

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

LORI L. ENGLAND,

Appellant-Respondent,

v.

JESSE W. ENGLAND,

Respondent-Appellant.

DOCKET NUMBER WD77209
(Consolidated with WD77230)

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: February 24, 2015

APPEAL FROM

The Circuit Court of Platte County, Missouri
The Honorable James W. Van Amburg, Judge

JUDGES

Division Two: Gabbert, P.J., and Ellis and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Anne Kiske
St. Joseph, MO

Attorney for Appellant-Respondent,

Jonathan Sternberg
Kansas City, MO

Attorney for Respondent-Appellant.



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

LORI L. ENGLAND,)
)
)
Appellant-Respondent,)
v.) **OPINION FILED:**
) **February 24, 2015**
)
JESSE W. ENGLAND,)
)
)
Respondent-Appellant.)

WD77209 (Consolidated with WD77230)

Platte County

Before Division Two Judges: Anthony Rex Gabbert, Presiding Judge, and Joseph M. Ellis and Karen King Mitchell, Judges

Jesse and Lori England, formerly husband and wife, cross-appeal various portions of the trial court's distribution of marital assets in its judgment of dissolution. Wife challenges the trial court's finding that a \$115,000 gift from Husband's mother was Husband's separate non-marital property. Husband appeals four of the trial court's rulings: (1) awarding the family dog to Wife as marital property; (2) excluding from the marital estate debts allegedly incurred in improving the couple's property; (3) finding Husband's motorcycle was a marital asset; and (4) finding a pre-marital gift of \$50,000 from Husband's mother was completely dissipated at the time of marriage.

AFFIRMED.

Division Two holds:

1. Under Missouri law, all property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation or dissolution of marriage is presumed to be marital property. But this presumption is overcome if the spouse can show by clear and convincing evidence that the property was acquired by gift made solely to that spouse.

2. A trial court is not bound to believe any contested evidence presented by either party, and is free to believe or disbelieve any evidence presented, even when only one party offers evidence, which the other party does not rebut. The appellate court defers to the trial court's determination of credibility.
3. When the trial court finds that the party bearing the burden has not met its burden, the finding need not be supported by substantial evidence. Rather, the lack of substantial evidence requires a finding against the party bearing the burden.
4. Mother's testimony that she intended a gift to be only to Husband, her belief that she was wiring money to his sole account—as opposed to the couple's joint account, and Husband's testimony that he transferred money from the joint account to his sole account as quickly as he thought the law allowed supports a finding by clear and convincing evidence that the gift was to Husband alone.
5. The trial court was not required to find that Husband's father's testimony that “as far as [he] know[s],” the father's ex-wife—who was deceased at the time of trial—meant for a dog to be a gift solely to Husband, was sufficient to prove by clear and convincing evidence that the dog was a gift solely to Husband. That Wife did not put on affirmative evidence that the dog was a gift to the marriage does not change the fact that Husband did not meet his burden.
6. Where Wife effectively cross-examined alleged creditors as to the existence of alleged debts, pointed out inconsistencies with Husband's evidence of the debts, and testified that she had no knowledge of the alleged debts, the trial court was not required to believe Husband's evidence that marital debts existed. It was not error for the trial court to determine that Husband, as the moving party, failed to meet his burden that the debts existed.
7. Where, despite Husband's mother being present to testify about gifts, the record contains no testimony from her about an alleged gift of a Harley Davidson motorcycle from her to Husband, and there is no direct evidence whatsoever that the mother actually purchased the motorcycle or provided funds for its purchase, the trial court did not err in finding that Husband failed to prove by clear and convincing evidence that the motorcycle was his sole non-marital property.
8. Wife's affirmative response to the question “you're asking the Harley be set aside to [Husband] as his sole and separate property . . . for purposes of determining the division of assets and debts and equalization payment?” does not serve as a stipulation that the motorcycle was Husband's non-marital property. Rather, it was consistent with how both she and the trial court referred to assets that Wife did not personally want to receive, but wanted to be considered when distributing marital assets.
9. Even if the trial court did err by holding that a \$50,000 pre-marital gift was “dissipated . . . at the time of marriage,” Husband could not show that he was prejudiced when the trial court calculated the amounts of all accounts held by both parties prior to

marriage and subtracted those sums from the marital estate. Whatever amount of the gift was remaining at the time of marriage, Husband received credit for it in the calculation.

Opinion by: Karen King Mitchell, Judge

February 24, 2015

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