[Cite as *Leach v. Leach*, 2016-Ohio-8569.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ELIZABETH AMIREH LEACH

Plaintiff-Appellee

-vs-

WILLIAM LEACH

Defendant-Appellant

JUDGES:
Hon. William B. Hoffman, P. J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. 2016 CA 00013

O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 2014 DR 00151
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	December 27, 2016

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
RAYMOND T. BULES MILLS, MILLS, FIELY and LUCAS 101 Central Plaza South, Suite 200 Canton, Ohio 44702	LORRIE E. FUCHS 3974 Wales Avenue, NW Massillon, Ohio 44646

Wise, J.

{¶1} Defendant-Appellant William Leach directly appeals from his divorce in the Stark County Court of Common Pleas, Domestic Relations Division. Plaintiff-Appellee

Elizabeth Amireh Leach is appellant's former spouse. The relevant facts leading to this appeal are as follows.

{¶2} Appellant William and Appellee Elizabeth met in 1999. They were married on June 19, 2004. Appellee lived with appellant during part of the courtship. One day before the wedding, on June 18, 2004, appellant and appellee signed a prenuptial agreement, as further analyzed *infra*. This prenuptial agreement was initiated by appellant and drafted by his attorney at the time, although appellee obtained separate counsel to assist her in reviewing said agreement.

{¶3} On February 14, 2014, appellee filed a complaint for divorce in Stark County. Attached in support of appellee's complaint was a copy of the aforesaid eleven-page prenuptial agreement, which incorporated additional Exhibits "A," "B," and "C." Of these, "A" and "B" purported to be the itemized premarital assets of appellant, totaling approximately $4,900,000.00, leaving a net worth of approximately $4,500,000.00, as well as his life insurance policies and a variable annuity. However, it appears undisputed that the bulk of the premarital property appellant owned on the eve of the marriage, as he had listed on Exhibits A and B, was lost to appellant via bankruptcy proceedings several years into the marriage

{¶4} Meanwhile, Exhibit "C" purported to be the premarital assets of appellee; however, other than the heading, it was left blank. Appellee subsequently maintained that her then-counsel had, prior to the marriage, supplied appellant's counsel with her financial statement, showing *inter alia* the value of her fashion boutique business known as "Vita."

{¶5} On March 18, 2014, appellant filed an answer and counterclaim as to the divorce action.

{¶6} On May 7, 2014, appellee requested leave to file an amended complaint for divorce. The trial court granted leave to amend on May 8, 2014. The amended complaint also included an attached prenuptial agreement. It was the same as the one attached to the original complaint, except that it carried an additional attachment purporting to be a typed financial statement of appellee, dated June 15, 2004, showing a net worth of approximately $203,000.00, including the amount of $150,000.00 for "market value of business."

{¶7} On May 12, 2014, the trial court ruled that the parties should present evidence on the issues related to the enforceability of the prenuptial agreement, before proceeding with other issues related to the divorce action.

{¶8} Hearings on the issues related to the enforceability of the prenuptial agreement were held before a magistrate on July 30, 2014 and September 29, 2014.

{¶9} On November 14, 2014, the magistrate filed his decision concluding that the parties' prenuptial agreement was valid. The magistrate specifically found, among other things, that appellant "knew the assets and liabilities of [appellee] when he signed the prenuptial agreement on June 18, 2004 and it is undisputed that [appellant] made a full disclosure of his assets and liabilities to [appellee]." Magistrate's Decision at 14.

{¶10} On November 24, 2014, appellant filed objections to the magistrate's aforesaid decision under Civ.R. 53. The record of the two magistrate's hearings was transcribed and filed on February 4, 2015.

{¶11} On June 24, 2015, appellant filed a supplement to his Civ.R. 53 objections, with references to the record. Counsel for the parties presented oral arguments as to the objections on the same day.

{¶12} On July 16, 2015, the trial court filed an interlocutory judgment entry which approved and adopted the magistrate's decision of November 14, 2014. The trial court thus found the prenuptial agreement to be enforceable. The trial court further determined that the retail clothing business known as “Vita” was appellee’s separate property. Judgment Entry at 5.

{¶13} During the aforesaid proceedings, another issue arose concerning property division. In essence, appellant contended that he should be entitled to a distributive award from appellee’s separate property, based on the theory that the value of appellee’s separate property had been increased by the use of appellant’s premarital tax losses that had been carried forward and applied on the parties’ joint tax returns filed during the marriage.

{¶14} Both parties agreed the issue on the tax losses was a legal one and that no evidence on the issue was needed. On September 28, 2015, both parties filed briefs on the issue per the trial court's request. On October 23, 2015 the court issued an interlocutory judgment entry denying appellant the relief he sought on the tax issue. The court therein determined no legal authority in Ohio existed which would authorize the court to grant the relief sought by appellant.

{¶15} On November 19, 2015, a final pretrial was conducted. A final decree of divorce was filed on December 31, 2015. Based on the trial court's interlocutory rulings concerning the prenuptial agreement and the tax loss issue, it was determined that no substantive issues remained to be decided other than spousal support. In that regard, the trial court, reiterating its ruling as to the validity and enforceability of the prenuptial agreement, determined that via stipulation of the parties there would be no spousal

support awarded, but that the court would retain jurisdiction over said issue "in the event the case is remanded back to the lower court once [appellant] exercises his right to appeal." *Nunc Pro Tunc* Final Entry of Divorce at 3.

{¶16} On January 20, 2016, appellant filed a notice of appeal. He herein raises the following three Assignments of Error:

{¶17} "I. THE TRIAL COURT COMMITTED ERROR WHEN IT DETERMINED THAT THE PRENUPTIAL AGREEMENT WAS ENFORCEABLE.

{¶18} "II. THE TRIAL COURT COMMITTED ERROR WHEN IT FAILED TO RESCIND THE CONTRACT IN FAVOR OF THE DEFENDANT BASED UPON MISTAKE.

{¶19} "III. THE TRIAL COURT COMMITTED ERROR WHEN IT FAILED TO CREDIT DEFENDANT WITH A DISTRIBUTIVE AWARD AGAINST VITA BY THE SUMS VITA SAVED IN TAXES THAT CONTRIBUTED DIRECTLY TO AN INCREASE IN INVENTORY AND VALUE OF VITA."

{¶20} As an initial procedural matter, we note the trial court's ruling of July 16, 2015, regarding the prenuptial agreement stemmed from the parties trying the issue to a magistrate on an interlocutory basis. The trial court's ruling regarding the impact of tax loss write-offs on property division was also interlocutory in nature. After that, with no issues remaining other than spousal support, a divorce decree was issued on December 31, 2015. "In a domestic relations action, interlocutory orders are merged within the final decree, and the right to enforce such interlocutory orders does not extend beyond the decree, unless they have been reduced to a separate judgment or they have been considered by the trial court and specifically referred to within the decree." *Colom v.*

Colom (1979), 58 Ohio St.2d 245, 389 N.E.2d 856, syllabus. There is no requirement under Ohio law that a litigant must move the trial court for reconsideration of an interlocutory order as a condition of contesting that order on appeal. *See Runge v. Brown*, 6th Dist. Ottawa No. OT–12–033, 2013-Ohio-3064, ¶ 9. Upon review of the divorce decree under appeal, we find the present assigned errors are thus properly before us.

I.

{¶21} In his First Assignment of Error, appellant argues the trial court erred in finding the parties' prenuptial agreement was enforceable. We disagree.

Standard of Review

{¶22} The test in Ohio for the validity of an antenuptial agreement is set forth in *Gross v. Gross* (1984), 11 Ohio St.3d 99, 464 N.E.2d 500: "Such agreements are valid and enforceable (1) if they have been entered into freely without fraud, duress, coercion, or overreaching; (2) if there was full disclosure, or full knowledge and understanding of the nature, value and extent of the prospective spouse's property; and (3) if the terms do not promote or encourage divorce or profiteering by divorce." *Id*., at paragraph two of the syllabus. By assenting to this mechanism, "the prospective wife or husband waives any particular right arising out of the marriage contract, including statutory rights, where the agreement by its clear wording shows that such a result was intended." *In re Estate of Armstrong*, 4th Dist. Hocking No. 96 CA 3, 1997 WL 139441, citing *Troha v. Sneller* (1959), 169 Ohio St. 397, 159 N.E.2d 899, syllabus (internal quotations omitted).

{¶23} The validity of an antenuptial agreement is a question of fact for the trial court, and the trial court's decision will not be reversed absent an abuse of discretion. *Bisker v. Bisker* (1994), 69 Ohio St.3d 608, 609–610, 635 N.E.2d 308. An abuse of

discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 218, 450 N.E.2d 1140. Furthermore, as an appellate court, we do not function as fact finders; we neither weigh the evidence nor judge the credibility of witnesses. Our role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base his or her judgment. *See Dinger v. Dinger,* 5th Dist. Stark No. 2001CA00039, 2001–Ohio–1386.

{¶24} The posture of the instant case is somewhat unusual in that appellant, the groom-to-be in 2004, pursued the very prenuptial agreement he now contends is unenforceable. In said agreement, appellant expressed his intent to distribute a portion of his assets to appellee, in the event of marriage termination, in increasing increments based on the longevity of the marriage. *See* Prenuptial Agreement at 6-8. However, we note the Ohio Supreme Court has indicated it originally formulated the three-part *Gross* test, *supra*, "to ensure that the economically superior party, who typically proposes the antenuptial agreement, does not take unfair advantage of his or her prospective spouse." *Fletcher v. Fletcher*, 68 Ohio St.3d 464, 466-467, 628 N.E.2d 1343, 1994-Ohio-434. This suggests to us that a court's primary concern should be the fairness to the party in the economically inferior position when a prenuptial agreement was signed. In other words, the rule of *Gross* may not have been designed for application where, as here, the formerly "poorer" party later invokes a prenuptial agreement in a divorce, while the party with the significant economic advantage at the time of drafting no longer seeks enforcement of same. Nonetheless, in the interest of justice for both parties, we will proceed to our analysis.

{¶25} The record in the case *sub judice* reveals that in 2004, Appellant William retained Attorney Lee Plakas of Canton, Ohio to draft a prenuptial agreement. Appellee Elizabeth then retained Attorney Stan Rubin, also of Canton, to represent her interests in the matter. The initial draft of the prenuptial agreement referenced Exhibits "A," "B," and "C" as containing the separate property of the parties. Exhibits A and B listed appellant's net assets totaling approximately $4,500,000.00 in value. This figure included the value of William H. Leach Enterprises, Inc., dba Hartville Ready Mix. However, as noted in our recitation of facts, appellant went through a bankruptcy several years after the parties were married.

{¶26} Appellee's chief asset at the time of the marriage was a retail clothing business known as Vita, operated in the Hartville Marketplace, a large indoor facility hosting various vendors and shops. Vita is not referenced as being the separate property of appellee in the text of the prenuptial agreement or in Exhibits A, B, or C. However, during the divorce, appellee maintained that Vita came under the prenuptial agreement, was her separate property, and was not subject to property division by the trial court. Nonetheless, appellant testified that he believed Vita was a joint business venture, not intended to be separate property. Tr., September 29, 2014, at 126-136. Appellant also testified that he would not have signed the prenuptial agreement if he had been aware that appellee considered Vita her separate property. Tr. at 133.

Burden of Proof Issue

{¶27} Appellant first contends the trial court failed to properly place the burden of proof on appellee regarding the prenuptial agreement's validity. The Ohio Supreme Court has held: "When an antenuptial agreement provides disproportionately less than the party

challenging it would have received under an equitable distribution, the burden is on the one claiming the validity of the contract to show that the other party entered into it with the benefit of full knowledge or disclosure of the assets of the proponent. The burden of proving fraud, duress, coercion or overreaching, however, remains with the party challenging the agreement." *Fletcher*, *supra*, at paragraph one of the syllabus.

{¶28} We note the magistrate determined at the outset of the proceedings that appellee, as the plaintiff and the party seeking to enforce the prenuptial agreement, would go forward first in the evidentiary hearing, as she was the plaintiff in the case (Tr., July 30, 2014, at 3), and the trial court reiterated in its judgment entry that appellee had the burden of proof. *See* Judgment Entry, July 16, 2015, at 8. Appellant's contention that the trial court incorrectly applied the burden of proof is premised on his proposition that full disclosure in this matter could only have been made by attaching a list of assets to the prenuptial agreement. But appellant fails to recognize that under *Gross v. Gross,* appellee could sustain her burden of proving full disclosure by other means; *i.e*., by showing that appellant had independent knowledge of the nature and extent of appellee's premarital assets. Upon review, we find the trial court assigned the burden of proof to the proper party.

Boilerplate Clause

{¶29} Appellant next challenges the trial court's interpretation of certain "boilerplate" language in the prenuptial agreement on the issue of disclosure of assets. The boilerplate language in question provided that a failure to include any asset in the exhibit listings shall not be deemed in any way to invalidate the agreement so long as the fair market value of the omitted assets as of the date of execution does not exceed 50% of the current fair market value of all assets listed. *See* Agreement at 3.

{¶30} Appellant essentially argues that such provisions should not be recognized pursuant to this Court's decision in *Postiy v. Postiy*, 5th Dist. Stark No. 2002CA00263, 2003-Ohio-2146, in which we affirmed, on an abuse of discretion standard, a trial court's decision finding a prenuptial agreement invalid. He urges that because the two undisclosed assets in *Postiy* were a $130,000.00 airplane and approximately $20,000.00 in gold assets, which represented in that case about 10% of the husband's claimed premarital wealth of $1,500,000.00, the 50% baseline utilized in the case *sub judice* renders the entire prenuptial agreement herein invalid. However, appellant misconstrues *Postiy.* In that case, we did not set forth a bright-line "10% rule" for gauging asset disclosure. As we set forth in our opinion, the husband in *Postiy* had additionally admitted to questionably stating the value of his ownership share in the Postiy's Meat business based on an insurance amount of $700,000, even though he admitted that a value of $1,000,000 could have been used. He also stated a value for his oil wells which, at the time of the drafting of the financial statement, was already three years old. *See Postiy* at ¶ 19. Finally, the *Postiy* opinion does not make mention of any issues involving a boilerplate clause similar to that found in the instant case.

{¶31} We therefore find no merit in appellant's present challenge to the validity of the prenuptial agreement on this basis.

"Full Knowledge and Understanding" Alternative Criterion

{¶32} Appellant further argues under this assigned error that the trial court erred in finding that even if written disclosure of appellee's assets was lacking, appellant still had "full knowledge and understanding" of the nature of her assets under *Gross v. Gross*. We first note the agreement in the case *sub judice* contains the following recitals: "Prior to the execution of the Agreement, each party had made an oral disclosure of approximately all significant property owned by the other party, including but not limited to real, personal, tangible, and intangible property, and each party hereby agrees that they have [sic] the full and complete opportunity for a period of the last several months, to ascertain the extent and nature of the property which the other party owns or has an interest in. *** The following disclosures are not intended to be the complete, exact, or exclusive list of the assets or interests owned by either party; instead, the listing is intended to provide an approximation of some of the financial wealth of each party." Prenuptial Agreement at 2.

{¶33} As previously noted, the trial court found the second prong of *Gross* had been met in ways other than via written asset disclosure. *Id.* at 7. Appellant herein maintains that this "alternative" portion of the second *Gross* prong should only apply if a list of assets was not the choice of disclosure elected by the parties. The trial court acknowledged that there had been conflicting testimony before the magistrate. *See* Judgment Entry at 6-7. According to the testimony of Attorney Plakas, then-counsel for appellant, Exhibit C, the list of separate property belonging to appellee, was left blank

when prepared by appellee. He also recalled that appellant had informed him appellee had no separate property of any significance. *See* Tr., July 30, 2014, at 73-75, 88. But while appellee admitted that she returned Exhibit C in blank to her attorney, Stan Rubin, the record reveals inconsistent versions of what additional notations or appellee asset lists were sent or faxed between Attorney Plakas and Attorney Rubin. *See e.g.,* Tr., July 30, 2014, at 20-21. The trial court ultimately found that the blank form or lack of attachment of Exhibit C was not fatal to the validity of the prenuptial agreement, concluding that the full disclosure requirement of *Gross* was met because appellant had knowledge of the nature and extent of the appellee's assets at the time even if the pertinent exhibits in the agreement were blank. The court also determined that the fact that the property is not identified in the prenuptial agreement is not determinative, inasmuch as the agreement did not purport to provide an exclusive list of all premarital assets.

{¶34} Furthermore, in regard to appellant's position that Vita was a joint venture established prior to the marriage, the trial court found credibility in the testimony of Marion Coblentz, the president of the Hartville marketplace, who recalled that appellant had brought appellee to meet him in 2002, but that appellant unequivocally stated that Vita was her business venture and he was not to be involved. In contrast, appellant contended at trial that before the marriage appellee had used his Hartville Ready Mix business address for delivery of Vita merchandise and that some of his employees sometimes unloaded trucks and performed assembly services for Vita. Appellant also maintained that he had paid for appellee's automobile and cell phone used in the business. However, the trial court found that appellant's actions in assisting appellee in her business prior to the

marriage were part of "courtship ritual." Judgment Entry at 5. Ultimately, appellant's insistence that he was acting somewhat as a premarital business partner to appellee only weakens his claim that he was not sufficiently familiar with the Vita operation.

{¶35} Appellant's First Assignment of Error is therefore overruled.

II.

{¶36} In his Second Assignment of Error, appellant argues the trial court erred in failing to apply the equitable remedy of rescission based upon mistake. We disagree.

{¶37} Generally, a contract will not be reformed for a unilateral mistake. "However, equitable relief by rescission may be given if the mistake relates to a material feature of the contract, if it is of such grave consequence that enforcement of the contract as made will be unconscionable, if it occurred notwithstanding the exercise of ordinary diligence by the party making the mistake and if the other party can be put in status quo." *Gartrell v. Gartrell*, 181 Ohio App.3d 311, 2009-Ohio-1042, ¶ 36 (5th Dist.), quoting 3 Pomeroy Equity Jurisprudence, 5th Ed., 388 (additional citations and internal quotations omitted). Our standard of review regarding claims for equitable relief is generally abuse of discretion. *Summitcrest, Inc. v. Eric Petroleum Corp.*, 60 N.E.3d 807, 2016-Ohio-888, ¶ 45 (7th Dist.).

{¶38} Appellant maintained at trial that he would not have entered into the prenuptial agreement had he known appellee claimed Vita as her sole property. However, appellant does not explain why his listing of assets (Exhibits A and B) are devoid of any mention of a claimed half-interest in the Vita business, which would be expected if he earnestly thought he was part of a joint venture or partnership with appellee. In that light, and given the wide economic disparity between the parties at the time of marriage, we

find no abuse of discretion in the trial court's refusal to apply the remedy of rescission based upon unconscionability.

{¶39} Appellant's Second Assignment of Error is therefore overruled.

III.

{¶40} In his Third Assignment of Error, appellant argues the trial court erred in failing to adjust the property division to effectively require appellee to reimburse appellant for the value of net operating losses on appellant's businesses, which were subsequently carried forward to benefit appellee for tax purposes during the marriage. We disagree.

{¶41} Although no formal evidence was taken on this issue, appellant's trial brief of September 28, 2015 attached a letter from a CPA indicating that appellee would have had a tax liability of more than $295,000.00 in regard to Vita if she had not been able to utilize tax losses from appellant's separate businesses. Appellant further asserts that tax returns additionally attached to said trial brief indicated that during the relevant period Vita's inventory grew by more than $400,000.00.

{¶42} Pursuant to R.C. 3105.171(B), "[i]n divorce proceedings, the court shall *** determine what constitutes marital property and what constitutes separate property. In either case, upon making such a determination, the court shall divide the marital and separate property equitably between the spouses, in accordance with this section. * * * "

{¶43} Furthermore, R.C. 3105.171(A)(6)(a) states as follows: " 'Separate property' means all real and personal property and any interest in real or personal property that is found by the court to be any of the following:

(i) An inheritance by one spouse by bequest, devise, or descent during the course of the marriage;

(ii) Any real or personal property or interest in real or personal property that was acquired by one spouse prior to the date of the marriage;

(iii) Passive income and appreciation acquired from separate property by one spouse during the marriage;

(iv) Any real or personal property or interest in real or personal property acquired by one spouse after a decree of legal separation issued under section 3105.17 of the Revised Code;

(v) Any real or personal property or interest in real or personal property that is excluded by a valid antenuptial agreement;

(vi) Compensation to a spouse for the spouse's personal injury, except for loss of marital earnings and compensation for expenses paid from marital assets;

(vii) Any gift of any real or personal property or of an interest in 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.

{¶44} Trial court decisions in divorce actions regarding the classification of separate and marital property are not reversed unless there is a showing of an abuse of discretion. *See Valentine v. Valentine,* 5th Dist. Ashland No. 95COA01120, 1996 WL 72608, citing *Peck v. Peck,* 96 Ohio App.3d 731, 734, 645 N.E.2d 1300 (12th Dist. 1994). In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore, supra.*

{¶45} Appellant cites two Ohio cases in support. In the first case, *Office v. Office*, 2nd Dist. Montgomery No. 15298, 1997 WL 18043, the Second District Court of Appeals held that the trial court had erred in determining in a divorce that a husband's tax refund constituted marital rather than separate property, concluding "the fact that the loss was carried back to years during [the parties'] marriage is not determinative as to whether the refunds were separate or marital property." In the second case, *Millstein v. Millstein*, 8th Dist. Cuyahoga Nos. 79617, *et al.*, 2002-Ohio-4783, the Eighth District Court of Appeals rejected a wife's argument that she was entitled to one-half of the parties' 1996 income tax refund because the couple had filed jointly, where the evidence demonstrated that the husband had paid the parties' taxes during the marriage, including a large overpayment in 1996, from his separate property. *Id.* at ¶ 106.

{¶46} Upon review, we conclude that neither R.C. 3105.171 nor the two aforementioned cases adequately support appellant's present theory. We therefore find no abuse of discretion in the trial court's rejection of appellant's claim for reimbursement for the claimed value of appellant's net losses used to offset the parties' joint income during the marriage.

{¶47} Appellant's Third Assignment of Error is therefore overruled.

{¶48} For the foregoing reasons, the judgment of the Court of Common Pleas, Domestic Relations Division, Stark County, Ohio, is hereby affirmed.

By: Wise, J.

Delaney, J., concurs.

Hoffman, P. J., concurs separately.

JWW/d 1201

Hoffman, P.J., concurring

{¶49} I concur in the majority's analysis and disposition of Appellant's second assignment of error.

{¶50} I also concur in the majority's analysis and disposition of Appellant's first assignment of error. I write separately with respect thereto only as to its discussion of the "Boilerplate Clause". While I agree with the majority's analysis of Appellant's argument regarding the precedential value of *Postiy*, the majority fails to address Appellant's additional argument relative to the provision in the prenuptial agreement which renders the agreement invalid if the value of omitted assets exceeds 50% of the value of all assets listed.

{¶51} Appellant argues the common sense interpretation of that provision dictates the 50% limitation language applies to each party's list, not the combined value of assets of both the parties' lists. Appellant reasons the prenuptial agreement is void because Appellee failed to list any assets as her separate property on Exhibit C, despite the fact her claimed separate business, Vita, has value and its value necessarily exceeds 50% of the value listed on her Exhibit C [$0]. Therefore, Appellant concludes the prenuptial agreement is invalid pursuant to its own terms.

{¶52} While I recognize the limiting language is arguably ambiguous, assuming, arguendo, Appellant's interpretation is correct, I find Appellant's independent knowledge of the nature and extent of Appellee's business renders the provision unenforceable when applying the rationale in *Gross*, and in light of the majority's observation, the *Gross* Court recognized the importance of ensuring the economically superior party [Appellant herein] does not take unfair advantage of his or her prospective spouse [Appellee herein].

{¶53} I further concur in the majority analysis and disposition of Appellant's third assignment of error. Because the parties filed joint tax returns during the marriage, the tax losses resulting from Appellant's separate property were offset against both parties total income. As such, Appellant and Appellee both benefitted. I find Appellant's argument Appellee's Vita business is tantamount to a tax refund unpersuasive.