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NO. COA01-366

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

KELSEY RUE KEFFER,
Plaintiff,

v.

New Hanover County
No. 98 CVD 3112

MICHAEL JOSEPH KEFFER,
Defendant.

Appeal by defendant from judgment entered 3 October 2000 by Judge J. H. Corpening, II, in New Hanover County District Court. Heard in the Court of Appeals 23 January 2002.

Lea, Clyburn & Rhine, by James W. Lea, III, for plaintiff-appellee.

Johnson & Lambeth, by Carter T. Lambeth and Maynard M. Brown, for defendant-appellant.

HUDSON, Judge.

Defendant appeals an equitable distribution order entered on 3 October 2000. Defendant contests the trial court's classification and distribution of five items as marital property: a Centura Bank certificate of deposit (the "CD"), a Boston Whaler boat and trailer (the "boat"), a 1995 Jeep Cherokee (the "Jeep"), a 1965 Jaguar automobile (the "Jaguar"), and a 1998 Dodge Pickup (the "Dodge"). We affirm the trial court's order.

Plaintiff and defendant married 13 September 1986 and resided in North Carolina for the duration of their marriage. They had two

children, born in 1991 and 1992, and separated in the spring of 1998. Plaintiff filed for divorce in August 1998. The court heard the parties' equitable distribution matter on 13 January 2000 and the trial court issued an "Order on Equitable Distribution" 2 October 2000. The court then corrected a clerical error in the Order, and filed an Amended Order on 8 December 2000. Defendant filed a Notice of Appeal alleging that the trial court erred in classifying and distributing the five items listed above as marital property.

The standard of review for equitable distribution awards is set forth in *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985):

"Historically our trial courts have been granted wide discretionary powers concerning domestic law cases. . . .

It is well established that where matters are left to the discretion of the trial court, appellate review is limited to a determination of whether there was a clear abuse of discretion. A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly unsupported by reason. A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." [sic]

Munn v. Munn, 112 N.C. App. 151, 155-56, 435 S.E.2d 74, 77 (1993) (quoting *White*, 312 N.C. at 777, 324 S.E.2d at 833) (internal citations omitted). We apply the abuse of discretion standard here in our review of the trial court's Amended Order.

N. C. Gen. Stat. § 50-20(b)(1) (1999) defines "Marital property" as "all real and personal property acquired by either

spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence." In *Loeb v. Loeb*, 72 N.C. App. 205, 209-10, 324 S.E.2d 33, 38, cert. denied, 313 N.C. 508, 329 S.E.2d 393 (1985), this Court held that N.C.G.S. § 50-20

creates a presumption that all property acquired by the parties during the course of the marriage is "marital property". . . The "marital property" presumption may, therefore, be rebutted by clear, cogent, and convincing evidence that the property comes within the "separate property" definition. The burden of proof necessarily falls on the party claiming the "separate property."

(internal citations and quotations omitted). Here, defendant is contending that the five items at issue were wrongly classified by the trial judge as marital property and should be re-classified as his separate property. Therefore, defendant has the burden of proof in rebutting the presumption that these five items, which were acquired by the couple during their marriage, are marital property; defendant must present "clear, cogent, and convincing evidence" that the five items are his separate property. *Id.*

Defendant contends that all five items at issue are his separate property because they were purchased with money given to him by his parents as his separate property. "Separate property" is defined in N.C.G.S. § 50-20(b)(2) as "all real and personal

property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage." In *Loeb*, the Court noted that "the legislature intended to exclude from the definition of 'separate property' a gift of property to both parties from a third party during the course of the marriage." 72 N.C. App. at 210, 324 S.E.2d at 38. Here, the testimony, including that of defendant, indicates that the money was given and held as a gift to the marriage. Plaintiff and defendant testified that defendant's parents gave plaintiff three checks during 1996 totaling \$239,999.90, in addition to cash gifts at Christmas time to both parties, which defendant deposited in the parties' joint account. The parties spent portions of that money on family purchases, including the boat, the CD, the Jeep, the Jaguar, the Dodge, renovations to a rental property, as well as other family expenses. Defendant described how he and plaintiff made purchases and managed their bank accounts during cross-examination:

Q Okay, so you were in charge of where the money went, where it was placed and what checks were written out of the accounts?

A On the larger items, yes.

Q Okay, so when the Church Street [rental property] was bought you made the decision about having the title on that property, was that correct?

A No, that was a joint decision.

Q Joint decision, and y'all decided to title it in both your names?

A Yes.

Q Same thing with Shoemaker [Lane property]?

A Yes.

Q Same thing with the money that you got from your parents you say back in 1996 that you put into a joint account, is that

correct? You didn't try to earmark that money in any way, you put it into an account for you and [plaintiff].

A Right.

Q And then you bought things for you and [plaintiff] out of it, is that correct?

A Yes.

. . . .
Q When [a bank official] wrote your mortgage company and said [defendant and plaintiff] received \$253,556 last year in gifts from [defendant's parents], that's how you looked at it, is that correct? That's money that was going to you and [plaintiff]?

A Sure.

Q And it was going to y'all to buy homes, and buy cars and help with monthly expenses and do things in the marriage, correct?

A Yes, sir.

Thus, defendant acknowledged having treated the money as a gift to the marriage, rather than to him separately.

If the money given by defendant's parents was marital property, then the items purchased with that money for their family were also marital property. See N.C.G.S. § 50-20(b)(1). Defendant conceded in his testimony that he and plaintiff used the money given by his parents to purchase items jointly and to "do things in the marriage." Defendant made no effort to keep the money given by his parents separate from the marital property. Defendant admitted during cross-examination that the gifts from his parents were for both himself and plaintiff, and that he used them as such.

As indicated in the testimony at trial, the parties purchased the CD, the boat, the Jeep, the Dodge, and the Jaguar with the money defendant's parents gave them in 1996. Because these funds were marital property, these five items are marital property, and were properly classified and distributed as such by the trial

court. The court did not err in concluding that defendant failed to rebut the presumption that these five items acquired during the marriage are marital property. See *Loeb*, 72 N.C. App. at 209-10, 324 S.E.2d at 38. Nor has defendant demonstrated that the trial court abused its discretion in classifying and distributing these items as marital property. See *Munn*, 112 N.C. App. at 155-56, 435 S.E.2d at 77.

Affirmed.

Judges WYNN and THOMAS concur.

Report per Rule 30(e).