

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-001382-MR

TERESA COX

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE ROBERT V. COSTANZO, JUDGE
ACTION NO. 15-CI-00062

HOMER COX,
JENNIFER SAYLOR, and
CLIFFORD SAYLOR

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: JONES, D. LAMBERT, AND TAYLOR, JUDGES.

JONES, JUDGE: The Appellant, Teresa Cox (“Teresa”), appeals from the August 25, 2015, dissolution decree entered by the Bell Circuit Court. Teresa challenges the trial court’s classification and award of certain real and personal property as non-martial and awarding that property to the Appellee, Homer Lee Cox

(“Homer”). For the reasons set forth below, we VACATE the order of the Bell Circuit Court and REMAND this matter back for proceedings consistent with this opinion.

I. BACKGROUND

In 2005, after meeting in church, Teresa and Homer began a romantic relationship. Shortly after meeting, the parties moved in together; however, at that time, both were married to other individuals. Teresa obtained a divorce first. Homer, however, remained married to his first wife, Karen, for some time after the parties began cohabitating. The parties eventually married on March 13, 2011.

Prior to their marriage, the parties resided in a double-wide trailer (“Mobile Home”), which was gift from a cousin of Homer’s and rebuilt by him, in Bell County, Kentucky. The property on which the Mobile Home sat was made up of two purchased tracts of land. The first tract was deeded June 23, 2007, from Glenn A. Gambrel to Teresa. The second tract was deeded May 8, 2009, to Teresa from Wayne Gambrel and his wife Haroldeane Gambrel.¹ A loan financing the purchase of the Land was made from Teresa’s uncle, Clifford Saylor.

It is undisputed that at the time the Land was acquired, Homer was still married to Karen. Teresa and Homer agree that the Land was placed solely in Teresa’s name to prevent Karen from claiming an interest during Homer’s dissolution. Because of this, in order to avoid Karen receiving any possible

¹ As a practical matter, we shall refer to the two tracts of real property collectively as the “Land.”

interest in the Land, the parties put the Land in Teresa's name only. All payments on the loan for the Land were made from a joint checking account that was in both Homer and Teresa's names. However, the money in the joint checking account, used to pay the mortgage on the Land, was earned by Homer through the wages he earned working as an underground coal miner.

On February 24, 2015, Teresa filed a petition for dissolution of marriage with the trial court. In her petition, Teresa alleged that the parties acquired no real estate subject to equitable dissolution during their marriage. She maintained that the Mobile Home and Land were her non-marital property since she acquired them prior to the marriage.

Subsequently, on March 25, 2015, Homer responded to Teresa's petition and filed a separate counter-petition. Therein, Homer alleged that the Mobile Home and Land were his non-marital property, or in the alternative, that he and Teresa owned the Mobile Home and Land jointly. Homer maintained that the Mobile Home and Land were acquired by both himself and Teresa prior to their marriage. He noted, however, that the Land was only titled in Teresa's name in order to avoid any potential claim by his then wife, Karen. Homer also argued the joint checking account, through which the mortgage was paid, contained only funds earned by him.

On August 12, 2015, the trial court held a hearing on the petition and counter-petition. At that hearing evidence was received from both parties.

Following the hearing, by order rendered August 25, 2015, the trial court allocated to each party various real and personal property. Regarding the Mobile Home and Land, the trial court, relying on the “source of funds rule,” determined that Teresa held only equitable title in trust for Homer and thus, the Mobile Home and Land were Homer’s non-marital property. Specifically, the trial court stated:

11. Respondent paid for the land. The dwelling was a double-wide trailer given to him by a cousin which he rebuilt. All this was prior to the marriage. The real property was placed in the name of the Respondent to avoid the dower interest of the spouse whom Respondent was divorcing.

12. From testimony of Petitioner at trial the Court finds that the Respondent paid for the real property above-referenced and that all the equity in that real property, came from his non-marital funds. It therefore, belongs to Respondent. Though Petitioner held title, she paid no amounts for the real property or the improvements. The funds were paid from a joint checking account of non-marital monies funded solely by the Respondent. The Court thus finds that Petitioner held title to the real property described above and the dwelling in an equitable trust for Respondent as the source of all funds was Respondent.

13. From the testimony of Petitioner and Respondent the Court finds that the dwelling was a gift to Respondent from cousin and therefore it and the real estate upon which it rests is the non-marital property of the Respondent, it having been purchased by or given to him.

Any improvements made at the cost to Petitioner or Respondent were not quantified at trial.

This appeal by Teresa followed.

II. STANDARD OF REVIEW

On appeal, we afford great deference to the trial court. As explained by our Supreme Court,

Domestic relations cases allow broad discretion to the trial court which hears the cases without a jury. The legal standards a judge must apply in these cases demonstrate the need for such discretion: the best interest of the child, KRS 403.270, conscionability, KRS 403.180, application would be unjust or inappropriate because of an extraordinary nature, KRS 403.211, to name some of the standards. Clearly, the court must make its judgment based on how it perceives the effect of the evidence on the question to be resolved. And, as we have often said, due deference must be given to the judgment of the court that hears the evidence, knows the facts of the case, and can judge the credibility of the witnesses.

McFelia v. McFelia, 406 S.W.3d 838, 839-40 (Ky. 2013).

“The test is not whether the appellate court would have decided it differently, but whether the findings of the family court are clearly erroneous, whether it applied the correct law, or whether it abused its discretion.” *Coffman v. Rankin*, 260 S.W.3d 767, 770 (Ky. 2008) (quoting *B.C. v. B.T.*, 182 S.W.3d 213, 219-20 (Ky. App. 2005)). A judgment is not “clearly erroneous” if it is “supported by substantial evidence.” *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). Regarding a trial court’s conclusion of law, however, we owe no deference, as a “trial court’s conclusions of law . . . are subject to independent de novo appellate review.” *Gosney v. Glenn*, 163 S.W.3d 894, 898 (Ky. App. 2005).

III. ANALYSIS

When disposing of property in a dissolution of marriage action, the trial court is required by KRS² 403.190 to follow a three-step process: (1) the trial court first characterizes each item of property as marital or nonmarital; (2) the trial court then assigns each party's nonmarital property to that party; and (3) finally, the trial court equitably divides the marital property between the parties. *See Travis v. Travis*, 59 S.W.3d 904, 908-09 (Ky. 2001). Generally, any property acquired between the date of marriage and the date of divorce is presumed to be marital property. KRS 403.190(3). In contrast, property acquired before the marriage or after the date of divorce is nonmarital property. If the property retains its value and character after the marriage, it is unnecessary to resort to the source of the funds rule.

It is undisputed that the Mobile Home and Land were both acquired prior to the parties' marriage. As stated in Homer's appellate brief, "the Property was bought and paid for and the Mobile Home placed and remodeled all before the Parties were married." The record does not indicate that either party is claiming that the Land or the Mobile Home appreciated in value during the marriage. Therefore, it was unnecessary for the trial court to apply the source of the funds rule.

² Kentucky Revised Statutes.

Instead, the trial court should have concluded that the fact that the Land was acquired in Teresa's name only prior to marriage created a rebuttable presumption that it was her nonmarital property and that any monetary contribution from Homer for its purchase was intended as a gift to her from Homer. *See Rakhman v. Zusstone*, 957 S.W.2d 241, 244 (Ky. 1997). The trial court should have then considered whether Homer adduced "clear and convincing evidence of a specific agreement, either express or implied, that the title is held in trust or clear and convincing evidence that the title was obtained by the grantee by fraud or in violation of a specific agreement or understanding." *Id.* The mere fact that Homer paid the funds out of a joint bank account comprised entirely of contributions by Homer is not sufficient to overcome the rebuttable presumption. *Id.*

The Mobile Home is not titled in anyone's name. Teresa testified that it was a gift to both of them from a cousin of Homer's prior to the marriage. Homer testified that it was gifted to him only. The trial court found Homer's testimony more credible. This finding is well within the trial court's prerogative. However, the trial court failed to consider whether Homer's act of placing the Mobile Home on property titled in Teresa's name only was intended as a gift of the Mobile Home to her in whole or in part.

In sum, the trial court abused its discretion when it failed to follow the proper law with respect to the two assets at issue as both were unquestionably acquired prior to the marriage. Examining the evidence, the trial court should have

concluded that Teresa enjoyed a presumption that the Land was a gift to her from Homer. This in turn implicates the Mobile Home, which Homer placed on the Land that was titled only in Teresa's name. Because the evidence is not conclusive, we must vacate the trial court's order and remand for additional proceedings. On remand, the trial court should afford Teresa the presumption of ownership with respect to the Land, and consider the impact, if any, of Homer's decision to place the Mobile Home on the Land that was titled only in Teresa's name.

On remand, the trial court should not give any evidentiary weight to Homer's alleged explanation for titling the property only in Teresa's name. Homer's explanation is that he was married to Karen when the Land was acquired and did not want to acquire it in his name because he did not want Karen to be able to claim any interest in it when the two divorced. This was a direct attempt by Homer to evade *Stallings v. Stallings*, 606 S.W.2d 163 (Ky. 1980), which holds that all property acquired during a period of separation is marital, unless it fits within one of the exceptions set out in KRS 403.190(2), and must be valued as of the date of the dissolution decree. Allowing such an explanation to carry evidentiary weight would be tantamount to sanctioning the fraud Homer perpetrated in the prior dissolution proceedings. Instead, the law instructs we should leave Homer to suffer the consequences of his fraudulent actions. *See Asher v. Asher*, 129 S.W.2d 552, 553 (Ky. 1939) ("In a long and unbroken line of

cases this court has refused relief to one, who has created by his fraudulent acts the situation from which he asks to be extricated.”). Homer desired Teresa’s name alone to be placed on the deed before they were married. Homer cannot plead his own fraudulent conduct to avoid the presumption that he intended the Land as a gift. *See id.*

IV. CONCLUSION

For the reasons set forth above, we VACATE the decision of the Bell Circuit Court and REMAND this matter back to the trial court for proceedings consistent with this opinion.

TAYLOR, JUDGE, CONCURS.

D. LAMBERT, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

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