

RENDERED: AUGUST 12, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000001-MR

JAMES HAMMER

APPELLANT

v.

APPEAL FROM CAMPBELL FAMILY COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 13-CI-00739

HAZEL HAMMER

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MAZE, TAYLOR AND VANMETER, JUDGES.

MAZE, JUDGE: James Hammer appeals from the Campbell Family Court's order involving the dissolution of his marriage to Hazel Hammer. James argues that a twelve-acre tract of land in Alexandria, Kentucky was improperly found as the non-marital property of Hazel. He claims that because the property was deeded in the names of both parties, it was acquired during their marriage and is therefore subject to equitable division. However, because title is not determinative in

classifying marital or non-marital property, the trial court did not clearly err by concluding that the land was acquired by Hazel before the marriage and is non-marital property. Therefore, we affirm.

Background

The following facts are not in dispute. James and Hazel married on February 28, 1998, in Campbell County, Kentucky. James filed for divorce in 2013 at approximately 78 years of age. Hazel was approximately 86 years of age.

Before marrying James, Hazel acquired two tracts of land in Alexandria, Kentucky. One of these properties was a twelve-acre tract that she had purchased with her husband from a prior marriage. James also owned land in Alexandria, Kentucky that he acquired before the marriage. He sold this land approximately two years after marrying Hazel. In July of 1999, Hazel deeded the twelve-acre tract of land in Alexandria to herself and James jointly with the remainder in fee simple to the survivor. Although they considered putting a mobile home on the property, they ultimately decided not to and the tract of land remained empty and uninhabited.

Upon dissolution of marriage, the court ordered that the personal property of Hazel and James be divided as they had previously agreed upon. Each party was to retain his or her own social security, pension or retirement account, and bank account. The court also concluded that both tracts of land that Hazel

acquired before her marriage with James were non-marital. The court found that Hazel had deeded the twelve-acre tract to James only so that James would be cared for in the event of her death. Thus, the court concluded that the deed did not amount to an acquisition of land that would convert the property into marital property. James appeals from this order.

Standard of Review

The sole question on appeal is whether the trial court properly concluded that the twelve-acre tract of land is non-marital. Family courts generally have wide discretion deciding division of property issues in divorce proceedings. *Smith v. Smith*, 235 S.W.3d 1, 6 (Ky. App. 2006). Therefore, the court's determinations of value and division of marital assets are factual findings reviewed for an abuse of discretion. *McVicker v. McVicker*, 461 S.W.3d 404, 416 (Ky. App. 2015). However, the classification of property as marital or non-marital is purely a matter of law and is reviewed *de novo*. *Smith*, 235 S.W.3d at 6.

Analysis

The disposition of property in a dissolution of marriage proceeding is controlled by KRS¹ 403.190. "Marital property" is defined as "all property acquired by either spouse subsequent to the marriage," with enumerated exceptions including property acquired by gift. Neither party disputes that Hazel originally

¹ Kentucky Revised Statutes.

acquired the twelve-acre tract of land before her marriage to James. However, James contends that deeding the property to him and her jointly during their marriage constituted an acquisition which transformed the non-marital property into marital property. Alternately, James argues that the land in dispute was gifted to him as marital property by Hazel.

Essentially, James argues that the property in question underwent a process called “transmutation.” This doctrine applies when separate, non-marital property is treated in a way that gives evidence of an intention to become marital property, creating a rebuttable presumption of a gift to the marital estate. *Sexton v. Sexton*, 125 S.W.3d 258, 270 (Ky. 2004). Under this theory, transmutation can occur by placing separate property in the names of both spouses, as is the argument in this case. *Id.* However, Kentucky Courts have specifically declined to adopt this doctrine because it is inconsistent with KRS 403.190. *Id.*

KRS 403.190(3) states, in relevant part, that, “All property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property.” By statute, title is not indicative of whether the property is marital or non-marital. *Hunter v. Hunter*, 127 S.W.3d 656, 660 (Ky. App. 2003). Transmutation would undermine this statute,

which protects spouses who hold title jointly for the sole purpose of estate planning. *Sexton*, 125 S.W.3d at 271. Rather, Kentucky courts use the “source of funds” rule to characterize property as marital or non-marital, which simply traces the land back to the source of funds originally used to acquire the property. *Travis v. Travis*, 59 S.W.3d 904, 909 (Ky. 2001).

The trial court did not err in concluding that the twelve-acre tract of land is the non-marital property of Hazel. The court’s decision is consistent with KRS 403.190, which states that title is irrelevant in the classification of property as marital or non-marital. There is no dispute that Hazel is the “source of funds” of this land, as she purchased the property with her prior husband.

Lastly, whether the property was gifted to James is a factual issue that considers the intent of the donor. *Hunter*, 127 S.W.3d at 660. After reviewing the record, we cannot hold that the court clearly erred in concluding that the intent of the deed was for estate planning purposes rather than a gift to James. Hazel stated in her testimony that she deeded the land to herself and James jointly to provide for him in case she predeceased him. James has not offered any affirmative evidence to the contrary.

Accordingly, the judgment of the Campbell Family Court is affirmed.

TAYLOR, JUDGE, CONCURS.

VANMETER, JUDGE, DISSENTS, AND WILL NOT FILE
SEPARATE OPINION.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Laurie B. Dowell
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