IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

SHELBIE TORRES,

Respondent,

v.

ALEJANDRO RAUL TORRES,

Appellant.

DOCKET NUMBER WD82498

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: April 14, 2020

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Susan E. Long, Judge

JUDGES

Division Four: Mitchell, C.J., and Martin and Ardini, JJ. CONCURRING.

ATTORNEYS

Jonathan Sternberg, Kansas City, MO, Attorney for Respondent.

Anthony W. Bonuchi, Kansas City, MO, Attorney for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SHELBIE TORRES, Respondent,
v.
ALEJANDRO RAUL TORRES, Appellant.

WD82498 **Jackson County**

Before Division Four Judges: Karen King Mitchell, Chief Judge, and Cynthia L. Martin and Edward R. Ardini, Jr., Judges

Husband appeals the property distribution portion of the amended judgment dissolving his marriage to Wife. Husband argues that the court erred in ordering him to make a $302,300.50 equalization payment to Wife because the court (1) misapplied Missouri law governing when equity in a spouse's non-marital company can be deemed marital property; (2) lacked substantial evidence to support its finding that Husband's business has a marital value of $348,965.00; and (3) failed to subtract the $234,554.00 mortgage on the marital home from the calculation of the net marital estate before calculating the equalization payment. We affirm the trial court's holding that the increase in the value of Husband's non-marital company during the marriage is marital property, but we reverse and remand for the court to clarify the effect of the $234,554.00 marital liability on calculation of the equalization payment.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

Division Four holds:

1. In a dissolution proceeding, we will affirm the trial court's decision unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. We defer to the trial court's superior ability to view the witnesses and determine credibility, and we accept the evidence and inferences favorable to the court's ruling and disregard contrary evidence.

2. Where the parties do not request specific findings of fact on an issue, we presume the trial court correctly applied the law on that issue in entering its judgment.

3. The division of marital property need not be equal, but must only be fair and equitable given the circumstances of the case. The trial court has substantial discretion in dividing marital property, and we will affirm the court's division of property unless it is unduly weighted in one party's favor.

4. We presume that the trial court's division is correct and the party challenging it bears the burden of overcoming that presumption.

5. We will reverse a judgment where it is based on inconsistent or ambiguous findings that do not permit appellate review.

6. The court sets apart to each spouse such spouse's non-marital property and divides the marital property and marital debts equitably; equitable division depends on the proper classification of the parties' property and debts as either non-marital or marital.

7. Generally, property owned by one spouse prior to the marriage will remain non-marital property and will be awarded to that spouse.

8. Generally, all property acquired by either spouse during the marriage is marital property, but under the "source-of-funds" rule, any increase in the value of separate property is marital property if marital labor or marital assets contributed to the increase.

9. At trial, the spouse advocating application of the source-of-funds rule to characterize non-marital property as marital property bears the burden of proving that the non-marital property increased in value due to marital labor or other marital assets; such proof must include the value of the services or assets and their connection to the increased value of the property.

10. Here, there was substantial evidence that, in terms of an hourly rate, Wife was uncompensated by the Business in the amount of $83,200.00 during the marriage and that the monetary value of her contributed labor was actually higher because she was instrumental in obtaining various licenses necessary to operate the Business.

11. Under the source-of-funds rule, courts also consider whether marital assets, other than marital labor, contributed to the increase in the value of non-marital property.

12. Here, the evidence supported a finding that, during the marriage, the parties purchased a building valued at $115,000.00 that the Business used rent-free for five years to store equipment and materials and as an office.

13. The evidence also supported a finding that, during the marriage, Husband withdrew significant amounts from a marital account to run the Business, and there was no evidence that Husband reimbursed the marital account for those withdrawals.

14. Thus, there was substantial evidence to support the trial court's conclusion that the Business had a marital value of $348,965.00 because marital effort and marital assets contributed to the increase; thus, the court did not misinterpret or misapply the source-of-funds rule.

15. The court stated that its intent is to divide the net marital assets equally. But, because the court does not deduct the marital debt from marital assets in determining the amount of net marital assets, the division of property is not equal. While it is within the trial court's discretion to divide marital assets unequally, we cannot determine from the

judgment whether an unequal distribution was intended. We reverse and remand for the trial court to clarify the effect of the $234,554.00 marital debt on calculation of the equalization payment because the court's judgment contains inconsistent findings on that point.

Opinion by: Karen King Mitchell, Chief Judge April 14, 2020

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