

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000119-MR

HAROLD STACY PARKER

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT
HONORABLE DAVID D. FLATT, JUDGE
ACTION NO. 16-CI-00247

TAMMY LYNN PARKER

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, SMALLWOOD,¹ AND TAYLOR, JUDGES.

COMBS, JUDGE: Harold Stacy Parker appeals from the judgment of the Carter Family Court that dissolved his marriage to Tammy Lynn Parker. Stacy challenges the findings of the trial court that characterized a portion of the marital residence as

¹ Judge Gene Smallwood concurred in this opinion prior the expiration of his term of office. Release of the opinion was delayed by administrative handling.

Tammy's nonmarital property. He also argues that the trial court erred by awarding Tammy a substantial windfall as a result of the equitable distribution of the remaining marital property. After our review, we affirm.

Stacy and Tammy were married on June 25, 2005. They separated in October 2015, and Tammy filed a petition for dissolution of the marriage in August 2016. No children were born of the marriage.

On September 19, 2017, the family court entered a decree dissolving the marriage. In its final judgment, the family court found that the parties had acquired real property in January 2005. It found that Tammy expended \$20,203 in improving the property prior to the marriage and an additional \$27,842 in her separate property to her nonmarital estate following the marriage. The court was persuaded that Tammy adequately traced to her nonmarital estate the source of funds she had invested in the property following the marriage. It was also persuaded that Stacy had adequately traced to his nonmarital estate the source of \$30,000 that he had invested in the property following the marriage. For the most part, the parties agreed upon the value and disposition of the personal property that they had acquired during the marriage.

In its decree, the family court concluded that the parties' real property was valued at \$125,000 and awarded it to Tammy. In total, including the value of the marital equity in the real property (\$46,955), Tammy was awarded marital

property valued at \$117,496. Stacy was awarded marital property valued at \$83,400. The family court concluded that an equal division of the marital assets was equitable and required Tammy to pay to Stacy the sum of \$17,048.

Additionally, the court ordered Tammy to restore to Stacy the sum of \$30,000, representing his nonmarital contribution to the acquisition of the real property.

Stacy filed a motion to alter, amend, or vacate pursuant to the provisions of CR² 59.05. The family court denied the motion, and this appeal followed.

Stacy contends that the family court erred by concluding that Tammy had adequately traced the source of the additional \$27,842 that she allegedly contributed to the acquisition of the real property following the marriage. He also challenges the family court's division of the marital estate.

On appeal, we apply a two-tiered standard of review to the question of whether property is characterized as marital or nonmarital. We review the factual findings of the family court under the clearly erroneous standard of CR 52.01. However, we review the court's ultimate legal conclusions *de novo*. *Smith v. Smith*, 235 S.W.3d 1 (Ky.App. 2006).

² Kentucky Rules of Civil Procedure (CR).

Equitable distribution of the parties' property is governed by the provisions of KRS³ 403.190. In *Travis v. Travis*, 59 S.W.3d 904 (Ky. 2001), the Kentucky Supreme Court set out a three-part test for the trial court to use in order to distribute the parties' property: (1) the trial court first characterizes each item of property as marital or nonmarital; (2) the trial court then assigns each party's non-marital property to that party; and (3) finally, the trial court equitably divides the marital property between the parties.

In *Sexton v. Sexton*, 125 S.W.3d 258, 265 (Ky. 2004), the Court discussed the application of the “source of funds” rule to this process:

An item of property will often consist of both nonmarital and marital components, and when this occurs, a trial court must determine the parties' separate nonmarital and marital shares or interests in the property on the basis of the evidence before the court. Neither title nor the form in which property is held determines the parties' interests in the property; rather, Kentucky courts have typically applied the “source of funds” rule to characterize property or to determine parties' nonmarital and marital interests in such property. The “source of funds rule” simply means that the character of the property, i.e., whether it is marital, nonmarital, or both, is determined by the source of the funds used to acquire the property.

In *Terwilliger v. Terwilliger*, 64 S.W.3d 816 (Ky. 2002), the Court held that where a party claiming a nonmarital interest in marital property is a skilled business person with extensive record-keeping experience, the courts may be justified in

³ Kentucky Revised Statutes (KRS).

requiring documentation to trace nonmarital assets into marital property. *Id.* Otherwise, testimony alone may be sufficient to satisfy the tracing requirement. *Chenault v. Chenault*, 799 S.W.2d 575 (Ky. 1990).

At the family court's hearing, Tammy testified that as a result of the destruction by fire of a home that she had owned, she received -- *in 2002* -- insurance proceeds totaling \$30,000 for the loss of the house and \$9000 for the loss of its contents. She testified that she held those proceeds in a bank account at the time of the parties' marriage and eventually used the sum of \$27,842 from that separate account to pay for improvements (including the building of a barn) to the marital property. A spreadsheet capturing the value of individual checks written on the account to cover the costs of a variety of improvements was introduced into evidence during her testimony with no objection. On cross-examination, Tammy testified that the expenditures had increased the value of the real property. Stacy did not dispute the value of the payments made, nor did he dispute Tammy's explanation of the source of funds. In fact, it is only upon appeal that Stacy disputed Tammy's claim to an additional nonmarital interest in the real property totaling \$27,842.

Under these circumstances, we conclude that the family court properly characterized the itemized expenditures as Tammy's contribution of nonmarital property to the value of the marital property. The evidence was more than

sufficient to show that the contributions disputed on appeal were made from an account that existed prior to the parties' marriage and that Tammy was entitled to the restoration of \$27,482 as her nonmarital property.

Next, Stacy contends that the family court failed to take into account his \$30,000 nonmarital contribution to the marital property when it distributed the property. We disagree.

As Stacy correctly notes, the family court awarded to Tammy property valued at \$117,496. Since Tammy was awarded the marital residence, the family court included in this sum the entirety of the marital equity in the parties' real property -- \$46,955 (\$125,000 -- the value of the real property -- minus the \$48,045 nonmarital interest assigned to Tammy and minus the \$30,000 nonmarital interest assigned to Stacy). Stacy was awarded property valued at \$83,400. To equalize the distribution, the family court ordered Tammy to pay to Stacy \$17,048. Thus, each party was awarded \$100,448 in marital assets. Furthermore, Tammy was ordered to pay an additional \$30,000 to Stacy representing the value of his nonmarital interest in the real property awarded to her. We can discern no mathematical error in the family court's computation.

We affirm the judgment of the Carter Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

W. Jeffrey Scott
Brandon M. Music
Grayson, Kentucky

BRIEF FOR APPELLEE:

Earl Rogers, III
Morehead, Kentucky