

NEW YORK COURT OF APPEALS

Fields v. Fields

15 N.Y.3d 158, 931 N.E.2d 1039 (2010) · Decided June 10, 2010

OPINION

Fields v. Fields 15 N.Y.3d 158

GRAFFEO, J.

OPINION OF THE COURT

Graffeo, J. The principal issue raised in this matrimonial case is whether husband's one-half interest in the parties' residence—a Manhattan townhouse that husband purchased during the marriage and where the parties have lived for nearly 30 years—is marital property. We conclude that the value of husband's one-half interest in the townhouse constitutes marital property subject to equitable distribution and we therefore affirm the Appellate Division order. I. As we have previously observed, although the manner in which marital property is distributed falls within the discretion of the trial court, "the initial determination of whether a particular asset is marital or separate property is a question of law, subject to plenary review on appeal" (*DeJesus v DeJesus*, 90 NY2d 643, 647 [1997]). Domestic Relations Law § 236 defines "marital property" as "all property acquired by either or both spouses during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action, regardless of the form in which title is held" (Domestic Relations Law § 236 [B] [1] [c] [emphasis supplied]), and the definition of marital property includes a "wide range" of tangible and intangible interests (*DeJesus*, 90 NY2d at 647). It is telling that the Legislature chose to initially categorize all property, of whatever nature, acquired after parties marry as marital property. As we have repeatedly emphasized, the Equitable Distribution Law "recognizes that spouses have an equitable claim to things of value arising out of the marital relationship and classifies them as subject to distribution by focusing on the marital status of the parties at the time of acquisition" (*O'Brien v O'Brien*, 66 NY2d 576, 583 [1985]). This marital property designation is in keeping with the fundamental purpose of the Equitable Distribution Law—the recognition of marriage as an economic partnership (see Governor's Approval Mem, L 1980, ch 281, reprinted in 1980 McKinney's Session Laws of NY, at 1863), in which "both parties contribute as spouse, parent, wage earner or homemaker" (*O'Brien*, 66 NY2d at 585). The Legislature did provide for several exceptions to this general classification. Section 236 specifies that marital property does not include "separate property" and the statute sets forth four categories of property that constitute separate property: "(1) property acquired before marriage or property acquired by bequest, devise, or descent, or gift from a party other than the spouse; "(2) compensation for personal injuries; "(3) property acquired in exchange for or the increase in value of separate property, except to the

extent that such appreciation is due in part to the contributions or efforts of the other spouse; “(4) property described as separate property by written agreement of the parties pursuant to subdivision three of this part” (Domestic Relations Law § 236 [B] [1] [d]). When the Legislature enacted Domestic Relations Law § 236, it sought “to recognize the direct and indirect contributions of each spouse” (Hartog v Hartog, 85 NY2d 36, 47 [1995], citing Governor’s Approval Mem, L 1980, ch 281, and Assembly Mem, 1980 NY Legis Ann, at 129-130). Hence, we have stressed that marital property should be “construed broadly in order to give effect to the ‘economic partnership’ concept of the marriage *163relationship” (Price v Price, 69 NY2d 8, 15 [1986] [emphasis omitted]). By contrast, separate property—denoted as an exception to marital property—should be construed “narrowly” (id. [emphasis omitted]; see Majauskas v Majauskas, 61 NY2d 481, 489 [1984]). The structure of section 236 therefore creates a statutory presumption that “all property, unless clearly separate, is deemed marital property” and the burden rests with the titled spouse to rebut that presumption (DeJesus, 90 NY2d at 652). With these principles in mind, we turn to the unique facts presented in this case. II. Husband and wife, who are 60 and 69 years old, respectively, were married in 1970 and they have a son who was born in 1973. In 1978, the parties decided to purchase a home on the Upper West Side of Manhattan, selecting a five-story townhouse with 10 apartments and a basement. Wife agreed to the acquisition of the townhouse only if husband consented to certain preconditions because she believed that working outside the home and caring for their son, together with maintaining the townhouse, would be too burdensome. Because of wife’s reticence, husband decided to purchase the townhouse with his mother’s assistance. Husband paid \$130,000 for the townhouse, making a \$30,000 down payment. The down payment came from funds husband received from his grandparents—half in lieu of a bequest and half on loan, which his mother agreed to repay. The balance of the purchase price was paid through two mortgages held jointly by husband and his mother. Husband took title solely in his name but later conveyed a one-half interest in the building to his mother. From 1982 to 2001, husband and his mother managed the townhouse as a formal partnership. They deposited rent proceeds into a partnership bank account and made mortgage payments from that account. But the partnership bank account was not used exclusively for the building’s income and expenses; husband acknowledges that he commingled marital funds in the account. In September 1978, husband and wife moved into the townhouse, initially residing in apartment 2 and, in 1979, the couple converted the basement into an apartment where they lived together for five months until wife became ill and moved into apartment 3. In 1983, after apartment 3 was burglarized, wife *164relocated to apartment 2. Husband remained in the basement apartment and the couple shared occasional meals until 1997. Husband paid rent to the partnership for the basement apartment until 2002; he used his income from employment to make rental payments. Wife also paid rent using her wages while she was living in apartment 3. Husband’s mother and stepfather resided in the building as well and paid rent for three apartments that they combined into a single residence. The remaining apartments were leased to various tenants. Husband and wife were continuously

employed outside of the home, although they each took periods of parental leave to care for their son. It is not disputed that the couple shared child care expenses and responsibilities as parents.

III. Husband commenced this divorce action in February 2005 and Supreme Court referred the matter to a Special Referee. After a hearing on issues of equitable distribution, the Referee found that both parties contributed to the long-term marriage, their son's upbringing and the townhouse. The Referee recommended that husband's one-half interest in the townhouse be classified as marital property, less the \$30,000 down payment, which the Referee deemed as husband's separate property because those funds had been received from husband's grandparents. He also found that husband's one-half interest in the partnership bank account was marital property. The Referee awarded wife 35% of the value of all marital assets because he concluded that wife had made direct and indirect contributions to the townhouse, including services as a spouse and mother.¹ Supreme Court confirmed the Referee's report and directed entry of a judgment of divorce. Upon husband's failure to pay wife her distributive award, Supreme Court entered a money judgment in wife's favor. *165The Appellate Division, with two Justices dissenting, affirmed (65 AD3d 297 [1st Dept 2009]). The court held that husband's interest in the townhouse, less the \$30,000 down payment, was properly categorized as marital property subject to equitable distribution. The majority emphasized that husband purchased the townhouse during the parties' marriage, that the couple continuously lived in the townhouse and raised their son in the home, and that wife made direct and indirect contributions to the upkeep of the townhouse. Rejecting husband's assertion that his interest in the townhouse should be viewed as separate property, the court explained that "[t]he fact that the marital residence can also be used to generate income . . . does not therefore reclassify marital property into separate property" (*id.* at 304).² The two dissenting Justices disagreed and concluded that husband rebutted the statutory presumption by showing that the townhouse, purchased with funds that were separate property, remained separate property and that wife failed to establish that any appreciation in the townhouse's value was caused by her direct or indirect contributions (see *id.* at 305 [McGuire, J, dissenting]). This appeal ensued.

IV Husband argues that his one-half interest in the townhouse is separate property because he owns and manages the building with his mother and because wife did not contribute to its purchase or its appreciation in value. We disagree and conclude that the value of husband's one-half interest in the townhouse is marital property subject to equitable distribution. This case involves the application of the well-settled statutory presumption that all property acquired by either spouse during the marriage, unless clearly separate, is deemed marital property (see *DeJesus*, 90 NY2d at 652). Here, husband purchased the townhouse in 1978, approximately eight years into the marriage, and therefore, on the date of acquisition, the presumption of marital property arose. Indeed, New York courts have long treated a marital residence that was purchased after the marriage as marital property subject to equitable distribution (see e.g. *Murphy v Murphy*, 4 AD3d 460, 461 [2d Dept 2004], *lv denied* 3 NY3d 612 [2004]; *Judson v Judson*, 255 AD2d 656, *166657 [3d Dept 1998]; see also *Juhasz v Juhasz*, 59 AD3d 1023, 1024 [4th Dept 2009], *lv*

dismissed 12 NY3d 848 [2009]; *Heine v Heine*, 176 AD2d 77, 84 [1st Dept 1992], lv denied 80 NY2d 753 [1992]). Even where one spouse contributed monies derived from separate property toward the acquisition of the marital residence, this has not precluded its classification as marital property where the other spouse made economic or other contributions to the residence and the marriage; the contributing spouse generally has received a credit for that contribution (see e.g. *Juhasz*, 59 AD3d at 1024; *Murphy*, 4 AD3d at 461; *Judson*, 255 AD2d at 657; *Heine*, 176 AD2d at 84). For example, in *Heine*, the parties purchased a townhouse containing several apartments during their marriage. The husband used separate property to meet the down payment expense and the parties secured two mortgages to pay the balance of the purchase price; however, title was placed solely in the husband's name. The couple lived in an apartment in the townhouse and at least one of the units was always rented to a tenant. The wife was involved in several renovations to the building and she undertook primary care of the family's domestic and social needs. The Appellate Division credited the husband with the amount of the down payment, designating it as separate property (see 176 AD2d at 84). Nevertheless, the court held that husband was not entitled to the appreciation in value of his separate property contribution because that appreciation was not attributable to the down payment but to market forces, renovations and mortgage payments paid for with marital funds (see *id.*). Thus, the court viewed the townhouse, less the husband's initial contribution, as marital property subject to distribution between the parties (see *id.*; see also *Bartha v Bartha*, 15 AD3d 111, 115-117 [1st Dept 2005]). Here, the property was purchased eight years into the parties' marriage with the intent that it would be used as the marital residence where the parties would live and raise their son. In fact, that is precisely what occurred—the parties resided in the home with their son and other family members for nearly 30 years. Thus, the statutory presumption that a residence acquired during the marriage is marital property clearly applies in this case. Once the statutory presumption was triggered, the burden shifted to husband to rebut that presumption (see *DeJesus*, 90 NY2d at 652). Husband relies on the fact that he used monies derived from separate property—specifically, the \$30,000 down payment—to acquire the townhouse.³ But the townhouse was not “acquired in exchange for” the \$30,000 down payment (Domestic Relations Law § 236 [B] [1] [d] [3]). Instead, husband's \$30,000 separate property contribution covered only a fraction of the purchase price. While the down payment facilitated the acquisition, the use of a “separate property” down payment does not, in and of itself, establish the property's character as separate property (see e.g. *Juhasz*, 59 AD3d at 1024; *Murphy*, 4 AD3d at 461; *Judson*, 255 AD2d at 657; *Heine*, 176 AD2d at 84). The remaining \$100,000 of the purchase price was paid through two mortgages and, despite husband's claim that he made mortgage payments solely from rental proceeds, he failed to substantiate that allegation. Husband testified that he commingled marital assets in the partnership bank account from which mortgage payments were made. Specifically, he acknowledged that he would sometimes deposit his paychecks—which were marital property—into the account. Funds from other sources of marital income were also placed into the account, such as husband's earnings from his tax

preparation and video businesses and wife's paychecks. The fact that husband would later transfer funds or give cash to wife does not alter the commingled nature of the funds. Finally, both husband and wife paid rent to the partnership using income from their outside endeavors, which was a partial source of the mortgage payments. Husband therefore failed to establish that the mortgages, which were used to pay the majority of the townhouse's purchase price, were paid using monies derived exclusively from separate property, much less that all of the expenses associated with the property were covered by segregated funds. There is no single template that directs how courts are to distribute a marital asset that was acquired, in part or in whole, with separate property funds. In these situations, courts have usually given the spouse who made the separate property contribution a credit for such payment before determining how to equitably distribute the remaining value of the asset (see e.g. *168Zurner v Zurner, 213 AD2d 906, 908 [3d Dept 1995], lv denied 87 NY2d 802 [1995]; Burns v Burns, 193 AD2d 1104, 1106 [4th Dept 1993], mod on other grounds 84 NY2d 369 [1994]). In distributing any appreciation in value, courts may consider any of the factors listed in Domestic Relations Law § 236 (B) (5) (d) or any other relevant considerations (see e.g. Butler v Butler, 171 AD2d 89, 93-94 [2d Dept 1991]; Woodson v Woodson, 178 AD2d 642, 642-643 [2d Dept 1991]), including the respective contributions of each spouse and the effect of market forces. In this case, the courts below properly considered the spectrum and quantity of contributions made by each spouse to the management and maintenance of the townhouse and the extent to which market factors enhanced the value of the property.⁴ Under these circumstances, we decline to disturb the determination below that husband failed to rebut the statutory presumption that his interest in the townhouse is marital property subject to equitable distribution and that wife was entitled to 35% of husband's interest in that asset. In reaching this conclusion, we emphasize that husband purchased the townhouse eight years into the 35-year marriage and that the family maintained their living arrangement since 1978. It is not for the courts to dictate what type of lifestyle a "normal" marriage should reflect or how married couples should structure their marital relationships. That husband and wife in this case have maintained separate apartments in the building does not change the character of the property from marital to separate, especially since they both made economic and noneconomic contributions to their marriage and the upbringing of their son (see e.g. Iwanow v Iwanow, 39 AD3d 471, 475 [2d Dept 2007]; see also Fagan v Fagan, 2 AD3d 394, 395 [2d Dept 2003]; Greenwald v Greenwald, 164 AD2d 706, 713-714 [1st Dept 1991], lv denied 78 NY2d 855 [1991]). Surely, many married couples sleep in different bedrooms for a variety of reasons and such arrangements do not affect the "marital property" status of their homes if they divorce. Likewise, the fact that husband took title to his one-half interest in the townhouse in his name alone is irrelevant under the statute's express language (see Domestic Relations Law § 236 [B] [1] [c]), nor does the fact that husband acquired title with his mother interfere with the marital character of his interest in the property (see e.g. Bartha, 15 AD3d at 115). Finally, that portions of *169the townhouse were used as an income-generating business does not transform the building

into separate property (see e.g. Heine, 176 AD2d at 84). Wife's lack of an initial monetary investment and involvement in the management activities pertaining to the townhouse do not preclude a holding that husband's interest in the building is marital property. These were factors properly considered by the trial court in determining the extent of wife's distributive award (see Domestic Relations Law § 236 [B] [5] [d]). We part ways with the dissent at the initial stage of this analysis. The dissent fails to recognize the statutory presumption that property acquired during a marriage is marital property; instead, the dissent begins with the assumption that the building was separate property at the time of its acquisition. As explained above, we do not view husband's interest in the townhouse as property "acquired in exchange for" his separate property contribution toward the down payment. Under the dissent's analysis, any time a married couple purchases a marital residence using "separate" funds (e.g., an inheritance or monetary gift from a parent) contributed by one spouse towards the down payment, the entirety of the marital home would be classified as separate property. This approach is not consistent with relevant precedent, does not heed the Domestic Relations Law's statutory presumption in favor of marital property and is contrary to the very purpose underlying the statute in recognition of an "economic partnership." V Next, husband claims that his one-half interest in the partnership bank account is separate property because the account was created solely to manage funds relating to the townhouse. But, as previously discussed, husband commingled marital assets in the partnership bank account and he could not sufficiently delineate any of the funds in the account as separate property (see e.g. McManus v McManus, 298 AD2d 189 [1st Dept 2002]). We agree with the courts below that husband's interest in the partnership bank account is marital property that should be allocated between the parties. VI. Finally, husband challenges the trial court's distribution of the marital property, arguing that the court abused its discretion by awarding wife 35% of the value of the marital assets. We disagree. *170 In recognizing marriage as an economic partnership, Domestic Relations Law § 236 mandates that the equitable distribution of marital assets be based on the circumstances of the particular case and directs the courts to consider a number of statutory factors. These factors encompass the income and property of each party at the time of marriage and at the time of commencement of the divorce action, the duration of the marriage, the age and health of the parties, the extent of any maintenance award and the nontitled spouse's direct or indirect contributions to the marriage, including "services as a spouse, parent, wage earner and homemaker" (Domestic Relations Law § 236 [B] [5] [d]). Absent an abuse of discretion, this Court may not disturb the trial court's distributive award (see Holterman v Holterman, 3 NY3d 1, 8 [2004]). Here, Supreme Court issued a comprehensive decision addressing all relevant factors, including that husband and wife were married for 35 years; that both maintained employment and made economic and noneconomic contributions to the marriage, their son and the townhouse; that they had equal parenting responsibilities; that wife did not invest in the purchase of the townhouse; and that the couple maintained separate units in the building for approximately 28 years. In light of these considerations, particularly the length of the marriage, the age of the parties

and wife's contributions to the marriage, we cannot conclude that Supreme Court abused its discretion in awarding wife 35% of the value of husband's half interest in the townhouse and other marital assets. Accordingly, the Appellate Division order should be affirmed, with costs. . Included in his findings, the Special Referee determined that wife decorated the basement apartment, purchasing a carpet, a Formica countertop, couches, a linen closet, bathroom cabinets, a chandelier, curtains, and rugs. She installed a door in the basement apartment, wallpapered the bathroom and paid for flooring and a mirror for the foyer outside the apartment. Wife also helped with the townhouse's day-to-day maintenance. She cleaned the basement apartment and purchased the vacuum used to clean the lobby. Wife cleaned the mailbox vestibule, swept the interior and exterior steps, periodically cleaned the sidewalk, raked and bagged leaves in the backyard and planted a garden. She also cleaned lobby windows and washed the curtains, polished the lobby mirror and, during times when husband was away, disposed of the townhouse's refuse. . The majority appears to have concluded that husband failed to rebut the statutory presumption that property acquired during the marriage is marital property, although the court's opinion does not explicitly state its holding in those terms. . Wife argues that husband failed to prove that the \$30,000 down payment was separate property because he could not produce cancelled checks showing that the money was a gift from his grandparents. Wife did not cross appeal to this Court or seek a modification of the Appellate Division order affirming Supreme Court's classification of the down payment as separate property. In any event, husband testified that he received the funds from his grandparents and his inability to produce the cancelled checks did not preclude a finding that the money was a gift (see e.g. *Chiotti v Chiotti*, 12 AD3d 995, 996 [3d Dept 2004]). . At the time of trial, the townhouse was valued at \$2,625,000.