

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

SARAH WERDEBAUGH,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
RONALD W. WERDEBAUGH, SR.,	:	
	:	
Appellee	:	No. 1306 MDA 2013

Appeal from the Order Entered June 28, 2013
in the Court of Common Pleas of Fulton County
Civil Division at No(s): 189-2011-C

BEFORE: PANELLA, WECHT, and STRASSBURGER,* JJ.

MEMORANDUM BY STRASSBURGER, J.:

FILED MAY 29, 2014

Sarah Werdebaugh (Wife) appeals from the order entered on June 28, 2013, which granted a divorce for Wife and Ronald W. Werdebaugh, Sr. (Husband) and distributed their marital property. We vacate the portion of the order distributing the marital property and remand for further proceedings.

The trial court summarized the background underlying this matter as follows.

The parties were married on November 25, 1970 and separated in July 2010. [Wife filed a Complaint in Divorce on July 7, 2011, including a count for equitable distribution. Husband filed a Counterclaim on March 13, 2012, including counts for alimony, alimony pendente lite, counsel fees, and expenses. On March 21, 2012, Timothy D. Wilmot was appointed Master for all the aforesaid claims. A Pre-Hearing Conference was held on June 5, 2012, and a Settlement Conference was held on July 31, 2012. A Master's Hearing was held on August 14, 2012 and September 20, 2012.

* Retired Senior Judge assigned to the Superior Court.

The Master filed his report on November 8, 2012, in the office of the Fulton County Prothonotary. On November 28, 2012, [Wife] filed exceptions. ... [The trial court] heard oral arguments on March 12, 2013. On June 2[8], 2013, [the trial court] [filed] an Order and Opinion, and a Divorce Decree. [Wife] filed a Notice of Appeal on July 22, 2013, and a Statement of Matters Complained of on Appeal on August 12, 2013. [The trial court subsequently filed an opinion pursuant to Pa.R.A.P. 1925(a).]

Trial Court Opinion, 8/15/2013, at 1.

In her brief to this Court, Wife asks us to consider the following issues.

1. The [court] erred in adopting the Master's recommendation ... that the entire value of the parties' son's residence located at 1260 Bethel Church Road was marital property subject to equitable distribution when only \$2,000.00 of marital funds was [sic] used to purchase the land on which the home was located, moreover the Master found specifically that son was the "equitable owner" of said residence.

2. The [court] erred in adoption [sic] the Master's recommendation ... awarding the marital residence ... to Husband based solely upon his business being operated out of a building on the property. Moreover the [court] abused its discretion in adopting the Master's recommendation where the business in question had little to no income over the last three years of the marriage.

Wife's Brief at 6 (suggested answers omitted).

Both of Wife's issues challenge the trial court's award of equitable distribution. We consider such challenges mindful of the following principles.

A trial court has broad discretion when fashioning an award of equitable distribution. Our standard of review when assessing the propriety of an order effectuating the equitable distribution of marital property is whether the trial court abused its discretion by a misapplication of the law or failure to follow proper legal procedure. We do not lightly find an abuse of discretion, which requires a showing of clear and convincing evidence. This Court will not find an abuse of discretion unless

the law has been overridden or misapplied or the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will, as shown by the evidence in the certified record. In determining the propriety of an equitable distribution award, courts must consider the distribution scheme as a whole. [W]e measure the circumstances of the case against the objective of effectuating economic justice between the parties and achieving a just determination of their property rights.

Biese v. Biese, 979 A.2d 892, 895 (Pa. Super. 2009) (citations and quotation marks omitted).

In its opinion and order regarding Wife's exceptions, the trial court addressed the first issue that Wife raises on appeal as follows.

[Wife's Exception #6: Wife has filed an exception to the Master's finding that the real estate located at 1260 Bethel Church Road, Fulton County, Pennsylvania, which is owned by [the parties'] son, Ronald Werdebaugh, Jr. [(Son)], is marital property. All of the testimony supports the finding that [Wife and [Son] acquired the real estate during the marriage. The real estate is currently titled in a deed to [Wife and [Son] as joint tenants with right of survivorship. Furthermore, prior to separation, [Wife, without [Husband's knowledge, borrowed \$25,000.00 from the Franklin County Teacher's Credit Union to lend to [Son]. A lien was placed against the real estate. [Wife then took a line of credit from Tower Bank to pay off the loan to Franklin County Teacher's Credit Union. Husband had no knowledge of [Wife's actions as supported by the Day 2 transcript [of the Master's hearing]. The Master expressed empathy with [Son] by observing that he is the "equitable" owner of the real estate, because [Son] is repaying the debt on the real estate. However, the facts are clear that at least a portion of the real estate is marital property. The oddity is the nature of the titling of the real estate. If [Son] were to have died during the life of the parties' marriage, all ownership and value would have then been distributed to [Wife. On the other hand, if [Wife had died during the parties' marriage, [Son] would have received the entire value of the real estate. In this instance, both parties are alive and both parties have [paid] for the debts on the real estate. The Master's decision to assess

\$47,500.00 as one-half of the \$95,000.00 appraised value of the real estate is appropriate. Furthermore, Pennsylvania has a long line of cases, including [***Diamond v. Diamond***, 519 A.2d 1012 (Pa. Super. 1987),] in which marital property is defined as all property acquired by either party during the marriage. This [c]ourt does not have to go on to cite any additional case law to support its decision because 23 Pa.C.S.[] § 3501(a) also defines as marital property “all property acquired by either [party] during the marriage unless an exclusion applies.” This [c]ourt can find that there is no exclusion that applies in this instance. As much as []Wife may resent the fact that [her and Son’s] decisions were likely made with the intent to deprive []Husband of possible interest in the real estate, the reality is that while titling of the real estate deprives []Husband of actual possession or ownership of the real estate, he still has a right to be compensated for his marital interest. This [c]ourt cannot ignore that a portion of the value of the real estate must be made a part of the marital property, and in turn, the Master’s distribution of that value is supported by the record, statutory authority, and case law. []Wife’s Exception #[6] is DENIED.

Trial Court Order and Opinion, 6/28/2013, at 8-9.

In her brief to this Court, Wife argues that the court erred by denying her Exception #6. In support of her argument, Wife first asserts, “It is counter-intuitive to find [Son] to be the equitable owner of the property but then award the value of a one-half interest to Husband in this instant matter.” Wife’s Brief at 12 (citation omitted). Wife further contends that, “should this [C]ourt find Husband to have any interest [in the property], it would be a one-third interest in the home, as Husband could arguably be entitled to one-half of [W]ife’s current interest.” ***Id.*** The theme of Wife’s argument is that Son is the actual owner of the property; therefore, this property does not constitute marital property.

Regarding the property located at 1260 Bethel Church Road, at the Master's hearing, Wife testified that the only reason that her name is associated with that property is because of Son's poor credit. N.T., 9/20/2012, at 76-77 ("He had bad credit because of his marriage. He couldn't borrow no money and he'd have lost his home if I wouldn't have helped him out. **That's the reason my name was put on the place to start with.** He was young and didn't have credit.") (emphasis added). She further testified that, outside of \$2,000.00 that she gave to Son to purchase the land, Son has paid all of the debt connected to the property. *Id.* at 65-82. In addition, Wife stated that she considers Son the owner of the property. *Id.* at 79.

The Master credited Wife's testimony. Master's Report and Recommendations, 11/8/2012, at 12. In fact, the Master deemed Son to be the "equitable owner" of the property. *Id.* The Master and the trial court nonetheless determined that the property constitutes marital property. We hold that this determination, in light of the contradictory finding that Son is the equitable owner of the property, was erroneous.

Although not controlling, cases addressing ownership of joint bank accounts are instructive. By statute, joint bank accounts carry a presumption of joint ownership with a right of survivorship. *In re Estate of Cella*, 12 A.3d 374, 379-81 (Pa. Super. 2010). However, when an account carries a second name solely for the convenience of the other accountholder,

and the facts clearly demonstrate that the second party was never intended as an owner of the funds in the account, that presumption is rebutted. **See, e.g., *In re Estate of Strahsmeier***, 54 A.3d 359, 361 (Pa. Super. 2012).

Similarly, in the instant case, Wife credibly testified that her name was added to the deed for Son's property solely to enable him to make a purchase he otherwise would not have been able to finance. Son resided on the property and made payments on the mortgage for the property.¹ Although Wife's name appears on the deed, she convinced the Master that she was not the actual owner of the property.

"Marital property" is defined as "all property acquired by either party during the marriage." 23 Pa.C.S. § 3501(a). Given the Master's credibility determinations, it is clear that Wife did not intend to acquire, nor did she acquire, the property located at 1260 Bethel Church Road. Rather, she lent her name and credit to Son in order to allow him to acquire that property. For these reasons, we conclude that the trial court erred by treating Son's property as the marital property of the parties.

Wife also argues that the trial court erred by denying her Exception #7. The trial court addressed this exception as follows.

Wife's Exception #7: []Wife takes exception to the Master's award of granting the residence located at 1818 Bethel Church Road to []Husband.

¹ At some point after the parties separated, Wife moved into Son's home. She lived there at the time of the Master's hearing.

The Master in his analysis on Day 1 of testimony found that 1818 Bethel Church Road was the real estate at which [Husband] had operated his business for 27 years, and in turn, the real estate had substantial value to [Husband] because it supported his sole source of income. [Husband] operates a garage there and in addition stores 4 to 5 vehicles. [Husband] testified that he could obtain a mortgage to buy out [Wife's] interest in the property on Day 1 of testimony. [Wife] could provide no testimony or proof that she would be able to borrow sufficient monies to purchase [Husband's] share of the property. The Master is afforded great latitude in making an award of real property. **Gaydos v. Gaydos**, 693 A.2d 1368 (Pa. Super. 1997). Furthermore, it is an appropriate factor for the [c]ourt to consider which spouse is utilizing the property to support [his or her] particular business. In **Gaydos v. Gaydos**, the [c]ourt awarded the marital residence real estate to [the husband because] it included husband's dental practice. The Master insured husband the opportunity to generate income and pay support. The same logic can apply to [this case]. The property located at 1818 Bethel Church Road was utilized primarily by [Husband] to support and provide income to [him] and [Wife]. [Wife] is a custodian at [the] local school district and thus, is not dependent upon the real estate to generate income. Under these circumstances, it was appropriate for the Master to award the real estate to [Husband] and assign appropriate valuation of it to [Wife]. For the foregoing reasons, [Wife's] Exception #7 is DENIED.

Trial Court Order and Opinion, 6/28/2013, at 9-10.

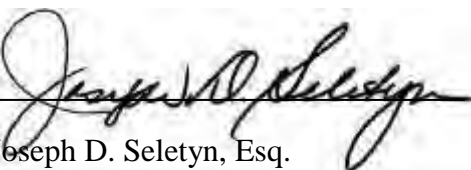
On appeal, Wife essentially argues that, because Husband has not realized a substantial income from his business located at the marital residence, the trial court abused its discretion by awarding Husband possession of that residence. However, as we noted above, the trial court has broad discretion in fashioning an award of equitable distribution. The record supports the trial court's conclusion that Husband has operated a business out of the marital residence for 27 years, whereas Wife's income is

not connected to the residence. We simply can discern no misapplication of the law in the trial court's decision to allow Husband to remain in the marital residence. Moreover, the record does not suggest that the court's decision was manifestly unreasonable or the result of partiality, prejudice, bias, or ill will. We, therefore, conclude that the court did not abuse its discretion by allowing Husband to remain living in, and operating his business out of, the marital residence.

Our determination that the trial court erred by concluding that Son's property constitutes marital property upsets the equitable distribution scheme and may require modification of the distribution of all other assets. ***See DeMasi v. DeMasi***, 530 A.2d 871, 888 (Pa. Super. 1987) ("[O]ur holding which excludes good will from marital property and includes the certificates of deposit as marital property may require modification of the distribution of all other assets."). We, therefore, vacate the equitable distribution portion of the trial court's June 28, 2013 order. We remand the matter and direct the trial court to fashion a new equitable distribution order consistent with this Memorandum.

Order vacated in part. Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/29/2014