

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2008-CA-000422-MR

BRUCE E. WINTERS

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT  
HONORABLE DOLLY W. BERRY, JUDGE  
ACTION NO. 06-CI-501583

BETTY JO WINTERS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE AND NICKELL, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

ACREE, JUDGE: Bruce Winters appeals from an order of the Jefferson Family Court determining the ownership of the residence shared with his former wife, Betty Jo Winters, during their marriage. At issue is the effect of a quitclaim deed, signed by Bruce while the parties were living in the marital residence, which

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<sup>1</sup> Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

purportedly transferred all of his right, title, and interest in the property to his wife. Betty Jo, however, did not record the deed until after the parties separated thirteen months later. Nevertheless, the family court found that Bruce had intended to make a gift of his interest in the marital residence to Betty Jo. We affirm.

The parties were married in 1979 and had one child together. Betty Jo had additional children born during her first marriage. The residence at 832 Eastern Parkway in Louisville was purchased jointly in 1987. Bruce and Betty Jo continued to live there together throughout their marriage. In 1995, the Winters' next-door neighbor died and bequeathed the home located at 834 Eastern Parkway to Betty Jo. Five years later, Bruce signed a quitclaim deed conveying all of his right, title, and interest in the marital residence to Betty Jo. The parties separated a year later, and Bruce moved out of the home at 832 Eastern Parkway. Betty Jo recorded the deed the following month.

Following a lengthy separation, the parties divorced in 2007. They were ordered to participate in mediation in an attempt to resolve all issues concerning property, maintenance, and debts. At the conclusion of the mediation process, the remaining issue was whether Bruce still had a marital interest in 832 Eastern Parkway. Following a hearing the trial court issued an order concluding that the quitclaim deed signed by Bruce resulted in a complete transfer of his interest in the marital residence to his then-wife Betty Jo. Thus, the residence at

832 Eastern Parkway was found to be her nonmarital property. This appeal followed.

On appeal, Bruce argues that the trial court erred in determining that 832 Eastern Parkway was Betty Jo's nonmarital property. KRS 403.190(1) requires a trial court in a dissolution proceeding to assign to each party his or her nonmarital property. Typically, any property acquired by either spouse after marriage is considered marital property, subject to certain exceptions. KRS 403.190(2). "Property acquired by gift, bequest, devise, or descent" during the marriage is nonmarital. KRS 403.190(2)(a). The property at 834 Eastern Parkway was clearly Betty Jo's nonmarital property since it was acquired by bequest to her as an individual. Consequently, the only question before us is whether or not Bruce made a gift to Betty Jo of his interest in the residence at 832 Eastern Parkway. We have previously described the standard for reviewing the trial court's decision classifying property as marital or nonmarital as follows:

The question of whether an item is marital or nonmarital is reviewed under a two-tiered scrutiny in which the factual findings made by the court are reviewed under the clearly erroneous standard and the ultimate legal conclusion denominating the item as marital or nonmarital is reviewed de novo.

*Smith v. Smith*, 235 S.W.3d 1, 6 (Ky.App. 2006).

In this case, the trial court made several factual findings based on the parties' testimony. Bruce testified that he believed the quitclaim deed had no legal effect. He told the trial court that he had the deed prepared at his wife's request in

exchange for her agreement to use the property at 834 Eastern Parkway as collateral for a loan. He further testified that he did not read the deed and did not care what it said because he did not believe it could harm him. Betty Jo testified that the quitclaim deed was drafted after the parties talked about the divorce of some friends where the wife had lost her interest in the marital home. She told the trial court that Bruce said he would never take the marital residence away from her and had the deed prepared to prove his sincerity. The parties signed the deed in the presence of a friend who was also an attorney. Betty Jo testified that Bruce intended to give her his interest in the property.

The trial court considered the four-prong test stated in *O'Neill v. O'Neill*, 600 S.W. 2d 493 (Ky.App. 1980), in reaching its conclusion that Bruce made a gift of his interest in the marital residence to Betty Jo. The four factors we considered in *O'Neill* were the source of the funds used to purchase the property, the donor's intent at the time of the gift, the status of the marriage at the time of the transfer, and whether there was a valid agreement that the property was be excluded from the marital estate. *O'Neill*, 600 S.W.2d at 495. We further stated that such decisions "would necessarily have to be based on the pertinent facts of each case." *Id.* The property in question here was paid for with marital funds and, at the time of its purchase, was unquestionably marital in nature. The parties' testimony was contradictory regarding the status of the marriage, with Bruce claiming a tumultuous relationship and his former wife stating that they had some bad times, but were mostly happy. Betty Jo also stated her belief that the quitclaim

deed represented an agreement between the parties to exclude 832 Eastern Parkway from the marital estate in the event of the parties' divorce. Further, the trial court examined the circumstances around the drafting and signing of the quitclaim deed in order to ascertain Bruce's intent.

This Court has previously recognized that donative intent is the primary factor to be considered when determining whether property transferred to a spouse during marriage is a gift. *Clark v. Clark*, 782 S.W.2d 56, 63 (Ky.App. 1990). In *Clark*, we upheld the trial court's determination that a Cadillac given to the wife by her husband as a Christmas present while she was pregnant with the couple's child was nonmarital. On the other hand, Bruce argues our decision in *O'Neill*, which reversed the trial court's determination that jewelry given to the wife by her husband was her nonmarital property, required the trial court to find that he did not make a gift of his interest in 832 Eastern Parkway to Betty Jo. In that case, Dr. O'Neill testified that he purchased the jewelry as an investment hoping it would accrue in value and could be converted into cash at a later date to assist the parties in paying for the education of their children. Noting this testimony, and the lack of any evidence of an agreement that the jewelry be treated as Mrs. O'Neill's separate property, we found that "the unique circumstances of [the] present case" indicated that the jewelry was not a gift within the meaning of KRS 403.190(2)(a). *O'Neill*, 600 S.W.2d at 496.

Bruce contends that the only evidence regarding his intentions is his own self-serving testimony before the trial court that he believed the quitclaim

deed had no legal effect on his ownership interest in 832 Eastern Parkway. Not so. We first note that, unlike the contested property in either *Clark* or *O'Neill*, the property in question here is real property and, thus, the deed supplies additional evidence of Bruce's intent. The language of the quitclaim deed expressly states that Bruce conveys "all of his right, title, and interest in and to" the property to Betty Jo. (Quitclaim deed, signed December 27, 2000). Further, Betty Jo's own testimony indicates that she believed that her husband's intent in procuring and signing the quitclaim deed was to make the marital residence solely her nonmarital property. The trial court also noted Bruce's failure to list any ownership interest in 832 Eastern Parkway among his assets in either of the two bankruptcy petitions he filed after signing the quitclaim deed. After considering the circumstances surrounding the signing of the quitclaim deed, the trial court reached the following conclusion:

The Court concludes that Mr. Winters knowingly and voluntarily intended to gift the marital property located at 832 Eastern Parkway to Ms. Winters in 2000. Bruce had worked in the real estate mortgage business for two years at the time the quitclaim was signed. He was the party who contacted an attorney to prepare the papers. At a later date, he presented the papers to Betty and they were later signed in the presence of a different attorney. Nothing indicates that this was an impulsive act or that Mr. Winters did not appreciate the significance of what he was doing. The Court is unconvinced that an intelligent man with experience in the mortgage and real estate business would casually acquire a quit-claim deed with express language gifting his interest in his marital property without reading the document and believe that such a document would have no operative legal effect.

(Hearing Order, entered January 29, 2008). Based on the evidence before it, the trial court was not clearly erroneous in finding that Bruce intended to give 832 Eastern Parkway to Betty Jo. *Ghali v. Ghali*, 596 S.W.2d 31, 32 (Ky.App. 1980).

Because the property at 832 Eastern Parkway was a gift, within the meaning of KRS 403.190(2)(a), the trial court properly found it to be Betty Jo's nonmarital property. Bruce also claims that he was denied the opportunity for a full evidentiary hearing before the trial court. We have considered the issue and find it to be without merit.

For the foregoing reasons, the judgment of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

J. Gregory Joyner  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Thomas J. Schulz  
Charles Meers  
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