

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2024-CA-0997-MR

WILLIAM DALE TUCKER

APPELLANT

v.

APPEAL FROM SIMPSON FAMILY COURT  
HONORABLE ASHLEY DOUGLAS, JUDGE  
ACTION NO. 23-CI-00070

CANDACE LEA TUCKER

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \*

BEFORE: ECKERLE, McNEILL, AND MOYNAHAN, JUDGES.

McNEILL, JUDGE: This is an appeal from a dissolution of marriage, wherein the Simpson Circuit Court, Family Division, addressed various assets and child custody. Appellant is William Dale Tucker (Husband). Appellee is Candace Lea Tucker (Wife). The parties were married on August 31, 2010. Wife filed a Petition for Dissolution on March 27, 2023. The Decree of Dissolution of Marriage was entered on June 13, 2024. The parties have two minor children who

are not the subject of the present appeal. The issues here concern the division of equity in real property. For the following reasons, we affirm.

### **STANDARD OF REVIEW**

KRS<sup>1</sup> 403.190 governs the disposition of marital property in a dissolution of marriage. We will not disturb the family court's findings unless they are clearly erroneous. *Hunter v. Hunter*, 127 S.W.3d 656, 659 (Ky. App. 2003). "A factual finding is not clearly erroneous if it is supported by substantial evidence. Substantial evidence is evidence, when taken alone or in light of all the evidence, which has sufficient probative value to induce conviction in the mind of a reasonable person." *Id.* (citations omitted). Legal issues are reviewed *de novo*. *Id.* With these general standards in mind, we return to the record and arguments at issue in the present case.

### **ANALYSIS**

When dividing property in a divorce, a trial court is required to follow a three-step process:

(1) the trial court first characterizes each item of property as marital or nonmarital; (2) the trial court then assigns each party's nonmarital property to that party; and (3) finally, the trial court equitably divides the marital property between the parties.

---

<sup>1</sup> Kentucky Revised Statutes.

*Travis v. Travis*, 59 S.W.3d 904, 909 (Ky. 2001) (footnotes omitted). KRS 403.190(1) contains factors which the trial court must consider when dividing marital property.

There are two parcels of residential real estate at issue in the present case. The first is 417 Breckinridge Street (Breckinridge), where Wife resided at the time of dissolution. The other is located at 302 Liberty Street (Liberty), where Husband resided at the time of dissolution. Both properties were owned by Husband's now deceased father, Lloyd Tucker. The Liberty property is owned by Lloyd's estate (Estate). Each property will be discussed in turn.

### ***Breckinridge***

The family court determined that the Breckinridge property was transferred from Lloyd Tucker to Husband in 2014, while the parties were still married. The court proceeded to divide the equity in two equal sums based on an appraisal of the property at the time of dissolution. Wife's marital share was determined to be \$34,450.00. Husband was ordered to pay Wife that sum.<sup>2</sup> Husband was awarded the property, and Wife was ordered to vacate.

For the first time on appeal, Husband appears to argue that the family court erred by determining that the Breckinridge property was a marital asset

---

<sup>2</sup> Despite the family court's citation to *Brandenburg v. Brandenburg*, 617 S.W.2d 871 (Ky. App. 1981), the contributions to this property appear to be exclusively marital.

instead of a non-marital gift to Husband from his father, Lloyd Tucker. Husband has not provided a state of preservation of error as required under RAP<sup>3</sup> 32(A)(4). Because this issue is unpreserved, we are limited to palpable error review.<sup>4</sup> *Herndon v. Herndon*, 139 S.W.3d 822, 826–27 (Ky. 2004), *as modified on reh’g* (Aug. 26, 2004).

However, Husband has not requested palpable error review. *See Shepherd v. Commonwealth*, 251 S.W.3d 309, 316 (Ky. 2008) (“Absent extreme circumstances amounting to a substantial miscarriage of justice, an appellate court will not engage in palpable error review . . . unless such a request is made and briefed by the appellant.”). Yet, out of an abundance of caution, we will review for palpable error. Pursuant to CR<sup>5</sup> 61.02:

A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

“In Kentucky, all property acquired by either party during the marriage is presumed to be marital property. KRS 403.190(3).” *Allison v. Allison*, 246

---

<sup>3</sup> Kentucky Rules of Appellate Procedure.

<sup>4</sup> Husband also now takes issue with the family court’s award of \$1,612.034 to Wife for HVAC repairs and new water heater on the Breckinridge property. We will treat this as an issue concerning the underlying real estate and, thus, as one, unpreserved issue.

<sup>5</sup> Kentucky Rules of Civil Procedure.

S.W.3d 898, 904 (Ky. App. 2008). Gifts are one exception. KRS 403.190(2)(b).

In *Sexton v. Sexton*, 125 S.W.3d 258 (Ky. 2004), our Supreme Court addressed the legal elements applicable to cases involving gifts between spouses:

[T]he Court of Appeals set forth four (4) factors that trial courts should consider in determining if a transfer was a gift and thus a spouse's nonmarital property: one, "the source of the money with which the 'gift' was purchased," two, "the intent of the donor at that time as to intended use of the property," three, "status of the marriage relationship at the time of the transfer," and four, "whether there was any valid agreement that the transferred property was to be excluded from the marital property." . . . Clearly, the donor's intent is the primary factor in determining whether a transfer of property is a gift, and we likewise hold that the donor's intent is also the primary factor in determining whether a gift is made jointly to spouses or individually to one spouse. The donor's testimony is highly relevant of the donor's intent; however, the intention of the donor may not only be "expressed in words, actions, or a combination thereof," but "may be inferred from the surrounding facts and circumstances, including the relationship of the parties [,]" as well as "the conduct of the parties [,]"

*Id.* at 268–69 (footnote citations omitted). *See also Hunter*, 127 S.W.3d at 660

("Whether property is considered a gift for purposes of a divorce proceeding is a factual issue subject to the clearly erroneous standard of review."). Furthermore, "[l]ike other nonmarital claimants of property acquired during marriage, a party claiming that property is nonmarital by reason of the gift exception has the burden to prove it." *Sexton*, 125 S.W.3d at 267 (footnote omitted). While some of the *Sexton* factors may plausibly weigh in Husband's favor, we have been

presented with no clear legal or factual dictate that necessitates reversal here.

There was certainly no palpable error.

### ***Liberty***

The family court concluded that Wife has no marital interest in this property, other than the value of labor she contributed to improve it. More precisely, the court found that Husband and Wife previously lived at the Liberty property, with the intention to remodel and move into that property as their family home. The court further determined that Wife's work on remodeling the property amounted to \$4,800.00, which Husband was required to reimburse her pursuant to the decree. For the first time on appeal, Wife argues that the family court lacked subject-matter jurisdiction to dispose of any issue related to the Liberty property. "It is well-established that the issue of subject matter jurisdiction can be raised at any time, even *sua sponte*, as it cannot be acquired by waiver, consent, or estoppel." *Doe v. Golden & Walters, PLLC*, 173 S.W.3d 260, 270 (Ky. App. 2005) (citations omitted).

As previously discussed, the family court expressly found that the Liberty property is part of the Estate, and that Wife has no marital interest in that property. The value of one spouse's labor in improving a property may be an appropriate consideration. *See Travis*, 59 S.W.3d at 911 n.17. And while it is not discussed in the briefs or the decree of dissolution, Wife asserts in her petition for

dissolution that Husband “recently inherited” the Liberty property. In any event, the court’s equitable discretion is not being challenged here. Subject-matter jurisdiction was proper. Thus, we need not review further for palpable error.

### **CONCLUSION**

For the foregoing reasons, we hereby affirm the Simpson Family Court’s Findings of Fact, Conclusions of Law, and Decree, entered on June 13, 2024.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ashlea Shepherd Porter  
Bowling Green, Kentucky

BRIEF FOR APPELLEE:

Katina B. Miner  
Bowling Green, Kentucky