

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Kelvin Lindsey,	:	
	:	No. 15AP-733
Plaintiff-Appellant,	:	(C.P.C. No. 13DR-4024)
v.	:	
	:	(REGULAR CALENDAR)
Dora Lindsey,	:	
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 28, 2016

On brief: *Timothy R. Dougherty*, for appellant.
Argued: *Timothy R. Dougherty*

On brief: *Byron L. Potts & Co., LPA, Byron L. Potts, and
Aisha J. Boykin*, for appellee.

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

LUPER SCHUSTER, J.

{¶ 1} Plaintiff-appellant, Kelvin Lindsey, appeals from a decree of divorce of the Franklin County Court of Common Pleas, Division of Domestic Relations, dividing the assets and debts of Kelvin and defendant-appellee, Dora Lindsey. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} The parties married in October 2004, and no children were born as issue of the marriage. In October 2013, Kelvin filed a complaint for divorce, alleging incompatibility. The next month, Dora filed an answer and counterclaim, seeking a divorce due to Kelvin's alleged extreme cruelty. The matter proceeded to trial in February 2015. The trial court filed its decree of divorce on July 1, 2015. As pertinent to this

appeal, the trial court ordered that each party is responsible for one-half of an outstanding debt for medical care provided to Dora. The trial court found that the parties' household goods, including furniture and appliances, were already divided equally between the parties. Additionally, the trial court divided the marital residence equally based on its determination that neither party identified any separate interest in that asset. Kelvin timely filed an appeal from the decree of divorce.

II. Assignments of Error

{¶ 3} Kelvin assigns the following errors for our review:

[1.] The Court erred with regard to a \$6000 medical bill and turning it into a "property" settlement in the decree.

[2.] The Court erred with regard to the division of personal property, household goods and effects.

[3.] The Court erred with regard to the division of real property.

III. Discussion

A. First Assignment of Error – \$6,000 Medical Bill

{¶ 4} In his first assignment of error, Kelvin asserts the trial court erred in regard to its allocation of the \$6,000 medical care debt. Kelvin argues there was no evidence demonstrating the existence of a \$6,000 medical bill, and that, even if the debt did exist, it was covered by insurance. Kelvin therefore contends that the trial court erred in requiring him to pay one half of the medical care debt. These arguments are unpersuasive.

{¶ 5} In divorce proceedings, a trial court must divide marital property and debt equally or, if an equal division is inequitable, equitably. *Gallo v. Gallo*, 10th Dist. No. 14AP-179, 2015-Ohio-982, ¶ 42, citing R.C. 3105.171(C)(1); *Neville v. Neville*, 99 Ohio St.3d 275, 2003-Ohio-3624, ¶ 5; *Polacheck v. Polacheck*, 9th Dist. No. 26551, 2013-Ohio-5788, ¶ 7-8. A trial court has broad discretion in the allocation of marital assets and debt, and an appellate court will not disturb a trial court's judgment absent an abuse of discretion. *Gallo*; *Polacheck*. An abuse of discretion implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 6} The trial court's division of the medical care debt was not an abuse of discretion. Dora testified at trial that she sustained an injury in April 2013 that resulted in a medical bill of approximately \$6,000. Dora also testified that the amount of that debt accounts for her insurance coverage. Kelvin challenges that testimony, contending that insurance should have covered any medical bill relating to Dora's injury. Kelvin's argument, however, fails to recognize that the trial court accounted for the disputed issue of insurance coverage in its division of the medical care debt. The trial court ordered Dora to "verify that each bill has been submitted to insurance and that the insurance company has made full payment." (Decree of Divorce at 15.) The trial court ordered each party to pay one-half of the medical care debt remaining after the medical insurer has made all payments. Therefore, the trial court's division of the medical care debt addressed Kelvin's concern regarding this debt by reasonably accounting for the possibility that coverage had not been fully applied as of the date of trial.

{¶ 7} Because the trial court did not abuse its discretion in its division of the medical care debt, we overrule Kelvin's first assignment of error.

B. Second Assignment of Error – Division of Household Goods and Effects

{¶ 8} Kelvin's second assignment of error alleges the trial court erred in its division of the parties' household goods and effects. Kelvin alleges the trial court awarded all of the household goods and effects to Dora and that the trial court correspondingly awarded to him none of the household goods and effects, and that such a division of property was inequitable. This assignment of error lacks merit.

{¶ 9} The basic premise Kelvin presents in support of his second assignment of error, that the trial court awarded to Dora all of the household goods and effects, is inaccurate. The trial court awarded to Dora some furniture that Kelvin conceded was her separate property. As to the remainder of the household goods and effects, the parties provided limited evidence and both agreed that the household goods and effects should be divided equally. Kelvin's affidavit of property, which was filed with the complaint, indicated that both parties had possession of the furniture and appliances. Based on that affidavit and the limited testimony, the court reasonably determined that "each party [was] already in possession of the items they wish[ed] to retain," and, thus, the household

goods and effects were already equally divided between the parties. (Decree of Divorce at 13.)

{¶ 10} Because Kelvin fails to demonstrate that the trial court abused its discretion in its division of the household goods and effects, we overrule Kelvin's second assignment of error.

C. Third Assignment of Error – Division of Real Property

{¶ 11} Kelvin's third assignment of error alleges the trial court erred in its division of the parties' marital residence. Kelvin argues the trial court did not properly account for his down payment toward the purchase of the marital residence. In January 2013, Kelvin purchased the marital residence from the bank after it had been foreclosed, and he made a down payment of \$17,000. According to Kelvin, the trial court erred in not treating the \$17,000 as his separate property. We disagree.

{¶ 12} As pertinent here, marital property includes "[a]ll real and personal property that currently is owned by either or both of the spouses * * * and that was acquired by either or both of the spouses during the marriage." R.C. 3105.171(A)(3)(a)(i). Marital property also includes "all income * * * due to the labor * * * of either or both of the spouses that occurred during the marriage." R.C. 3105.171(A)(3)(a)(iii). Marital property does not include "separate property." R.C. 3105.171(A)(3)(b). Separate property is defined to include "[a]ny gift of any real or personal property * * * that is made after the date of the marriage and that is proven by clear and convincing evidence to have been given to only one spouse." R.C. 3105.171(A)(6)(a)(vii).

{¶ 13} When parties contest whether an asset is marital or separate property, the asset is presumed marital property unless it is proven otherwise. *Dach v. Homewood*, 10th Dist. No. 14AP-502, 2015-Ohio-4191, ¶ 33. The spouse seeking to have certain property declared separate property bears the burden of proving that the property is separate, not marital, property. *Alderman v. Alderman*, 10th Dist. No. 10AP-1037, 2011-Ohio-3928, ¶ 23. The characterization of property as marital or separate is a factual issue and is therefore reviewed under the manifest weight of the evidence standard. *Heyman v. Heyman*, 10th Dist. No. 05AP-475, 2006-Ohio-1345, ¶ 15; *Taub v. Taub*, 10th Dist. No. 08AP-750, 2009-Ohio-2762, ¶ 15. Under this standard, the trial court's classification of

property will not be reversed if it is supported by some competent, credible evidence. *Heyman* at ¶ 15, citing *Barkley v. Barkley*, 119 Ohio App.3d 155, 159 (1997).

{¶ 14} Testimony at trial indicated that Kelvin financed the down payment of the marital residence with \$11,000 that his mother, Anna Wright, provided to him and with money in his "Christmas savings" account. (Tr. at 89.) According to Kelvin, the trial court should have treated these funds as his separate property. However, the Christmas savings account was an account funded throughout the year with a portion of his wages. Because the money used from the Christmas savings account derived from Kelvin's labor during the marriage, it was marital property. R.C. 3105.171(A)(3)(a)(iii).

{¶ 15} Regarding the \$11,000 that Wright provided to Kelvin, evidence supported the trial court's finding that it was also marital property. Wright testified that she loaned the \$11,000 to Kelvin as a contribution to the purchase of the marital residence, and that Kelvin was obligated to repay the debt at \$300 per month. However, Wright also testified that, even though she only expected Kelvin to repay her, the loan was to both Kelvin and Dora. Wright further testified that, as of the time of trial in February 2015, Kelvin had not been late on any payment, and that a balance of approximately \$9,000 remained. Despite Kelvin's and Wright's characterization of the money transfer as a loan, the trial court reasonably was unconvinced, considering no documentation was executed to memorialize the loan and the remaining payoff amount testified to was inconsistent with the alleged amount due and paid each month. In effect, the trial court treated the property transfer as a gift. For a gift received by a spouse during marriage to constitute separate property, it must have been given with the intent to provide a benefit to only one of the spouses. *Butler v. Butler*, 5th Dist. No. 12CA009, 2012-Ohio-6085, ¶ 24. Here, it is undisputed that Wright provided the \$11,000 to help fund the purchase of the marital residence, which benefited both parties. Thus, competent, credible evidence indicated that the \$11,000 Kelvin received from his mother, and used as part of the down payment of the marital residence, was marital property.

{¶ 16} Because the trial court did not abuse its discretion in finding that Kelvin did not have a separate interest in the marital residence, we overrule Kelvin's third assignment of error.

IV. Disposition

{¶ 17} Having overruled all three of Kelvin's assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

TYACK and BRUNNER, JJ., concur.
