

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Mary L. Wolf v. Robert G. Wolf

Mary L. Wolf v. Robert G. Wolf, 979 So. 2d 1123 (Fla. Dist. Ct. App. 2008) (Fla. 2d DCA 2008) · No. 2D06-5077

SUMMARY

In a dissolution action, the Florida appellate court held that a trial court may presume an asset is not significant and omit it from equitable distribution when the parties fail to present evidence of its value, but must value and distribute rental income when both parties present evidence of it. The court also ruled that a domestic violence injunction awarding exclusive possession of the marital residence but silent on rental value does not preclude a later dissolution court from awarding rental value credit to the out-of-possession spouse, and that such an award was not an abuse of discretion.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	VILLANTI; NORTHCUTT; SALCINES
JURISDICTION	Florida
DOCKET	2D06-5077
DISPOSITION	affirmed_in_part_reversed_in_part
PROCEDURAL POSTURE	Appeal from final judgment of dissolution of marriage, challenging equitable distribution of assets.
STANDARD OF REVIEW	abuse of discretion
PRECEDENTIAL VALUE	published
PARTIES	Mary L. Wolf v. Robert G. Wolf

TOPICS

- family law
- family law procedure
- appellate procedure
- injunctions
- real estate

PRACTICE AREAS

- Family Law
- Equitable Distribution
- Domestic Violence

QUESTIONS PRESENTED

1. Whether the trial court erred in failing to value and distribute the parties' fractional interest in a hunting cabin.
2. Whether the trial court erred in failing to account for rental income from the Cedar Avenue and 8505 Nundy Avenue properties.
3. Whether a final judgment for protection against domestic violence that awards exclusive possession of the marital residence but is silent on rental value precludes an award of rental value in a subsequent dissolution judgment.
4. Whether the trial court abused its discretion in awarding the Husband credit for half the rental value of the marital residence during the Wife's exclusive possession.

HOLDINGS

1. When parties fail to present evidence of the value of an asset, the trial court is entitled to presume the asset is not of significant value and does not err by failing to include it in the equitable distribution scheme.
2. When both parties present evidence concerning rental income, the trial court must value and account for it in the equitable distribution scheme; failure to do so is reversible error, and a claim of harmless error based on use of the income requires a factual finding by the trial court.
3. Silence on the issue of rental value in a final judgment for protection against domestic violence that awards exclusive possession of a marital residence does not preclude an award of rental value in a future final judgment of dissolution of marriage.
4. The trial court did not abuse its discretion in awarding the Husband credit for half the rental value of the marital residence, given the court's awareness of the domestic violence judgment and the equities.

KEY QUOTATIONS

“In the present case the wife remained in exclusive possession by virtue of a specific provision to that effect in the final judgment of dissolution. An argument could be made that where a property settlement agreement or final judgment permits one tenant to have exclusive occupancy this operates as an eviction or constructive ouster of the other tenant, who should thereby have a claim for the fair rental value. We think that the scant authority and better reasoning support a contrary position. Where the parties have agreed that one should have exclusive possession and there is no provision in the agreement for rent, it seems inappropriate to subsequently engraft such a requirement on the contract made by the parties. By the same token, a judgment which awards exclusive possession to one party is based upon certain, known facts and if rent had been contemplated and thus placed in the balance, the court presumably would have said so.” (1127)

“The rights of an out-of-possession cotenant for credit for fair rental value depends on the circumstances. If such person is ousted by a court order following a marriage dissolution, and no reimbursement for rental value is provided in that judgment, it is assumed that the trial judge intended that there be none.” (1127)

“we hold that silence on the issue of rental value in a final judgment for protection against domestic violence that awards exclusive possession of a marital residence does not preclude an award of rental value in a future final judgment of dissolution of marriage.” (1128)

“to avoid the need to resort to case law in an effort to intuit a trial court's intent, it may be wise for a trial court to affirmatively state in the final judgment of dissolution that rental value was considered and no award was found to be warranted.” (1129 n.1)

FACTUAL BACKGROUND

During a 36-year marriage, the parties jointly acquired five properties: the marital residence, three rental properties, and a fractional share of a hunting cabin. The Wife obtained a domestic violence injunction granting her exclusive possession of the marital residence. At the dissolution hearing, the parties presented evidence on the value of four properties and rental income from the rental properties. The trial court distributed four properties and rental income from one property, but omitted the hunting cabin and rental income from two other properties.

PROCEDURAL HISTORY

The Wife filed for dissolution and a domestic violence petition. The domestic violence court awarded her exclusive possession of the marital residence. The dissolution court held a hearing on equitable distribution, valuing and distributing most assets but omitting one property and rental income from two properties. The Wife appealed.

DISPOSITION

affirmed_in_part_reversed_in_part

REMAND INSTRUCTIONS

Remand for the trial court to value the rental income from the Cedar Avenue and 8505 Nundy Avenue properties and either distribute it or explain its reasons for not doing so.

CASES CITED

- Roth v. Roth, 973 So.2d 580 (Fla. 2d DCA 2008)
- Italiano v. Italiano, 873 So.2d 558 (Fla. 2d DCA 2004)
- Ritter v. Ritter, 690 So.2d 1372 (Fla. 2d DCA 1997)
- Robinson v. Robinson, 652 So.2d 466 (Fla. 1st DCA 1995)
- Glover v. Glover, 601 So.2d 231 (Fla. 1st DCA 1992)
- Nelson v. Nelson, 721 So.2d 388 (Fla. 4th DCA 1998)
- Bomwell v. Bomwell, 676 So.2d 508 (Fla. 4th DCA 1996)
- Kelly v. Kelly, 583 So.2d 667 (Fla. 1991)
- Glenda A. Wiley Goolsby v. Joseph B. Wiley, Goolsby v. Wiley, 547 So.2d 227 (Fla. 4th DCA 1989)

CITED IN

- Mary L. Wolf v. Robert G. Wolf, Wolf v. Wolf, 979 So. 2d 1123, 1125 (Fla. 2d DCA 2008)

