

[Cite as *Bakle v. Bakle*, 2009-Ohio-6003.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

DAVID J. BAKLE, SR.	:	
Plaintiff-Appellant	:	C.A. CASE NO. 2009 CA 9
v.	:	T.C. NO. 06 DR 281
MARLENE E. BAKLE	:	(Civil appeal from Common Pleas Court, Domestic Relations)
Defendant-Appellee	:	

OPINION

Rendered on the 13th day of November, 2009.

PATRICIA N. CAMPBELL, Atty. Reg. No. 0068662, 2190 Gateway Drive, Fairborn, Ohio 45324
Attorney for Plaintiff-Appellant

STEPHEN E. KLEIN, Atty. Reg. No. 0014351, 240 Bohanan Drive, Vandalia, Ohio 45377
Attorney for Defendant-Appellee

FROELICH, J.

{¶ 1} David Bakle appeals from a Final Judgment and Decree of Divorce entered in the Greene County Court of Common Pleas. In particular, he objects to the court’s determination that certain assets were marital property, rather than separate property, and to its division of those assets.

{¶ 2} Many of the facts pertinent to this appeal are undisputed. David and Marlene Bakle married in 1981; they have one minor son. Mr. Bakle is a veteran and, before the marriage, he incurred a disabling injury in the course of his military service. Mr. Bakle applied for disability benefits through the U.S. Department of Veterans Affairs (“VA”) in 1978, but his application was denied.

{¶ 3} In the early years of the parties’ marriage, their financial situation was tenuous. They often had only \$100-\$200 in their joint checking accounts. They bought a house in 1987, for which they borrowed \$44,900 of the \$45,000 purchase price. The house was titled in the names of both spouses. The Bakles ran a janitorial service together for 15 years, and Mrs. Bakle later worked in restaurant jobs, earning a few thousand dollars each year.

{¶ 4} In 1998, Mr. Bakle reapplied for disability benefits through the VA, and the application was granted. He also became eligible for Social Security Disability Income (“SSDI”). In 2001, he received lump sum payments from the VA and SSDI totaling \$155,584.36, which he deposited into the parties’ joint accounts. In 2002, Mr. Bakle also received a \$35,000 inheritance from an uncle, which he deposited into the joint accounts. By the time of the divorce, Mrs. Bakle was also receiving disability benefits through Social Security, but it is unclear when these payments began.

{¶ 5} Shortly after Mr. Bakle’s lump sum payments and inheritance were received, the Bakles made several substantial expenditures. They made two large payments toward the mortgage principal totaling \$28,455.61, bought a Ford Focus for Mrs. Bakle, a pickup truck for Mr. Bakle, and a trailer. Mr. Bakle also claims that they spent more than \$24,000

on unspecified improvements to the house.

{¶ 6} The parties separated on December 5, 2005, and Mr. Bakle filed a Complaint for Divorce on September 13, 2006. While the divorce was pending, the Bakles sold the marital home for \$85,000. They cleared \$37,269.12 after the mortgage balance, tax liens, and expenses related to the sale were paid. The Bakles also had \$15,000 in their joint bank accounts at the time of their separation. Mr. Bakle contended that he was entitled to all of the proceeds from the sale of the house and to the money in the joint accounts because these assets were traceable to his separate property, i.e., the VA benefits, his disability benefits, and his inheritance. Mrs. Bakle acknowledged that Mr. Bakle had contributed separate property but claimed that she was entitled to some of the parties' assets.

{¶ 7} On June 13 and December 19, 2007, the magistrate conducted a hearing on the property distribution and on other issues that are not pertinent to this appeal. With respect to the parties' property, the magistrate recognized that Mr. Bakle's VA benefits and inheritance were separate property. Accordingly, she credited Mr. Bakle with the two payments he made (totalling \$28,455.61) to reduce the principal on the loan after receiving his VA award and recommended that the remaining funds from the sale of the house – \$8,813.50 – be divided equally. Thus, pursuant to the magistrate's decision, Mr. Bakle received a total of \$32,862.37 from the sale of the house, and Mrs. Bakle received \$4,406.75. The magistrate rejected Mr. Bakle's argument that he had made improvements to the home from his separate property that had increased the value of the house. The magistrate also divided the \$15,000 in the joint bank accounts between the parties equally.

{¶ 8} With respect to the Ford Focus driven by Mrs. Bakle, the magistrate found

that the car had been purchased with money traceable to Mr. Bakle's VA benefits. She noted, however, that the car had originally been titled jointly, and that Mr. Bakle had transferred the title to Mrs. Bakle in January 2006, after they were separated. The magistrate concluded, based on this action and testimony from Mrs. Bakle, that Mr. Bakle had made a gift to Mrs. Bakle when he transferred the title. Accordingly, the magistrate awarded the Ford Focus to Mrs. Bakle notwithstanding the use of separate property to purchase it and without an offset in the distribution of the parties' other assets.

{¶ 9} Mr. Bakle filed objections to the magistrate's Decision & Order regarding property distribution, but the trial court overruled the objections and incorporated the magistrate's findings into the Final Judgment and Decree of Divorce.

{¶ 10} Mr. Bakle raises one assignment of error on appeal.

{¶ 11} "THE TRIAL COURT ABUSED ITS DISCRETION IN DISTRIBUTING MONEY AND PROPERTY AS MARITAL ASSETS WHEN THE EVIDENCE PRESENTED SHOWED THE MONEY AND PROPERTY WERE TRACEABLE TO THE APPELLANT'S VETERAN ADMINISTRATION BENEFITS."

{¶ 12} Mr. Bakle contends that all of the parties' assets were traceable to his VA benefits and that, as such, the trial court abused its discretion in awarding any property to Mrs. Bakle.

{¶ 13} The Ohio Revised Code defines separate property, in pertinent part, as "all real and personal property and any interest in real or personal property that is found by the court to be any of the following: (i) [a]n inheritance by one spouse *** during the course of the marriage; *** (vi) [c]ompensation to a spouse for the

spouse's personal injury, except for loss of marital earnings and compensation for expenses paid from marital assets." R.C. 3105.171(A)(6)(a). Disability benefits are a form of compensation for a spouse's personal injury and, generally, are not considered marital property. *Ockunzzi v. Ockunzzi*, Cuyahoga App. No. 86785, 2006-Ohio-5741, at ¶64, citing *Arkley v. Arkley*, Jefferson App. No. 03 JE 10, 2003-Ohio-7021. In addition, federal law dictates that state courts may not treat veterans' disability benefits as property that is divisible upon divorce. See Uniformed Services Former Spouses' Protection Act, Section 1408, Title 10, U.S.Code, and *Mansell v. Mansell* (1989), 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed.2d. 675.

{¶ 14} "Commingling of separate property with other property does not convert the separate property into marital property unless the separate property is untraceable. R.C. 3105.171(A)(6)(b). The focus in determining whether separate property has become marital property after commingling with marital property is traceability of separate assets." *Peck v. Peck* (1994), 96 Ohio App.3d 731, 734; *Oberly v. Oberly*, Greene App. No. 06-CA-90, 2007-Ohio-4571. Once traced, the separate property is to be distributed to its individual owner. R.C. 3105.171(D).

{¶ 15} The burden of proof that specific property is not marital but separate is upon the proponent of the claim to prove by a preponderance of the evidence. *Peck*, 96 Ohio App.3d at 734. "Oral testimony as evidence, without corroboration, may or may not satisfy the burden." *Maloney v. Maloney*, 160 Ohio App.3d 209, 2005-Ohio-1368, at ¶23, citing *Fisher v. Fisher*, Montgomery App. No. 20398, 2004-Ohio-7255. "Because traceability presents a question of fact, we must give

deference to the trial court's findings, and the court's decision on the matter will not be reversed as against the manifest weight of the evidence when it is supported by competent credible evidence." *Id.*

{¶ 16} Appellate courts review a trial court's division of property under an abuse of discretion standard, but a trial court's classification of property as marital or separate must be supported by the manifest weight of the evidence. *Mays v. Mays*, Miami App. No. 2000-CA-54, 2001-Ohio-1450. When we consider manifest weight arguments, we "review the evidence, and *** determine whether, when appropriate deference is given to the factual conclusion of the trial court, the evidence persuades us by the requisite burden of proof." *Cooper v. Cooper*, Greene App. Nos. 2007-CA-76 and 2007-CA-77, 2008-Ohio-4731, at ¶25; *Howard v. Howard* (Mar. 20, 1998), Montgomery App. No. 16542. An abuse of discretion is more than an error of law or judgment; it implies that the court's attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 17} First, we will address the issues related to the Bakles' equity in their home. It is undisputed that the Bakles originally borrowed \$44,900 to purchase their house. It is also undisputed that, in addition to their regular monthly payments, Mr. Bakle made payments to reduce the outstanding balance on the mortgage in the amounts of \$8,455.61 and \$20,000 after he received lump sum payments from the VA. He was credited with these amounts in the distribution of the proceeds from the sale of the house. Mr. Bakle claimed, however, that he paid all of the expenses related to the house from his VA benefits, such that Mrs. Bakle

should not have received any of the proceeds. He likewise claims that all of the funds in their joint accounts were traceable to his VA benefits.

{¶ 18} The parties presented conflicting testimony about how they shared household expenses. For fifteen years, the Bakles ran a janitorial service for which they held joint accounts. That enterprise had ended several years before the divorce. Since then, Mr. Bakle had not worked, and Mrs. Bakle had earned a small amount by working part-time at restaurant jobs. Both parties received Social Security Disability, and Mr. Bakle received VA benefits. Mr. Bakle claimed that Mrs. Bakle spent all of her paychecks on herself, but he admitted that her Social Security checks were deposited into the joint accounts. The mortgage payments were made out of the joint accounts. Mrs. Bakle testified that she often cashed her paychecks, rather than depositing them into the accounts, but she said that she used the money to pay for expenses such as car insurance and groceries. She also testified that her Social Security benefits went to pay their bills. Based on the evidence, it was not an abuse of discretion for the magistrate and court to conclude that both parties had contributed to the mortgage payments and that only \$28,455.61 was traceable to Mr. Bakle's separate property.

{¶ 19} Mr. Bakle also claimed that he had made improvements to the house with funds traceable to his VA benefits and that he should have received credit for those improvements from the proceeds of the sale. He contended that the improvements cost over \$24,000. Mr. Bakle provided a list of payments he had made to contractors and a home improvement store, but no documentation of these payments. Other than a notation on one of the entries that said "Shed," he offered

no specific testimony about the nature of the improvements he had made to the home. The magistrate stated that there was no evidence, other than Mr. Bakle's opinion, that these improvements had actually added value to the house. Although the sale price of \$85,000 reflected substantial appreciation in the time that the parties had owned the house, the magistrate concluded that there was no evidence "to indicate that the increase in value was due to more than just market conditions and the increase in the value of real estate" over the twenty year period. Accordingly, the magistrate found that the evidence did not support giving Mr. Bakle credit for the home improvements. The trial court did not abuse its discretion in adopting these findings and dividing the proceeds from the marital home as it did.

{¶ 20} Second, Mr. Bakle argues that Mrs. Bakle should not have received any funds from the parties joint bank accounts. This argument was premised on his claim that all of the money in those accounts was traceable to his VA and Social Security benefits. However, by his own admission, Mrs. Bakle's Social Security benefits were also deposited into those accounts. The magistrate found:

{¶ 21} "Both Mr. and Mrs. Bakle deposited funds in these accounts during the marriage, including funds they earned from their jointly owned janitorial service business. There is no clear evidence establishing the source of the remaining \$15,000.00 in funds. Therefore, the magistrate finds that they are marital property."

{¶ 22} Mr. Bakle relied on bank statements predating his receipt of disability benefits – which show typical balances in the accounts of \$100-\$200 – as evidence that the \$15,000 balance on the date of the parties' separation was attributable to

his VA benefits, and thus separate property. He also points out that the janitorial business had ceased operations many years earlier. While these facts were of some probative value, they did not compel the conclusion that all of the money in the accounts was Mr. Bakle's separate property. Mr. Bakle bore the burden of proof on this issue, *Peck*, 96 Ohio App.3d at 734, and such a conclusion would have been inconsistent with both parties' testimony that Mrs. Bakle's Social Security benefits were also deposited into the accounts. The trial court did not abuse its discretion in concluding that the evidence was insufficient to establish that all of the funds in the parties' joint accounts were traceable to Mr. Bakle's VA benefits.

{¶ 23} Finally, Mr. Bakle disputes the trial court's finding that he had given Mrs. Bakle the parties' Ford Focus as a gift and its refusal to treat the car as his separate property. As mentioned above, it was undisputed that the Ford Focus was purchased with funds from Mr. Bakle's VA benefits, along with a truck and a trailer. Mrs. Bakle testified that Mr. Bakle bought the car for her as a gift. After the parties separated, Mr. Bakle changed the title, which had been in both parties' names, so that Mrs. Bakle was listed as the sole owner. Mr. Bakle claimed that the transfer was not evidence of a gift, but reflected his concern about being liable for the car.

{¶ 24} Where the parties present conflicting evidence, the credibility of that evidence is for the trier of fact. *Maloney*, 160 Ohio App.3d at ¶23, citing *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279. The magistrate's conclusion indicates that she found Mrs. Bakle's testimony about the car more

credible than Mr. Bakle's, as she was entitled to do. The trial court did not abuse its discretion in adopting the magistrate's conclusion that the car was not Mr. Bakle's separate property because he gave it to Mrs. Bakle.

{¶ 25} The assignment of error is overruled.

{¶ 26} The judgment of the trial court will be affirmed.

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DONOVAN, P.J. and BROGAN, J., concur.

Copies mailed to:

Patricia N. Campbell
Stephen E. Klein
Hon. Steven L. Hurley