

Cite as 2024 Ark. App. 119
ARKANSAS COURT OF APPEALS
DIVISION IV
No. CV-23-65

CATHERINE POWELL

APPELLANT

V.

KAVIN POWELL

APPELLEE

Opinion Delivered February 21, 2024

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NO. 17DR-21-278]

HONORABLE MARC MCCUNE,
JUDGE

AFFIRMED

BART F. VIRDEN, Judge

Catherine Powell appeals the Crawford County Circuit Court’s decision that the real property located at 6801 Lillie Lane in Ozark containing a storage building and trailer is not marital property. Specifically, she asserts that the circuit court’s findings that the Lillie Lane property “was an inheritance” and the property constituted a gift are clearly erroneous. We disagree and affirm.

I. Relevant Facts

On June 22, 2021, Catherine Powell filed a complaint for divorce from Kavin Powell after nineteen years of marriage. At the divorce hearing in September, Kavin testified that in June 2010, his father Lonnie Powell was dying from myasthenia gravis and cancer. In anticipation of his death, and for the purpose of avoiding probate, Lonnie and his wife deeded the one-acre property located at 6801 Lillie Lane in Ozark to Kavin. Kavin explained

that at the time, the loan on the property had matured, and the bank required him to cosign on a new loan as guarantor for the loan amount of \$17,000. Lonnie and Kevin's nephew made the remaining payments on the property, and at the time of the hearing, the loan had been paid off "for years." Kevin stated that he did not make any payments on the loan, and Catherine never had any interest in the property. The deed executed by Lonnie and his wife transferring the property to Kevin alone was entered into evidence. Catherine disagreed with Kevin's testimony that the property was a gift. She denied that the Lillie Lane property was "a pre-inherited piece of property that his dad advanced him" and stated that Kevin gave consideration for the property. Catherine surmised that the bank would have claimed the Lillie Lane property had the deed transferring the land to Kevin not been filed before Lonnie died. Catherine testified that Lonnie "made a deal with what he owed on the land that he could sell it to Kevin so he would not have that bill. So Kevin said that he would take over and pay the land off"; thus, Catherine asserted, because the land was paid for with marital funds, it was marital property.

The court entered the divorce decree on October 11. In the decree, in pertinent part, the court found that Kevin "was gifted real property located at 6801 Lillie Lane, Ozark, Arkansas 72949 by his father in anticipation of his death and was deeded to him to bypass probate proceedings. Therefore, the Defendant shall retain said property."

Catherine timely filed her notice of appeal and this appeal followed.

II. Discussion

For her first point on appeal, Catherine asserts that the circuit court erroneously found that the property at issue was “an inheritance.” Catherine contends that “the assertion that the appellee . . . necessarily would have inherited the property is patently false” because Lonnie did not have a will, and the property would have passed via the laws of intestate succession. She concludes that there was testimony that Kavin cosigned on the new loan for the Lillie Lane property “to keep the property from going into default, showing that the purpose of the transfer was not to avoid probate.” Her argument is not well taken.

We review divorce cases de novo on appeal. *Moore v. Moore*, 2019 Ark. 216, 576 S.W.3d 15. However, the circuit court’s findings pertaining to the division of property will not be reversed unless they are clearly erroneous or against the preponderance of the evidence. *Id.* A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with a definite and firm conviction that a mistake has been made. *Jones v. Jones*, 2014 Ark. 96, 432 S.W.3d 36. 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. *Id.* All marital property shall be distributed one-half to each party unless the court finds such a division to be inequitable. Ark. Code Ann. § 9-12-315(a) (Repl. 2020). “Marital property” means all property acquired by either spouse subsequent to the marriage; however, an exception to this rule is property acquired by gift. Ark. Code Ann. § 9-12-315(b)(1).

The circuit court heard Kavin’s testimony that his father transferred the property to him to avoid probate and Kavin’s statement that he never made any payment on the loan or gave consideration for the land. Kavin testified that the bank required him to cosign, and

there was no testimony that cosigning on the note was a condition of Lonnie's transfer of the property to Kavin. The court also heard Catherine's testimony that she thought Lonnie transferred the land to Kavin because Lonnie no longer wanted to pay the loan on the land, and Kavin took over the payments. The court believed Kavin's testimony that the property was a gift from his father, and giving due deference to the court's determination of the credibility of the witnesses, we are not left with a definite and firm conviction that the circuit court erred. *See Jones, supra*.

Additionally, for the first time on appeal, Catherine asserts that the circuit court erred in finding that the Lillie Lane property was a gift because Kavin "admits that he provided valuable consideration for the transfer: 'He had to refinance so I [sic] cosigned for him for a new loan because the time had run out on the original. I would have been responsible [if somebody defaulted].'" Catherine asserts that consideration need not be financial, and cosigning on the loan amounted to consideration.

Catherine had an opportunity to raise this argument at the hearing, but she did not. It is well settled that we do not consider arguments that are not first raised in the circuit court; otherwise, we would be placed in the position of reversing a circuit court order for reasons not addressed by that court. *See Vongkhamchanh v. Vongkhamchanh*, 2015 Ark. App. 584, at 6, 473 S.W.3d 570, 573. Accordingly, we affirm.

Affirmed.

ABRAMSON and THYER, JJ., agree.

Jeremy D. Wann, PLC, by: *Jeremy D. Wann*, for appellant.

Carrie L. Jernigan; and Brian G. Brooks, Attorney at Law, PLLC, by: Brian G. Brooks, for
appellee.