

# ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-56

DAVID COLLINS

APPELLANT

V.

BILLIE GRADY COLLINS

APPELLEE

**Opinion Delivered** June 16, 2010

APPEAL FROM THE  
INDEPENDENCE COUNTY  
CIRCUIT COURT,  
[NO. DR-2009-260-2]

HONORABLE ADAM HARKEY,  
JUDGE

AFFIRMED

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## WAYMOND M. BROWN, Judge

Appellant David Collins appeals from the October 29, 2009 divorce decree, entered by the Independence County Circuit Court. David argues on appeal that the trial court erred in determining that his premarital property was marital property subject to division. We find no error and affirm.

David purchased the property at issue on December 22, 1983, from James and Marie Bishop. David and Billie married on February 17, 2006. On August 24, 2006, David executed a warranty deed conveying title to the property to himself and Billie, as husband and wife. The parties separated on or about April 1, 2009. Billie filed a complaint for divorce on June 2, 2009, alleging general indignities. Billie also sought a temporary restraining order.

A standing restraining order was filed that same day. David counterclaimed alleging general indignities on September 1, 2009.

The divorce hearing took place on October 8, 2009.<sup>1</sup> Billie testified that she was currently living in the marital home and wished to stay there. She stated that she wanted a divorce from David because she could not take it anymore. She stated that “he would say that he would rather be dead than married to me. He would also tell me to get the f— out of his house and pack my s— and leave. He would call me a worthless b—.” Billie testified that she was a recovering alcoholic and that in January 2009 David was drinking vodka and put the bottle to her mouth and told her to drink. Billie told the court that she received a text message from David’s sister informing her that if she would sign a quitclaim deed, David would go to anger management. Billie testified that she did not accept the offer.

On cross-examination, Billie stated that David was living in the home at the time she married him. According to Billie, she also had a house at the time; however, she sold her home and placed the funds<sup>2</sup> into a joint account she shared with David. Billie stated that she was aware that the items purchased with the money she received from the sale of her house were marital property.

Sarah Bolin testified that she had witnessed mental and physical cruelty by David. She stated that she was at the parties’ home “the night of the ice storm” when David put a bottle

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<sup>1</sup>Billie’s restraining order also terminated that day.

<sup>2</sup>About \$26,000 plus “some monthly payments.”

of vodka to Billie's head and "told her to drink it while calling her a b-." Sarah testified that she could not count how many times Billie had shown up at her house in the middle of the night.

David testified that he added Billie to the deed after she sold her house. According to David, after Billie sold her house she "kept talking about having no place of her own." He continued:

I told her that she had this place with me. She argued that this place belonged to me and if I loved her, I would put her name on the property since we were husband and wife.

I put her name on the property and never thought that three years later she would divorce me and take one half of my property. That is not the reason I put her name on the property. I put her name on the property because I am on the river boat for thirty days at a time and things need to be done around the property.

David testified that he purchased the property for \$120,000 with his wife at the time. He stated that he had done a lot of work to the property after he purchased it. David said that he found out Billie filed for divorce shortly before September 8. David denied placing the vodka to Billie's mouth; however, he stated that he "did set it down in front of her."

On cross-examination, David stated he was unsure if Billie paid for any improvements made to the house prior to their marriage. David testified that Billie always started "stuff" knowing that he has a temper.

Aaron McMullin testified that he was David's employer and that David's work schedule is "six hours on, six hours off, thirty days on, thirty days off." McMullin stated that he did not know of any alcohol problems David might have. Robert Sanders testified that

he once lived with the parties from March to June and that he saw David drink only once during that time. David's daughter, Gina Robinson, testified that David "remodeled the entire home."

The trial court found that the property was marital property because "the strong presumption as to a gift has not been overcome." The divorce decree was entered on October 29, 2009. David filed a timely notice of appeal. This appeal followed.

David raises two points on appeal: 1) the trial court committed reversible error when it ordered division of his real and separate property, and 2) equity demands that the exclusionary language in Arkansas Code Annotated section 9-12-315, which excludes from the marriage certain property, be extended or modified to preclude separate real property that is deeded from one spouse to another absent proper consideration.

Property acquired prior to marriage is not considered marital property.<sup>3</sup> However, when property is placed in the names of a husband and wife, a presumption arises that they own the property as tenants by the entirety.<sup>4</sup> This presumption can be overcome only by clear and convincing evidence that a spouse did not intend it as a gift.<sup>5</sup> Also, when a husband and wife hold real property as tenants by the entirety, it is presumed that the spouse who

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<sup>3</sup>Ark. Code Ann. § 9-12-315(b)(1) (Repl. 2009).

<sup>4</sup>*McCracken v. McCracken*, 2009 Ark. App. 758, 358 S.W.3d 474 (citing *Young v. Young*, 101 Ark. App. 454, 278 S.W.3d 603 (2008)).

<sup>5</sup>*Id.*

furnished the consideration made a gift in favor of the other spouse, and this presumption must also be rebutted by clear and convincing evidence.<sup>6</sup>

Although we review traditional equity cases de novo on the record, we do not reverse unless we determine that the trial court's findings were clearly erroneous.<sup>7</sup> A trial court's findings of facts are clearly erroneous when, although there is evidence to support them, the reviewing court is left with the definite and firm conviction that a mistake has been committed.<sup>8</sup> In reviewing a trial court's findings, we defer to the trial court's superior position to determine the credibility of witnesses and the weight to be accorded their testimony.<sup>9</sup>

David cites *Young, supra*, for his position that the trial court should have granted him full ownership of the property. However, *Young* is distinguishable from this case. In *Young*, the court made a specific finding from the bench that the husband was the dominating force in the marriage and that he overcame the wife's free will at a time when the wife was vulnerable and in a substantially impaired state.<sup>10</sup> Here, no such finding was made; however,

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<sup>6</sup>*Id.* (citing *Keathley v. Keathley*, 76 Ark. App. 150, 61 S.W.3d 219 (2001)).

<sup>7</sup>*Young, supra* (citing *Hill v. Hill*, 84 Ark. App. 132, 134 S.W.3d 6 (2003)).

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>The wife's son died unexpectedly in July 2003, and she executed a quitclaim deed adding the husband's name the following month.

testimony revealed that Billie suffered mental and physical abuse from David. Thus, David's reliance on *Young* is misplaced.

David also cites *Cole v. Cole*<sup>11</sup> for his position that the trial court should have determined that the property was his separate property. David's reliance on *Cole* is also misplaced. In *Cole*, the wife placed her husband's name on the deed to her café in reliance on his promise to execute a will and add her children's names as beneficiaries. The husband never fulfilled his end of the bargain; therefore, the trial court determined that the café was the wife's separate property and, as such, the wife was entitled to all the proceeds from the sale of the café. Here, there was no evidence that the parties entered into a contract and that Billie failed to fulfill her part of the obligation. David argues on appeal that he and Billie had a contract, which Billie breached. However, the abstracted testimony does not support this contention. Furthermore, David testified that he placed Billie's name on the deed because she told him that if he loved her he would.

The warranty deed to the property at issue stated that David and Billie were to be tenants by the entirety. The deed was filed the same day it was executed. It is clear that David was unable to overcome the strong presumption of a gift. Therefore, the trial court did not err by determining the property to be marital property subject to one-half division as contemplated by Ark. Code Ann. § 9-12-315(a)(1)(A).

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<sup>11</sup>53 Ark. App. 140, 920 S.W.2d 32 (1996).

Cite as 2010 Ark. App. 506

David also argues that Ark. Code Ann. § 9-12-315 should be extended or modified to preclude separate real property that is deeded from one spouse to another spouse absent proper consideration. David fails to recognize that in a situation where there has been a valid gift from one spouse to another, consideration is not necessary.<sup>12</sup> Thus, this argument is without merit.

Affirmed.

VAUGHT, C.J., and GRUBER, J., agree.

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<sup>12</sup>See *Davis v. Jackson*, 232 Ark. 953, 341 S.W.2d 762 (1961).