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ARKANSAS COURT OF APPEALS
DIVISION III
No. CV-21-203

ASHOK THAKAR

APPELLANT

V.

JAGRUTI THAKAR

APPELLEE

Opinion Delivered June 1, 2022

APPEAL FROM THE HEMPSTEAD
COUNTY CIRCUIT COURT
[NO. 29DR-19-69]

HONORABLE RANDY WRIGHT,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Ashok Thakar appeals from a divorce decree entered on November 24, 2020, ending his twenty-five-year marriage to Jagruti Thakar. He presents two points on appeal: (1) the circuit court erred in its division of the marital estate—specifically by including marital property Ashok transferred to India; and (2) there was insufficient evidence to support the circuit court’s valuation of the parties’ home in India. After a de novo review, we affirm the circuit court’s order.

The parties lived in Hope at the time of their separation and divorce, and they do not dispute that all their property was marital property. They raised two children and together owned and operated several businesses. They owned two different motel properties in Hempstead County: the Village Inn, an RV park, and a convenience store, which they owned

and operated through Nidhi Enterprises, Inc.; and the Relax Inn, which they owned and operated through Pavan Enterprises, Inc. They also owned a home in Little Rock, two IRAs, two whole-life-insurance policies, personal vehicles, several bank accounts, and a home and an apartment in India. The only property at issue on appeal is the property in India, both the real estate and the funds that exist or existed in various accounts or with Ashok's family members. Jagruti contends that Ashok transferred marital funds from the parties' joint accounts in the United States to India without her knowledge and consent. It was unclear exactly where all these funds went, if they remained in Ashok's individual accounts, or if Ashok's family members possessed some of the funds. The parties also dispute the value of the marital home in India.

After a hearing spanning two days, the circuit court made the following findings regarding the parties' property:

Throughout the proceedings, on March 6, 2020, and October 7, 2020, it became clear to the Court that the parties had worked together for years to build up a marital estate which would benefit the both of them sufficiently in the future. The parties were owners of two different motel properties in Hope, Arkansas, one under the corporate name of PAVAN, Enterprises, Inc., and the other is under the corporate name of NIDHI Enterprises, Inc. The parties contributed equally in the work of the motels as well as raising two children. During the years of the motel operations, it would appear the parties were consistent in building up their marital assets. However, only after [Ashok] separated from [Jagruti] did [Jagruti] learn of a systemic process by which [Ashok] removed marital assets without the consent and knowledge of [Jagruti]. A significant amount of funds were transferred by [Ashok] to India without the consent and knowledge of [Jagruti]. With the evidence presented, the Court concludes it was the intention of [Ashok] to remove marital assets into his sole control. As a result, the Court must divide the property in accordance with ACA 9-12-315, one-half (1/2) to each party, as to do otherwise would cause [Ashok] to profit from his scheme of deceit.

In reviewing the assets, the Court finds the marital property should be divided as follows:

(1) [Ashok] shall be awarded the following:

Cash transferred to India	\$280,060.12
Home in India	211,000.00
Apartment in India	30,000.00
All Interest and Payments made by Husband in PAVAN, Inc.	179,110.24
Husband's IRA	11,795.79
Husband's Life Insurance	15,528.77
Funds transferred to Husband's Family	<u>133,141.48</u>
Total - Husband	860,636.40
Promissory Note to Wife	-87,027.98
TOTAL	<u>\$733,608.42</u>

(2) [Jagruti] shall be awarded the following:

House in Little Rock, Arkansas	\$50,804.00-Equity
NIDHI Enterprises	511,296.00
2011 Toyota	10,523.00
2005 Toyota	3,508.00
Wife's IRA	11,443.36
Wife's Life Insurance	13,124.80
Savings	11,616.27
Trailer	<u>100.00</u>
	612,415.43
Wife to have control exclusive of Husband in children's accounts	<u>+74,165.00</u>
	<u>686,580.43</u>
Note from Husband	<u>+87,027.98</u>
TOTAL	<u>\$773,608.41</u>

The circuit court is given broad powers to distribute both marital and nonmarital property to achieve an equitable division, and the overriding purpose of the property-division statute is to enable the court to make a division that is fair and equitable. *Steeland v. Steeland*, 2018 Ark. App. 551, at 8, 562 S.W.3d 269, 274. We review division-of-marital-property cases de novo, but we will not reverse the circuit court’s findings of fact unless they are clearly erroneous or against the preponderance of the evidence. *Perser v. Perser*, 2019 Ark. App. 467, at 5, 588 S.W.3d 395, 401. A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. *Id.* We also give due deference to the circuit court’s determination of the credibility of the witnesses and the weight to be given to their testimony. *Norwood v. Norwood*, 2020 Ark. App. 345, at 5–6, 604 S.W.3d 252, 256. This court will not substitute its judgment for that of the circuit court, which observes witnesses firsthand. *Id.*

I. *Division of Marital Estate*

For his first point on appeal, Ashok argues that the circuit court erred in dividing the parties’ marital property by attributing \$413,201.60—\$280,060.12 in cash transferred to India and \$133,141.48 in funds to Ashok’s family—to his half of the marital estate. He claims that the court penalized him for transferring these funds without Jagruti’s consent and knowledge and that the court’s division violates Arkansas law. He claims that Jagruti must prove he transferred these funds with the intent to defraud her before the court may reimburse her. He argues that the circuit court did not find “fraud” but found only that he

transferred sums to India without Jagruti's knowledge and consent. Thus, he claims the court's inclusion of the transferred amounts in the marital estate was clear error.

Parties in a divorce action are not required to account for every sum spent in a marriage. *Chism v. Chism*, 2018 Ark. App. 310, at 6, 551 S.W.3d 394, 398. However, a spouse may recover his or her interest in marital property that the other spouse has transferred if the latter made the transfer for the purpose of defrauding the former of his or her interest in the property. *Skokos v. Skokos*, 332 Ark. 520, 535, 968 S.W.2d 26, 34 (1998).

The supreme court's most recent opinion on this issue appears to confirm the fraud requirement from *Skokos*, but it also recognized its holding in *Ramsey v. Ramsey*, 259 Ark. 16, 531 S.W.2d 28 (1975), that a court should consider the "wrongful disposition" of property by one spouse in ordering the division of marital property. *Chekuri v. Nekkalapudi*, 2020 Ark. 74, at 12 n.2, 593 S.W.3d 467, 474 n.2. We do not read the cases so narrowly that the requirement of fraud does not also include "scheme of deceit," as the circuit court found here.

Testimony at the hearing established that Ashok handled the finances for the parties and their businesses during the marriage. Jagruti's brother, Bhavesh Trivedi, testified that women do not handle the money in India, that the male is the head of the household and manages all financial aspects, and that Jagruti was unaware of the parties' finances. Trevedi testified that, after the parties separated, he and his brother helped Jagruti review her bank statements, obtain bank statements from the accounts in India, and trace the funds. Jagruti introduced documentary evidence that Ashok had transferred \$280,060.12 to accounts in

India. Ashok does not dispute that he transferred these amounts from the parties' joint accounts in the United States, but he does dispute that he still has those funds. He testified that those sums were transferred to joint accounts in India over a ten-year period and then were transferred to fixed-deposit accounts to earn a better interest rate, akin to a certificate of deposit in a U.S. bank. The documents introduced by Jagruti indicate that these fixed deposits were in Ashok's name only, although Ashok testified that the fixed-deposit accounts were jointly owned. He testified that he had transferred the balance of these accounts to his father after the parties' separated, denying however that the accounts contained the entire \$280,000 at the time of the transfer. He said that the parties spent most of the funds while they were in India, but he produced no documentation to show this.

Jagruti also testified that she discovered after the parties separated that Ashok had been giving money to various members of his extended family including his brother, his sisters, his mother, his aunt, and his uncle totaling \$133,141.48. She said these transfers were not a joint decision and were made without her knowledge or consent. She did not know whether the money was intended to be gifts or loans.

In its most recent case on this issue, the supreme court affirmed a circuit court's determination that the husband spent \$135,000 in marital funds during the parties' separation and awarded the wife half of that amount. *See Chekuri*, 2020 Ark. 74, 593 S.W.3d 467. Although the circuit court made no specific finding of fraud, the supreme court "presumed that the circuit court acted properly and made such findings of fact as were necessary to support its decision." *Id.* at 14, 593 S.W.3d at 476. The husband in *Chekuri*

contended that his wife failed to prove his transfers were made with the intent to defraud her of her marital interest. The supreme court distinguished the facts from those in *Skokos* because the husband had no documentation to support his expenses and there was evidence from which the circuit court “could have concluded that Chekuri spent these funds with the intent to defraud Nekkalapudi.” *Id.* at 13, 593 S.W.3d at 475.

Here, the circuit court noted the parties had worked together for years to build up a marital estate. Ashok does not dispute that Jagruti had no knowledge of, and did not consent to, his systematic process of removing these marital assets from their joint accounts in the United States and transferring them to India. Although Ashok argued that he no longer had all of the money that the evidence showed he transferred to India, he produced no documentation demonstrating when or where it was spent or transferred. The circuit court was required, as the trier of fact, to determine the credibility of witnesses and resolve conflicting testimony. *Skokos v. Skokos*, 344 Ark. 420, 40 S.W.3d 768 (2001). On appeal, we will not disturb a circuit court’s resolution of disputed facts or determinations of credibility as these are within the province of the fact-finder. *Silzell v. Silzell*, 2022 Ark. App. 50, at 4, 640 S.W.3d 667, 670–71. We cannot say the circuit court’s finding that it was Ashok’s intention to place them in his total control without her knowledge and that it was his intent “to profit from his scheme of deceit” is clearly erroneous.

II. *Home in India*

For his second point on appeal, Ashok argues that there was insufficient evidence to support the circuit court’s valuation of the parties’ home in India. Ashok testified that he

bought the home in India in 2010 with his father and his brother and that they each owned a 1/3 interest in the home.¹ He introduced what he alleged was a deed listing the owner as “Kapilaben Kantilal Thakar [alleged to be Ashok’s father] and Others.” However, there is no document in the record suggesting who the “Others” were. The document states that the “Consideration Price” is 9,05,531 (Nine Lakh Five Thousand Five Hundred and Thirty-One), which Ashok testified was the equivalent of \$12,292 U.S. dollars using the conversion rate at the time of the hearing in 2020. We note that there is no evidence in the record indicating the value of the “consideration price” in U.S. dollars using a conversion rate from 2010 when the home was purchased. Nor was any evidence introduced relating to what his father, his brother, or “others” may have contributed to the purchase of the property, if anything. Ashok just testified that his brother’s family currently lives in the home.

Jagruti’s brother, Bhavesh Trivedi, testified that he had been to the Thakars’ house in India; that it is in a “fabulous location”; and that Ashok had told him it was his and Jagruti’s family home, that the property was a good investment, and that it was worth around \$200,000. Jagruti testified that the home is in an area that is growing and that Ashok told her the value of the home was about \$201,000. Ashok presented no evidence of current valuations to contradict this testimony, which we note, was based on information provided to the witnesses from Ashok.

¹He admits that Jagruti owns half of his interest.

Ashok argues that the only actual evidence of market value of the home is the deed itself. We disagree. It is well settled that the owner of property, because of his or her relationship as owner, is competent to give opinion testimony on an issue of the value of the property regardless of the owner's knowledge of property values, and it is not necessary to show that the owner is an expert or is acquainted with the market value of local real estate. *City of Lowell v. M & N Mobile Home Park, Inc.*, 323 Ark. 332, 344, 916 S.W.2d 95, 101 (1996). Moreover, the consideration recited in a deed is not always equal to the value of the property conveyed. 26A C.J.S. Deeds § 28 Westlaw (database updated May 2022). Often a nominal sum is named, and even love and affection may constitute sufficient consideration for a conveyance of land. *Howard v. Howard*, 152 Ark. 387, 238 S.W. 604, 606 (1922).

Further, the court specifically found that it was Ashok's intent to "remove marital assets into his sole control" and "to profit from his scheme of deceit." Ashok chose to purchase the home in India, to brag about its value to his wife and brother-in-law, and to present to the court very limited evidence regarding its ownership and market value. It was this scheme of deceit that created the confusion regarding the home in India. And it was not erroneous for the court to place the burden on Ashok to resolve it. We hold that the value of the home involved issues of weight and credibility for the circuit court, which observed the witnesses firsthand. *Norwood*, 2020 Ark. App. 345, at 6, 604 S.W.3d at 256. We will not reweigh the evidence on appeal. *Id.*

Affirmed.

WHITEAKER and HIXSON, JJ., agree.

Taylor & Taylor Law Firm, P.A., by: Jennifer Williams Flinn, Andrew M. Taylor, and Tasha C. Taylor, for appellant.

Wright, Lindsey & Jennings LLP, by: Troy A. Price and Alexander T. Jones; and Langdon Davis, by: Demaris A. Hart, for appellee.