NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

IN RE THE MARRIAGE OF:

GEOFFREY GOBLE,

Petitioner/Appellant,

vs.

LYNN BICH THUY NGUYEN,

Respondent/Appellee.

Case No. 119,430

APPEAL FROM THE DISTRICT COURT OF
CLEVELAND COUNTY, OKLAHOMA

HONORABLE THAD BALKMAN, TRIAL JUDGE

VACATED AND REMANDED

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OPINION BY GREGORY C. BLACKWELL, JUDGE:

Geoffrey Goble appeals a decision dividing the equity of the parties' marital home in a divorce action. The couple purchased the home during their marriage. At the time of purchase, title was taken as joint tenants and the property was made subject to a jointly held note and mortgage. By the time of the divorce, the note had been paid in full, the mortgage was released, and the property had an agreed value. The parties further agreed to all aspects of the property division except the proper division of the equity in the marital home. Geoffrey argued that the value of the home should be shared equally. Lynn argued that she should be awarded approximately 74% of the value of the home as separate property, as she had contributed that amount to the down payment and pay-off amounts with money that could be traced to gifts from her parents to her. The trial court agreed with Lynn and awarded her all payments she had made as her separate property and split only the remaining equity. On review, we hold that the trial court erred in failing to split the equity of the home equally.

The court based its decision on the case of *Bruce v. Bruce*, 1930 OK 38, 285 P. 30, which purportedly held that any portion of joint tenancy property purchased with separate funds is not "acquired by joint industry" and hence not divisible by the court. We find that the trial court misapplied *Bruce* and that the rules set forth in later cases—typified by *Larman v. Larman,* 1999 OK 83, 991 P.2d 536, and *Shackelton v. Sherrard*, 1963 OK 193, ¶ 9, 385 P.2d 898—control. Under either line of cases, Geoffrey prevails and the equity in the jointly held home must be shared equally. As such we vacate the judgment of the district

court and remand with instructions for the court to divide the value of the home equally between the parties.

BACKGROUND

The relevant facts are generally uncontested. The parties were married in 2012. They purchased the home in question in May 2016 and lived there together during their marriage. They made a down payment of $80,000 against a purchase price of $316,500. Although the down payment was from a jointly held account, Lynn testified that her parents contributed the majority of that amount—$53,075.72—in the form of two gifts (plus interest on those gifts) made to Lynn alone.[1] Lynn's parents gifted Lynn $25,000 again in 2017 and 2018. These funds were used to pay down the mortgage on the marital home. Finally, also in 2018, Lynn's parents gifted her $150,000, which was used to pay off the jointly-held mortgage in full.[2] All told, Lynn claims that $253,075.72 towards the purchase of the home was provided by her, while only $91,343.40 was provided from marital funds.

In July 2019, Geoffrey filed for divorce. The couple were able to agree on all aspects of their parting, including property distribution, with the exception of

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[1] These gifts were made via two checks to Lynn from her parents dated March 14, 2013, and July 28, 2014, in the amounts of $28,000 and $25,000, respectively. The $28,000 check was first deposited into a separate account held by Lynn only. She later added Geoffrey to this account, which had earned $75.72 in interest by the time of the 2016 home purchase, but no new funds were added. The $25,000 check was deposited into the parties' joint checking account.

[2] There was some question below whether this gift was intended, ultimately, to benefit Lynn or the couples' minor child. As we do not believe the issue to be determinative, we will assume that the funds were, as Lynn describes, to be used to pay off the marital home, as was done.

the distribution of the equity in the now-debt-free marital home. The parties agreed to a present value of $322,500. Geoffrey argued that each party was entitled to an equal share of this sum, or $161,250. Lynn argued that the court should distribute only that portion of the property that was purchased with the $91,343.40 of marital funds, not the portion purchased with her separate funds. She calculated that Geoffrey should receive no more than $42,765.11.[3]

After a hearing held June 1, 2020, the district court made a "summary order" finding that the marital interest in the property was the amount of the marital funds dedicated to its purchase—$91,343.40. The court determined that the gifts to Lynn which were used for a portion of the down payment and to pay down the jointly-held mortgage retained their separate character and ordered that the $91,343.40 be split, with half—$45,671.70—to each party. As the marital home had been awarded to Lynn previously, she was ultimately responsible to pay that amount to Geoffrey.

On July 14, 2020, Geoffrey filed a motion to reconsider or for new trial. The court denied the motion. A journal entry was eventually prepared in which the trial court memorialized both its order that the marital interest in the property was $91,343.40 and denied the request for reconsideration or for a new trial. Geoffrey appeals.

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[3] Lynn's *Exhibit 1* shows that this number was calculated by taking the ratio of separate to marital contributions (0.735 to .0265) and multiplying the present value of the property by 0.265 to find a marital portion of $85,530.23, of which half—$42,765.11—would be Geoffrey's allotment.

STANDARD OF REVIEW

The order appealed is a journal entry of November 2020 that reduced to a final judgment the court's prior handwritten orders stating a property distribution and denying reconsideration. As such, the situation here is similar to that of *Reeds v. Walker,* 2006 OK 43, ¶ 9, 157 P.3d 100. This Court's assessment of the trial court's exercise of discretion in denying Geoffrey's motion to reconsider will rest on the correctness of the underlying property distribution. *See Reeds,* ¶ 9.

A divorce suit is one of equitable cognizance in which the trial court has discretionary power to divide the marital estate. *Colclasure v. Colclasure,* 2012 OK 97, ¶ 16, 295 P.3d 1123. The trial court must follow the provisions of 43 O.S. § 121, which require a fair and equitable division of property acquired by the joint industry of the husband and wife during the marriage. *Id.* A trial court has wide discretion in the division of marital property and the decision dividing such property will not be disturbed on appeal unless contrary to law, against the clear weight of the evidence, or an abuse of discretion. *Jackson v. Jackson,* 2002 OK 25, ¶ 2, 45 P.3d 418.

ANALYSIS

The order here states that "$91,343.40 of the equity in the marital home is classified as marital property in this case, and the balance of the equity is classified as [Lynn's] separate property ...." On what basis the court arrived at the decision that $231,156.60 of equity in the home was separate property is not clear from the order, and the parties' briefing cites and intermixes at least three

different and separate lines of cases, the rules of which, in our view, mandate different results when applied to the same facts. It is clear, however, that the court did not make an *equitable adjustment* to the distribution of *marital property*, but rather found that $231,156.60 of equity in the home was Lynn's *separate property*.

We emphasize this fact because, at times, counsel in this case comingle—so to speak—theories regarding the equitable distribution of marital property with theories regarding the identification and segregation of separate property. A court may equitably distribute *marital property* in unequal shares. A court may not legally distribute shares of *separate property* between the parties at all. Here, the court unambiguously excluded $231,156.60 of equity in the home from distribution because it was separate property, rather than finding that the entire home was marital but distributing it in unequal shares.

Lynn, and it appears the trial court, relied on a line of cases beginning with *Bruce v. Bruce*, 1930 OK 38, 285 P. 30, for a theory that the down payment and extra principal payments against the mortgage were not "accumulated by joint industry" and hence the greater part of the resulting home equity was not marital property.

Bruce actually made two decisions. The first is that the "Twenty-Fourth St. property," which was purchased by wife's family and deeded to wife alone, remained wife's separate property. *Bruce*, ¶16. This decision is compatible with current law and has no impact on the situation here. The second decision in

Bruce concerns the status of the family "homestead," also called the "Ninth street property." The court found that the wife

> did contribute $1,750 towards the purchase price of the homestead; that the $1,750 so contributed by her was obtained by her from her people as heretofore narrated by the court; that said money so contributed by wife in the purchase of said property was not part of the joint accumulations of [husband] and [wife] during marriage, but is part of [wife's] separate property.

Id. ¶ 38. This paragraph can be interpreted as stating that wife's contribution of $1,750 remained a separate property interest in the homestead. The *Bruce* Court later went on to state, however, that:

> The record clearly shows, and we so hold, that the property accumulated during marriage and now owned by them has in no sense been equitably and fairly distributed between the plaintiff and defendant.
>
> When the court awarded the homestead to the [husband], it took away from the [wife] $1,750 of her own money and gave it to the [husband], thereby depriving her of a home for herself and children.

Id. ¶ 50-51. The court then reversed the decision of the trial court, which had awarded possession of the homestead to the husband, instructing the trial court "to decree the possession of the homestead described in this record to the [wife] as a home for her and her children, until the youngest child shall have become 21 years of age." *Id.* ¶ 52. This language strongly suggests that the court made an equitable distribution of the homestead, rather than one entirely based on a distinction between marital and separate property. *Bruce*, therefore, not being entirely susceptible to precise interpretation from its text, must be interpreted by examining how later courts have characterized its holdings.

In the ninety-plus years since the *Bruce* decision was issued, the case has been cited three times for a general standard of review,[4] thirteen times on matters of child custody and parental fitness,[5] twice on the effect of "fault" in a divorce as it relates to property distributions,[6] and twice for the accepted general rules of "joint industry property."[7] At no time has it been cited as holding that a down payment made from separate property, but applied to marital real estate, continues to be separate property as a matter of law. No subsequent court appears to have interpreted *Bruce* as Lynn urges.

Further, more recent lines of cases do clearly apply here. These are cases involving unequal contributions towards acquiring joint marital real estate, exemplified by *Shackelton v. Sherrard,* 1963 OK 193, ¶ 9, 385 P.2d 898, and *Hill v. Hill,* 1983 OK 81, 672 P.2d 1149, and cases involving the creation of a marital interest in previously separate real estate, exemplified by *Larman v. Larman,* 1999 OK 83, 991 P.2d 536, and *Smith v. Villareal,* 2012 OK 114, 298 P.3d 533.

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[4] *See Bussey v. Bussey,* 1931 OK 32, 296 P. 401, 402; *Hayes v. Hayes,* 1936 OK 608, 62 P.2d 62, 63; *Manhart v. Manhart,* 1986 OK 12, 725 P.2d 1234, 1237.

[5] See *Sylvan v. Sylvan,* 1962 OK 171, 373 P.2d 232, 234; *Kuykendall v. Kuykendall,* 1955 OK 294, 290 P.2d 128, 130; *Marcum v. Marcum,* 1954 OK 4, 265 P.2d 723, 727; *Pearson v. Logan,* 1953 OK 87, 237, 255 P.2d 255, 258; *Frankovich v. Frankovich,* 1969 OK 151, 459 P.2d 583, 587; *Perry v. Perry,* 1965 OK 160, 408 P.2d 285, 287; *Ford v. Ford,* 1952 OK 224, 564, 245 P.2d 75, 78; *Irwin v. Irwin,* 1966 OK 146, 416 P.2d 853, 858; *Martin v. Martin,* 1952 OK 52, 240 P.2d 1057, 1058; *Bush v. Bush,* 1939 OK 54, 92 P.2d 363, 364; *Clark v. Clark,* 1936 OK 478, 61 P.2d 28, 29; *Barnett v. Barnett,* 1932 OK 440, 13 P.2d 104; *Panther v. Panther,* 1931 OK 10, 295 P. 219, 219.

[6] *See Williams v. Williams,* 1967 OK 97, 428 P.2d 218, 222; *Turlington v. Turlington,* 1944 OK 15, 144 P.2d 957, 958.

[7] *See McCoy v. McCoy,* 1967 OK 86, 429 P.2d 999, 1004; *Longmire v. Longmire,* 1962 OK 219, 376 P.2d 273, 275.

The *Larman*-type cases arise where one spouse already owns separate real estate, and then transfers this separate property into joint tenancy without consideration or contribution from the other spouse. To validate such a transaction without consideration, the law presumes a gift of an interest in the real estate to the other spouse. *Larman* held that a spouse can overcome this presumption of a gift by showing a lack of donative intent. *Larman*, ¶ 10. *Shackleton* also holds that "it is ordinarily immaterial how much money [either spouse] has actually contributed to the purchase of the property involved because a gift from one to the other is presumed." *Shackelton* at ¶ 9.

Here, it is unquestioned that Lynn knowingly entered into a joint tenancy and jointly held debt, and there was no allegation of fraud or a side agreement that the joint tenancy would be regarded as containing unequal shares, or any showing of a "collateral purpose" for placing the real estate in joint tenancy.[8] The court therefore erred in finding that her $53,075 contribution to the down-payment remained separate property.

Lynn also argued that other payments totaling $60,000 were made as extra payments against the principle of the mortgage on the property, and all but $10,000 of this amount came from her separate property.[9] The same principle applies. We find neither a side agreement that the joint tenancy would be

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[8] The court clearly did not accept *Shackelton* or *Larman* as controlling here, stating from the bench that "I don't believe there has to be some showing that there was some agreement between the parties that these funds would be withheld or they would change if there was indeed a divorce ...." Tr. (June 1, 2020), pg. 18.

[9] The $35,000 payment was mixed with $25,000 being traced to Lynn's yearly gift from her parents.

regarded as containing unequal shares, nor any showing of a "collateral purpose" for placing the property in joint tenancy.

The final and most difficult question is that of the last payment. Unlike the regular $25,000 gifts to Lynn from her parents, this originated from a $150,000 parental check made out to Lynn, and marked as some form of "generation skipping gift."[10] This *could* imply that the money was intended for the couple's child, and only held by the couple as trustees, and provide some evidence of the required "side agreement" that the $150,000 was actually an interest of the child, not of the parents.

Lynn effectively denied this at trial, however. She testified that the funds actually came from her trust fund, which was administered by her parents, and that the reference to a generation skipping gift was intended as an indication that the check should go "only to the bloodline" but was also "for tax purposes."[11] Tr. (June 1, 2020), pg. 21. She also testified that she had "a verbal agreement with my parents that this 150 would—from these savings when we paid off the house, we would use it for my daughter's college savings." *Id.* She later testified that the check was "intended for me." She then agreed that "you weren't saying the $150,000 was going to be [your daughter's] money, right?" *Id.* at 22. At best,

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[10] Basically, such a gift skips the child's generation and goes to a grandchild to avoid an inheritance being subject to estate taxes twice—once when it moves from the parent to child, and then when it moves from the child to the grandchildren.

[11] This "trust fund" testimony is problematic because the check is not from Lynn's parents as trustees, but is simply a personal check from her parents *drawn on the same account as the previous gifts.* (See Exhibits 9 and 12). No legally established "trust" appears to exist. Nor would a payment from a trust to Lynn appear to qualify as a "generation skipping gift" to her daughter for tax purposes.

Lynn's testimony was that, if her parents let her have $150,000 from a purported trust account, she agreed to eventually return this money to a college savings plan for the daughter after paying off the mortgage. This was an agreement between *Lynn and her parents*, however, not an agreement between Lynn and Geoffrey that some part of the joint tenancy would be held out as her separate property.

CONCLUSION

Lynn argued that the core holding of *Bruce* is that separate funds put towards acquiring a marital home in joint tenancy are "not acquired by joint industry" and a corresponding part of the home therefore remains separate property, regardless of joint legal title and joint legal responsibility for indebtedness. The exact basis of the *Bruce* decision is not clear from the opinion, but later treatment of the case clearly establishes that it has never been construed as holding as Lynn suggests. We find that *Shackleton* and *Larman* clearly control here. As such, we find that the trial court applied an incorrect principle of law. Under the facts presented, all of the equity in the marital home was marital property. We therefore vacate the challenged judgment and remand with instructions to make an equal distribution of the equity in the marital home.

VACATED AND REMANDED.

WISEMAN, P.J., and BARNES, J. (sitting by designation), concur.

September 30, 2022