

RENDERED: NOVEMBER 23, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000703-MR

ANGELA MARIE GABBARD-WRIGHT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DOLLY W. BERRY, JUDGE
ACTION NO. 13-CI-503804

WILLIAM ALEXANDER WRIGHT

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, THOMPSON AND VANMETER, JUDGES.

VANMETER, JUDGE: Angela Marie Gabbard-Wright appeals from the Jefferson Circuit Court's order denying her motion to alter, amend or vacate the court's January 9, 2015, Findings of Fact, Conclusions of Law, Orders, and Decree of Dissolution of Marriage. For the following reasons, we affirm.

Angela and William Alexander Wright (“Bill”) were married on November 6, 2010, and filed a petition for dissolution of marriage in December 2013. While married, the parties resided in a home purchased by Bill prior to the marriage. After refinancing the home, Bill used the proceeds from the refinancing to pay off a student loan incurred by Angela prior to the marriage. In the process of distributing marital debt, equity and assets, the trial court awarded the marital home and all debts, mortgages, and expenses associated with the home to Bill. Both parties filed motions to alter, amend, or vacate the court’s dissolution order, and the court amended its order, reassigning to Angela the portion of the debt on the home used to pay off Angela’s student loan. From that order, Angela appeals, arguing that the reallocation of the student debt requires a reallocation of other property to be equitable.

“On appellate review of a trial court’s ruling regarding the classification of marital property, we review *de novo* because the trial court’s classification of property as marital or non-marital is based on its application of KRS^[1] 403.190; thus, it is a question of law.” *Heskett v. Heskett*, 245 S.W.3d 222, 226 (Ky. App. 2008). However, the trial court’s distribution of marital property is reviewed under an abuse of discretion standard. *Herron v. Herron*, 573 S.W.2d 342, 344 (Ky. 1978).

Wilder v. Wilder, 294 S.W.3d 449, 452 (Ky. App. 2009). “The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Goodyear Tire &*

¹ Kentucky Revised Statutes.

Rubber Co. v. Thompson, 11 S.W.3d 575, 581 (Ky. 2000), citing *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

Angela alleges that the trial court erred by considering the debt in the distribution of marital property after it had already been paid in full. KRS 403.190 states, in relevant part:

(1) In a proceeding for dissolution of the marriage . . . the court shall assign each spouse's property to him. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including:

(a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;

(b) Value of the property set apart to each spouse;

(c) Duration of the marriage; and

(d) Economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

Here, Bill purchased the home at issue prior to the parties' marriage. Bill then refinanced the home twice after the parties were married, and upon the second refinancing, Bill used the funds he received from the refinance to pay off Angela's student loan. At the time of the divorce decree, the couple had no marital equity in the home, and no proof of an increase in value of the home during the marriage was presented. Further, Angela made no claim to any equity in the home.

We do not believe the trial court abused its discretion by reassigning to Angela the portion of the mortgage debt that paid off her student loan incurred prior to the marriage. While the student loan was technically paid off, the student loan debt was actually consolidated into the mortgage to reduce monthly expenses and obtain a better interest rate. In essence, the debt continued on in the mortgage. The trial court found, and Angela does not contest, that the student loan debt is non-marital. Accordingly, we believe it equitable to assign her that debt.

Furthermore, we do not believe that the reallocation of the student loan debt to Angela rendered the marital property distribution manifestly unfair. “It is important to bear in mind that a trial court is not obligated to divide the marital property equally. Rather, a trial court need only divide the marital property ‘in just proportions.’” *Smith v. Smith*, 235 S.W.3d 1, 6 (Ky. App. 2006) (internal citations omitted). The parties were only married for a short amount of time and had little marital property; from our review, the trial court carefully considered each party’s marital and non-marital contributions and economic circumstances in making its decision. Therefore, we find that the trial court equitably distributed the marital property.

Next, Angela claims that Bill did not properly trace the funds used to pay off her student loan back to the mortgage loan, and therefore, the portion of the mortgage debt used to pay off the student loan cannot be characterized as non-marital.

“An item of property will often consist of both nonmarital and marital components, and when this occurs, a trial court must determine the parties' separate nonmarital and marital shares or interests in the property on the basis of the evidence before the court.” Neither title nor the form in which property is held determines the parties' interests in the property; rather, “Kentucky courts have typically applied the ‘source of funds’ rule to characterize property or to determine parties' nonmarital and marital interests in such property.”

“The ‘source of funds rule’ simply means that the character of the property, i.e., whether it is marital, nonmarital, or both, is determined by the source of the funds used to acquire the property.”

Sexton v. Sexton, 125 S.W.3d 258, 265 (Ky. 2004) (internal citations omitted). We find no issue with the source of funds or tracing. Evidence in the record clearly supports the court’s finding that Bill’s second refinancing of the house provided him with funds from which he paid Angela’s student loan in full.

For the above reasons, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Elizabeth McConahy Jenkins
Louisville, Kentucky

BRIEF FOR APPELLEE:

Kimberly Withers Daleure
Louisville, Kentucky