

FLORIDA COURT OF APPEALS, FOURTH DISTRICT

Rosa H. Naranjo v. Freddy Raul Ochoa

Naranjo v. Ochoa, No. 4D21-3084 (Fla. 4th DCA July 5, 2023) · No. 4D21-3084

SUMMARY

The Florida Court of Appeal, Fourth District, reversed the trial court's equitable distribution ruling, holding that under section 61.075(6)(a)1.b., Florida Statutes, the passive appreciation of a nonmarital advanced inheritance invested using a "buy-and-hold" mutual fund strategy did not constitute a marital asset. The court found that merely researching and selecting mutual funds, without active trading, does not amount to the "efforts of either party" required to transform passive appreciation into a marital asset, consistent with *Oxley v. Oxley*, *Doerr v. Doerr*, and *Steele v. Steele*, and distinguishable from *Chapman v. Chapman* where active trading occurred. The burden was on the former husband to prove marital efforts enhanced the asset, and the appreciation was attributable to fund managers and market forces, not the parties' actions.

CASE DETAILS

COURT	Florida Court of Appeals, Fourth District
WRITING FOR THE COURT	Gerber, J.; Gerber; Warner; Artau
JURISDICTION	Florida
DOCKET	4D21-3084
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a final judgment of dissolution of marriage in the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County.
STANDARD OF REVIEW	Mixed standard: factual findings reviewed for competent, substantial evidence; legal conclusions reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	Rosa H. Naranjo v. Freddy Raul Ochoa

TOPICS

- family law
- family law procedure
- appellate procedure

PRACTICE AREAS

- Family Law
- Equitable Distribution
- Marital vs. Nonmarital Assets

QUESTIONS PRESENTED

1. Whether the circuit court erred by equitably distributing, as a marital asset, the appreciation on the former wife's nonmarital advanced inheritance under section 61.075(6)(a)1.b., Florida Statutes (2020).

HOLDINGS

1. The appreciation on the former wife's nonmarital advanced inheritance was not a marital asset because neither party's efforts contributed to the appreciation within the meaning of section 61.075(6)(a)1.b., Florida Statutes (2020).

KEY QUOTATIONS

“Unlike Chapman, where the husband's brokerage account records revealed he had been 'actively trading' stocks and bonds, enabling him to achieve a greater annual return than the benchmark for stocks and resulting in that enhancement being deemed marital, here it is undisputed that the \$830,000 advanced inheritance was invested in the four mutual funds using a 'buy-and-hold' strategy which the former husband typically had utilized and the former wife testified she had utilized, without active trading by either party during the marriage.” (at 10-11)

FACTUAL BACKGROUND

During the marriage, the former wife's mother gifted a total of \$830,000 to the former wife as an advanced inheritance. The former wife transferred \$660,000 of those funds into a separate brokerage account and purchased shares in three mutual funds. Later, an additional \$170,000 was transferred into the same account and used to purchase shares in a fourth mutual fund. The parties employed a buy-and-hold investment strategy, making only those four purchases and no active trades during the marriage. By the time of dissolution, the mutual funds had appreciated by \$892,687.94.

PROCEDURAL HISTORY

The former wife received advanced inheritance gifts from her mother totaling \$830,000, which were invested in four mutual funds. The former husband filed a petition for dissolution of marriage, and the former wife filed a counterpetition. The circuit court entered a final judgment of dissolution, classifying the \$892,687.94 appreciation on the advanced inheritance as a marital asset to be divided equally. The former wife appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

On remand, the circuit court shall enter an amended final judgment determining that the \$892,687.94 appreciation is the former wife's nonmarital asset, and adjust the equitable distribution calculations accordingly.

CASES CITED

- Oxley v. Oxley, 695 So.2d 364 (Fla. 4th DCA 1997)

- Doerr v. Doerr, 751 So.2d 154 (Fla. 2d DCA 2000)
- Steele v. Steele, 945 So.2d 601 (Fla. 4th DCA 2006)
- Chapman v. Chapman, 866 So.2d 118 (Fla. 4th DCA 2004)
- Palmer v. Palmer, 316 So.3d 411 (Fla. 5th DCA 2021)
- Gromet v. Jensen, 201 So.3d 132 (Fla. 3d DCA 2015)

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