

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001763-MR

BRADLEY STEVEN WATKINS

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE STEVEN R. JAEGER, JUDGE
ACTION NO. 00-CI-02648

GINNY MARIE WATKINS, A/K/A
GINNY MARIE WARDELL

APPELLEE

OPINION

REVERSING AND REMANDING

** ** * * *

BEFORE: BARBER, DYCHE, AND McANULTY, JUDGES.

DYCHE, JUDGE. Bradley Steven Watkins appeals the Findings of Fact and Conclusions of Law in a Decree of Dissolution entered by the Kenton Circuit Court, in which the court found that Ginney Marie Watkins had a marital interest in property appellant inherited from his father. Although this court granted appellee's motion for an extension of time to file a brief in response, she failed to do so.

There are no underlying factual disputes in this matter. The parties were married on March 6, 1989. In June of 1998, the husband inherited from his father real property located at 15 Pike Street, Bromley, Kentucky. At the time of the inheritance, the property had a fair market value of \$52,000.00, and there was no debt or lien against the property. According to the husband's testimony, the property had not increased in value from the time he inherited it, and the wife presented no contrary evidence.

In 1999, the parties took out a loan through Altegna Credit with a mortgage on the inherited property in the amount of \$27,653.00. The wife conceded at the dissolution hearing that it was necessary for her name to be added to the deed in order to place a mortgage on the property. It was undisputed that the borrowed money was not used toward the property in any manner. Instead, it was used for marital living expenses. No marital funds were used toward paying off the mortgage. In fact, at the time of the dissolution hearing, the property was in foreclosure because no payments had been made at all.

In regard to the property at issue, the circuit court made the following Conclusions of Law:

The Court concludes that the Husband has a non-marital contribution to the real estate in the sum o[f] \$24,347, at the time the property was deeded to the parties. The marital contribution evidenced by the joint

mortgage is \$27,653. There is no evidence of any mortgage principal reduction during the marriage. In fact, the property is in foreclosure. Utilizing the suggested formula in Brandenburg v. Brandenburg, Ky. App., 617 S.W.2d 871 (1981), the Court concludes that the [Husband's] non-marital interest in the property is \$11,399.54, and that shall be restored to him. The marital interest in the property is \$12,947.46, and each party is awarded one-half of that amount.

Marital debt on the property is \$27,653, and each party shall pay one-half of that debt of the note signed by them as Husband and Wife.

Pursuant to KRS 403.190(2)(b) non-marital property includes "[p]roperty acquired by gift, bequest, devise, or descent during the marriage" Clearly, at the time the husband inherited the property, it was non-marital; the wife did not dispute this fact. Further, adding the wife's name to the deed did not change the character of the property as title is not controlling. Angel v. Angel, Ky. App., 562 S.W.2d 661, 665 (1978).

We must determine what, if any, effect on the classification of the property placing a mortgage on it had wherein the borrowed money was used to pay for marital living expenses. The circuit court relied on the Brandenburg case for its result. However, we disagree that Brandenburg applies to the present case.

Pursuant to the formula in Brandenburg, 617 S.W.2d at 872, "[m]arital contribution . . . is defined as the amount expended after marriage from other than nonmarital funds in the reduction of mortgage principal, plus the value of all improvements made to the property after marriage from other than nonmarital funds." In the case at hand, the parties' mortgage on the property did nothing to increase the property's equity. No marital funds were used to increase the value of the property. In fact, no marital funds were used to pay off the note and no payments whatsoever were made on the property. If, however, marital funds had been used to pay off the note and buy back equity in the property, we might agree that Brandenburg applied. By the very definition of marital contribution in Brandenburg, it is clear that in the present case such contribution is absent. Accordingly, Brandenburg does not apply under the facts of this case.

The wife in this matter enjoyed the benefits of the loan proceeds, but did not thereafter contribute to the payment of the loan. Where the husband uses non-marital property as collateral for a debt benefiting both parties, such does not dictate that the wife will not have liability for the debt. See generally Bruton v. Bruton, Ky. App., 569 S.W.2d 182 (1978). And, there is no supporting case law that the husband's doing so

results in the wife acquiring an interest in the mortgaged property, absent a marital contribution.

Based on the foregoing, we hold that the circuit court clearly erred in concluding that the wife had a marital interest in the subject property. We therefore remand this matter for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

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