

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001595-MR

KIMBERLY ADAMS

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE MARCUS L. VANOVER, JUDGE
ACTION NO. 16-CI-00591

RODNEY ADAMS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, JONES, AND NICKELL, JUDGES.

ACREE, JUDGE: Kimberly Adams appeals the Pulaski Circuit Court's findings of fact, conclusions of law, and decree of dissolution. Kimberly argues the family court erred by: (1) misapplying the dissipation theory; (2) relying on inadmissible evidence; and (3) rejecting her unclean hands argument.

BACKGROUND

In 2001, Rodney pleaded guilty to conspiracy to distribute marijuana and conspiracy to conduct financial transactions with unlawful drug trafficking proceeds. He served a seventeen-and-one-half-year sentence in federal prison. On January 11, 2006, while Rodney was incarcerated, Rodney and Kimberly married. The parties remained married throughout the entirety of Rodney's incarceration, but ultimately separated on November 11, 2015. The Commonwealth released Rodney from prison in January 2016, and he filed a petition for dissolution six months after his release. The parties have no minor children together.

At issue is the marital or nonmarital character of certain real property. In 1999, prior to marrying Kimberly, Rodney purchased a farmhouse (farm) for his aunt and uncle, James and Helen Ward (Wards). Only the Wards' names were included on the deed. He expected the Wards to leave the property to him in their wills so he would inherit the farm upon their passing.

When Rodney was convicted, the farm became the subject of a federal civil forfeiture action. However, because the Wards were innocent owner-occupiers of the farm, the government agreed to dismiss the claim. There is no dispute that the farm was titled to the Wards alone when Rodney began serving his sentence and in 2004, prior to the parties' marriage, when Rodney asked Kimberly to move to the farm.

From 2004 to 2010, Kimberly lived on the farm and received substantial sums of money from Rodney he had left with his parents. On Rodney's order, his mother delivered funds to Kimberly in the amount of \$28,500, and his father delivered Kimberly \$40,000. Kimberly also received \$36,000 from the sale of the farm's tobacco base. Rodney asked that she use the money for upkeep of the farm and in preparation for their life together after his release.

In 2010, the Wards deeded the farm to the parties in consideration of their "love and affection." This was the first time Rodney's name appeared on any deed to the farm. The Wards retained a life estate in the farm, but they died prior to the parties' dissolution hearing. When the Wards conveyed the property, Rodney still had six years left to serve in prison. Believing Kimberly was caring for the farm and his money, he insisted her name be added to the deed.

Kimberly testified she received \$4,000 a year from the sale of the tobacco base. From this money, she would send \$1,000 to Rodney's prison account and an additional \$500 a few months later. She would then use the remaining \$2,500 for general expenses, such as traveling and food. Rodney wanted Kimberly to buy a reliable vehicle, so she could visit him in prison more often. So, Kimberly purchased a new Toyota Camry for \$21,818.54 with the money Rodney directed her way. Rodney testified he "gave her everything," and "had no idea" how Kimberly used his money. He claimed Kimberly did not

contribute “one penny” to the farm. But, Kimberly insisted she updated the kitchen with some of the money Rodney gave her.

It so happens that, shortly after the Wards deeded the property to the parties, Kimberly moved from the farm. Rodney was aware of Kimberly’s relocation. In fact, prior to Rodney’s release, Kimberly located a new residence where they intended to live. Kimberly testified the Wards took care of the farm and she never had “any actual control over anything.” Once she relocated, the farm went unattended for six years. Despite receiving substantial lump sums of money for farm upkeep, she allowed it to fall into a state of disrepair. After his release from prison, Rodney returned to the farm, finding it in an uninhabitable condition.

The family court found the Wards intended the conveyance of the farm as a gift, deeming the farm marital property. The family court determined the farm’s value was \$225,000, which was the value of the home at the time of conveyance. It ordered the parties to equally divide the farm, with each party receiving \$112,500. However, the family court found Kimberly failed to show she used the lump sums of money she received from Rodney for a marital purpose. The family court determined Kimberly’s neglect of the farm effectively decreased the value of the property, stating, “she had use of the house for years” and “left the house unsecured and allowed the house to be damaged by weather and animals to

the extent of \$66,000 in damages.” Taking all these factors into account, the family court concluded Kimberly’s share of the marital estate should be offset for the damages to the farm, as well as failing to account for the \$100,000 she received. Therefore, the family court awarded Rodney the farm.

STANDARD OF REVIEW

A family court’s findings must be sustained if supported by substantial evidence. *Kleet v. Kleet*, 264 S.W.3d 610, 617 (Ky. App. 2007). However, the family court’s conclusions of law are reviewed *de novo*. *Stipp v. St. Charles*, 291 S.W.3d 720, 723 (Ky. App. 2009).

ANALYSIS

Dissipation Argument

Kimberly argues the family court improperly applied the theory of dissipation because neither party depleted marital assets in anticipation of a separation or divorce. *Robinette v. Robinette*, 736 S.W.2d 351, 354 (Ky. App. 1987); *Brosick v Brosick*, 974 S.W.2d 498, 500 (Ky. App. 1998). We disagree.

Kimberly correctly states Kentucky law regarding dissipation and shows how the evidence in this case falls short of sustaining a ruling on that doctrine. However, the family court did not apply the law of dissipation. The court agreed with both parties that it does not apply here because neither party depleted marital funds in anticipation of divorce or separation.

At no point in the family court's findings of fact, conclusions of law, and decree of dissolution, did the family court use the word "dissipate" or apply dissipation law or standards. The family court merely attempted to justly and equitably divide the marital estate of the parties after Kimberly redirected Rodney's *nonmarital* assets to her own use.

Rodney had his parents deliver to Kimberly around \$100,000 of his nonmarital money, intending she would use the money for marital purposes – in part, the maintenance of the marital home. Instead, Kimberly used the money for her own benefit, treating the money as though it were a gift and offering no accounting of the funds. In fact, the evidence supported, and the family court treated, as a gift to Kimberly the money she used to purchase the Camry, which the court awarded her as nonmarital property.

The family court treated the real property differently. Incarceration prevented Rodney from supervising the marital use of his nonmarital funds and he trusted Kimberly to do so. Implicit from the judgment is the family court's reasonable inference, drawn from the evidence, that Kimberly agreed. However, Kimberly could not convince the family court she had lived up to that trust. The family court concluded:

[Kimberly] left the house unsecure and allowed the house to be damaged by weather and animals to the extent of \$66,000 in damage, which the Court hereby charges against her share of the property; and the fact [Kimberly]

received \$100,000 in proceeds during the marriage to be used for a marital use for which she cannot account. The Court finds it is just and equitable to also offset one-half of those funds against her marital share in the real property. Therefore, the Court awards the farm solely to Rodney.

Rodney acknowledged the unlikelihood he could recoup his nonmarital funds, so he asked the family court to award him the farm. There is substantial evidence to support the family court's conclusion that Kimberly did not use Rodney's nonmarital funds for a marital purpose. Largely based on that finding, the family court concluded that dividing the real property in equal shares would be inequitable to Rodney; instead, the court divided the marital assets, fairly and equitably, to account for Kimberly's personal and unauthorized use of Rodney's nonmarital assets. We find no error in this application of the law and will not reverse the family court based on this argument.

Hearsay Evidence

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Kentucky Rules of Evidence (KRE) 801(c). Kimberly argues the family court relied on inadmissible hearsay in determining the cost of farmhouse repairs. At a particular point in the hearing, Rodney attempted to testify about an estimate he received from an appraiser regarding the amount of damages to the farm. Kimberly objected, and the family court sustained. Kimberly asserts the

family court relied on this inadmissible hearsay in its ruling. We disagree because her argument ignores the evidence of damages to which she did not object.

Rodney first testified, “My house is destroyed. We got an estimate, I think it’s \$67,000 or something like that to fix the house,” to which Kimberly made no objection. Rodney also testified to the deplorable state of the farm and, again, Kimberly made no objection. Kimberly did not object to the deposition testimony of other witnesses regarding the deterioration of the property. Kimberly only objected when Rodney expressly attempted to say something another person told him regarding the cost of repairs. At this point, the family court sustained the objection. It remains, however, that there were *several* other instances, as many as four, when Rodney testified without objection to the extent of the damages and cost of repairs.

Because there was more than one statement regarding the condition of the property and cost of repair, the family court based its determination on properly presented evidence. Rodney testified the damage was approximately \$67,000, well before Kimberly’s first objection. The family court properly considered the evidence before it. Such proof has been found sufficient to support a damages award. *See Bruner v. Gordon*, 214 S.W.2d 997, 1000 (Ky. 1948) (noting that plaintiff’s property damage testimony was “the only evidence before the jury . . . [which] was authorized to use this evidence in fixing the damage”). We see no

reason, given these circumstances, that it should not be used for valuation purposes here.

Rodney's Unclean Hands

Kimberly asserts Rodney's history of fraudulent and illegal conduct, which resulted in his incarceration, barred him from recovery. She argues Kentucky forbids litigants from using the courts to profit from "fraudulent, illegal, or unconscionable conduct." *Suter v. Mazyck*, 226 S.W.3d 837, 843 (Ky. App. 2007). She also argues Rodney came to court with unclean hands based on his previous criminal behavior. The doctrine of unclean hands is "a rule of equity that forecloses relief to a party who has engaged in fraudulent, illegal, or unconscionable conduct, *but does not operate so as to repel all sinners from courts*" *Id.* (emphasis added) (citing *Duncombe v. Amfot Oil Co.*, 201 Ky. 290, 256 S.W. 427, 429 (1923)).

Rodney never denied his previous criminal behavior. He served his time in federal prison and forfeited millions of dollars of his property. Kimberly contends Rodney was obliged, because of his criminal past, to demonstrate a lawful source for the funds he used to purchase the farm and gave to her. We are not persuaded.

The United States Department of Justice initially sought forfeiture of the farm but, as part of the plea agreement, the Wards retained legal title. Rodney

testified that the United States dismissed the forfeiture claim because the Wards were “innocent owners” of the farm. It is true the United States advanced the theory that Rodney purchased the farm with drug money. But, the Government dropped the forfeiture action because it received the checks and mortgage Rodney took out against his own residence. The Government reached a plea agreement regarding the farm. The forfeiture action yielded no determination the farm was purchased with ill-gotten funds and, in the utter absence of evidence, this Court will not indulge in a presumption to the contrary.

There was no evidence any of these funds in question were proceeds of criminal acts. In fact, Kimberly testified she was unaware of the funds’ source. Notably, Kimberly says nothing regarding the effect of an unclean hands determination on her ownership of the Toyota Camry the family court awarded her.

Courts may use the equitable doctrine of unclean hands when the lack of any other remedy means an innocent party will be wronged by fraudulent, illegal, or unconscionable acts; we do not apply the doctrine to punish individuals because they once lived a life inconsistent with a lawful society.

CONCLUSION

For the foregoing reasons, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert E. Norfleet
Somerset, Kentucky

BRIEF FOR APPELLEE:

Melinda Gillum Dalton
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