

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

JOE VENTON JENKINS

Respondent

v.

EVELYN SUE JENKINS

Appellant

DOCKET NUMBER **WD74148**

DATE: June 19, 2012

Appeal From:

Circuit Court of Bates County, MO
The Honorable Debra Ann Hopkins, Judge

Appellate Judges:

Division Three
Thomas H. Newton, P.J., James M. Smart, Jr., and Gary D. Witt, JJ.

Attorneys:

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Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

JOE VENTON JENKINS, Respondent, v.
EVELYN SUE JENKINS, Appellant

WD74148

Bates County

Before Division Three Judges: Newton, P.J., Smart, and Witt, JJ.

Mr. and Ms. Jenkins sought dissolution of their marriage. At trial, Mr. Jenkins testified that he had significant assets prior to the marriage, including a 40-acre farm, and that Ms. Jenkins's debts were greater than her assets. After they married, he re-titled the farm in both parties' names and the parties subsequently placed the farm into a trust. He also testified that he purchased wedding rings for Ms. Jenkins and gave them to her. Prior to the separation, Ms. Jenkins opened several bank accounts and purchased CD's in her name. At trial, Ms. Jenkins requested, *inter alia*, findings of fact from the trial court concerning the distribution of marital property. In its judgment, the trial court determined that the farm and Ms. Jenkins's wedding rings were marital property and divided the marital property without issuing specific findings of fact on all of the requested issues. Ms. Jenkins appeals.

AFFIRMED IN PART AND REMANDED IN PART.

Division Three Holds:

For ease of discussion, we address Ms. Jenkins's points out of order. In the first point, Ms. Jenkins argues that the farm was non-marital property owned by their trust in which she had a non-marital half-interest; or, alternatively, she argues, Mr. Jenkins gave her half the property as a gift when he added her name to the title and placed it into the trust. We reject both arguments. First, adding a spouse to the title of property transmutes separate non-marital property into marital property. Consequently, when Mr. Jenkins re-titled the property, the farm became marital property. Second, when the parties placed the property into their trust, the property remained marital property. Ms. Jenkins first point is denied.

In the third point, Ms. Jenkins contends that the trial court erred in finding the wedding rings were marital property. We agree because no evidence in the record supports that the rings were marital property. The only evidence is Mr. Jenkins's testimony that he purchased the rings for Ms. Jenkins, and an *inter vivos* gift to a spouse is non-marital property. Ms. Jenkins's third point is granted.

In her fourth point, Ms. Jenkins argues the trial court erred in failing to make the findings of fact she requested pursuant to Rule 73.01(c). Ms. Jenkins failed to move to amend the judgment as required by Rule 78.07(c). Consequently, her claim was not preserved. Ms. Jenkins's fourth point is denied.

In her second point, Ms. Jenkins argues that the trial court erred in finding she had engaged in marital misconduct and using that finding as the basis for an unequal distribution of marital property. We cannot determine from this record the value of the marital property awarded to each party because the account statements presented to the trial court were not provided on appeal. Where the record does not include the documents necessary for us to determine the issue presented, our review is impossible. Ms. Jenkins's second point is denied.

In conclusion, the trial court erred in finding the wedding rings to be marital property. We remand to the trial court to award the wedding rings to Ms. Jenkins as nonmarital property and to adjust the marital property division as the trial court finds is reasonable under the evidence and otherwise affirm.

Opinion by Thomas H. Newton, Presiding Judge

June 19, 2012

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