

RENDERED: FEBRUARY 15, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-000957-ME

BRENT LEROY REICHARDT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE DENISE BROWN, JUDGE  
ACTION NO. 17-CI-501082

CARA CHRISTINA REICHARDT (NOW GENSHEIMER)

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

COMBS, JUDGE: The sole issue on appeal is whether the trial court erred in concluding that an automobile purchased during the parties' marriage was marital property. After our review, we affirm.

We limit our discussion of the record to the issue before us.

Appellant, Brent Leroy Reichardt (Brent), and Appellee, Cara Christina Reichardt (now Gensheimer) (Cara), were married on October 2, 2015. They separated on

March 1, 2017. On March 31, 2017, Cara filed a petition for dissolution of their marriage.

The matter was tried on February 23, 2018. Both parties were present and represented by respective counsel. On March 30, 2018, the trial court entered findings of fact, conclusions of law, judgment, and decree, in relevant part, as follows:

Based upon the testimony presented and the record contained herein, the Court makes the following findings:

...

15. During the parties' marriage, they maintained separate bank accounts, although they added the other party's name to their account after the date of marriage. Each party's income was deposited into their primary account and each party paid their personal expenses from their primary account.

16. In general, the parties did not use the other party's bank account during the marriage.

17. Regarding joint expenses for the household, the parties agreed [Cara] would pay the water, trash and credit card payments, including items purchased to be jointly used in the marital residence. From [Brent's] account, the parties paid the mortgage on the residence<sup>[1]</sup> and the utilities.

...

21. During the marriage, the parties purchased a 2013 Toyota Camry for [Cara] to drive as a marital vehicle. The parties agree [Brent] shall be awarded this vehicle. [Cara] is asserting a claim to marital equity in the vehicle.

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<sup>1</sup> The parties agreed that Brent would be awarded the marital residence and that he would pay Cara the sum of \$2,500.00 as her marital equity in the property.

22. [Brent] tendered documentation at the time of the trial showing the value of the vehicle to be approximately \$14,000.00.

23. The vehicle was purchased on June 30, 2016, The purchase price was \$18,065.00 and was paid in full from [Brent's] 5/3 [Fifth Third] bank account that he had prior to marriage.

24. At the date of the marriage, the account had \$47,047.67 in it, which the parties agree was [Brent's] non-marital funds.

25. During the marriage, [Brent's] paychecks were deposited into the account, which the parties acknowledge are marital funds. Bank records indicate [Brent] deposited \$29,561.04 in marital funds to the account between the date of the marriage and June 30, 2016, when the car was purchased.

The trial court awarded Brent the Toyota, which it valued at \$14,000.00 based upon the evidence presented at trial. The court concluded that the entire value of the Toyota was marital in nature:

While [Brent] asserts a non-marital claim, the court concludes he failed to sustain his burden of proof that the funds used to purchase the vehicle were non-marital in nature. It is clear from the documentation presented that sufficient marital funds had been deposited into the account to cover the purchase price of the vehicle. Therefore, the court presumes this property was acquired through marital funds and not through the use of [Brent's] non-marital funds.

Accordingly, the court awarded Cara \$7,000.00 “as her one-half of the marital equity in the 2013 Toyota Camry.”

On April 9, 2018, Brent served a motion to alter, amend or vacate, which the trial court denied by order entered on May 25, 2018.

The only issue that Brent raises on appeal is that the trial court erred in denying his non-marital claim in the Toyota. Our review is carefully circumscribed.

The standard of review on appeal for a question involving the characterization of whether property is marital or nonmarital is two-tiered. Factual findings of the trial court are reviewed under the clearly erroneous standard of CR<sup>[2]</sup> 52.01, but the trial court's legal conclusions are reviewed de novo as an issue of law.

*Smith v. Smith*, 450 S.W.3d 729, 734 (Ky. App. 2014).

According to Brent, his Fifth Third bank records from the date of marriage to the date on which the Toyota was purchased reflect \$44,210.72 in marital expenditures and \$29,561.04 in deposits. He also contends that the amount by which the expenditures exceed the deposits is \$14,649.68, which equals 81% of the purchase price of the Toyota (\$14,649.68/\$18,065.00). Brent contends he should have been awarded 81% of the value of the Toyota as his non-marital property because “if not for the nonmarital monies in the account, the parties would not have been able to purchase the vehicle from marital funds alone.”

The presumption in Kentucky is that all property acquired during the course of the marriage is marital property, unless the property can be shown to have originated in one of the excepted ways outlined in KRS<sup>[3]</sup> 403.190(2). A party claiming that property acquired

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<sup>2</sup> Kentucky Rules of Civil Procedure.

<sup>3</sup> Kentucky Revised Statutes.

during the marriage is other than marital property, bears the burden of proof. KRS 403.190(3), *Brosick v. Brosick*, Ky.App., 974 S.W.2d 498 (1998). While the word does not appear in the statute, judicial construction of KRS 403.190<sup>4</sup> has given rise to the concept of “tracing.” *Chenault v. Chenault*, Ky., 799 S.W.2d 575 (1990). In *Chenault*, this Court recognized that tracing to a mathematical certainty is not always possible, noting that: “While such precise requirements for nonmarital asset-tracing may be appropriate for skilled business persons who maintain comprehensive records of their financial affairs, such may not be appropriate for persons of lesser business skill or persons who are imprecise in their record-keeping abilities.” *Id.* at 578.

*Terwilliger v. Terwilliger*, 64 S.W.3d 816, 820 (Ky. 2002).

Brent argues that he adequately traced his ownership of the Fifth Third account prior to marriage and relies upon Judge Vance’s concurring opinion

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<sup>4</sup> In relevant part, KRS 403.190 provides:

(2) For the purpose of this chapter, “marital property” means all property acquired by either spouse subsequent to the marriage except:

...

(b) Property acquired in exchange for property acquired before the marriage . . . .

(3) 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. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.

in *Chenault* in support of his argument. As this Court explained in *Aubrey v. Aubrey*, No. 2009-CA-001598-MR, 2010 WL 4669144, at \*5 (Ky. App. Nov. 19, 2010), “[s]uffice it to say, the majority opinion in *Chenault* expressly rejected Justice Vance’s suggested method, and we are constrained to follow the law as stated by the majority opinion.”

In her brief, Cara points out that although the Fifth Third bank statements show that many other purchases were made from the account in the same time period, Brent only asked the court to assign the non-marital funds<sup>5</sup> to the Toyota. “[A] claimant cannot meet the tracing requirement simply by showing that he or she brought non-marital property into the marriage without also showing that he or she has spent his or her non-marital assets in a traceable manner during the marriage.” *Maclean v. Middleton*, 419 S.W.3d 755, 767 (Ky. App. 2014). Under the circumstances, we cannot say that the trial court clearly erred in concluding that Brent failed to meet his burden of proof.

Therefore, we affirm.

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<sup>5</sup> Cara submits that Brent offered no explanation on direct examination what purchases made up the \$14,649.68, and that he conceded on cross-examination that some withdrawals from the account were made for non-marital purposes. But, there is no video recording in the record before us, and it does not appear that Brent requested that any video records be certified on appeal. “Accordingly, our resolution of this appeal is based upon the record provided to us, and we assume the missing portions of the record support the trial court’s decision.” *Smith*, 450 S.W.3d at 732.

ALL CONCUR.

BRIEF FOR APPELLANT:

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