

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001069-MR
AND
NO. 2016-CA-001114-MR

DOUGLAS ROBB

APPELLANT/CROSS-APPELLEE

v. APPEAL FROM LAUREL FAMILY COURT
HONORABLE STEPHEN M. JONES, JUDGE
ACTION NO. 15-CI-00720

CONSTANCE ROBB

APPELLEE/CROSS-APPELLANT

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, CHIEF JUDGE; MAZE AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Douglas Robb (Doug) appeals and Constance Robb

(Connie) cross-appeals from the Laurel Family Court's judgment which allocated their marital assets after dissolving their marriage. Doug argues the family court erred in equally dividing marital assets rather than giving him credit for the non-

marital assets he used in acquiring the marital assets and for failing to rule that the marital home was subject to a loan. Connie argues she should have been awarded the proceeds from a separate property owned by an LLC she organized because this property was not marital.

Before Doug and Connie married on June 22, 2012, they executed an antenuptial agreement on June 1, 2012 (the agreement). While Doug and Connie agree that this agreement governs the distribution of their assets, they disagree as to the effect of the agreement.

The agreement provides in section 1.1 that the title of the property controls whether it is separate or joint property. Property titled in one party's name is that party's separate property and property titled in the name of both parties is joint property. The agreement specifically provides: "These designations shall be and remain effective no matter the source of the funds used to purchase or acquire said property."

Pursuant to section 1.2, all separate property existing prior to the marriage is to remain separate property "unless converted to joint property pursuant to paragraph 1.6."

Section 1.5 provides that "[a]ll tangible personal property given by the first party [Doug] to the second party [Connie] as gifts . . . during their marriage

. . . shall be deemed to be and shall remain the separate property of the second party.”

Section 1.6 provides that if the marriage is terminated by divorce, each party shall have “an undivided one-half interest” in property acquired during the marriage in their joint names with or without the right of survivorship.

Exhibit A to the agreement listed Doug’s separate assets including the following relevant assets and their estimated fair market value: a residence located at Aiken Road (the Aiken property), a 2010 Dodge Minivan, a 2008 Winnebago and a 51% interest in BSMD Trust Account (the trust).¹

The family court had to determine the division of assets acquired during the marriage which were titled in both parties’ names: the marital home located at Fount Hubbard Road (the Fount Hubbard property), a 2013 Jeep Patriot, a 2015 Dodge Ram and a 2007 Monaco La Palma motorhome. During the marriage, Doug traded in his Dodge Minivan towards the purchase of the Dodge Ram and his Winnebago towards the purchase of the Monaco La Palma motorhome. The family court also had to decide how to divide the proceeds of the Aiken property which was Doug’s separate property prior to the marriage, but then

¹ We note that no trust documents are contained in the record. Our knowledge of the trust is derived solely from the testimony and Exhibit A. In Exhibit A, Doug values his 51% interest in the trust at \$1,200,000.

deeded to an LLC, solely owned by Connie, and then sold by Connie and the LLC dissolved.

Further complicating this division was that Doug claimed the Fount Hubbard property was acquired with \$208,000 borrowed from the trust. While he acknowledged that no lien or mortgage was executed to secure the debt, Doug claimed he could not give the trust's assets away as the remaining 49% interest in the trust was owned by his children. Connie agreed the money to fund this purchase came from the trust but disputed they owed its purchase price to the trust.

Following a hearing, the family court issued a judgment on April 28, 2016. The family court found that the Jeep was purchased for \$15,000, the Dodge Ram was purchased for \$55,000, and the Jeep and Dodge Ram were marital property. Each party was awarded the vehicles they used and Doug was required to pay Connie a \$20,000 equalization payment. As to the Monaco La Palma motorhome, the family court found it was purchased for \$70,000 and as marital property it should be sold and the proceeds divided equally.

As to the Fount Hubbard property, the family court determined that although Doug testified he borrowed money from the trust to purchase it, he provided no evidence of such a debt and, while Connie knew the funds to purchase it came from the trust, she did not execute any loan documents. The family court

ruled it could not recognize a debt to this property and because it was jointly titled, it was to be sold and the proceeds divided equally.

As to the Aiken property, the family court found that the property belonged to Doug and his first wife but, during the marriage to Connie, Doug and Connie created an LLC and transferred the property to it, with the LLC to serve as an income stream for the parties. The LLC was placed in Connie's name to incur benefits available to female-owned businesses and Doug believed the property should be considered marital. Connie testified that she believed the property was non-marital because it was deeded to the LCC of which she was the sole organizer and member and requested the entire proceeds of the property be awarded to her and Doug be ordered to reimburse her for \$20,000 she paid to satisfy a prior lien on the property.

The family court found the Aiken property was marital, explaining: "The Court cannot make the stretch that the property is the separate, non-marital property of [Connie]. The parties deeded the property to the LLC rather than in [Connie's] sole name. [Connie] has already sold the property. The Court orders that the parties evenly divide the net proceeds of the sale."

Doug filed a motion to alter, amend or vacate, which the family court denied. He appealed and Connie cross-appealed.

In *Gentry v. Gentry*, 798 S.W.2d 928, 934 (Ky. 1990), the Kentucky Supreme Court generally upheld the validity of antenuptial agreements, holding:

a husband and wife in Kentucky may define by agreement their rights in each other's property, regardless of any rights which would otherwise have been excluded or conferred by [Kentucky Revised Statutes (KRS)] 403.190. Such agreements, provided they are otherwise valid contracts, are entitled to enforcement upon dissolution of the marriage.

A court enforces an antenuptial agreement like any other contract “according to the intent of the parties, if it can be determined from the four corners of the agreement.” *Herren v. Cochran*, 697 S.W.2d 149, 151 (Ky.App. 1985). “The construction and interpretation of a contract, including questions regarding ambiguity, are questions of law to be decided by the court.” *First Commonwealth Bank of Prestonsburg v. West*, 55 S.W.3d 829, 835 (Ky.App. 2000). Therefore, our standard of review of the agreement and any statutory interpretation is *de novo*. *Countryway Ins. Co. v. United Fin. Cas. Ins. Co.*, 496 S.W.3d 424, 429 (Ky. 2016).

Doug argues that while the agreement determines that the title of property is controlling as to whether it is a marital asset, thus preventing the application of KRS 403.190(2), the agreement does not prevent the application of KRS 403.190(1), which provides marital property shall be divided in just proportions. He also argues the agreement does not address how debt should be classified or divided and, therefore, the family court should have classified the debt

incurred to purchase the marital home as marital and divided it in an equitable manner. Connie argues the agreement eliminates the application of both KRS 403.190(1) and (2) and because the family court ruled there was no debt, it is irrelevant that the agreement does not specify how debt should be divided.

We agree with Connie that the agreement controls whether property is marital based on its title and that such property should be divided equally, exempting Doug's and Connie's jointly titled assets from both KRS 403.190(1) and (2). While Doug may have benefited from not entering into the agreement and having property divided based on KRS 403.190 instead, this dissolution is governed by the agreement's provisions that property titled in both their names is marital property. Pursuant to section 1.1 of the agreement, tracing is irrelevant because the title of the property is dispositive, "no matter the source of the funds used to purchase or acquire said property." Therefore, it does not matter that the Dodge Ram and the Monaco La Palma motorhome were partially funded through Doug's separate property by trading in his previously owned vehicles. Pursuant to section 1.2, Doug's separate property was "converted to joint property" by titling the newly purchased vehicles to both Doug and Connie. Similarly, it does not matter that the Fount Hubbard property was purchased with Doug's separate property from the trust and that the Aiken property was originally his separate property.

The agreement is clear under section 1.6 that Doug and Connie each have “an undivided one-half interest” in marital property. We interpret this as meaning this property should be divided equally, 50% to Doug and 50% to Connie, and that is just what the family court did.

While the agreement does not state what will happen to jointly held debt, the family court found there was no marital debt owed to the trust regarding the Fount Hubbard property. Doug and Connie disagreed on whether the money from the trust was loaned, as Doug asserted, or simply Doug’s use of his own assets, as Connie asserted. If Doug had taken money from his separate bank account to fund the purchase of the Fount Hubbard property, there would be no question that upon titling it in both their names his sole property would become marital pursuant to sections 1.1 and 1.2. Essentially, the family court treated Doug’s withdrawal of money from the trust without executing any loan or mortgage documents in the same way. It was Doug’s decision to withdraw this money from the trust. His doing so with Connie’s knowledge did not make any debt he may have incurred from the trust marital. *See Smith v. Smith*, 235 S.W.3d 1, 15 (Ky.App. 2006) (affirming trial court’s finding that alleged un-memorialized loans taken out by the husband during the marriage to keep a business venture afloat obligated the husband alone). Whether Doug acted appropriately in withdrawing money from the trust without the other members’ consent or

executing a loan should be addressed between himself and the other members of the trust, rather than determined in this appeal.² The family court acted within its discretion in determining there was no marital loan debt.

Connie argues that the family court should have awarded her the proceeds from the LLC either because it had no jurisdiction over the LLC, or because the Aiken property was a gift to her. Doug argues Connie waived this first argument because she never raised it before the family court and the family court properly acted within its discretion in considering the proceeds from the LLC marital and dividing them equally.

We agree with Doug that Connie waived her argument that the family court had no jurisdiction to divide the LLC proceeds and that the family court properly acted within its discretion by dividing the proceeds equally as marital property. Section 1.5 does not govern the classification of the Aiken property because it was not personal property. The family court made a factual finding that the Aiken property was placed into the LLC to serve as income producing marital property and this was within its purview. *See Gaskill v. Robbins*, 282 S.W.3d 306, 312 (Ky. 2009) (dividing value of sole proprietorship business established during the marriage as marital property). There was no error in dividing the LLC

² We have no basis for determining whether Doug acted in accordance with the provisions of the trust in withdrawing funds for his own use and express no opinion on whether Doug acted appropriately in taking this action.

proceeds in this manner and, indeed, once they were classified as marital they could be divided in no other way than equally.

Accordingly, we affirm the Laurel Family Court's judgment dividing marital property.

ALL CONCUR.

BRIEFS FOR APPELLANT/CROSS-
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