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Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-002430-ME

WILLIAM HUMPHREY KAISER, III — APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE PAULA SHERLOCK, JUDGE
ACTION NO. 06-CI-504632

RAVEN JOLEE KAISER — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MOORE AND THOMPSON, JUDGES, HENRY,[1] SENIOR JUDGE.

MOORE, JUDGE: William Humphrey Kaiser, III (William), appeals the Jefferson Family Court's order denying his motion to alter, amend, or vacate portions of the court's prior order entering findings of fact and conclusions of law in this divorce action. After a careful review of the record, we affirm.

[1] Senior Judge Michael Henry, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

I. FACTUAL AND PROCEDURAL BACKGROUND

William and Raven Jolee Kaiser (Raven) were married in November 2003. They had one child. In December 2006, an emergency protective order was entered ordering William to stay away from the marital residence. A domestic violence order was entered approximately one week later that directed William to obtain domestic violence offender treatment. William filed for divorce that same month.

Prior to their marriage, William owned a home on Downing Way in Louisville. The family court found that William's equity in the Downing Way home on the date of his marriage to Raven was $31,558.28. After they were married, William and Raven obtained a $25,000.00 line of credit mortgage on the home. They subsequently refinanced the mortgage and received an additional $21,000.00. The money from the line of credit and the mortgage were used to improve a farmhouse that was owned by William's parents and to buy a bull. The family court found that, "[a]lthough the parties had been told they could live in the house rent free in return for their investment, they never believed title would be transferred to them."

In the divorce proceedings, William contended that only $18,700.00 from the line of credit and $12,769.00 from the refinanced mortgage, *i.e.*, a total of $31,469.00, were used to improve the farmhouse. Thus, he alleged that the total amount invested in the farmhouse was less than the equity that he had in the Downing Way property before the parties were married and, accordingly, Raven

should not be awarded any money based on the money spent for improvements to the farmhouse.

The family court awarded Raven $20,000.00 for her share of the money spent improving William's parents' farmhouse after finding that, during their marriage, Raven

> became concerned about the significant debt the parties were taking on to improve a property that neither of them had a legal claim to, i.e. the farmhouse of [William's] parents. The [c]ourt [found] that, in response to these concerns, [William] promised [Raven] that, should they ever divorce, he would pay her $20,000.00 to reimburse her for her unrealized investment in the property. [Raven] relied on this promise and assumed additional debt.

Therefore, the family court ordered William to pay Raven "$20,000.00 to satisfy his obligation to her."

Prior to trial, Raven alleged that she could not find her promise ring, engagement ring, or wedding ring, and that William was the last person having possession of them. At trial, she testified that William told her he bought the rings for $10,000.00. However, William testified that he paid $4,000.00 for them, and he submitted an affidavit from a jeweler from whom he purportedly bought the rings, which stated that William purchased "an engagement ring and wedding band set for the purchase amount of $4,000.00 plus tax. The total purchase price was $4,240.00." The jeweler's affidavit continued, explaining that he had "reviewed the store records and prepared a duplicate receipt for [William] as he was unable to locate the original receipt." The jeweler attested that he "determined the receipt

amount by reviewing [his] purchase records of the item and from [his] memory. [The jeweler] purchased the items specifically for [William] to purchase as a wedding set and [the jeweler] was able to locate the paperwork of [his] original purchase of the items." Furthermore, the jeweler attested that he had "done business with [William] over the years and distinctly remember[ed the] purchase of the engagement ring and the wedding band set."

Regarding the rings, the family court noted William "testified that [he] had the jewelry but 'hid' these rings on top of a kitchen cabinet so they would be safe. [Raven] searched for the rings following the trial and provided an affidavit stating she could not find them." Thus, William "was the last person to have the rings in his possession and, having taken the rings, it was his responsibility to keep them safe." Consequently, the family court ordered William to pay Raven "the sum of $7,000.00 as reimbursement for her non-marital gift."

William moved to alter, amend, or vacate the family court's order, arguing, *inter alia*, that the $20,000.00 judgment against him to reimburse Raven for the money spent on his parents' farmhouse was improperly based on Raven's testimony that William had promised to reimburse her that amount if they ever divorced, when no such promise was made. Additionally, William contended that the $20,000.00 judgment for amounts spent improving the farmhouse, and the $7,000.00 judgment against him to reimburse Raven for the rings that he allegedly last had in his possession were improper because Raven had not raised these claims in her proposed findings of fact and conclusions of law before trial, although she

raised the issues at trial. William further argued that, concerning the finding that William was responsible for the lost rings, the family court "failed to consider the fact that Raven obtained an EPO against [him] in December and as a result he immediately left the house and [had] not been back in the house since December 3, 2006 – days before [the] divorce petition was filed." Thus, William asserted that the rings had been in Raven's "sole and exclusive possession."[2]

The family court denied William's motion, noting that the "$20,000 judgment awarded to [Raven] was based on an oral contract made by the parties when they were happily married. The contract was not a separation agreement. [Raven] relied on the contract in assuming additional debt. Accordingly, it does not fail for lack of consideration." Additionally, regarding the $7,000 judgment for the rings, the family court stated it "did not err in finding that [William] was the last person to have possession of [Raven's] rings and had a duty to keep them safe. [William] failed to produce any reliable proof to rebut [Raven's] testimony regarding the rings' value."

William now appeals, contending that: (1) the family court erred in finding that he made a binding promise to reimburse Raven for his use of his equity in the Downing Way property to improve his parents' property; (2) the family court clearly erred in charging him $7,000.00 for Raven's lost rings; and (3) the family court erred in awarding Raven the $20,000.00 and $7,000.00 judgments on claims that she did not raise in her pre-trial submissions.

[2] Raven alleged that William had possession of the rings before he was ordered to leave the house.

II. STANDARD OF REVIEW

On appeal, the family court's "factual findings underpinning the determination of whether an item is marital or nonmarital are entitled to deference and, consequently, [are] reviewed under the clearly erroneous standard. Ultimately, classification is a question of law, which [is] reviewed *de novo*." *Smith v. Smith*, 235 S.W.3d 1, 6-7 (Ky. App. 2006). "[T]he trial court is unquestionably in the best position to judge the weight and credibility of the evidence." *Id*. at 6. "[A] trial court has wide discretion in dividing marital property; and we may not disturb the trial court's rulings on property-division issues unless the trial court has abused its discretion." *Id*.

III. ANALYSIS

A. CLAIM THAT THERE WAS NO BINDING PROMISE TO REIMBURSE RAVEN[3]

William first alleges that the family court erred in finding that he made a binding promise to reimburse Raven for his use of his equity in the Downing Way property to improve his parents' farmhouse. He contends that he should not have been ordered to pay Raven $20,000.00 because the farmhouse on which they made improvements was owned by his parents and, thus, it was not a marital asset. Furthermore, William asserts that the money the parties borrowed to improve the farmhouse was borrowed against the equity William acquired in the Downing Way property himself before the parties were married. Finally, William argues that the alleged oral contract he made with Raven to reimburse her $20,000.00, if they ever divorced, was barred by the statute of frauds.

As for William's argument that the money borrowed was against the equity that he, personally and individually, held in the Downing Way property, both the line of credit and the refinanced mortgage were co-signed by Raven and, thus, she became as equally indebted as William on those loans. Therefore, William's allegation that the money borrowed as a result of those loans, which was used to repair the farmhouse, was his nonmarital property based on his equity in the house, lacks merit.

[3] William inexplicably spends a great deal of space in his brief arguing that the "oral promise [was] not enforceable as a separation agreement as it was not in writing." (William's Br. at pp. 6-11). However, the family court explicitly found that "[t]he contract was not a separation agreement." We agree. Therefore, this argument lacks merit.

Regarding the improvements made to the farmhouse, the family court found that, "[a]lthough the parties had been told they could live in the house rent free in return for their investment, they never believed title would be transferred to them. Neither party has any legal interest in the property." Thus, because William and Raven did not own the house, the family court concluded that "any change in its fair market value is not an asset of the marriage and cannot be divided by [the c]ourt."

At trial, Raven testified William promised her that if they separated, he would pay her $25,000.00. She attested that she would not have continued to contribute money to the farmhouse improvement project if he had not made that promise. During trial, William was asked by opposing counsel if it was true that he told Raven he would pay her $25,000.00 if they ever divorced and did not move into his parents' farmhouse. William denied ever making such a promise.

The family court noted that Raven testified at trial that during their marriage, she

> became concerned about the significant debt the parties were taking on to improve a property that neither of them had a legal claim to, i.e. the farmhouse of [William's] parents. The [c]ourt [found] that, in response to these concerns, [William] promised [Raven] that, should they ever divorce, he would pay her $20,000.00 to reimburse her for her unrealized investment in the property. [Raven] relied on this promise and assumed additional debt.

Therefore, William was ordered to pay Raven "$20,000.00 to satisfy his obligation to her."

In William's motion to alter, amend, or vacate the $20,000.00 judgment against him, he contended that "[t]he only evidence of this so-called 'promise' was Raven's testimony that [William] orally promised her during the marriage that if they divorced he would pay her this sum of money. There is no writing supporting or reflecting this so-called promise." The family court, in its order denying William's motion to alter, amend, or vacate, stated as follows: "The $20,000.00 judgment awarded to [Raven] was based on an *oral contract* made by the parties when they were happily married. . . . [Raven] relied on the contract in assuming additional debt. Accordingly, it does not fail for lack of consideration." (Emphasis added).

William contends on appeal that the alleged "oral contract" was unenforceable because it violated the statute of frauds, because the contract was not in writing, as he had alleged in his motion to alter, amend, or vacate. Kentucky's statute of frauds provides, in pertinent part, that "[n]o action shall be brought to charge any person: . . . Upon any promise to answer for the debt, default, or misdoing of another." KRS 371.010(4). However, there are exceptions to this part of the statute of frauds:

> It has often been held that where the consideration for the agreement to pay the debt of another redounds to the benefit of the promisor, the Statute of Frauds does not apply as it would be inequitable and unfair to permit one to receive and enjoy the benefits of a promise and then evade his part of the obligation because the promise was not in writing.

Barnett v. Stewart Lumber Co., 547 S.W.2d 788, 790 (Ky. App. 1977). Therefore, the statute of frauds is inapplicable to the present case because the consideration for the agreement benefited William. He cannot now evade his part of the obligation when he induced Raven to continue paying money towards the improvements on the farmhouse, and promised in return that if they ever divorced, he would pay her $20,000.00. Thus, William's statute of frauds claim lacks merit.

William alleges on appeal that "[t]here was no proof of the existence of the alleged promise other than Raven's testimony." Even so, the family court was in the best position to determine the weight and credibility of the evidence, including the testimony presented, and we will not overturn such factual findings unless they are clearly erroneous. *See Smith*, 235 S.W.3d at 6-7. Based on the evidence presented, the family court would have been justified to order William to pay $25,000.00 to Raven to satisfy his promise to her, as that was the amount that Raven testified he promised her. Therefore, the family court did not err in awarding the lesser amount of $20,000.00 to Raven based on William's promise, and Raven's reliance on that promise, as the elements of promissory estoppel were satisfied. *See Rivermont Inn, Inc. v. Bass Hotels Resorts, Inc.*, 113 S.W.3d 636, 642 (Ky. App. 2003).

B. CLAIM REGARDING THE LOST RINGS

William next contends that the family court clearly erred in charging him $7,000.00 for Raven's lost engagement, wedding, and promise rings. Raven testified at trial that William told her he paid $10,000.00 for the rings. William

testified that he paid $4,000.00. Additionally, William obtained an affidavit from the jeweler who sold him the engagement and wedding rings, attesting that the store's records showed that the total purchase price for the two items was $4,240.00, even though William's original receipt could not be located.

The affidavit and duplicate receipt prepared by the jeweler concerned the alleged purchase price for the engagement and wedding rings, but did not mention the promise ring. No tangible evidence was presented concerning the value of the lost promise ring, which William last had in his possession. However, Raven testified that William told her that all three rings cost a total of $10,000.00, and William testified that the rings cost $4,000.00. Yet, considering that the jeweler attested that just two of the rings cost $4,240.00, *i.e.*, more than William attested all three rings cost, we cannot say that the family court erred in finding that all three rings were worth $7,000.00.

Furthermore, because William was the last person who saw the rings or had them in his possession, the family court did not abuse its discretion when it found that William had taken the rings and that it was William's responsibility to keep the rings safe. Consequently, the family court did not err when it ordered William to pay Raven $7,000.00 for her lost rings.

C. CLAIM REGARDING PRE-TRIAL SUBMISSIONS

Finally, William alleges that the family court erred in awarding Raven the $20,000.00 and $7,000.00 judgments on claims that she purportedly did not raise in her pre-trial submissions. However, at the close of trial, Raven's attorney

asked to be permitted to file amended proposed findings of fact and conclusions of law to conform to the evidence that was presented at trial. William's attorney did not object at that time and, in fact, the court permitted both parties to file amended proposed findings of fact, as well as responses to the opposing party's amended proposed findings, as requested by William's attorney.

Both parties subsequently filed amended proposed findings of fact and conclusions of law, and William's response to Raven's proposed findings of fact and conclusions of law included the submission of additional evidence concerning the value of the rings, *i.e.*, the jewelry store owner's affidavit and duplicate receipt. As previously explained, the family court's findings of fact conformed to the evidence presented. Because both parties wanted, and were granted, permission to file amended proposed findings of fact concerning the evidence produced at trial, and William was given permission to subsequently produce his own evidence concerning the value of the rings, the family court did not err in considering Raven's claims.

D. CONCLUSION

Accordingly, the order of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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