

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000971-MR

JOHNNY STINSON BRYANT

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE SQUIRE N. WILLIAMS, JUDGE
ACTION NO. 13-CI-00831

MARY LOU BRYANT

APPELLEE

OPINION
REVERSING AND REMANDING

** ** *

BEFORE: KRAMER, CHIEF JUDGE; TAYLOR AND VANMETER, JUDGES.

VANMETER, JUDGE: Johnny Stinson Bryant appeals an order from the Franklin Family Court entered on April 14, 2015 classifying a home given to him by his employer as a marital employment benefit. For the following reasons, we reverse and remand.

I. Procedural and Factual Background.

Johnny and Mary Lou Bryant were married in March 1976 before separating in July 2012, and divorcing in May 2015. The only remaining contested issue in the dissolution of their marriage is the disposition of a home located in Metcalfe County.

Johnny worked for the Jimmy Rowe on the Rowe tobacco farm for nearly forty years. Johnny was paid a salary for his work, and the Rowe family also provided his family and him a residence on the farm. The Rowes furnished the home and paid for all utilities associated with the residence for the duration of Johnny's employment. Johnny and Mary Lou lived together in that residence, and raised their three children. Mary Lou was a homemaker, but she occasionally worked for the Rowes during tobacco growing and harvesting season as needed.

After Jimmy Rowe died in 1994, Johnny continued working on the farm, then operated by surviving Rowe family members. In 2004, the Rowe family sold their land and farm, including the residence in which the Bryants had lived. In December 2004, the Rowe family bought and conveyed a different home to the Bryants shortly after they sold the farm, and ceased farming operations.

The deed for this second home was signed by grantors Dora Dean Rowe, the widow of Jimmy Rowe, and her daughter, Anna Rowe McMurtrey. The language of the deed conveyed the home to Johnny and Mary Lou "jointly and equally" and is signed by both Johnny and Mary Lou. The consideration for the deed recited payment of \$1 for the property, and with "the love and affection the

Grantors have for the Grantees[.]” The Bryants began living in the home shortly after closing. While they lived in the residence together, the Bryants made several improvements to the property, including a new roof, out buildings, painting, and paneling. The exact value of these improvements is not in the record.

The trial court held a hearing to determine the nature of this residence, and heard testimony from Johnny, Mary Lou, and the grantors, Mrs. Rowe, and Anna Rowe McMurtrey. Both Mrs. Rowe and Anna testified that the residence was intended to be a gift to Johnny for his years of loyalty and dedication to the family, not to replace the previous home, and that Mary Lou had been added to the deed only at the request of Johnny. Anna further testified that the residence was given as a gift to Johnny to follow her father’s wishes to ensure Johnny always had a place to live.

Following the hearing, the trial court entered its April 14, 2014, order, stating that “the ownership of the subject property was not a gift to Johnny, but rather a continuation of the arrangement established many years prior due to Johnny’s loyalty and reliability as an employee.” The trial court found that the property is marital in nature, and subject to division, and ordered the property to be sold with the proceeds divided between Johnny and Mary Lou. Johnny now appeals from that order.

II. Standard of Review.

Under CR¹ 52.01, in an action tried without a jury,

¹ Kentucky Rules of Civil Procedure.

“[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. . . . A factual finding is not clearly erroneous if it is supported by substantial evidence. Substantial evidence is evidence, when taken alone or in light of all the evidence, which has sufficient probative value to induce conviction in the mind of a reasonable person. An appellate court, however, reviews legal issues *de novo*.

Hunter v. Hunter, 127 S.W.3d 656, 659 (Ky. App. 2003) (internal citations omitted). “The question of whether an item is marital or nonmarital is reviewed under a two-tiered scrutiny in which the factual findings made by the court are reviewed under the clearly erroneous standard and the ultimate legal conclusion denominating the item as marital or nonmarital is reviewed *de novo*.” *Smith v. Smith*, 235 S.W.3d 1, 6 (Ky. App. 2006).

III. Analysis.

On appeal, Johnny argues that the trial court erred in its ultimate conclusion that the residence is marital property. He contends that the residence is a nonmarital gift because the question of whether property is a gift to only one spouse depends primarily on the intent of the donor, regardless of how the property is titled. Mary Lou counters that, because this gift was not familial, the donative intent is not the primary factor to be considered, rather consideration includes “the intent of the donor at that time as to intended use of the property, status of the marriage relationship at the time of the transfer, and whether there was any valid

agreement that the transferred property was to be excluded from the marital property.” *O’Neill v. O’Neill*, 600 S.W.2d 493, 495 (Ky. App. 1980).²

KRS³ 403.190 governs the dissolution of property, and states in relevant part:

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

(a) Property acquired by gift, bequest, devise, or descent during the marriage and the income derived therefrom unless there are significant activities of either spouse which contributed to the increase in value of said property and the income earned therefrom;

(b) Property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; [and]

...

(e) The increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during 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

² Additionally, Mary Lou seems to argue that the grantors are now estopped from denying the material representation that the residence was conveyed to Johnny and Mary Lou, for Johnny’s hard work and dedication on the Rowe farm. However, we will not address this argument since no testimony disputed the residence was a gift; in fact, all parties testified that the conveyance was a gift.

³ Kentucky Revised Statutes.

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.

KRS 403.190(2), (3). “Property acquired by either spouse subsequent to the marriage is presumed to be marital property, except for certain enumerated types including property acquired by gift. The party claiming property acquired after the marriage as his/her nonmarital property through the gift exception bears the burden of proof on that issue.” *Hunter*, 127 S.W.3d at 660 (citing *Travis v. Travis*, 59 S.W.3d 904, 912 (Ky. 2001)); *Browning v. Browning*, 551 S.W.2d 823, 825 (Ky. App. 1977)(holding that the appellant must “prove by clear and convincing proof that he acquired his interest by gift[]”).⁴

In construing KRS 403.190 and in assigning each spouse his or her property, record title should not be controlling; marital presumption “can be rebutted by evidence of a gift intended for one spouse regardless of the documentary title.” *Hunter*, 127 S.W.3d at 662. If this marital presumption is rebutted, unless the trial court finds that the other spouse was named as a grantee for a reason other than the marriage to the spouse to whom the gift was intended, that property should be considered nonmarital. *Angel v. Angel*, 562 S.W.2d 661, 665 (Ky. App. 1978); *Hunter*, 127 S.W.3d at 660. Factors relevant to the determination whether the property is marital or nonmarital are:

⁴ This court has defined a “gift in a common, ordinary, popular sense [as] a voluntary and gratuitous giving of something by one without compensation to another who takes it without valuable consideration.” *Browning*, 551 S.W.2d at 825 (internal quotation and citations are omitted).

whether particular property was a gift include the source of the money used to purchase the item, the intent of the donor, and the status of the marriage at the time of the transfer. However, the intent of the purported donor is considered the primary factor in determining whether a transfer of property is a gift.

Hunter, 127 S.W.3d at 660 (internal citation omitted).⁵

Despite the testimony that this residence was a gift, the trial court classified the residence as a marital employment benefit, and held that because an employer-employee relationship existed between the Rows and Bryants, not a familial one, “the ownership of the subject property was not a gift to Johnny, but rather a continuation of the arrangement established many years prior due to Johnny’s loyalty and reliability as an employee.” However, Johnny received a separate salaried compensation for his work at the Rowe farm in addition to the use of on-farm residence, Johnny paid only \$1 nominal consideration for the home, and he did not perform his job duties in consideration for a possible future conveyance. The Rows no longer owned and operated the farm, and the employment relationship with Johnny had ended at the time of conveyance of the second residence. We therefore disagree with the trial court’s conclusion of law that the conveyance of this residence was merely a continuation of Johnny’s prior employment arrangement, and not a gift.

⁵ In *Hunter*, 127 S.W.3d at 662, the court continued that this holding “is consistent with [prior precedent] and the source of funds rule underpinning both statutory and case law to determine marital and nonmarital interests in property. . . since both attempt to effectuate the intent of the donor.” (Internal citations omitted).

We believe the trial court erred in holding that the residence was a continuation of the prior employment arrangement; however, the trial court did not make sufficient findings of fact for this court to properly determine the classification of the gift as marital or nonmarital. Despite the undisputed testimony from the Rowses, the trial court did not make an explicit finding as to the Rowses' donative intent in the conveyance of the residence. The trial court also did not make any findings regarding Johnny's intent in directing Mary Lou's name be added to the deed. The current value of the home and any improvements made during the marriage are also absent from the court's findings. Because of the erroneous findings of the trial court relating to the classification of the residence, and because of the absence of these specific findings, further proceedings are necessary to determine the characterization of the home.

IV. Conclusion.

According, we hold the trial court erred and therefore reverse its judgment, and remand to the Franklin Circuit Court for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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