

IN THE UTAH COURT OF APPEALS

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Camille Castillo Johnson,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellee,)	
)	Case No. 20061003-CA
v.)	
)	F I L E D
Travis Paul Johnson,)	(October 12, 2007)
)	
Respondent and Appellant.)	2007 UT App 329

Third District, Salt Lake Department, 044907342
The Honorable Leslie A. Lewis

Attorneys: Jeffrey A. Callister, Samuel M. Barker, and Bradley
J. Schofield, Murray, for Appellant
Barbara W. Richman and Glen M. Richman, Salt Lake
City, for Appellee

Before Judges Greenwood, Davis, and McHugh.

DAVIS, Judge:

Respondent Travis Paul Johnson (Husband) appeals the amended divorce decree, arguing that the trial court erred in awarding Petitioner Camille Castillo Johnson (Wife) all appreciation on a piece of real property acquired during the marriage. Husband also argues that the trial court erred in awarding Wife money she had paid for his medical bills. We affirm.

The trial court awarded the real property at issue, and its appreciation, to Wife. In support of this determination, the trial court made the following findings:

The real property . . . was purchased by [Wife] from her separate, pre-marital funds and assets. Title to said real property was taken by [Wife] individually. [Husband] was never included or named as an owner on the title to said real property. [Wife] was the sole applicant of and obligor on the obligation which encumbers the real property. All payments of the mortgage principal and interest were made by [Wife] from her

separate funds. All payments of the real property taxes and insurance were made by [Wife] from her separate funds.

The trial court is given "considerable latitude" in its property division determinations, and we presume such division is valid. Naranjo v. Naranjo, 751 P.2d 1144, 1146 (Utah Ct. App. 1988). "Changes will be made only if there was a misunderstanding or misapplication of the law resulting in substantial and prejudicial error, the evidence clearly preponderated against the findings, or such a serious inequity has resulted as to manifest a clear abuse of discretion." Id.

Husband first argues that the evidence does not support the trial court's finding that "[a]ll payments of the mortgage principal and interest were made by [Wife] from her separate funds." In an attempt to marshal the evidence as required in such a challenge, see Utah R. App. P. 24(a)(9), Husband points to Wife's testimony that Husband never provided any money to pay toward the mortgage payments. Husband then proceeds to argue that despite this evidence, there was also evidence indicating that in one instance, some of Husband's money was deposited into Wife's personal account, which was the account from which mortgage payments were made. Although Husband concedes that there is no evidence to show where those funds were actually applied, he argues that the simple fact that the funds made it to Wife's personal account negates the trial court's finding that all mortgage payments were paid from Wife's separate funds. When there is evidence both supporting and contradicting a fact, "it is within the province of the fact finder to believe those witnesses or evidence it chooses." Yelderman v. Yelderman, 669 P.2d 406, 408 (Utah 1983). Thus, "[t]he issue on appeal is not whether the trial court's findings accord with our own view of the evidence, but whether, viewing the evidence and the reasonable inferences therefrom in the light most favorable to the findings, the findings are supported by the evidence." Shioji v. Shioji, 712 P.2d 197, 201 (Utah 1985). Wife's testimony regarding the source of mortgage payments was sufficient to support the trial court's contested finding--especially considering that there was no evidence showing that Husband's money was actually used for mortgage payments--and we therefore refuse to overturn this finding.

Husband next argues that the trial court misunderstood or misapplied the law in determining that the appreciation on the real property was Wife's separate property, as opposed to marital property subject to an equal division among the parties. Husband does not dispute that the real property was purchased from Wife's premarital funds and, thus, was initially Wife's separate property. Nor does he dispute that any appreciation on Wife's

separate property would also be considered Wife's separate property. Husband appears to argue, however, that events within the marriage converted this separate property into marital property.

Premarital property loses its separate identity and becomes a part of the marital estate if "(1) the other spouse has by his or her efforts or expense contributed to the enhancement, maintenance, or protection of that property, thereby acquiring an equitable interest in it, or (2) the property has been consumed or its identity lost through commingling or exchanges or where the acquiring spouse has made a gift of an interest therein to the other spouse."

Oliekan v. Oliekan, 2006 UT App 405, ¶20, 147 P.3d 464 (quoting Mortensen v. Mortensen, 760 P.2d 304, 308 (Utah 1988)).

We are not persuaded by Husband's arguments that his purported efforts--including doing some tile work in the home and "supervising" landscaping and home theater installation--were sufficient to obtain an equitable interest in the home.¹ Instead, we agree with the trial court that "[Wife] kept the asset separate" and that the facts do not support a finding that "[Husband] made any contribution to the house" other than possibly a monetary contribution toward landscaping and tile--a portion of the one deposit made into Wife's separate account--for which the court ordered reimbursement to Husband.²

Nor do we agree with Husband's contention that Wife's actions show that she intended to gift her separate property to the marital estate simply because the property was acquired after the marriage and birth of the parties' child, and because the three lived on the property. Such reasoning would virtually

1. Husband also points to his care of the parties' child, but we fail to see the relevance of such a fact where neither party worked and both cared for the child, as opposed to the situation where child care provided primarily by one spouse may have allowed the other spouse to enhance the value of his or her separate property.

2. This reasoning, combined with Wife's clear testimony regarding her intent, defeats any commingling argument. The one possible contribution by Husband was easily traceable and had not lost its identity through its deposit into Wife's separate account.

eliminate the ability of a party to acquire separate property during the marriage, especially if the party at all allowed the spouse to enjoy any benefit from the property; and this reasoning would be inharmonious with "the right that married persons have always had in this state to separately own and enjoy property." Mortensen, 760 P.2d at 308. As the findings of the trial court explain, several of Wife's actions indicate that she intended to maintain the real estate as separate property, and the single fact that Wife did not insist on a prenuptial agreement does not require a contrary conclusion.

Husband finally argues that the case should be remanded for factual findings that would affect the determination of whether Wife is entitled to retain money paid for Husband's medical bills. The trial court ordered Wife to reimburse Husband only \$14,000 of the \$24,000 of his funds that were deposited in her account because Wife paid approximately \$10,000 in medical bills related to Husband's premarital accident. Husband argues that this determination is based on insufficient facts regarding whether his surgery was performed before or after the marriage. But Husband acknowledges that Wife testified that the surgery was performed after the marriage. Thus, the trial court was allowed to rely on such an assertion, and if Husband had evidence to the contrary, he had an opportunity to produce such below. We may not remand to give him a second opportunity to do so now.

Affirmed.

James Z. Davis, Judge

WE CONCUR:

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge