

Circuit Court for Montgomery County
Case No. 140763FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0157

September Term, 2019

MING YE

v.

CORINA GUO

Nazarian,
Beachley,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: April 27, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On November 17, 2018, following a four-day merits hearing in the Circuit Court for Montgomery County, appellee, Corina Guo, was granted a judgment of absolute divorce from appellant, Ming Ye. The court denied appellee's request for alimony, and both parties' requests for a monetary award and attorneys' fees. The court ordered a division of properties owned by the parties, provided for use and possession of the marital home, and child support. On December 21, 2018, appellant filed a Motion for Reconsideration and Motion to Clarify and on December 26, 2018, appellee filed a Motion to Alter or Amend Judgment of Absolute Divorce and Memorandum Opinion. On March 1, 2019, the court granted in part and denied in part both parties' motions and issued an Amended Memorandum Opinion. Appellant noted this appeal and presents the following questions for our review:

1. Whether the trial court's factual finding that the E*trade Account was non-marital was clearly erroneous when there was competent or material evidence to support the finding that the account was marital and where the trial court failed to apply the source of funds theory?
2. Whether the trial court's factual finding that the China Condo had a zero value was clearly erroneous when there was a competent or material evidence to support a finding that the China Condo had value?
3. Whether the trial court abused its discretion by not imposing sanctions and waiting until the last day of trial to compel appellee to provide information regarding the China Condo?

For the reasons discussed below, we remand for further proceedings.

BACKGROUND

On March 6, 2003, the parties were married in New York City, New York. Two children were born of the marriage and at the time of the hearing, they were ages nine and

fourteen. During the course of the marriage, both parties were employed. Appellant owned a technology business, Micro Intelligence, and appellee was most recently employed by Astra Zeneca in the field of clinical research, until June 2017 when her position was eliminated.

In May 2016, appellee obtained a temporary protective order against appellant. He then consented to the entry of a Final Protective Order in June 2016. The parties have lived separate and apart since the temporary protective order was granted. Appellant filed, in November 2016, a complaint for access, child support, and other relief. Appellee filed a counterclaim for divorce. Eventually, the parties were able to agree on custody, visitation and child support. A merits hearing was scheduled for August 6, 2018. Prior to the hearing, appellant filed a Motion to Compel Discovery as a result of appellee's failure to disclose information regarding bank accounts and a condominium in China. The court deferred ruling on the motion and proceeded with the hearing. Both parties testified and called various witnesses on their behalf. On the final day of the hearing, during appellee's testimony, the court granted the Motion to Compel. At the conclusion of the hearing, the Court took the matter under advisement and issued its opinion and order on November 17, 2018. An Amended Judgment and Opinion was issued on March 1, 2019.

E*trade Account

In 1999, prior to her marriage, appellee opened an E*trade account, with \$5,000 of her own money and \$10,000 from a third party, Lei Wang.¹ The account has remained

¹ Part of the record refers to Lei Wang's last name as Wong, but the parties use Wang. For consistency, we will use Wang throughout this opinion.

active and is titled solely in appellee's name. At the merits hearing, appellant testified that appellee notified him in 2011 or 2012 about the nature of E*trade account and Wang's involvement. Appellee told him Wang wanted his shares from the account in order to support a factory business his niece had established in Europe. He stated appellee did not "want to sell the shares because of the tax and all this reporting issues." He testified that appellee "asked [him] if [they] could use marital money to purchase [Wang's] portion" and he agreed. Based on their conversation, appellant testified he thought Wang would be wired around "\$30,000 or \$40,000." He later learned appellee wired Wang \$128,000 from a Bank of America account between 2014 to 2016.

Appellee testified the account was established with her own money, prior to marriage, and monies received from Wang. When Wang requested payment for his shares, she stated she discussed it with her husband and he "proposed to use our marital funds to refund him to avoid the tax burden from selling the stock." She stated Wang's interest was paid to him through several wire transfers, totaling \$128,000. The money was wired from a Bank of America account, solely in her name, that was funded from a Chase and PNC bank account that were also solely in her name but contained marital funds. When asked what proportion of the E*trade account belonged to Wang appellee stated "two-third . . . should be awarded to him" since he invested \$10,000 and she invested \$5,000. In clarifying Wang's current interest, she stated "I have the one-third, and I have sent—refunded him \$128,000, deducted that amount is what he is supposed to earn as of current." She also testified that it was her "understanding" Wang still possibly had interest in the account.

Alan Zipp, an accountant retained by appellee, was qualified as an expert in tax and

accounting, including expertise as a CPA, a certified fraud examiner, a certified business appraiser and a tax law expert. He opined, based on his review of the records, “all of the securities in [the E*trade] account are 100 percent traceable to premarital funds.”

In the court’s Memorandum Opinion, it found the E*trade account to be “100% traceable to non-marital funds.” The court determined the value was \$273,856.

Condominium in China

According to appellant, Micro Intelligence invested roughly \$200,000 in a condominium in China, purchased by his wife. He stated appellee had him transfer money to his mother in China in order for his mother to transfer the money to appellee’s father’s account in China. He further testified that once appellee returned to China and opened her own bank account, his mother no longer wired money to appellee’s father but directly to appellee’s Chinese bank account. Appellant stated that each time a wire transfer was made on behalf of appellee she would inform him when she received the money. Appellant further testified that he has never seen the condo and did not have the address. Yet, appellant estimated the value of the condominium at \$420,000. He “based this information on a website called Found.com,” which he referred to as the Chinese version of Zillow.com. In arriving at this conclusion, he examined similar properties in the area of the condo.

Appellee testified the condominium was non-marital because it did not belong to her. She acknowledged the property was acquired during the marriage, was titled in her name but maintained marital funds were not used to purchase it. Her parents live in the condo and she has stayed there while visiting her family. During her testimony, the court

granted the motion to compel and ordered appellee to provide the address of the condominium. She then testified to the address, including the unit number, square footage and number of bedrooms and baths.

In rendering its opinion, the court found the condominium was a marital asset. The court, however, ruled that, appellant had failed “to provide any value for the property.”

STANDARD OF REVIEW

Appellate courts review cases tried without a jury “on both the law and the evidence. [We] will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). “[A] circuit court’s classification of property as marital or non-marital [is reviewed] . . . under the clearly erroneous standard,” we use “a discretionary standard of review” to determine “whether to grant a monetary award and the amount of that award.” *Huntley v. Huntley*, 229 Md. App. 484, 489 (2016). When factual findings are “supported by substantial evidence” the findings are not clearly erroneous. *Richards v. Richards*, 166 Md. App. 263, 272 (2005).

DISCUSSION

I. The trial court committed error when it determined the E*trade account was non-marital property.

Appellant argues the court committed error in its assessment of whether to grant a monetary award when it determined the E*trade account was not a marital asset. He asserts appellee used marital funds to purchase Wang’s portion of the account, thus it is partially marital property. Appellee maintains the E*trade account is a non-marital asset because it

was purchased prior to marriage. Appellee claims appellant failed to meet his burden that the account was a marital asset.

In determining whether to grant a monetary award in a divorce proceeding, the trial court follows a three-step process. *Richards*, 166 Md. App. 272. The court must first determine whether the disputed property “is marital or non-marital. Second, the court must determine the value of all marital property. Third, the court must determine if the division of marital property according to title will be unfair; if so, the court may make an award to rectify the inequity.” *Id.* Under Maryland Family Code § 8-201(e), marital property is considered “the property, however titled, acquired by 1 or both parties during the marriage.” Section 8-201(e) further states that property is non-marital when:

- (i) acquired before the marriage;
- (ii) acquired by inheritance or gift from a third party;
- (iii) excluded by valid agreement; or
- (iv) directly traceable to any of these sources.

In determining whether an asset is marital or non-marital, courts examine the source of funds used to acquire the property. “When property is acquired by an expenditure of both nonmarital and marital property, the property is characterized as part nonmarital and part marital.” *Harper v. Harper*, 294 Md. 54, 80 (1982). A person who claims “marital interest in [a] property [has] the burden of proof as to that claim. Conversely, a party seeking to demonstrate the nonmarital nature of a particular property must **‘trace the property to a nonmarital source.’**” *Malin v. Mininberg*, 153 Md. App. 358, 428 (2003) (emphasis in original) (quoting *Noffsinger v. Noffsinger*, 95 Md. App. 265, 282, *cert.*

denied, 331 Md. 19 (1993).

Appellant argues *Gravenstine v. Gravenstine*, and *Dave v. Steinmuller* are instructive. In *Gravenstine v. Gravenstine*, prior to marriage, husband acquired several securities shares which were titled in his name. 58 Md. App. 158, 173 (1984). During the marriage, husband and wife acquired additional shares using “marital cash and dividend reinvestments.” *Id.* Husband argued all of the shares were non-marital because the original stocks were purchased prior to the marriage and the dividends were non-marital as a result; wife asserted ““but for her monetary contribution to the family’s finances, the parties would have needed the dividends for other purposes.”” *Id.* at 173–74. This court stated:

Applying the “source of the funds” theory articulated by the Court of Appeals in *Harper, supra*, we make the following observations. The chancellor correctly determined that the securities purchased before marriage were nonmarital property. The chancellor also correctly found that the securities acquired during the marriage are marital property. The evidence adduced demonstrated that the marital unit was able to purchase the additional securities due to appellee’s contribution to the marriage’s finances. Hence, shares purchased during the marriage were marital property and appellee was entitled to a “proportionate and fair” return on her investment.

Id.

In *Dave v. Steinmuller*, we held:

. . . when property is acquired by an expenditure of both nonmarital and marital property, the property is characterized as part nonmarital and part marital. Thus, a spouse contributing nonmarital property is entitled to an interest in the property in the ratio of the nonmarital investment to the total nonmarital and marital investment in the property. The remaining property is characterized as marital property and its value is subject to equitable distribution. Thus, the spouse who contributed nonmarital funds, and the marital unit that contributed marital funds each receive a proportionate and fair return on their investment.

57 Md. App. 653, 663–64 (2004) (quoting *Pope v. Pope*, 322 Md. 277, 281–82 (1991). In

order to preserve non-marital property during a marriage “even if it changes in character or form during the marriage . . . the asset acquired during marriage [must be traced] directly to a nonmarital source.” *Id.* at 664. The husband in *Dave* argued that his work managing wife’s portfolio and determining which stocks to purchase made the securities marital. *Id.* at 665. Wife did acknowledge that husband was the account manager but maintained that “her premarital and inherited assets continued to be held in her name only.” *Id.* at 667. We found husband nor his expert were able to provide evidence as to the extent of profit husband provided to the portfolio; and as a result, we ruled that the trial court was correct in determining the securities account was non-marital property. *Id.* at 667–69.

In the case at bar, it is uncontested that appellee opened the E*trade account prior to her marriage. It is also uncontested that she repaid Wang for his interest in the account using marital funds. Thus, while the E*trade account at its inception was non-marital, it was transformed into a partial marital asset when \$128,000 was paid to Wang from marital funds.

Like in *Gravenstine*, the “marital unit was able to purchase” the shares “due to [spousal] contribution[s] to the marriage's finances.” Appellant, here, unlike the husband in *Dave*, presented evidence of the wire transfers and the source of funds used for the repayments. As a result, the court erred in ruling the account was a non-marital asset. Appellee’s original one-third share is a nonmarital asset as it was acquired prior to the marriage, but the shares acquired from Wang during the marriage with marital funds are marital assets. We, thus, remand to the trial court to determine the value of this marital and non-marital property.

II. The trial court did not err when it failed to value the condominium in China.

Appellant also argues the court erred in failing to grant a monetary award by failing to value the condominium in China. He contends there was sufficient evidence before the court to determine the property’s value. Appellee argues appellant did not meet his burden of proof in this regard. We agree with appellee.

As discussed above, a trial court must first determine if an asset is marital, then it must assign value to it. *Richards*, 166 Md. App. 272. The party who seeks “a monetary award has the burden of establishing the value of the marital property and the value of nonmarital property.” *Abdullahi v. Zanini*, 241 Md. App. 372, 412 (2019). Under Maryland law “value” is defined as “fair market value” meaning “the amount at which property would change hands between a willing buyer and a willing seller;” it “is the ‘estimated or appraised worth’ of property” *Rosenberg v. Rosenberg*, 64 Md. App. 487, 525–26 (1985) (quoting Black’s Law Dictionary 537, 1391). There is a presumption that “[t]he owner of property is presumed to be familiar with its value so that his opinion of its value is admissible as evidence.” *See Brown v. Brown*, 195 Md. App. 72, 119 (2010).

In *Abdullahi*, the husband, in the parties Joint Property Statement, assigned a value to wife’s property in Somalia, which she shared with her siblings, but he did not offer any evidence to support his assertion. 241 Md. App. 413–14. Wife, on the other hand, testified the property had “zero” value. The trial court concluded the property was valued in the amount listed by the husband. *Id.* On appeal, we held “the circuit court erred in accepting Husband’s bald assertion of value provided in the Joint Statement, which was unsupported by any reasoning regarding how he arrived at that result.” *Id.*

Appellant, here, in claiming the condominium was a marital asset had the burden of proving its value. He testified that he did not know the address of the condominium and he presented a Chinese internet estimate of properties in the same area. He also testified that he contributed \$200,000 towards the acquisition of the property, but provided no financial documents to support his claim. Appellee, on the other hand, testified she did not know the value of the property. She stated that she did not participate in the acquisition of the property, she was not named on the deed, nor did she request her husband send money to her family to purchase the property.

In such instances, “[v]aluation is a question of fact, subject to the clearly erroneous standard of review.” *Abdullahi*, 241 Md. App. 413. Here, the trial court, after listening to the testimony, and as the ultimate determiner of the facts stated, it “would merely be guessing” and was “unable to determine the value of the property.” As a reviewing court, we “. . . give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229 (2000). We thus, hold, this finding by the court, based on its assessment of credibility and its determination there was not enough evidence to support a property valuation, was not clearly erroneous.

III. The trial court did not abuse its discretion in failing to impose a sanction or in delaying its ruling on the Motion to Compel.

It is well established that Maryland trial courts have “discretion to impose sanctions for discovery violations, ranging from striking pleadings to dismissal.” *Rose v. Rose*, 236 Md. App. 117, 131, 181 A.3d 225, 233, *reconsideration denied* (Mar. 28, 2018), *cert. denied*, 459 Md. 417, 187 A.3d 44 (2018). An abuse of discretion occurs when “the court’s

ruling is clearly against the logic and effect of facts and inferences before the court.” *Santo v. Santo*, 448 Md. 620, 626 (2016) (internal quotations omitted). An appellate court’s “review of the trial court’s resolution of a discovery dispute is quite narrow; [we] are reluctant to second-guess the decision of a trial judge to impose sanctions for a failure of discovery.” *Id.* (quoting *Sandler v. Littman*, 166 Md. App. 90, 123 (2005)).

Appellant argues the trial court abused its discretion when it delayed compelling appellee to provide information about the property in China and further, by not imposing a sanction. In support, appellant relies on *Taliaferro v. State*. However, in that case, the Court of Appeals held the trial court did not abuse its discretion with the sanction of excluding testimony when appellant in that case failed to comply with discovery rules. *Taliaferro v. State*, 295 Md. 376, 378 (1983). The case at bar is dissimilar. Here, the court made a decision to allow testimony regarding the condominium prior to ruling on the motion to compel. The court stated it knew “nothing about [the] property” and needed evidence to determine if the condominium “was acquired during the course of the marriage with marital funds.” The court further stated:

[s]o well what I am saying is that say on Wednesday I have enough evidence before me that it’s marital property and I compel her to give this court the address. That’s going to give you two more days to find the value . . . I can’t really, you know, with all due respect I don’t know how that’s going to significantly prejudice your client 48 hours. You’ve got to give me an opportunity to hear the evidence.

Appellant lodged no objection to the court’s ruling, nor did he request sanctions. The court ultimately compelled appellee and following her disclosure, appellant did not request any additional documents, a postponement, or sanctions.

Under these circumstances, the court’s decision not to impose sanctions was not “clearly against the logic and effect of facts and inferences before the court.” *Santo*, 448 Md. 626. It was rather, a reasoned approach to determining whether compelling such evidence was relevant to the case and in furthering the case presentation thereafter.

Appellant further claims appellee’s lack of compliance prejudiced him because he was not able to obtain the value of the condominium, which resulted in the court determining its value was zero. In ruling on appellant’s motion to compel, prior to the start of the hearing, the court indicated it would give appellant additional time to present evidence. However, following appellant’s cross examination of appellee on this issue, he neither sought further guidance from the court or a continuance to research or obtain further information. The court then heard an additional witness and following closing arguments, the matter was taken under advisement. During this timeframe, appellant did not seek to supplement the record. We, thus, hold the trial court’s handling of the discovery matter did not prejudice appellant as he had ample opportunity to provide additional evidence to the court, following appellee’s disclosure.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED IN PART AND REVERSED IN
PART; CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID
EQUALLY BY APPELLANT AND
APPELLEE.**