commingled marital and nonmarital funds in his personal account, all the funds in that account lost their separate nonmarital character." Id. No such thing occurred with respect to the real property at issue here.

Notably, neither party has identified any authority where nonmarital real property became a marital asset by virtue of commingling. To the contrary, that would be inconsistent with the reasoning in Higgins, which rejected the argument that the proceeds from the sale of the real property became marital. See 226 So. 3d at 907. Further, other Florida decisions draw a clear distinction in this regard between real property and money. See, e.g., Macleod v. Macleod, 82 So. 3d 147, 149 (Fla. 4th DCA 2012) (distinguishing conduct regarding inherited nonmarital real property "from the inheritance of money, which can lose its status as a non-marital asset if commingled with marital funds" (quoting Martin v. Martin, 923 So. 2d 1236, 1238 n.1 (Fla. 1st DCA 2006))). Although we do not go so far as to hold that there are no circumstances under

which real property can lose its nonmarital character by virtue of commingling, it is clear that the record here does not support that outcome.

The Wife concedes that if Pinehurst is nonmarital property, then she is entitled only to her marital share of its appreciation. See Kaaa v. Kaaa, 58 So. 3d 867 (Fla. 2010) (recognizing that under section 61.075, marital assets include the appreciation of a nonmarital asset resulting from marital efforts or funds). The trial court found that Pinehurst had appreciated during the marriage, but did not determine the amount of appreciation or the Wife's share. Thus, the trial court erred in finding that Pinehurst is a marital asset, and consistent with Higgins and Kaaa, we reverse and remand for the trial court to determine the amount of the property's appreciation and the Wife's share.

Our remand to correct and complete the equitable distribution renders moot the Husband's challenges to the alimony and attorney's fees awards.[2] See Orloff v. Orloff, 67 So. 3d 271, 272 (Fla. 2d DCA 2011) ("Our reversal of the equitable distribution portion of the final judgment renders the third issue moot because it results in the need to reconsider the alimony award on remand as well as the issue of attorney's fees and costs.").

We accordingly affirm the dissolution of the parties' marriage but reverse the equitable distribution, alimony, and attorney's fees awards and remand for further proceedings consistent with this opinion. On remand, the trial court may, in its

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[2]The Husband also contends that the trial court should not have awarded him a money judgment against the Wife for her portion of debt on the marital home, but instead should have offset that amount against the attorney's fees award. Although our disposition renders this issue moot as well, we question the propriety of this distribution mechanism in the particular context of this case.

discretion, take additional evidence. See Pavese, 932 So. 2d at 1270 (citing Nicholas v. Nicholas, 870 So. 2d 245, 248 (Fla. 2d DCA 2004)).

Affirmed in part, reversed in part, and remanded.

LUCAS and STARGEL, JJ., Concur.