10612081 68

ORIGINAL

NOT FOR OFFICIAL PUBLICATION
See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

MAR - 3 2025

JOHN D. HADDEN
CLERK

MICHELLE T. BUDA,

Petitioner/Appellee,

vs.

JUSTIN A. BUDA,

Respondent/Appellant.

Case No. 121,685

Rec'd (date) 3-3-25
Posted
Mailed
Distrib
Publish ___ yes X no

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE BARRY L. HAFAR, SPECIAL JUDGE

AFFIRMED

S. Corey Stone
BALL MORSE LOWE PLLC
Stillwater, Oklahoma — For Petitioner/Appellee

Maria Tully Erbar
Oklahoma City, Oklahoma — For Respondent/Appellant

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Justin A. Buda appeals several aspects of the property division contained in the decree of divorce entered by the district court. On review, we find no error and thereby affirm.

BACKGROUND

The parties were married in July 2017 and divorced in July 2023. No children were born of the marriage. Mr. Buda appeals two major aspects of the

decree here. The first is the court's decision to value the marital homestead on the date of filing, rather than the date of separation. The second is the court's determination that Mr. Buda's separately titled Ameritrade investment account was primarily marital property. Less significant issues include the court's valuation of certain vehicles, the court's decision not to recognize or account for Mr. Buda's contributions to Ms. Buda's retirement account, and the court's decision not to distribute a portion of Ms. Buda's 2021 tax refund to Mr. Buda.

STANDARD OF REVIEW

A dissolution of marriage action is one of equitable cognizance in which the trial court has discretionary power when dividing the marital estate. *Teel v. Teel*, 1988 OK 151, 766 P.2d 994. Our standard of review for the issues raised in this appeal requires us to review all of the evidence presented to the trial court and to sustain the trial court's judgment unless the trial court abused its discretion or unless the court's findings were clearly against the weight of the evidence. *Hough v. Hough*, 2004 OK 45, 92 P.3d 695.

ANALYSIS

The Date of Separation

Ms. Buda moved out of the marital home and established her own residence on May 31, 2021, but did not file for divorce until November 8, 2021. The court found the date of filing to be the date of separation and valued the marital home and other property as of the date of filing. We first note this is not a dispute regarding the actual property valuation. Mr. Buda's brief states that "he believes that the court should use the County Assessor's valuation of the

property in 2021 ($276,000) for purposes of property division." *Brief-in-chief*, 6. The court's attachment to the decree shows that it did use that exact figure to value the home. The dispute is thus over whether the *mortgage balance* on May 31 or November 8 should have been subtracted when determining the couple's equity in the home. The court found the date of separation to be November 8 and hence subtracted the November 8 balance. Mr. Buda argues it should have used May 31 as the date of separation and subtracted the May 31 balance instead.

There is no clear consensus on the appropriate cut-off time for valuation of marital assets and Oklahoma jurisprudence provides no definitive rule to be used. *Thielenhaus v. Thielenhaus*, 1995 OK 5, ¶ 15-16, 890 P.2d 925, 933. Oklahoma retains a flexible approach in which trial courts are generally free to choose the most appropriate appraisal date for valuation. *Id.* ¶¶ 16-17. Mr. Buda cites *In re Marriage of Janitz*, 2013 OK CIV APP 107, 315 P.3d 410, as persuasive. *Janitz* did find that Mr. Buda's preferred result, setting the date of separation as the date one party moved out of the marital home, was not against the clear weight of the evidence. Like all cases affirming under a deferential standard of review, however, *Janitz* provides neither precedent for reversal nor an applicable rule. A finding that a particular court's decision is *not* against the clear weight of the evidence does not mean that a contrary decision in similar circumstances *is* against the clear weight. There is a broad middle ground between the extremes

of "against the clear weight" and *Janitz* does not indicate that the trial court abused its discretion simply because it reached a different result.[1]

Although the point is not extensively explained in his briefing, Mr. Buda's central argument appears to be that it was inequitable for the court to set the separation date as November 8 because Ms. Buda moved out on May 31, and he continued to make mortgage payments for some six months between her leaving and the divorce filing.[2] Mr. Buda attempts to analogize this to a court distributing separate property as marital property, again citing *Janitz*, as well as *Forristall v. Forristall*, 1992 OK CIV APP 64, 831 P.2d 1017, for the principle that property acquired after separation is not the product of joint industry, but is separate property.[3]

The separate property rules of *Janitz* and *Forristall* do not appear to have any bearing on the equities of the *initial selection* of a separation date; however,

---

[1] The facts in *Janitz* are also not as similar as Mr. Buda argues. In *Janitz*, the couple had been separated for *fourteen years* before the wife filed the divorce petition. In the current case, the gap was a little over five months.

[2] Mr. Buda argues that the court should have found the parties' equity in the home by finding May 31 to be the date of separation and subtracting the mortgage balance on the earlier date of May 31 from the assessed value rather than the court's separation date of November 8. The mortgage balance would have been slightly higher on May 31st than on November 8, so the equity available for distribution to each party would have been slightly smaller using Mr. Buda's preferred date of May 31 than using the court's preferred date of November 8. In the first scenario, Mr. Buda would have slightly less equity, but would also owe less in property distribution for Ms. Buda's share of the home. The balance of the decree is the same in both instances, however.

[3] In *Janitz*, the court awarded husband, as his separate property, his IRA, a 2002 Buick Le Sabre, a 2006 Mazda Miata, and his office furnishings and equipment. *Janitz* was a very unusual case in that the couple had been separated for fourteen years before wife filed the divorce petition. In the current case, the gap was a little over five months. In *Forristall* the court excluded the profits from husband's medical practice earned between the time of separation and trial from the marital estate.

they govern how property must be characterized after a date is chosen. Mr. Buda provides no authority for his argument that a court is equitably required to set the date of separation as the date one party moves out simply because a mortgage is involved. If this was a rule, it would likely affect the majority of divorce cases, but we find no trace of it in the existing case law. Trial courts are generally free to choose the most appropriate appraisal date for valuation, and we find the date chosen by the court here was not an abuse of its discretion.[4]

Mr. Buda also briefly argues that the court erred in dividing the Ameritrade account on November 8, 2021, instead of his proposed date of May 3. He provides no specific arguments as to the valuation date of the account, and evidently relies on the same arguments he raised regarding the valuation date of the marital home. We have previously found no error in the chosen date when applied to the marital home, and we find no error in the same date when applied to the Ameritrade account.

The Ameritrade Account

The court distributed part of an Ameritrade account as marital property. At the onset of marriage in 2017 the account was worth $27,699.71. On the date of separation, it was worth $226,232.83. The court awarded Ms. Buda $149,614.02 from the account and awarded Mr. Buda $76,618.81. Mr. Buda argues that this was in error because the account was entirely his separate

---

[4] A better way, perhaps, to address this matter would have been for Mr. Buda to request an equitable offset for a portion of the mortgage payments rather than modifying the date of separation. Nothing in the record indicates that Mr. Buda made such a request, however, or that such an offset would have been required to effectuate an equitable division of the couple's property.

property at the time of marriage and was funded entirely from separate property after that.[5]

Thielenhaus is clear that, when a spouse brings separate property to the marriage, "its increased or enhanced value, produced by investment managed by neither spouse or by appreciation, inflation, changing economic conditions, or circumstances beyond the parties' control, cannot be treated as a divisible marital asset." *Id.*, ¶ 9. The account balance grew, however, by approximately 900 percent between 2017 and 2023, and this was not merely by the natural accumulation of a prudent investment.

Mr. Buda argues that this increase is due to a combination of natural increase, his skill alone in managing the account, and the deposit of an $84,000 legacy he received on his godmother's death.[6] The legacy was not, however deposited directly into the Ameritrade account, but into the same account where the Mr. Buda's marital wages were deposited and from which the family mortgage was paid. Mr. Buda's Exhibit 16 states that three deposits to the account were from the legacy, $23,500 in June 2018, $55,000 in January 2019, and $5,021 in June 2019, for a total of $83,521. This exhibit also states that he made

---

[5] We note that this unequal distribution of the Ameritrade account is explained in the record. The Court used this unequal distribution in lieu of an "equalization payment," which Mr. Buda would have owed to Ms. Buda. *See* Tr. (7/21/2023), 5 ("[R]ather than enter an Order of Payment, I've basically set the offset in values of the Ameritrade accounts currently in Mr. Buda's name, so any offset in values will be offset by that.").

[6] Even if the entire legacy was posted to the account in 2017, the account still increased from $107,699 to $226,232 over five years, an unusually high return of approximately sixteen per cent per annum. Mr. Buda testified that, in fact, the $80,000 was deposited in 2018 through 2021, making the purported rate of natural increase even more remarkable.

transfers from that same account to the Ameritrade account, amounting to $14,880.99 in 2018, $30,349.05 in 2019, $6,000 before May 1, 2021, and $18,500 in the latter part of 2021.[7] The total of these deposits equals $69,740.04. Mr. Buda argues that these deposits represent the same legacy funds that were paid into the account the three years prior.

It is undisputed that marital property (wages earned during the marriage) and originally separate property (a legacy) were commingled in an account, and the account was also used to pay marital bills. Courts should exclude from the marital estate "property owned by a spouse before the marriage, which retains its separate status during coverture because it is maintained in an uncommingled state as a spouse's individual property." *Thielenhaus,* ¶ 9, 890 P.2d at 930-31. We cannot say the court erred in finding commingling here.

Equally, although separate property may be "traceable" through some forms of commingling, the law requires that the separate property be clearly and indisputably traced and identified. *Clanton v. Oklahoma Tax Comm'n,* 1953 OK 19, ¶ 16, 253 P.2d 562, 564. Property as immediately fungible as money placed in a frequently-used account is very unlikely to be clearly and indisputably traced and identified years later. We find that the court's decision regarding the marital nature of the Ameritrade account was neither in error as a matter of law, nor against the clear weight of the evidence.

---

[7] Mr. Buda's exhibit uses his preferred date of separation of May 31, 2021, rather than the chosen date of November 8, 2021.

Other Errors

Mr. Buda also briefly raises the following errors: that the court erred in accepting Ms. Buda's valuations of two vehicles; that the court "disregarded" the fact that Mr. Buda contributed $16,000 of the money he received separately from insurance and sale of his former vehicle into the purchase of a marital vehicle; that Mr. Buda contributed $7,200 of his own funds into Ms. Buda's IRA; and that Ms. Buda failed to pay Mr. Buda any part of Ms. Buda's 2021 tax refund, which amounted to $1,412.

As to the vehicles, Mr. Buda provides no facts or authority that the vehicle values were determined by an improper method, or against the clear weight of the evidence. As to the $16,000, Mr. Buda also provides no citation to the record for his argument that the vehicle was either separate property or had a $16,000 separate property component. As to the IRA, Mr. Buda does cite to testimony from a hearing on June 12 for his contention that he put $7,200 into Ms. Buda's IRA, but the transcript provides no more detail than the bare claim that this money was Mr. Buda's separate property. As to the tax records, his Exhibit 7 does show that Ms. Buda received a 2021 tax refund of $1,412 but provides no further evidence that this amount was not accounted for by the court in its equitable distribution. Indeed, the decree clearly states that this amount was awarded to Ms. Buda to offset household bills that Ms. Buda paid during the pendency of the divorce. As such, we find that the court's decisions on these matters were not against the clear weight of the evidence.

AFFIRMED.

WISEMAN, P.J., and FISCHER, J., concur.

March 3, 2025