

SUPREME COURT OF SOUTH CAROLINA

Crossland v. Crossland

408 S.C. 443 (2014) · No. 2012-212190 · Decided July 2, 2014

SUMMARY

The South Carolina Supreme Court reversed the Court of Appeals in a divorce action involving alimony, equitable division of marital property, and attorney's fees. The Court held that the family court was not required to impute unclaimed Social Security benefits as income, upheld the forty-percent award of the marital estate to Wife, and rejected remand of the attorney's-fee issue based on the appellate results.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| COURT                 | Supreme Court of South Carolina                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Acting Justice James E. Moore; Chief Justice Toal; Justice Pleicones; Justice Beatty; Justice Hearn                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| JURISDICTION          | South Carolina                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| DECIDED               | July 2, 2014                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| DOCKET                | 2012-212190                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Wife petitioned for a writ of certiorari to review the South Carolina Court of Appeals' reversal or modification of the family court's awards of alimony, equitable distribution, and attorney's fees.                                                                                                                                                                                                                                                                                                                              |
| STANDARD OF REVIEW    | In family court appeals, the Supreme Court reviews factual and legal issues de novo and may find facts in accordance with its own view of the preponderance of the evidence, while recognizing the family court's superior position to assess credibility. Alimony and equitable-distribution awards are reviewed for abuse of discretion, understood as incorporating deference to the trial judge's credibility determinations and the appellant's burden to show that the preponderance of the evidence is against the findings. |
| PRECEDENTIAL VALUE    | Published South Carolina Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| PARTIES               | Shirley Crossland v. Robert Crossland                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

TOPICS

alimony

equitable distribution

family law procedure

appellate procedure

standard of review

## PRACTICE AREAS

Family law

Appellate procedure

Alimony

Equitable distribution

Attorney's fees

## QUESTIONS PRESENTED

1. Whether the Court of Appeals erred by requiring the family court to impute income to Wife based on her eligibility for Social Security retirement benefits that she had not applied for or begun receiving.
2. Whether the Court of Appeals erred by modifying the family court's forty-percent equitable-distribution award to Wife based principally on the parties' direct financial contributions.
3. Whether the Court of Appeals erred by remanding Wife's attorney's-fee award for reconsideration after reversing and modifying the family court's substantive awards.

## HOLDINGS

1. A family court may, in appropriate circumstances, consider or impute income based on a party's eligibility for government benefits, but it is not required in every case to impute Social Security retirement benefits that the party is eligible to receive but has not applied for or begun receiving. On this record, the family court did not err by declining to impute Wife's eligibility for benefits available at age sixty-two.
2. The Court of Appeals erred by modifying the family court's equitable-distribution award based primarily on the parties' direct financial contributions. Direct financial contributions are relevant but cannot alone overshadow the other statutory and equitable factors governing division of marital property.
3. Because the Supreme Court reversed the Court of Appeals and reinstated the family court's alimony and equitable-distribution awards, the Court of Appeals also erred in remanding Wife's attorney's-fee award for reconsideration. The family court's attorney's-fee award was reinstated.

## KEY QUOTATIONS

*“Indeed, the family court may, but is not in all cases required to, consider eligibility for government benefits, and under the circumstances of this case, the family court did not commit reversible error.”* (408 S.C. at 450)

*“In sum, family courts may, in some cases, but are not required in every instance, to impute income based on a party's eligibility to receive social security benefits as a matter of law.”* (408 S.C. at 451)

*“Although greater direct financial contributions may properly be considered in apportioning a marital estate, that factor is but one of many factors to be considered and does not alone overshadow all of the other relevant factors examined by the family court.”* (408 S.C. at 454)

## FACTUAL BACKGROUND

Robert and Shirley Crossland married in 1997 and finally separated in 2006; no children were born of the marriage. Husband was retired and owned substantial assets, including savings accounts to which he added Wife's name, but after separation he transferred approximately \$180,000 into an annuity and other accounts held

in his name alone. Wife brought no assets to the marriage, did not work during most of the marriage at Husband's request, contributed her Census Bureau earnings and automobile-accident proceeds to joint accounts, and suffered substantial health problems that impaired her ability to work. The family court awarded Wife alimony, forty percent of the marital estate, and attorney's fees after finding that the parties had entered a traditional marriage, that Wife contributed to the marital estate, and that Husband had concealed marital assets.

#### PROCEDURAL HISTORY

The family court granted Husband a divorce based on one year of continuous separation, awarded Wife \$958.50 per month in alimony, forty percent of the marital estate, and \$16,024.50 in attorney's fees. The Court of Appeals reversed the alimony award and remanded for recalculation, modified the equitable distribution to thirty percent for Wife and seventy percent for Husband, and remanded attorney's fees for reconsideration. The Supreme Court of South Carolina granted Wife's petition for certiorari, reversed the Court of Appeals, and reinstated the family court's order.

#### DISPOSITION

reversed

#### REMAND INSTRUCTIONS

None. The Court reversed the Court of Appeals and reinstated the family court's order, including the alimony, equitable-distribution, and attorney's-fee awards.

#### CASES CITED

- Simmons v. Simmons, 392 S.C. 412, 709 S.E.2d 666 (2011)
- Lewis v. Lewis, 392 S.C. 381, 709 S.E.2d 650 (2011)
- Spence v. Spence, 260 S.C. 526, 197 S.E.2d 683 (1973)
- Allen v. Allen, 347 S.C. 177, 554 S.E.2d 421 (Ct. App. 2001)
- Dickert v. Dickert, 387 S.C. 1, 691 S.E.2d 448 (2010)
- Kennedy v. Kennedy, 389 S.C. 494, 699 S.E.2d 184 (Ct. App. 2010)
- Rimer v. Rimer, 361 S.C. 521, 605 S.E.2d 572 (Ct. App. 2004)
- Kelley v. Kelley, 324 S.C. 481, 477 S.E.2d 727 (Ct. App. 1996)
- Sexton v. Sexton, 308 S.C. 37, 416 S.E.2d 649 (Ct. App. 1992), rev'd on other grounds, 310 S.C. 501, 427 S.E.2d 665 (1993)
- Nelson v. Nelson, 651 So. 2d 1252 (Fla. Dist. Ct. App. 1995)
- Cox v. Cox, 882 P.2d 909 (Alaska 1994)
- Serowski v. Serowski, 381 S.C. 306, 672 S.E.2d 589 (Ct. App. 2009)
- Eubank v. Eubank, 347 S.C. 367, 555 S.E.2d 413 (Ct. App. 2001)
- Craig v. Craig, 365 S.C. 285, 617 S.E.2d 359 (2005)
- Deidun v. Deidun, 362 S.C. 47, 606 S.E.2d 489 (Ct. App. 2004)

- Morris v. Morris, 335 S.C. 525, 517 S.E.2d 720 (Ct. App. 1999)
- Doe v. Doe, 370 S.C. 206, 634 S.E.2d 51 (2006)
- Avery v. Avery, 370 S.C. 304, 634 S.E.2d 668 (Ct. App. 2006)
- Pittman v. Pittman, 407 S.C. 441, 754 S.E.2d 501 (2014)
- Myers v. Myers, 391 S.C. 308, 705 S.E.2d 86 (Ct. App. 2011)
- E.D.M. v. T.A.M., 307 S.C. 471, 415 S.E.2d 812 (1992)
- Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991)
- Rogers v. Rogers, 343 S.C. 329, 540 S.E.2d 840 (2001)

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