

Third District Court of Appeal

State of Florida

Opinion filed May 1, 2024.
Not final until disposition of timely filed motion for rehearing.

No. 3D23-1012
Lower Tribunal No. 15-4112

Nadja Marcela Bazan Vassallo,
Appellant,

vs.

Edelmo Escalona Socarras,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Maria Espinosa Dennis and Oscar Rodriguez-Fonts, Judges.

Gordon C. Watt, P.A., and Gordon C. Watt; Andrew M. Kassier, P.A., and Andrew M. Kassier, for appellant.

The Law Offices of Lizette Reboredo, P.A., and Lizette Reboredo, for appellee.

Before EMAS, GORDO and LOBREE, JJ.

GORDO, J.

Nadja Marcella Bazan Vassallo (“Former Wife”) appeals the amended final judgment dissolving her marriage to Edelmo Escalona Socarras (“Former Husband”). We have jurisdiction. Fla. R. App. P. 9.030(b)(1)(A). Because the trial court erred in failing to consider the marital funds used to pay down the mortgage on the Former Husband’s nonmarital property, we reverse.

The parties were married in 2005. In 2015, the Former Wife filed a petition for dissolution of marriage. The Former Husband filed a counterpetition. Thereafter, a final judgment of dissolution of marriage was entered. In a prior appeal to this Court,¹ we held that the Former Husband’s Miami Property must be classified as a nonmarital asset and remanded for the trial court to determine whether there was any appreciation in the value of the property during the marriage. On remand, the trial court entered an amended final judgment of dissolution finding the Former Wife was not entitled to a share of the appreciation because the Miami Property depreciated in value during the marriage. The Former Wife filed a motion for rehearing, which was denied pursuant to an agreed order of the parties. This appeal followed.

¹ Escalona Socarras v. Bazan Vassallo, 273 So. 3d 131 (Fla. 3d DCA 2019).

In this second appeal, the Former Wife challenges the trial court's failure to award a credit for any use of marital funds to pay down the mortgage on the Miami Property.

As other courts have previously observed, the Florida Supreme Court's decision in Kaaa v. Kaaa, 58 So. 3d 867 (Fla. 2010) did not affect the general rule that "[w]hen marital assets are used during the marriage to reduce the mortgage on non-marital property, the increase in equity is a marital asset subject to equitable distribution." Ballard v. Ballard, 158 So. 3d 641, 643 (Fla. 1st DCA 2014). Although the trial court in this case correctly found there was no appreciation, it erred in failing to give the Former Wife a credit for any use of marital funds to pay down the mortgage, which reduced the indebtedness on the Miami Property during the marriage. See Somasca v. Somasca, 171 So. 3d 780, 782 (Fla. 2d DCA 2015) ("Granted, the [property] did not appreciate in value during the term of the parties' marriage, but the use of marital funds to pay down the mortgage obviously caused an enhancement in the value of the Husband's equity in the property . . . It follows that the resulting increase in the equity value of the [property] was a marital asset subject to equitable distribution."); Frederick v. Frederick, 257 So. 3d 1105, 1111 (Fla. 2d DCA 2018) ("There is no question that the marital funds in this case were used to pay down the mortgage by \$7360.97,

resulting in an increase in the value of the Husband's equity in the property. Therefore, we reverse and remand to include the mortgage pay down in the equitable distribution award and to recalculate the equitable distribution as necessary.”); Nathey v. Nathey, 292 So. 3d 483, 485 (Fla. 2d DCA 2020) (“[T]he mortgage on the home and home equity line of credit were both paid down by marital funds. Accordingly, any increase in the property's equity due to these payments is a marital asset subject to equitable distribution. Therefore, on remand, the circuit court shall calculate the amount by which marital funds reduced the indebtedness on the home and equitably distribute to [the Wife] her share of that amount.”).

Reversed and remanded.