19CA1694 Marriage of Boyd 10-22-2020

COLORADO COURT OF APPEALS

Court of Appeals No. 19CA1694
El Paso County District Court No. 18DR31573
Honorable Chad C. Miller, Judge

In re the Marriage of

Nancy Chandler,

Appellee,

and

Charles Boyd,

Appellant.

JUDGMENT AFFIRMED

Division VII
Opinion by JUDGE NAVARRO
Tow and Lipinsky, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced October 22, 2020

Drexler Law LLC, Regina T. Drexler, Erin M. Verneris, Denver, Colorado; The Drexler Law Group LLC, Teresa A. Drexler, Colorado Springs, Colorado, for Appellee

Gill & Ledbetter LLP, Anne Whalen Gill, H.J. Ledbetter, Castle Rock, Colorado, for Appellant

¶ 1 In this proceeding to dissolve the marriage between Charles W. Boyd (husband) and Nancy E. Chandler (wife), husband contends that the district court erred in its classification and allocation of an investment account and a home. We disagree and therefore affirm.

I. Background

¶ 2 Wife was previously married to Lance Chandler, and they had two daughters. As part of a marital settlement agreement that wife and Mr. Chandler filed in contemplation of divorce, Mr. Chandler agreed that "[a]s additional child support, and as security for future child support," he would maintain a life insurance policy "established for the benefit of the minor children or [w]ife." Wife testified that this provision was meant to ensure she would have sufficient money to care for their two daughters.

¶ 3 Wife married husband in 2007. Six years later, Mr. Chandler died. Wife received $2,388,000 in proceeds from Mr. Chandler's life insurance policy. Wife placed them into an investment account (4500 account), naming husband as a joint owner. The initial deposit was the only source of funding for the 4500 account; neither party contributed to it during the marriage. Only wife took money out of the 4500 account.

¶ 4 Wife received $10,000 per month from the 4500 account. She put those monthly payments into the parties' joint checking account, from which she would pay marital expenses and her daughters' expenses. She also withdrew $362,743.90 from the 4500 account to purchase a home for herself after the parties' separation (Farrier home). Wife closed the joint checking account after filing the dissolution petition.

¶ 5 The parties disputed the characterization of the 4500 account and Farrier home, and husband's spousal maintenance request. The parties stipulated to the division of all other assets and debts and that each would pay for their own attorney fees.

¶ 6 As final orders, the court adopted the parties' stipulation; found that wife established by clear and convincing evidence that the 4500 account was her separate property; did not address the characterization or allocation of the Farrier home because it was purchased with wife's separate money; and awarded husband maintenance.

II. 4500 Account

¶ 7 Husband contends that the district court misapplied the law and failed to make sufficient factual findings supported by record

evidence when the court characterized the 4500 account as wife's separate property. We disagree.

A. Applicable Law

¶ 8 When dividing a marital estate, a court first determines whether an asset is marital and subject to division or separate and shielded from division. *In re Marriage of Corak*, 2014 COA 147, ¶ 9; *see also* § 14-10-113(1), C.R.S. 2019 (court sets apart each spouse's separate property and divides marital property).

¶ 9 Marital property generally includes all property acquired by either spouse during the marriage. *Corak*, ¶ 11. Marital property does not include property acquired by gift, bequest, devise, or descent; and property acquired in exchange for property acquired by gift, bequest, devise, or descent. § 14-10-113(2)(a)-(b). Separate property that is placed in joint tenancy by a spouse during the marriage, however, presumptively reflects an intent by the donor spouse to make a gift to the marriage. *In re Marriage of Balanson*, 25 P.3d 28, 37 (Colo. 2001). This presumption may be rebutted by clear and convincing evidence to the contrary. *Corak*, ¶ 11.

¶ 10 The classification of property as marital or separate is a legal determination based on factual findings. *In re Marriage of*

Williamson, 205 P.3d 538, 540 (Colo. App. 2009). We defer to the district court's factual findings concerning the classification of property, but we independently review the legal standard it applied. *In re Marriage of Krejci*, 2013 COA 6, ¶ 3.

B. Characterization of Life Insurance Proceeds

¶ 11 We first address whether wife received the life insurance proceeds as an inheritance (a bequest) or as a gift. We conclude that the life insurance proceeds were acquired by gift. *See In re Marriage of Sharp*, 823 P.2d 1387, 1388-89 (Colo. App. 1991) (insurance proceeds received as a beneficiary to a life insurance policy are acquired by gift).[1] The other methods of acquisition under section 14-10-113(2)(a) — by bequest, devise, or descent — do not apply because wife received the life insurance proceeds pursuant to a marital settlement agreement incorporated into a prior divorce decree, not by any testamentary or intestate distribution. The question becomes whether wife then gifted this

[1] Indeed, husband conceded this point in the trial court. In the joint trial management certificate, husband argued that "it is clear from the facts that the proceeds from the life insurance policy to [w]ife were a gift to her and, thus, separate property." He then argued that the wife converted the separate property to marital when she put them into the 4500 account.

separate property to the marital estate when she deposited it into the 4500 account.

C. Separate or Marital Property?

¶ 12 The district court found that the 4500 account was intended to be wife's separate property. The court credited wife's testimony that she set up the 4500 account to include husband's name so that he could make disbursements from it for her daughters if something happened to her. Considering that a death resulted in wife's receipt of the funds, the court found it reasonable that death would be on her mind when she set up the account. The court also found it important that husband did not remove money from the 4500 account, even though he could have. The court emphasized that husband never took money from the 4500 account at any time, even after the joint checking account was closed.

¶ 13 Husband argues that the court ignored the law when it found that wife's explanation for putting his name on the 4500 account supplied clear and convincing evidence of the parties' intent that the account was wife's separate property. He argues that "[w]ife's motivation for making the transfer is legally irrelevant" and cannot serve as evidence overcoming the marital presumption. He relies on

In re Marriage of Moncrief, 36 Colo. App. 140, 535 P.2d 1137 (1975), and *In re Marriage of Bartolo*, 971 P.2d 699 (Colo. App. 1998).

¶ 14 In *Moncrief*, the husband purchased a home during the marriage with his premarital funds. 36 Colo. App. at 141, 535 P.2d at 1138. The parties jointly titled the home, explaining that they intended to avoid inheritance taxes in the event of the husband's death. *Id.* They used the home as the family residence during the marriage. *Id.* The district court characterized the home as a marital asset, and the division affirmed. *Id.* The division held that the parties' explanation for why they jointly titled the home did not overcome the presumption that a gift to the marriage occurred; the explanation merely expressed a reason why the gift was made. *Id.* at 141-42, 535 P.2d at 1138.

¶ 15 In *Bartolo*, the wife and her mother owned a residence as joint tenants, which was conveyed to the parties after the marriage. 971 P.2d at 699. When the parties later experienced marital difficulties, they reconveyed the residence to the wife at her request in a "gift deed," and the husband moved out of the house. *Id.* at 700. He then testified, however, that he did not intend the reconveyance to be a gift to the wife. *Id.* The district court found that the husband's

reconveyance was a gift to the wife; thus, the residence was the wife's separate property. *Id.* In affirming the district court's finding, the division concluded that the husband's testimony was not "dispositive" of the gift issue. *Id.* The division explained that the district court was "free to consider all the relevant facts and circumstances in making its determinations." *Id.*

¶ 16 These cases suggest that a spouse cannot rebut the gift presumption simply by giving a reason for the property transfer. Neither case holds, however, that the reason for placing separate property in joint tenancy or for transferring marital property to one spouse is irrelevant. To the contrary, whether a party has rebutted the gift presumption is a factual question that hinges on the parties' intent and acts and is based on the court's consideration of all the relevant facts and circumstances. *See id.*

¶ 17 So, while wife's motivation for placing husband's name on the 4500 account, standing alone, may not be dispositive of whether she rebutted the gift presumption, the district court could still consider her rationale as part of the court's overall analysis and factor it into the ruling. *See id.* We therefore conclude that the court did not commit reversible error in considering wife's reason

for putting the 4500 account in both parties' names. Moreover, we conclude that, unlike in *Moncrief*, the court did not base its decision solely on wife's motivation for jointly titling the 4500 account.

¶ 18 In fact, the court found that the parties' use of the 4500 account during the marriage was the most persuasive evidence in determining whether wife established through clear and convincing evidence that the account was her separate property. With record support, the court found that only wife withdrew money from the account. The court also found that husband never took money from the 4500 account, even when he could and even after wife closed the joint checking account. To be sure, husband testified that he relied on the money in the joint checking account to pay for his expenses. But after wife closed the joint checking account, husband went into debt and had to withdraw funds from his separate investment accounts to meet his needs. The evidence that husband chose to go into debt rather than take money from the 4500 account supports the court's conclusion that the account was intended to be wife's separate property. *See Bartolo*, 971 P.2d at 699 (noting how the parties treated the property after the title change at issue); *Moncrief*, 36 Colo. App. at 141, 535 P.2d at 1138

(same); *see also In re Estate of Owens*, 2017 COA 53, ¶ 22 (the district court resolves disputed factual issues, determines witnesses' credibility, and determines the weight to accord testimony, and the inferences to be drawn from the evidence).

¶ 19 We disagree with husband's argument that these findings are insufficient. "A trial court's order must contain findings of fact and conclusions of law sufficiently explicit to give an appellate court a clear understanding of the basis of its order and to enable the appellate court to determine the grounds upon which it rendered its decision." *In re Marriage of Rozzi*, 190 P.3d 815, 822 (Colo. App. 2008). The court's findings reflect its consideration of the conflicting evidence, show which evidence it found persuasive, and allow us to conclude that the evidence supports its conclusion that the 4500 account was wife's separate property.

¶ 20 We are not persuaded by husband's argument that the court created a new requirement that spouses must withdraw money from marital accounts or risk losing their right of ownership. Instead, the court simply concluded that, under the facts and circumstances presented here, husband's failure to withdraw

money from the 4500 account supports a conclusion that the account was intended to be wife's separate property.

¶ 21 We are also not persuaded by husband's apparent assertion that the court's comment that it "ha[d] some doubts" about the evidence undermines its conclusion that wife rebutted the gift presumption with clear and convincing evidence. Reading the order in context, the court's "doubts" seem to stem mostly from the conflict between wife's testimony that the 4500 account was exclusively for her daughters' benefit, and one daughter's testimony that wife spent the money on herself and not on the daughters or as Mr. Chandler intended.

¶ 22 As the district court explicitly noted, clear and convincing evidence is that which persuades the fact finder that the contention is highly probable, *People in Interest of Marquardt*, 2014 COA 57, ¶ 14, *aff'd,* 2016 CO 4, and free from serious or substantial doubt. *People in Interest of R.F.*, 2019 COA 110, ¶ 16. Clear and convincing evidence does not have to be proven "beyond a reasonable doubt." *See People in Interest of A.J.L.*, 243 P.3d 244, 251 (Colo. 2010) (clear and convincing evidence is more than a preponderance but more easily met than the "beyond a reasonable

doubt" standard used in criminal proceedings). Hence, the court could have "some doubts" about how the funds from the 4500 account were spent while also finding it highly probable and free from substantial doubt that the 4500 account was intended to be wife's separate property.

¶ 23 We affirm the court's conclusion that the 4500 account was wife's separate property.

III. Farrier Home

¶ 24 Husband asks us to address the allocation of the Farrier home if we conclude that the 4500 account is marital property. Because we affirm the conclusion that the 4500 account is wife's separate property, we need not consider that issue.

IV. Appellate Attorney Fees Request

¶ 25 We do not consider husband's request for an award of his appellate attorney fees under section 14-10-119, C.R.S. 2019. That request should be made in the district court. *See In Marriage of Rivera*, 2013 COA 21, ¶ 25.

V. Conclusion

¶ 26 The judgment is affirmed.

JUDGE TOW and JUDGE LIPINSKY concur.