[Cite as *Sun v. Chen*, 2009-Ohio-6197.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Li C. Sun,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-404 (C.P.C. No. 08DR01-0039)
Ying Chen,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 24, 2009

Craig P. Treneff Law Office, Andrea L. Cozza, and *Craig P. Treneff*, for appellee.

White & Fish LPA, Inc., and *Jeffrey D. Fish*, for appellant.

APPEAL from the Franklin County Court of Common Pleas, Division of Domestic Relations.

FRENCH, P.J.

{¶1} Defendant-appellant, Ying Chen ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, which issued a judgment entry and decree of legal separation regarding appellant and her husband, plaintiff-appellee, Li C. Sun ("appellee").

{¶2} Appellant and appellee were married in China in 1985. Appellant moved to the United States in 1995; appellee and their child, who is now emancipated, arrived in the United States in 1999.

{¶3} Appellee filed a complaint for legal separation in 2008. The court issued its entry and decree of legal separation on March 24, 2009.

{¶4} Appellant appealed. She raises the following four assignments of error:

> First Assignment of Error: The trial court erred as a matter of fact and as a matter of law in failing to determine that the loans received by [appellant] during the marriage from her brother and cousin were marital debts.
>
> Second Assignment of Error: The trial court abused its discretion in failing to determine that the loans received by [appellant] during the marriage from her brother and cousin were marital debts.
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> Third Assignment of Error: The trial court erred as a matter of fact and as a matter of law in failing to allocate responsibility between the parties for the loans received by [appellant] during the marriage from her brother and cousin.
>
> Fourth Assignment of Error: The trial court erred as a matter of law in allowing into evidence, over the objection of counsel, a printout of an alleged email exchange between the parties that contained settlement negotiations.

{¶5} Appellant's first three assignments of error concern her claim that marital debts, owed to her family members, exist. We will not overturn a trial court's division of property absent an abuse of discretion. *Neville v. Neville*, 99 Ohio St.3d 275, 2003-Ohio-3624, ¶5. We review a trial court's characterization of property as separate or marital under a manifest weight of the evidence standard. *Heyman v. Heyman*, 10th Dist. No. 05AP-475, 2006-Ohio-1345, ¶16, citing *Garish v. Garish* (Mar. 10, 1998), 10th Dist. No. 97APF06-813, citing *James v. James* (1995), 101 Ohio App.3d 668, 684.

Applying this deferential standard, we will not reverse the trial court's classification of property if some competent, credible evidence supports it. *Barkley v. Barkley* (1997), 119 Ohio App.3d 155, 159.

{¶6} Here, appellant testified that she and appellee received the following cash loans from family members: $50,000 from her cousin in 1995; $30,000 from her brother in 1999; $70,000 from her brother in 2001; and $40,000 from her brother in 2003. The trial court, she argues, should have identified these loans as marital debts.

{¶7} Appellant testified that, when she came to the United States in 1995, she brought with her $2,000 from the couple's bank account and $50,000 she had borrowed from her cousin. Appellant described her family as "special." (Tr. 21.) She said that her father died when she was nine years old, and her uncles and cousins helped support and raise her after that. When she needed money to come to the United States to attend school, she approached her cousin, who gave her $50,000 in cash. She traveled to the U.S. alone and brought the $50,000, in cash, with her.

{¶8} Appellant said that she opened a bank account when she arrived, and she made her tuition payments to Xavier University from that account. She did not have a job until 1997 or 1998, when she became a graduate assistant and earned partial tuition and an hourly wage.

{¶9} From 1995 to 1999, appellant received $5,000 from appellee. As for that $5,000, she said that he borrowed part of that money from her brother. She would not have had sufficient funds to support herself without the money from her family. Appellee remained in China with their child, who attended boarding school, and he would not have been able to send enough money to support appellant.

{¶10} Appellant said that her cousin loaned her the $50,000. She agreed to pay him back in ten years, and the interest rate was five percent annually. She has not repaid him with money, but she has sent him health and electronic products "and he consider[s] that part of [her] payment." (Tr. 28.) She kept the money in a suitcase.

{¶11} Appellant graduated from Xavier in 1999 with an MBA. She earned $33,200 in 1999. Appellee arrived in August 1999; he made $800 that year. At that time, appellant had about $4,500 left from the original $50,000, and she deposited the remainder in a bank account.

{¶12} According to appellant, appellee arrived in the United States carrying $30,000 cash with him. Appellant said that the money was a loan from her brother. They kept the money in a suitcase. Appellant submitted evidence of a subsequent cash deposit and a transfer, which together totaled $11,000. Appellant said the loan was for a term of ten years at an interest rate of five percent.

{¶13} In 2000, the couple earned $49,000 together. Appellee was attending Columbus State Community College, and they paid his tuition from their bank account.

{¶14} In 2001, the couple purchased a house. The purchase price was $290,000, and they made a down payment of about $30,000. Appellant testified that, to make the purchase, her brother loaned them $70,000. The terms were the same as the other loans: a ten-year term at five percent per year. That same year, the couple earned $61,000, and appellee was still attending college.

{¶15} In 2002, the couple earned about $51,000 together. Appellee had become an employee at The Ohio State University, and he was attending school there tuition-free.

{¶16} In 2003, appellee and appellant refinanced the mortgage on their home. For the refinancing, appellant made a down payment of about $24,000 in cash. To do so, she borrowed $40,000 from her brother. To complete the transaction, her brother gave the money to a friend traveling to the United States, and the friend got the money to appellant. That same year, appellee and appellant had a combined income of about $70,000.

{¶17} Appellee graduated from Ohio State in 2005. He moved to Seattle, Washington, in 2006 to take a job there. Appellant and their daughter stayed in Ohio. When appellee moved, appellant paid $18,000 cash for a car for him.

{¶18} Appellant testified that she had repaid $4,000 to her brother. She made the repayment by giving cash to individuals who traveled to China and gave the money to her brother. She provided evidence of a $4,000 debit from her bank account.

{¶19} On cross-examination, appellant said that she had not declared the $50,000 cash on her customs form when she traveled to the United States in 1995. She could not recall the total amount she had repaid her cousin in the form of products. She confirmed that she had used the $50,000 for her own living expenses from 1995 to 1999; a few thousand dollars remained when appellee arrived in 1999. The terms of the loans were never documented in writing. She had no bank records of depositing any of the money. She did not want to provide the names of the individuals who brought the cash to or from China.

{¶20} Appellant said that she could not provide the exact amount of money she owed to her brother and cousin. She did not disclose any of the loans in 2003 when she and appellee refinanced their house.

{¶21} Appellant's brother, Gang Chen, traveled from China to testify with the aid of a translator. He testified about the restrictions on monetary transactions from China to the United States prior to 2003. Because of these restrictions, exchanges of money were commonly made in cash, through individuals traveling to or from the United States.

{¶22} Gang Chen confirmed appellant's testimony that he had given $30,000 cash to appellee in 1999 and confirmed that it was a ten-year loan at an interest rate of five percent. He said that, in Chinese culture, family members would not document loans in writing. He similarly testified to providing the $70,000 in 2001 and $40,000 (a 12-year loan at five percent) in 2003. Gang Chen testified about his financial ability to make the loans. On cross-examination, Gang Chen confirmed that he had no documentation of the transactions.

{¶23} Appellee's testimony was very different. He testified that appellant brought only about $13,000 with her to the United States in 1995. Part of the $13,000 was from their savings; part was a gift from appellant's cousin. He had no knowledge of the $50,000 loan, but knew of a $9,000 gift from her cousin. The cousin refused their attempts to repay the loan, but appellee and appellant sent him products from the United States and also sent money to his daughter, who was studying in Canada.

{¶24} Appellee said that he sent $5,000 to appellant in 1997. He borrowed $2,000 from her brother, and he later repaid it.

{¶25} When he arrived in the United States in 1999, appellee brought $5,000 with him. He produced a bank record showing a $5,000 deposit shortly thereafter. He denied receiving any money from appellant's family to bring with him. Appellee testified that he and appellant supported themselves during their marriage. They lived frugally.

{¶26} Appellee said that the couple borrowed about $6,000 from a friend when they purchased the house in 2001. They repaid that money by the end of the year. All other funds for the down payment came from their own savings. They refinanced in 2003 using money from their savings. Appellee testified that he never saw a suitcase full of money.

{¶27} On cross-examination, appellant's counsel asked questions about inconsistent testimony appellee gave in his deposition. Appellee was also questioned extensively about the couple's ability to afford substantial down payments, a mortgage, tuition, cars, and their living expenses on their modest salaries. In particular, he confirmed that they paid not only $24,000 as a down payment for refinancing in 2003, but also a $6,700 cash payment for a car that same year.

{¶28} In its decision, the trial court found that there was no credible evidence to substantiate the $50,000 loan appellant claimed to have received from her cousin in 1995. The court declined to include that loan as a marital debt. With respect to the three loans from appellant's brother, the court similarly found a lack of credible evidence as to the existence and value of the loans or an obligation to repay the debt. Therefore, the court declined to include the loans as marital debts.

{¶29} On appeal, appellant contends that the court erred by failing to identify the loans as marital debt. Appellant challenges appellee's testimony that the couple could have supported themselves and made the significant down payments for financing and refinancing their mortgage on their limited salaries.

{¶30} Having reviewed the evidence, we conclude that competent, credible evidence supports the trial court's findings. Appellant produced no documentary

evidence to support the existence of the loans or their terms. She could not state how much was still owed. She refused to produce, or provide the names of, individuals who delivered the money to her.

{¶31} It is the role of the trial court, not this court, to assess the credibility of the witnesses. *Heyman* at ¶19, citing *Rogers v. Rogers* (Sept. 2, 1997), 10th Dist. No. 96APF10-1333. Here, the trial court was free to disbelieve appellant's testimony and to believe appellee's testimony that they received no cash payments from appellant's family members, with the exception of the small loan he repaid to her brother. Finally, given the passage of time without repayment, the court could have reasonably concluded that any money that might have been given was a gift to appellant, not a loan. Therefore, we overrule appellant's first three assignments of error.

{¶32} In her fourth assignment of error, appellant contends that the trial court erred when it admitted e-mails sent from appellant to appellee. Appellee offered the e-mails as evidence that the loans were not debts because appellant had not identified the loans as a liability needing to be divided between them. Appellant objected to their admission, arguing that the exchange was for the purpose of settlement and inadmissible under Evid.R. 408.

{¶33} Having reviewed the e-mails, we conclude that, even if inadmissible, their admission was not prejudicial to appellant because they are of minimal evidentiary value. The court based its findings and conclusions regarding the alleged loans on appellant's inability to produce evidence of their existence and terms and appellee's testimony that they did not occur. There is no indication that the court gave any weight

to appellant's failure to list the debts in her settlement discussions with appellee. Therefore, we overrule her fourth assignment of error.

{¶34} Finally, we address appellee's motion for attorney fees. App.R. 23 allows this court to require an appellant to pay fees if we "determine that an appeal is frivolous." Here, appellee argues that appellant's appeal was frivolous because she presented no credible evidence to substantiate the existence of the four loans from her family members. We disagree. While we have affirmed the trial court's conclusion that the loans should not be identified as marital debts, appellant presented testimonial evidence that the loans existed. We cannot conclude that her claims were completely "frivolous." Therefore, we deny appellee's motion.

{¶35} In conclusion, we overrule all four of appellant's assignments of error. We deny appellee's motion for attorney fees. We affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.
Motion for attorney fees denied.

BRYANT and KLATT, JJ., concur.