

DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

---

JESSE T. HEARN, JR.,

Appellant,

v.

BETTY HEARN a/k/a Betty L. Hearn,

Appellee.

No. 2D20-2522

---

November 30, 2022

Appeal from the Circuit Court for Hillsborough County; Jared E. Smith, Judge.

Elaine L. Thompson, Atlanta, Georgia (withdrew after briefing); Ama Appiah of Law Office of Ama N. Appiah, P.A., St. Petersburg (substituted as counsel of record), for Appellant.

Matthew E. Thatcher and Alexander M. Bottone of The Solomon Law Group, P.A., Tampa, for Appellee.

BLACK, Judge.

Jesse Hearn, the former husband, appeals from the amended final judgment of dissolution, raising several issues. We find merit

in the former husband's contention that the trial court erred in assigning dissipated marital funds to him in the equitable distribution and therefore reverse in part. The remaining issues raised on appeal lack merit and warrant no further comment.

The former wife, Betty Hearn, filed the petition for dissolution of marriage in August 2017. Approximately two years prior, in July 2015, the former husband had been terminated by his employer for cause. Following his termination, the employer demanded that the former husband repay a bonus that had been given to him pursuant to his employment contract. The former husband refused and pursued litigation. At the conclusion of the litigation, which lasted a little over a year, a judgment (the Termination Judgment) was entered against the former husband. He satisfied the Termination Judgment using marital funds.

The trial court considered the Termination Judgment and the funds that had been used to satisfy the Termination Judgment for purposes of the equitable distribution. And in the amended final judgment of dissolution, the trial court found that the former husband had committed misconduct at work which caused him to

be terminated and resulted in his employer requiring that he repay his bonus. The trial court further found that the former husband had pursued litigation against his employer without the former wife's knowledge or consent and that he had satisfied the Termination Judgment using marital retirement funds without the former wife's knowledge or consent. The trial court therefore determined that the "[Termination] [J]udgment and the resulting liquidation of retirement assets constitutes misconduct which should be assigned to [the former husband] in [the] equitable distribution." The trial court valued the liquidated assets at \$220,000, but because the former husband had been solely responsible for the household expenses during the dissolution proceedings, the amount assigned to the former husband was reduced by the \$67,628.<sup>1</sup>

We review the trial court's distribution of marital assets for an abuse of discretion. *See Roth v. Roth*, 973 So. 2d 580, 586 (Fla. 2d

---

<sup>1</sup> The amended final judgment reflects that \$152,272 was assigned to the former husband as a result of his conduct. It appears, however, that the trial court made a mathematical error in reaching that figure since the difference between \$220,000 and \$67,628 is \$152,372.

DCA 2008). In order to assign dissipated marital assets to one party in the equitable distribution, misconduct must be shown.

*Belford v. Belford*, 51 So. 3d 1259, 1260 (Fla. 2d DCA 2011) (citing *Roth*, 973 So. 2d 584-85).

Misconduct is not shown by "mismanagement or simple squandering of marital assets in a manner of which the other spouse disapproves." Rather, there must be a specific finding of intentional misconduct based on evidence showing that the marital funds were used for one party's "own benefit and for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown."

*Id.* at 1260-61 (quoting *Roth*, 973 So. 2d at 585).

The former husband argues that the trial court erred in finding that his conduct justified assigning the dissipated retirement funds to him because the evidence established that he had used the funds to satisfy a legitimate marital debt and because no evidence had been presented establishing that the conduct occurred when the marriage was irreconcilably broken. We need not consider whether the evidence established that the use of the funds served a marital purpose because the trial did not find—and there is no evidence to support—that the former husband's conduct occurred at a time when the marriage was irreconcilably broken.

Absent such evidence, it was error for the trial court to assign the dissipated marital funds to the former husband. *Cf. Zambuto v. Zambuto*, 76 So. 3d 1044, 1046 (Fla. 2d DCA 2011) (holding that the trial court erred in assigning \$90,000 to the husband to account for the money he had lost while gambling during the final two years of marriage at which time the marriage was intact).

Based on the foregoing, we reverse the equitable distribution portion of the final judgment. On remand, the trial court shall recalculate the equitable distribution without consideration of the \$220,000 that had been used by the former husband to satisfy the Termination Judgment. The former husband shall once again be given credit for the expenses he paid during the dissolution proceedings, which the trial court found to amount to \$67,628. The final judgment of dissolution is otherwise affirmed.

Affirmed in part; reversed in part; remanded with directions.

NORTHCUTT and LUCAS, JJ., Concur.

---

Opinion subject to revision prior to official publication.