

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Melissa Leaphart Hagood, Appellant,

v.

James Buckner Hagood, Defendant.

Melody "Suzie" Hagood Sharpe, Third Party Defendant.

Of whom James Buckner Hagood and Melody "Suzie"
Hagood Sharpe are the Respondents.

Appellate Case No. 2016-001898

Appeal From Richland County
Monét S. Pincus, Family Court Judge

Opinion No. 5664
Heard December 4, 2018 – Filed July 17, 2019

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

James Ross Snell, Jr. and Vicki D. Koutsogiannis, both
of Law Office of James R. Snell, Jr., LLC, of Lexington,
for Appellant.

Peter George Currence, of McDougall, Self, Currence &
McLeod, LLP, of Columbia, and Carrie Hall Tanner, of
Speedy, Tanner, Atkinson & Cook, LLC, of Camden, for
Respondents.

LOCKEMY, C.J.: In this appeal from a divorce decree, Melissa Hagood (Wife) argues the family court erred in (1) characterizing the majority of the estate as the nonmarital property of James Hagood (Husband), (2) equitably apportioning the majority of the marital property to Husband, and (3) refusing to award her alimony. We affirm in part, reverse in part, and remand.

FACTS

Wife and Husband married on August 8, 2004, and separated April 17, 2014. At the time of the separation, Wife was fifty years old and Husband was sixty-five years old. The parties share one child (Child), born in 2002. Husband has three grown children from a previous marriage.

In 1996, before the couple met, Husband inherited several large tracts of land in and around Blythewood, South Carolina, from his father. The properties included the following: a doublewide mobile home located on a one-acre tract of land at 837 Langford Road (837 Langford Road); 142 acres located at 1521 Muller Road (the Muller Road Property); and 159 acres on Langford Road (the Langford Road Property). Each of these properties were titled in Husband's name throughout the marriage, with the exception of the doublewide mobile home titled in his sister's name. When the parties met in 2002, Husband was living in the doublewide mobile home at 837 Langford Road. In December 2002, Wife and Child moved into the mobile home with Husband and lived there until July 2009.

In 2007, Husband received approximately \$3.6 million from the sale of the Langford Road Property. In that same transaction, Husband acquired an additional 8.1 acres on Muller Road, near the Muller Road Property. Soon thereafter, Husband used \$495,000 in proceeds from the sale of the Langford Road Property to construct a new home on the Muller Road Property. The home was completed in the summer of 2009, and the couple lived there continuously until their separation in April 2014.

The marriage began to deteriorate in the spring of 2014. On April 28, 2014, Wife initiated divorce proceedings against Husband, requesting custody of Child, child support, alimony, equitable division, and other related relief. By administrative order, the family court bifurcated the merits hearing in order to address the financial and custody issues separately. The family court held a hearing on June 15 and 16, 2016, to address the financial issues. At issue was the character, equitable division, and apportionment of: (1) the property and mobile home located at 837 Langford Road; (2) the marital home and Muller Road Property; (3) the

additional 8.1 acres on Muller Road; (4) several investment accounts; (5) two collectable vehicles—a green Corvette and a 1969 Camaro; (6) a 2014 Jeep Wrangler; (7) a horse named "Chevy"; and (8) two tractors. In addition, Wife requested alimony of "whatever the [c]ourt deemed necessary," and both parties requested attorney's fees. Neither party requested a specific percentage of the marital estate.

The family court issued a final order and divorce decree on August 2, 2016, granting Husband and Wife a no-fault divorce based on one year's continuous separation. In its order, the family court denied Wife's request for alimony; held the entirety of the real property and investment accounts were Husband's nonmarital property; and apportioned the horse, the John Deer tractor, the Jeep, and the 1969 Camaro to Husband. This appeal followed.

STANDARD OF REVIEW

The appellate court reviews decisions of the family court de novo. *Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). The appellate court generally defers to the findings of the family court regarding credibility because the family court is in a better position to observe the witnesses and their demeanor. *Id.* at 389, 709 S.E.2d at 653. The party contesting the family court's decision bears the burden of demonstrating the family court's factual findings are not supported by the preponderance of the evidence. *Barrow v. Barrow*, 394 S.C. 603, 609, 716 S.E.2d. 302, 305 (Ct. App. 2011) (citations omitted).

LAW/ANALYSIS

I. Marital Property

Wife argues the family court erred in failing to categorize and apportion as marital property: (1) the mobile home and property located at 837 Langford Road, (2) the marital home and the Muller Road Property (3) the investment and bank accounts, (4) the green Corvette, and (5) the John Deer tractor.

Section 20-3-630(A) of the South Carolina Code (2014) defines marital property as "all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation . . . regardless of how legal title is held." Section 20-3-630(A) specifies the following is nonmarital property:

(1) property acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse;

(2) property acquired by either party before the marriage . . . ;

(3) property acquired by either party in exchange for property described in items (1) and (2) of this section;

. . .

(5) any increase in value in nonmarital property, except to the extent that the increase resulted directly or indirectly from efforts of the other spouse during marriage.

S.C. Code Ann. § 20-3-630(A). Nonmarital property may be transmuted into marital property if: "(1) it becomes so commingled with marital property as to be untraceable; (2) it is jointly titled; or (3) it is utilized by the parties in support of the marriage . . . so as to evidence an intent by the parties to make it marital property." *Jenkins v. Jenkins*, 345 S.C. 88, 98, 545 S.E.2d 531, 537 (Ct. App. 2001) (citing *Pool v. Pool*, 321 S.C. 84, 86, 467 S.E.2d 753, 756 (Ct. App. 1996)). "Whether transmutation of separate property into marital property has occurred 'is a matter of intent to be gleaned from the facts of each case.'" *Simpson v. Simpson*, 377 S.C. 527, 538, 660 S.E.2d 278, 284 (Ct. App. 2008) (quoting *Johnson v. Johnson*, 296 S.C. 289, 295, 372 S.E.2d 107, 110 (Ct. App. 1988)).

"The spouse claiming transmutation bears the burden of producing objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage." *Greene v. Greene*, 351 S.C. 329, 338, 569 S.E.2d 393, 398 (Ct. App. 2002) (citations omitted). "The mere use of separate property to support the marriage, without some additional evidence of intent to treat the property as marital, is not sufficient to establish transmutation." *Id.*

A. Real Property

The family court found all real property in existence at the time of the divorce was Husband's nonmarital property. Wife argues the evidence presented at trial shows

the parties used the properties in support of the marriage in such a way as to transmute it to marital property.

As previously noted, Husband inherited the 837 Langford Road Property in 1996. He was living in a mobile home on the property with his sister and his daughter from a previous marriage when the parties met in 2002. Husband purchased the mobile home with proceeds from a certificate of deposit (CD) he had during his first marriage, but titled the mobile home in his sister's name. Wife and Child moved into the mobile home with Husband in 2002, prior to their 2004 marriage, and lived there with him until they moved into their new home in July 2009. Wife testified she, along with Husband, made improvements to the property such as installing insulation, working on the well, putting up a fence, and taking care of the dogs.

According to the record, the 837 Langford Road Property remained solely titled in Husband's name and remained traceable as nonmarital property throughout the marriage. Although Wife assisted in the care of the property, she did not make any significant contributions to this property. While Husband and Wife lived in the mobile home, Husband's sister owned it. Accordingly, Wife did not meet her burden to prove the 837 Langford Road Property transmuted to marital property.

Wife also claims the marital home and the Muller Road Property are marital property. Husband inherited the Muller Road Property from his father prior to the marriage and chose it as the site to build the marital home. Husband deposited \$495,000 of the proceeds from the sale of the nonmarital Langford Road Property into a separate account exclusively for the construction of the home. Husband used this account to pay for the construction of the home and the work on the surrounding land. Furthermore, Husband titled the home and property in his name only.

Wife acknowledged at the final hearing that Husband paid to construct the home. Nevertheless, she claims the marital home and the Muller Road property transmuted to marital property because the parties utilized them in support of the marriage. Wife testified she was involved in the planning and building of the home, such as selecting the house plan, brick, and roof. She stated she participated in the landscaping and removed rocks from the property in preparation for building the home. Wife also stated she was involved in the continued maintenance of the home, especially after Husband became ill. She planted and maintained a garden, maintained the creek, and insulated pipes.

Transmutation is a matter of intent of the parties to treat the property as common property of the marriage. *Johnson*, 296 S.C. at 295, 372 S.E.2d at 110. Wife did not contribute financially to the construction of the home. The parties did not use marital funds to build equity in the property. The home and property remained in Husband's name throughout the marriage. Furthermore, Wife did not present evidence that Husband intended for the home to be a marital asset. While the parties used the home in support of the marriage, "[t]he mere use of separate property to support the marriage, without some additional evidence of intent to treat it as property of the marriage, is not sufficient to establish transmutation." *Id.* at 295-96, 372 S.E.2d at 111. Therefore, we do not find the home and Muller Road Property transmuted to marital property.

However, Wife was significantly involved in the construction as well as the care and maintenance of the home. While we do not find these contributions satisfy the burden to prove transmutation, Wife's efforts in the construction and maintenance of the home added value to the home during the marriage. Section 20-3-630(A)(5) of the South Carolina Code allows a spouse to receive a special equity interest in the increase in the value of nonmarital property when the spouse contributes directly or indirectly to the increase. We recognize the contributions of a spouse to nonmarital property through the award of a special equity interest in such property. *See Murray v. Murray*, 312 S.C. 154, 159, 439 S.E.2d 312, 316 (Ct. App. 1993) ("A spouse has an equitable interest in appreciation of property to which she contributed during the marriage, even if the property is nonmarital."). Wife is entitled to a special equity interest based on her contributions to such property. As such, we remand this case to the family court to determine the amount of Wife's special equity interest.

B. Bank Accounts

On June 22, 2007, Husband deposited the \$3,602,952.08 in proceeds from the sale of the Langford Road Property into various accounts with Wachovia and Community Resource Bank. On appeal, Wife asserts the family court erred in finding three of the Wachovia accounts were Husband's nonmarital property. Because her name appeared jointly with Husband's name on these accounts, Wife argues the accounts transmuted to marital property.

Husband deposited \$25,000 of the proceeds from the sale of the Langford Road Property into a joint account Wife established with Wachovia before the marriage (the Wachovia Account). The family court's order does not specifically address the character of this account as marital or nonmarital. With regard to the bank

accounts generally, the family court's order stated, "Each party shall maintain the sole ownership, use and possession of any other bank accounts not listed herein in that party's name." On appeal, Husband states the family court did not find this account was a marital asset. He concedes this account is Wife's nonmarital property.

Wife also argues two other accounts opened with Wachovia at the time of the Langford Road Property sale, the Crown Account and the Money Market Account, are also transmuted nonmarital property. In its final order, the family court traced a portion of the proceeds from the sale of the Langford Road Property through these accounts and ultimately to an investment account, but it did not rule on the character of the accounts. The record indicates Husband closed the Money Market Account in 2007. We cannot determine from the record whether the Crown Account existed when the marital litigation commenced. Nonetheless, "[t]o preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court." *Doe v. Doe*, 370 S.C. 206, 212, 634 S.E.2d 51, 54 (Ct. App. 2006) (citations omitted). The family court did not address the character of the Crown Account or the Money Market Account. In addition, Wife did not file a Rule 59(e) motion to alter or amend the family court's order to address the character of these accounts. Therefore, the status of the Crown Account and the Money Market Account as marital or nonmarital is not preserved for our review.

C. Investment Accounts

Wife also argues the family court should have found the three investment accounts Husband holds in his name with Wells Fargo are marital property. After the sale of the Langford Road Property, Husband deposited \$1 million of the proceeds into an account with Community Resource Bank. He immediately used \$500,000 of the \$1 million to purchase three CDs. Husband bought one CD for \$200,000 in his name only, one CD for \$200,000 in his and Child's names, and one CD for \$100,000 in Husband and Wife's names¹. In 2009, the two \$200,000 CDs matured. Husband invested the proceeds from these two CDs into two investment accounts

¹ Husband testified Wife borrowed against this CD. Wife made some loan payments, but Husband testified he paid off the balance and cashed out the CD, depositing the proceeds into a money market account prior to the commencement of the marital litigation. Neither the character of this CD nor its proceeds are at issue in this appeal.

at Wachovia (now Wells Fargo). Husband still possessed these accounts at the time of the final hearing.

Husband also funded the other investment account with proceeds from the sale of the Langford Road Property. On June 22, 2007, the date of the property sale, Husband opened the two accounts mentioned above, the Crown Account and the Money Market Account. Husband opened the Money Market Account in his name only and deposited \$1,477,952.08 into the account. Husband opened the Crown Account in his and Wife's names and deposited \$1.1 million into the account. On July 3, 2007, Husband transferred \$1 million from the Crown Account to the Money Market Account. On July 6, 2007, Husband used the \$1 million from the Money Market Account to purchase tax free bonds, which now represents the third Wells Fargo investment account.

As our supreme court explained in *Miller v. Miller*, 293 S.C. 69, 71, 358 S.E.2d 710, 711 (1987), "An unearned asset that is derived directly from nonmarital property also remains separate unless transmuted, as does property acquired in exchange for nonmarital property." These three accounts are traceable to the nonmarital proceeds from the sale of the Langford Road Property. In addition, the parties do not dispute the accounts originated from the \$3.6 million Husband received from the sale of nonmarital property. While part of the proceeds passed through a joint account held by the parties, "the act of depositing an inheritance into the parties' joint account does not automatically render the inherited funds to be marital property." *Sanders v. Sanders*, 396 S.C. 410, 416, 722 S.E.2d 15, 17 (Ct. App. 2011). We find no evidence in the record to support a determination that these accounts transmuted to marital property. Accordingly, the family court correctly held these three investment accounts were Husband's nonmarital property.

D. Personal Property

Wife also argues the family court erred in finding the green Corvette and John Deer tractor were Husband's separate property.

Wife testified Husband borrowed money for the purchase of the green Corvette against two acres of the Muller Road Property. She further testified Husband paid off the loan using money from the sale of the Langford Road Property. Finally, Wife asserted Husband gave her the green Corvette as a gift and she considered it to be her property. In contrast, Husband presented the vehicle's title, which was in

his name only, as well as a receipt showing the \$5,000 he put down on the vehicle was earnest money he received for the sale of the Langford Road Property.

Husband purchased the John Deere tractor during the marriage, but with funds from the sale of the Langford Road Property as evidenced by Husband's bank records. The tractor was also titled in his name. The only testimony Wife presented regarding her use of the tractor was that Husband taught her to drive it, and she occasionally drove it.

"[A]ny property inherited by a spouse, and any property acquired in exchange for such inherited property, is not 'property of the marriage.'" *See Hussey v. Hussey*, 280 S.C. 418, 422, 312 S.E.2d 267, 270 (Ct. App. 1984)). Husband purchased both the green Corvette and the John Deer tractor with funds from the sale of inherited property and titled them in his name. Accordingly, the family court did not err in determining the green Corvette and John Deer tractor were Husband's nonmarital property.

II. Equitable Distribution

The family court found the following assets were marital property: a Mazda Tribute, a 1969 Camaro, the horse, a 2014 Jeep Wrangler, and Wife's Thrift Savings Plan with the postal service. The family court also found the parties owed \$28,000 on the 2014 Jeep Wrangler as a marital debt. The family court apportioned the Mazda Tribute and the Thrift Savings Plan to Wife and all other marital assets to Husband. The family court ordered Husband to sell the 2014 Jeep Wrangler and use the proceeds to pay off the debt. On appeal, Wife argues the family court erred in the overall apportionment of the marital estate, focusing her argument on the apportionment of the horse and the 1969 Camaro to Husband.

Section 20-3-620(B) of the South Carolina Code (2014) lists fifteen factors for the family court to consider in equitably apportioning the marital estate. These factors consist of:

- (1) the duration of the marriage together with the ages of the parties . . . ;
- (2) marital misconduct or fault of either or both parties . . . ;
- (3) the value of the marital property . . . ;
- (4) the income of each spouse, the earning potential of each spouse, and the opportunity for future acquisition of capital assets;
- (5) the health, both physical and emotional, of each spouse;
- (6) the need of each spouse or

either spouse for additional training or education in order to achieve that spouses's income potential; (7) the nonmarital property of each spouse; (8) the existence or nonexistence of vested retirement benefits for each or either spouse; (9) whether separate maintenance or alimony has been awarded; (10) the desirability of awarding the family home as part of equitable distribution or the right to live therein for reasonable periods to the spouse having custody of any children; (11) the tax consequences to each or either party as a result of any particular form of equitable apportionment; (12) the existence and extent of any support obligations, from a prior marriage or for any other reason or reasons, of either party; (13) liens and any other encumbrances upon the marital property, which themselves must be equitably divided . . . and any other existing debts incurred by the parties or either of them during the course of the marriage; (14) child custody arrangements and obligations at the time of the entry of the order; and (15) such other relevant factors as the trial court shall expressly enumerate in its order.

S.C. Code Ann. § 20-3-620(B). "On appeal, this court looks to the overall fairness of the apportionment and it is irrelevant that this court might have weighed specific factors differently than the family court." *Id.*

Initially, we note neither party asked for a specific percentage of the marital estate. In addition, the family court considered all of the relevant factors as evidenced by its order. As noted by the family court, the marital debt exceeded the value of the marital assets. While Husband received several marital assets, the family court also made him responsible for the marital debt. Wife received several assets without responsibility for the marital debt. As such, the family court did not err in its apportionment of the marital property.

III. Alimony

Finally, Wife argues the family court erred in denying her request for alimony. Specifically, Wife contends the family court failed to give sufficient weight to the standard of living the parties enjoyed during the marriage. In the alternative, Wife asserts the family court should have ordered rehabilitative alimony.

Alimony is a substitute for the support normally incident to the marital relationship. *Spence v. Spence*, 260 S.C. 526, 529, 197 S.E.2d 683, 684 (1973). "Generally, alimony should place the supported spouse, as nearly as is practical, in the same position he or she enjoyed during the marriage." *Allen v. Allen*, 347 S.C. 177, 184, 554 S.E.2d 421, 424 (Ct. App. 2001).

Factors to be considered in making an alimony award include: (1) duration of the marriage; (2) physical and emotional health of the parties; (3) educational background of the parties; (4) employment history and earning potential of the parties; (5) standard of living established during the marriage; (6) current and reasonably anticipated earnings of the parties; (7) current and reasonably anticipated expenses of the parties; (8) marital and nonmarital properties of the parties; (9) custody of children; (10) marital misconduct or fault; (11) tax consequences; and (12) prior support obligations; as well as (13) other factors the court considers relevant.

Id. (citing S.C. Code Ann. § 20-3-130(C) (2014)). No one of the above factors is dispositive. *Lide v. Lide*, 277 S.C. 155, 157, 283 S.E.2d 832, 833 (1981).

In its order, the family court addressed each factor in section 20-3-130(C). The parties were married for ten years. At the time of the divorce, Husband was sixty-five and Wife was fifty. Husband is in poor health, while Wife recently had shoulder surgery and will require therapy before she is able to work. Wife has a high school education; Husband has training from the Air Force as well as two years of community college. Wife acknowledged she could return to work and receive an annual salary of \$40,000 to \$50,000 with the postal service and Husband receives social security, rental income, and interest from his investment accounts totaling approximately \$5,600 per month. Wife alleged Husband was physically violent toward her, but the family court did not consider her claims credible and did not find fault on behalf of either party. Both parties have significant attorney's fees and financial obligations to support their child, although Wife does not have custody. These factors do not weigh in favor of an alimony award to Wife.

However, we find the family court gave insufficient weight to the parties' standard of living and Husband's significant nonmarital property. During the marriage, the parties moved from a mobile home to a large new home. Wife and Husband frequently traveled to car shows and purchased numerous collectable cars. Wife received several large cash gifts from Husband. In addition, Husband has over \$3 million in nonmarital assets according to his financial declaration. We find Wife should be allowed alimony in some form. Thus, we remand the issue of alimony to the family court to determine the appropriate type and amount of alimony Wife should receive.

CONCLUSION

Based on foregoing, we affirm the family court's determination that the 837 Langford Road Property, the Muller Road Property and the marital home, the investment accounts, and the personal property are nonmarital property. However, we find Wife is entitled to a special equity interest in the marital home and the Muller Road Property. We remand this case to the family court to determine the special equity interest Wife is entitled to because of her contributions to the home and property. In addition, we remand to the family court to determine the type and amount of alimony award to Wife. The family court's order is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

GEATHERS and MCDONALD, JJ., concur.