

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
CLERMONT COUNTY

VLADIMIR BOZHENOV,	:	CASE NO. CA2022-11-080
Appellant,	:	
	:	<u>OPINION</u>
- vs -	:	7/17/2023
	:	
VIKTORIIA V. PIVOVAROVA,	:	
Appellee.	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION  
Case No. 2021 DRB 00225

Crowe and Welch, and Robert H. Welch III, for appellant.

Blake P. Somers, LLC, and Jordan M. Feldkamp, for appellee.

**M. POWELL, J.**

{¶ 1} Appellant, Vladimir Bozhenov ("Husband"), appeals a decision of the Clermont County Court of Common Pleas, Domestic Relations Division, dividing the parties' interest in a parcel of real property acquired prior to the marriage.

{¶ 2} Viktoriia Pivovarova ("Wife") and Husband began dating in 2014 when

Husband resided in the United States and Wife resided in Russia. Over the next couple of years, Husband provided financial support to Wife, encouraged her to leave her current husband, and promised he would support her and her two children. In 2015, Husband filed an application for Wife to obtain a visa and come to the United States. One requirement for Wife to move to the United States was that she and her children have a place to live. Husband and Wife looked for a home together; Wife participated virtually from Russia. On March 10, 2016, Husband purchased a house in Loveland, Ohio for \$147,900. At all times pertinent to this appeal, the house was titled solely in Husband's name.

{¶ 3} Wife obtained her visa in August 2016 and immigrated to the United States in early September 2016. The parties were married on September 30, 2016. Thereafter, the parties and Wife's children lived together in the house Husband had purchased. During the marriage, the parties made various changes to the house. Wife testified that she and her daughter removed wallpaper in the dining room, prepped and painted the dining room walls, and painted the hallway; Wife and Husband landscaped the backyard, planting new grass, evergreen trees, and flowers. Husband testified that he pressure-washed and resealed the deck and that he replaced the deck railing, the kitchen cabinets and countertop, and the stairs' carpet.

{¶ 4} Husband filed a complaint for divorce on February 26, 2021. The matter proceeded to a hearing in May 2022. Prior to the hearing, the parties entered into several stipulations. Among these stipulations, the parties agreed that (1) they were not married when Husband purchased the Loveland house; (2) using his own separate funds, Husband paid \$7,197.74 at closing when he purchased the house on March 10, 2016; (3) the house was titled solely in Husband's name and has remained so titled since the purchase of the house; (4) prior to the parties' marriage, Husband made mortgage payments with his separate funds, reducing the mortgage balance by \$1,280; (5) the mortgage balance was

\$139,225 when the parties married in September 2016; (6) the mortgage balance was \$101,995.17 in May 2022; and (7) the fair market value of the house was \$212,000 as determined by an appraisal on March 31, 2022. The trial court adopted the parties' stipulations as fair and equitable.

{¶ 5} The sole issue at trial was Wife's equitable share in the Loveland house. Husband argued that Wife was entitled to \$18,614.92, that is, one-half of the reduction of the mortgage balance between September 2016 and May 2022 (\$139,225 minus \$101,995.17). Wife argued that she was entitled to \$50,763.55, that is, one-half of the equity in the house (\$212,000), minus the current mortgage balance of \$101,995.17, minus Husband's \$7,197.74 payment at closing, minus the \$1,280 reduction of the mortgage balance between March 2016 and September 2016.

{¶ 6} The trial court issued a decision on August 9, 2022; the divorce decree was journalized on November 2, 2022. The trial court awarded the house to Husband, found that Husband had a premarital, separate property interest in the house of \$8,477.74 (this amount represents the \$7,197.74 Husband paid at closing and the \$1,280 premarital reduction of the mortgage balance in 2016), and found that all mortgage payments made during the parties' marriage as well as any improvements to the house were made with marital funds. The trial court determined that the equity in the house totaled \$110,004.83 (\$212,000 fair market value minus the \$101,995.17 mortgage balance in 2022), and then credited Husband with \$8,477.74 for his premarital, separate property interest in the house, resulting in a marital equity of \$101,527.09. The trial court ordered Husband to pay Wife \$47,383.81 for her share of the marital equity (this amount represents one-half of \$101,527.09, minus \$4,000 Wife owed Husband for his interest in a vehicle awarded to Wife, plus \$620.26 for Wife's share of Husband's Health Savings Account).

{¶ 7} Husband now appeals, raising one assignment of error:

{¶ 8} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT WHEN IT EQUALLY DIVIDED ALL EQUITY IN PRE-MARITAL REAL ESTATE.

{¶ 9} Husband argues that the trial court erred in equally dividing all equity in the house, presenting two issues for review. In his first issue for review, Husband argues that the Loveland house is his premarital, separate property, that the appreciation in the value of the house during the marriage was passive and not the result of any improvements made to the house, and that Wife's equity interest in the house should have been based upon the reduction in the mortgage balance during the marriage, and not the \$212,000 fair market value. In his second issue for review, Husband argues that the trial court erred in failing to make written findings of fact under R.C. 3105.171(D). The statute provides that "[i]f a court does not disburse a spouse's separate property to that spouse, the court shall make written findings of fact that explain the factors that it considered in making its determination that the spouse's separate property should not be disbursed to that spouse."

{¶ 10} Wife argues that the trial court did not err in equally dividing all equity in the house because the house's value appreciated during the marriage due to the various improvements made to the house, and thus, the increase in value was marital property.

{¶ 11} In divorce proceedings, a trial court is obligated to determine what constitutes marital property and what constitutes separate property, and then equitably divide the marital and separate property between the spouses in accordance with R.C. 3105.171(B). An appellate court reviews the classification of property as marital or separate under the manifest-weight-of-the-evidence standard and will not reverse a trial court's classification if it is supported by competent and credible evidence. *Smith v. Smith*, 12th Dist. Butler No. CA2021-09-109, 2023-Ohio-982, ¶ 28. An appellate court will not reverse a trial court's property division in a divorce proceeding absent an abuse of discretion. *Id.* at ¶ 29.

{¶ 12} Generally, any real property or interest in real property that was acquired by

one spouse prior to the date of the marriage is separate property. R.C. 3105.171(A)(6)(a)(ii). The Loveland house was purchased by Husband prior to the parties' marriage; therefore, the house was Husband's separate property under R.C. 3105.171(A)(6)(a)(ii) and was properly disbursed to him. See R.C. 3105.171(D) (requiring a court to disburse a spouse's separate property to that spouse); *Patterson v. Patterson*, 12th Dist. Preble No. CA2004-12-017, 2006-Ohio-1786, ¶ 34.

{¶ 13} Further, any passive income and appreciation acquired from separate property by one spouse during the marriage qualifies as separate property. R.C. 3105.171(A)(6)(a)(iii). However, all income and appreciation on separate property, due to the labor, monetary, or in-kind contribution of either or both of the spouses that occurred during the marriage, is classified as marital property. R.C. 3105.171(A)(3)(a)(iii). "Passive income" is defined as "income acquired other than as a result of the labor, monetary, or in-kind contribution of either spouse." R.C. 3105.171(A)(4). The party seeking to have a particular asset classified as separate property has the burden of proof, by a preponderance of evidence, to trace the asset to separate property. *Smith*, 2023-Ohio-982 at ¶ 33. This includes appreciation in the value of separate property.

{¶ 14} The Ohio Supreme Court has held that R.C. 3105.171(A)(3)(a)(iii) "unambiguously mandates that when *either* spouse makes a labor, money, or an in-kind contribution that *causes* an increase in the value of separate property, that increase in value is deemed marital property." (Emphasis sic.) *Middendorf v. Middendorf*, 82 Ohio St.3d 397, 400, 1998-Ohio-403. Therefore, if the separate property of one spouse appreciates during the marriage due to the labor, monetary, or in-kind contribution of either spouse, the appreciation is marital property. R.C. 3105.171(A)(3)(a)(iii). If, however, the appreciation of the separate property is attributable to conditions outside the control of the parties, such as inflation, the property's location, or market-driven, the increase in value is passive

appreciation and remains separate property. *Id.* at 401; *Harrington v. Harrington*, 4th Dist. Gallia No. 08CA6, 2008-Ohio-6888, ¶ 12; *Smith v. Smith*, 10th Dist. Franklin No. 07AP-717, 2008-Ohio-799, ¶ 8. Or stated otherwise, "[i]f the evidence indicates that the appreciation of the separate property is *not due* to the input of [Husband's (or [Wife's]) labor, money, or in-kind contributions, the increase in the value of the [Loveland house] is passive appreciation and remains separate property." (Emphasis sic.) *Middendorf* at 401.

{¶ 15} In determining that the marital equity in the house was \$101,527.09, the trial court essentially found that the appreciation in value of the house was marital property because it resulted from the mortgage payments and the improvements made during the parties' marriage. Upon reviewing the record, we find that the trial court erred in finding that the marital equity in the Loveland house was \$101,527.09 based upon the \$212,000 fair market value and any improvements to the house made during the marriage.

{¶ 16} Although the house was valued at \$212,000 in 2022, there is no evidence of the house's fair market value on September 30, 2016, the date of the parties' marriage, to permit a determination of the extent of the appreciation in value at valuation date. Further, although the record reflects the purchase price Husband paid for the house, it does not necessarily establish the fair market value of the house at that time. There was no appraisal of the house at the time Husband purchased it and the parties did not stipulate that the purchase price represented the fair market value of the house at that time. Further, there is no evidence whether the purchase of the house was an arm's length transaction or how much of the \$7,197.74 Husband paid at closing was applied to the purchase price. Moreover, while the evidence showed that marital funds were used to make the mortgage payments on the house during the marriage, there was no evidence presented to show how much the principal owed on the house was reduced by these payments. *Patterson*, 2006-

Ohio-1786 at ¶ 36; *Smith*, 2008-Ohio-799 at ¶ 10.<sup>1</sup> The trial court, therefore, erred in determining the marital equity in the Loveland house based upon the \$212,000 fair market value of the house.

{¶ 17} Additionally, there was no evidence presented that improvements made to the house during the marriage increased the value of the house. Due to prior negative rehabilitation experience, Husband testified that he purposely bought the Loveland house because it did not need repairs as it was in "precise condition. Plumbing was great. Everything was good, to the point I didn't even have to paint anything or fill up cracks with caulking." Husband testified that any changes made to the house were for general maintenance purposes, such as replacing carpet, kitchen cabinets, and deck railing, and that walls were painted simply because Wife wanted something else on them. His testimony indicates that he did not spend a lot of money in replacing fixtures and maintaining the house. Husband stated that the increase in the value of the house was a result of his "aggressive" mortgage payments and an over inflated market driven by out-of-state buyers. Husband's testimony was not controverted by Wife. In turn, Wife confirmed she removed the wallpaper and painted the dining room because she did not like the original décor. She testified that because of their landscaping efforts, they transformed the backyard from a "nothing but empty field with grass and one tree" to a beautiful backyard with evergreen trees and flowers. Wife was unable to say whether redoing the dining room and the backyard had increased the value of the house.

{¶ 18} The trial court did not have any evidence before it that either spouse's labor *caused* an increase in the value of the Loveland house. There was no expert testimony

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1. Husband testified that he was the party making all the mortgage payments on the Loveland house. Even assuming that Husband used his earnings to make the mortgage payments, the earnings were accumulated during the marriage and were thus marital assets. *Lynch v. Lynch*, 12th Dist. Warren No. CA2008-02-028, 2008-Ohio-5837, ¶ 15; *Smith v. Smith*, 10th Dist. Franklin No. 07AP-717, 2008-Ohio-799, ¶ 10.

that the various changes to the house caused its increase in value, and neither party quantified the costs of the improvements or labor. There was no testimony or evidence that the various changes and improvements made to the house did in fact increase the value of the home, were anything more significant than general maintenance, or something other than Wife simply implementing cosmetic changes to the home after moving in. *Flynn v. Flynn*, 196 Ohio App.3d 93, 2011-Ohio-4714, ¶ 17 (12th Dist.); see also *Cyrus v. Cyrus*, 9th Dist. Lorain No. 95CA006040, 1995 Ohio App. LEXIS 5252 (Nov. 29, 1995) (regular maintenance such as painting does not convert appreciation from separate to marital property); *Meister v. Meister*, 8th Dist. Cuyahoga No. 77110, 2000 Ohio App. LEXIS 4751 (Oct. 12, 2000) (routine maintenance such as painting, replacing carpeting, and some carpentry work was not the type of labor that converts appreciation from separate to marital property); *Neeley v. Neeley*, 2d Dist. Montgomery No. 16721, 1998 Ohio App. LEXIS 4461 (Aug. 28, 1998) (cleaning and repairs constitute ordinary maintenance that does not convert appreciation to marital property). To the contrary, Husband's testimony established that any appreciation of the Loveland house was not due to the input of his labor or Wife's labor.

{¶ 19} As was the case in *Flynn*, there is no evidence in the record to suggest that the value of the Loveland house was anything but passive income and appreciation acquired from separate property by Husband during the marriage. As of the date of the marriage, the mortgage balance was \$139,225. During the marriage, the mortgage was paid down to \$101,995.17 by marital effort, thus limiting the parties' marital equity in the real estate to \$37,229.83. The other equity in the house is Husband's separate property and should not have been divided among the parties. *Flynn* at ¶ 18. In other words, the Loveland house and its appreciation in value remained Husband's separate property, except for the reduction of the mortgage balance during the marriage.

{¶ 20} The trial court therefore erred in determining the marital equity in the Loveland



house based upon the 2022 fair market value of the house and not the reduction of the mortgage balance during the marriage, consequently erred in finding that the marital equity in the Loveland house was \$101,527.09, and erred in awarding Wife \$47,383.81 as her share of the marital equity based upon that determination. In light of our ruling, we need not address Husband's argument challenging the trial court's failure to make written findings of fact as required by R.C. 3105.171(D).

{¶ 21} Having found that the marital equity in the Loveland house was not \$101,527.09 but rather \$37,229.83, we sustain Husband's sole assignment of error, reverse the trial court's judgment, and remand the matter for the trial court to redetermine Wife's equity interest in the Loveland house, and any necessary corresponding adjustment to the division of marital property, in accordance with this opinion and based upon the record before the trial court.

{¶ 22} Judgment reversed and remanded for further proceedings consistent with this opinion.

HENDRICKSON, P.J., and PIPER, J., concur.