COURT OF APPEALS OF VIRGINIA

Record No. 0667-25-1

AMY MARIE LARCH
v.
DARRELL DEE LARCH

Present: Judges O'Brien, Chaney and Raphael
Argued at Williamsburg, Virginia

Opinion Issued September 8, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
Afshin Farashahi, Judge

Oliver T. Ward (Rachel L. Yates; Yates Appellate Law, on briefs), for appellant.

Jenni S. Tynes (Dale T. Berrett; Kaufman & Canoles, P.C., on briefs), for appellee.

MEMORANDUM OPINION BY
JUDGE STUART A. RAPHAEL

Appealing the trial court's final decree of divorce, Amy Larch (wife) challenges the trial court's equitable-distribution and spousal-support awards. The disputed assets in this appeal are: (1) a second home that husband, Darrell Larch, inherited from his father; (2) one of wife's investment accounts; and (3) two of wife's retirement accounts. In his assignments of cross-error, husband argues that the trial court erred by valuing wife's disputed retirement accounts as of the parties' separation date. Because we agree with wife that the court erred in its equitable-distribution award, and we agree with husband that the court should have valued the retirement accounts as of the trial date, we reverse the judgment and remand the case for further proceedings consistent with this opinion.

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

Background

"[W]e view the evidence in the light most favorable to the prevailing party"—here, the husband—"granting [him] the benefit of any reasonable inferences." *Starr v. Starr*, 70 Va. App. 486, 488 (2019) (quoting *Congdon v. Congdon*, 40 Va. App. 255, 258 (2003)). Husband and wife married in August 1983 and separated in January 2023. They had two children, both of whom were adults when the parties separated. In March 2023, wife filed for divorce based on husband's desertion or, alternatively, "on the grounds of a one year separation" under Code § 20-91(A)(9)(a). Husband counterclaimed for divorce based on constructive desertion and cruelty. Both parties requested equitable distribution of their marital property and spousal support.

Wife and husband testified at the bench trial on November 12, 2024. As to the assets disputed here, wife testified that she received a large personal-injury settlement award. Of that award, wife deposited $150,000 into an American Funds transfer-on-death account in March 2009 ("American Funds 1791"). The court received a quarterly statement for that account, revealing that it had grown to $695,848.16 as of September 2024. The statement showed an "Addition" of $67,029.71 and a "Withdrawal" of $16,500. Wife attributed the $67,029.71 addition to "international equities and some other stuff" and denied ever depositing marital funds into the account. She explained that she withdrew the $16,500 to pay for their daughter's wedding. Husband was not listed on the account.

Wife also has a 401(k) account and a cash pension through her longtime employer, Bank of America. The court received into evidence a quarterly statement from the 401(k) account for the period of January 1 through March 31, 2023. The account's "Beginning Balance" for that quarter was $938,070.41. By the time of trial, the 401(k) account had grown to "approximately

$1.4 million."[1] The cash-pension account statement received by the court showed a "Beginning Balance" of $131,194.28 on January 23, 2023. By September 2024, the cash pension had grown to $175,240.36. Husband asked the court to value wife's retirement accounts as of the trial date, rather than using the "Beginning Balances" that coincided with the parties' separation date.

When husband's father died in October 2021, husband and his brother, David, each inherited a one-half interest in their father's house. In December 2022, husband purchased David's share of the house for $108,000.[2] Husband testified that he received $44,650 from his father's estate and deposited it into the parties' joint checking account. He then wired $105,961.91 from the joint checking account to David for his share of the house. The parties do not explain the discrepancy between the agreed purchase price ($108,000) and the amount wired to David ($105,961.91).

As to their spousal-support requests, both parties testified to suffering physical abuse. Wife testified that in July 2021, when she was on the phone with husband's father, husband demanded to know who she was talking to and punched her in the face. Wife called the police but did not seek medical treatment. Husband recalled the incident differently, testifying that they "had a discussion" about wife's going through husband's belongings "and the next thing [he knew] the police were showing up and they arrest[ed] [him]." Wife obtained a preliminary protective order and filed for divorce following the assault, but both cases were dismissed with prejudice in March 2022 after the parties reconciled. Wife testified that they routinely got into "shoving match[es]" when husband had been drinking; husband testified that wife threw things at him. Each engaged in name-calling.

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[1] Husband represented in a pre-trial motion that wife's 401(k) account "was valued at $1,482,286.86" as of September 30, 2024, about six weeks before trial.

[2] Husband and David agreed to the $108,000 purchase price based on the house's $216,000 tax assessment.

Wife testified that she worked as a manager at Bank of America, earning a yearly salary of $147,500. Husband's work history was more intermittent, but his 2023 tax return showed that he earned $66,295 from his "sales job" and working as a hotel valet. As the primary earner, wife paid for the insurance on all four of the parties' cars. Both spouses contributed to the car payments. They took turns paying the mortgage, but wife primarily paid the utility bills. In 2020, the parties "came to [an] agreement" in marriage counseling that husband would pay wife $700 a month to help with their expenses. Husband testified that he paid for the landscaping projects around the house. Husband paid when they went out for dinner and often picked up dinner on his way home.

For their non-monetary contributions, husband detailed wife's car at least once a month, mowed the lawn, and vacuumed the house. Wife testified that husband did not attend the children's sporting events, doctors' appointments, dental appointments, or any of the "IEP planning sessions" for their son. Wife further testified that when she was battling cancer in 2006, husband missed most of her chemotherapy treatments.

After taking the parties' evidence and arguments under advisement, the court granted a divorce, finding that husband and wife had "lived separate and apart without interruption or cohabitation for a period in excess of one year." The court determined that wife's 401(k) account was marital property and contained $938,070 as of the parties' separation date. The court also classified wife's cash pension as marital property and valued it at $131,194 as of the date of the parties' separation.

The court classified the inherited house as hybrid property. The court accepted the parties' agreed-upon value of the home—$336,700 with no mortgage. Agreeing with husband's argument, the court found that husband's original half-interest constituted separate property. Husband conceded that he used marital funds to purchase David's interest in the house. But he argued that the $44,650 used for the purchase was his separate property because the money had come from his father's estate. The court agreed, finding that only $59,950 of the purchase price for David's share was marital. It divided that amount evenly, awarding each party $29,975. The court did not address the fact that the house's value had increased from $216,000 (original tax assessment) to $336,700 (stipulated value at trial).[3]

The court also classified wife's American Funds 1971 account as hybrid property. It found that the account had a value of $695,848 and the initial $150,000 deposit was separate property from wife's personal-injury settlement.[4] But "the remainder" was marital property to be divided equally.

In ruling on spousal support, the court considered the parties' 40-year marriage, their respective contributions to the marriage, and their financial resources. The court found that wife earns $147,500 a year as a manager at Bank of America and that husband earns $66,295 "from his independent contractor job [] [a]nd his valet work." It was "very clear" to the court that some abuse had taken place, but not "to the extent that wife described." The significance of the abuse, the court continued, was "diminishe[d] given that the parties reconciled" and the earlier "divorce suit was dropped and [the] protective order was dismissed with prejudice." The court awarded husband $400 in monthly spousal support, ending "upon the death of either party or husband's

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[3] Despite stipulating to the house's current value at the beginning of trial, husband later offered an alternative value of $247,900—"[t]he current tax assessment." Husband explained that he would accept the $336,700 amount if the court found that the house is his separate property and that wife is not entitled to its appreciation in value. He argued in the alternative, however, that if the court were to apportion the increase in value, it should assess that increase using the current tax assessment of $247,900. Using the two tax assessment values, husband argued, would provide a better "apples to apples" comparison.

[4] The trial court memorialized its ruling in a written outline, which it provided to the parties alongside its oral ruling on December 19, 2024. The transcript of the ruling suggests the court originally intended to value the account at $560,170, but the court's written outline and final order valued the account at $695,848.

remarriage or cohabitation in a relationship analogous to a marriage for one year or more." Wife appeals.

ANALYSIS

I. The trial court erred in its equitable distribution of the parties' property.

We review equitable-distribution awards for abuse of discretion. *Sobol v. Sobol*, 74 Va. App. 252, 272 (2022). A trial "court's 'equitable distribution award will not be overturned unless the [appellate court] finds an "abuse of discretion, misapplication or wrongful application of the equitable distribution statute, or lack of evidence to support the award."'" *Dixon v. Dixon*, 71 Va. App. 709, 717-18 (2020) (alteration in original) (quoting *Anthony v. Skolnick-Lozano*, 63 Va. App. 76, 83 (2014)). "[T]o the extent that the appeal requires an examination of the proper interpretation and application of Code § 20-107.3," however, "it involves [an] issue[] of law, which the Court reviews *de novo* on appeal." *Id.* at 718. Wife's second and third assignments of error, and husband's assignments of cross-error, challenge the court's equitable-distribution award. We address each in turn.

A. The second house is hybrid property, but the court erred by not addressing its increase in value (Assignment of Error II).

"Equitable distribution involves three distinct decisions: classification, valuation, and distribution." *Hamad v. Hamad*, 61 Va. App. 593, 602 (2013). At the classification step, property is "marital, separate, or hybrid. Hybrid property involves a mixture of 'part marital property and part separate property.'" *Id.* (quoting Code § 20-107.3(A)(3)). Separate property includes "all property acquired during the marriage by bequest, devise, descent, survivorship or gift from a source other than the other party." Code § 20-107.3(A)(1)(ii).

Wife argues that the half-interest in the second home acquired from David is presumptively marital property because it was purchased using marital funds. She relies on Code § 20-107.3(A)(3)(e), which provides that "[w]hen marital property and separate property are commingled into newly acquired property resulting in the loss of identity of the contributing properties, the commingled property shall be deemed transmuted to marital property." Husband concedes that he used $59,950 in marital funds to purchase David's interest in the second home. But he claims that he sufficiently traced the other $44,650 as his separate property. We agree.

"The party seeking to segregate the separate property bears the burden of proof to equitably trace the truly separate component." *Hamad*, 61 Va. App. at 602. Husband testified that he received $44,650 from his father's estate. That money constitutes separate property under Code § 20-107.3(A)(1)(ii). He deposited that separate property into the parties' joint checking account and then withdrew a total of $105,961.96 to purchase David's share of the property. Not only was the trial court entitled to credit that testimony, the account statements entered at trial corroborate the series of transactions that husband described. *See Sobol*, 74 Va. App. at 272 ("[T]he trier of fact ascertains a witness' credibility, determines the weight to be given to their testimony, and has the discretion to accept or reject any of the witness' testimony."). Accordingly, husband sufficiently traced the separate property that he contributed to David's share in the property, and the trial court did not err in finding that only the $59,950 was subject to equitable distribution.

We agree with wife, however, that the trial court erred by not addressing the property's increase in value. Wife argued in closing that if the trial court rejected her commingling argument (an argument we also reject here), it still needed to distribute the marital portion of the property's "equity at dissolution," which the parties agree is $336,700. She advocated below for the formula that we approved in *Keeling v. Keeling*, 47 Va. App. 484 (2006). The marital residence there increased in value from $394,000 to $825,000. *Id.* at 487. Mr. Keeling contributed $108,439 of his separate property to acquire the marital residence. *Id.* at 488. The court converted that contribution to a percentage of the purchase price (27.5%) and applied that percentage to the increase in value of the marital home. *Id.* The resulting amount ($141,885) constituted Mr. Keeling's separate share of the house's equity; the remaining equity was divided equally between the parties. *Id.*

We express no opinion on whether the *Keeling* formula would be the appropriate way to apportion the increase in value of the second home at issue here. *See id.* at 490 ("We have not adopted an exclusive method for determining how to apportion the increase in value [of a hybrid asset as between marital and] retraced separate property." (alteration in original) (quoting *Martin v. Martin*, 27 Va. App. 745, 753 (1998) (en banc))); *Rinaldi v. Rinaldi*, 53 Va. App. 61, 70 (2008) (same). It is enough that the trial court failed to address the property's significant increase in value *at all*, despite the parties' express agreement that the property's value at the time of trial had grown more than $120,000 over the purchase price. We thus remand this issue to the trial court to consider in the first instance how to apportion the increase in value.[5]

B. Wife's American Funds 1791 account is her separate property (Assignment of Error III).

The trial court classified wife's American Funds 1791 account as hybrid property. It found that the initial $150,000 investment was "wife's separate property" and the "remainder" was marital.

That is not quite right. There is no dispute that wife's original $150,000 investment is her separate property. "In some circumstances, when separate property has increased in value during the marriage, all or part of the increase in value can be treated as marital." *David v. David*, 64

[5] We reject husband's claim that the trial court accepted "the nominal increase in value" between the original tax assessment ($216,000) and the date-of-trial tax assessment ($247,900) and found that such increase "was not a result of the $59,950" used to purchase David's interest in the father's house. The court explicitly found that the "house is worth $336,700" and that the marital portion is $59,950. The court in its ruling said nothing of the alternative $247,900 valuation, nor did it address the increase in value from what was shown in the original tax assessment.

Va. App. 216, 221 (2015). Code § 20-107.3(A)(3)(a) provides,

> In the case of the increase in value of separate property during the marriage, such increase in value shall be marital property only to the extent that marital property or the personal efforts of either party have contributed to such increases, provided that any such personal efforts must be significant and result in substantial appreciation of the separate property.

The non-owning spouse bears "the burden of proving that (i) contributions of marital property or personal effort were made and (ii) the separate property increased in value." *Id.* We said in *David* that the personal efforts must be "significant." 64 Va. App. at 220. If the non-owning spouse meets that burden, the burden shifts to the owning spouse to prove "that the increase in value or some portion thereof was not caused by contributions of marital property or personal effort." Code § 20-107.3(A)(3)(a).

As the non-owning spouse, husband bore the burden to prove that (1) the account "substantially appreciated during the marriage," and (2) that marital property was contributed, or significant personal efforts were expended, with regard to the American Funds 1791 account. *David*, 64 Va. App. at 220. The only evidence in the record of a "contribution" to the account was the one-time "Addition" of $67,029.71. Wife's unrebutted testimony was that she did not deposit any funds into the account. She attributed the $67,029.71 increase to "the international equities and some other stuff"; the growth was "simply from the [$]150,000" itself. Husband did not offer an alternative explanation for the account's increase.

Husband thus did not meet his burden to show that marital contributions or significant personal efforts were made to wife's American Funds 1791 account.[6] The trial court erred in

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[6] Even assuming for argument's sake that husband met his burden, wife's testimony would have rebutted it. She testified that did not deposit any funds into the American Funds 1791 account or expend significant personal effort to increase the account's value. She attributed the growth of the account to market forces. *See, e.g.*, *David*, 64 Va. App. at 223 ("In the context of a stock account, routine adjustments to the portfolio—adding . . . stocks that are

classifying the account's increase in value as marital and awarding half of that amount to husband.[7]

C. The court erred in valuing wife's 401(k) and cash-pension accounts as of the parties' separation date (Assignments of Cross-Error I-II).

Husband assigns two cross-errors concerning the trial court's distribution of wife's retirement accounts. He first argues that the trial court erred by valuing wife's 401(k) and cash-pension accounts "as of the date of separation, instead of the date of trial, as required by . . . Code § 20-107.3 and [wife's] obligation to trace post-separation contributions." He argues in the alternative that the court should have awarded him a portion of the growth in wife's retirement accounts that occurred between the parties' separation and trial because his "interest in the marital share in those accounts was earned during the marriage and before the last separation of the parties."

Wife argues that retirement accounts are treated differently from other marital property. Relying on Code § 20-107.3(G)(1), wife claims that the cut-off date for valuing her retirement accounts was the parties' separation date. Under that subsection, the "marital share" of a retirement account "means that portion of the total interest, the right to which was earned during the marriage and before the last separation of the parties, if at such time or thereafter at least one of the parties intended that the separation be permanent." *Id.* Wife reads that language to mean

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performing well and culling underperforming stocks—does not constitute significant personal effort.").

[7] Husband argues that the trial court erred by valuing the American Funds 1791 account as of the parties' separation. True, the transcript of the court's ruling suggests that the court valued the account as of the parties' separation date, for a total of $560,170. But the final order signed by Judge Farashahi lists the account as being $695,848—the updated value that was submitted at trial. So the court did not err as wife's contends. Even so, our conclusion moots the argument. Husband is not entitled to any of the funds from that account, so the valuation date does not matter.

that the marital share should be applied to the value of the retirement account as of the separation date, not the trial date.

We disagree. "General principles for the valuation and division of property in equitable distribution proceedings also apply to the valuation and division of retirement benefits, including the principle that '[t]he court shall determine the value of any such property as of the date of the evidentiary hearing on the evaluation issue.'" *Cusack v. Cusack*, 53 Va. App. 315, 320 (2009) (emphasis omitted) (quoting Code § 20-107.3(A)). Wife misreads the purpose of Code § 20-107.3(G)(1). That subsection determines the percentage of apportionment of the marital share as of the separation date. But it does not alter the general rule that the court must "determine the value of any such property *as of the date of the evidentiary hearing* on the evaluation," unless a party moves for an alternative date and there exists good cause for "a different valuation date." Code § 20-107.3(A) (emphasis added). Were we to accept wife's argument, and if market forces resulted in a huge increase in the value of a retirement account before the evidentiary hearing, the account holder would retain 100% of the increase—an inequitable result.

As neither party moved for an alternative valuation date, the trial court erred by valuing wife's retirement accounts as of the parties' separation date. We reverse the trial court's distribution of wife's retirement accounts and remand for the court to properly value the accounts under Code § 20-107.3(A).

II. We remand the court's spousal-support award in light of our equitable-distribution holding.

Wife also challenges the court's award of spousal support to husband. "Whether and how much spousal support will be awarded is a matter of discretion for the trial court." *Giraldi v. Giraldi*, 64 Va. App. 676, 681 (2015) (quoting *Northcutt v. Northcutt*, 39 Va. App. 192, 196 (2002)). We will reverse a trial court's spousal-support award only if it "is plainly wrong or without evidence to support it." *Id.* at 682 (quoting *Fadness v. Fadness*, 52 Va. App. 833, 845 (2008)).

Wife's principal argument is that she should not have been ordered to pay spousal support to husband because of the physical abuse that she endured during the marriage. "Code § 20-107.1(E) requires the trial court to consider certain statutory factors and additionally to 'consider the circumstances and factors which contributed to the dissolution of the marriage, specifically including adultery and any other ground for divorce [including desertion and cruelty].'" *Wyatt v. Wyatt*, 70 Va. App. 716, 719 (2019) (alteration in original). Where, as here, the "court grants a divorce based on a one-year separation, it must still consider any proven fault-based ground in relation to spousal support." *Id.*

In rendering its equitable-distribution award, the trial court considered "the circumstances and factors which contributed to the dissolution of the marriage." Acknowledging that it "was not a fault based divorce," the court still considered "a lot of evidence" that "would typically be presented in a fault based divorce." After considering the parties' conflicting testimony, the court found "that the evidence does not establish the physical abuse and other abuse to the extent that the wife testified to." The court also noted that the parties reconciled after the incident in 2021 where husband allegedly punched wife in the face, causing the pending divorce petition to be dismissed with prejudice. The court memorialized these findings in writing as required under Code § 20-107.1(F). *Payne v. Payne*, 77 Va. App. 570, 592 (2023).

That the court found some evidence of abuse did not bar it from awarding spousal support to husband. *See Wyatt*, 70 Va. App. at 720 (noting that the 1988 amendment to Code § 20-107.1 "removed fault as a bar to spousal support except for adultery, sodomy or buggery committed outside the marriage"). The court's written findings also demonstrate that it considered the remaining necessary factors in making its award. It found that both parties made monetary and non-monetary contributions during their 40-year marriage, both parties were employed, and wife made "significantly more [money] than husband." The court also considered its equitable distribution of the parties' property in making its spousal-support award. We thus cannot say that the award is "plainly wrong or without evidence to support it." *Giraldi*, 64 Va. App. at 682 (quoting *Fadness*, 52 Va. App. at 845).

Even so, the trial court must re-examine its spousal-support award in light of our equitable-distribution holding. "[W]here an equitable distribution award is reversed on appeal and 'the provisions with regard to the marital property are to be considered on remand, the court must necessarily re-examine spousal support in the light of whatever new or different considerations flow from the additional proceedings.'" *Robinson v. Robinson*, 46 Va. App. 652, 671 (2005) (quoting *McGinnis v. McGinnis*, 1 Va. App. 272, 277 (1985)). Husband contends that the issue of ongoing spousal support is moot because he has remarried. But as wife points out, there is no evidence in the record to support husband's claim. Husband conceded at oral argument that even if the record confirmed that he is remarried, that information would not bear on the support that was paid beforehand. We leave it to the trial court on remand to ascertain the facts surrounding husband's claimed remarriage and to determine whether wife should be reimbursed for any support payments made before such remarriage.

CONCLUSION

We affirm in part and reverse in part. The trial court erred in its equitable distribution award by failing to apportion the increase in the value of the second-home property. It erred by classifying wife's American Funds 1791 account as hybrid property because husband did not meet his burden to show that the account's increase in value constituted marital property. It further erred by valuing wife's retirement accounts as of the parties' separation. Although we leave the trial court's other rulings undisturbed, the errors set forth above require that the case be remanded for further proceedings consistent with this opinion. The trial court on remand must reconsider the equitable-distribution ruling and husband's support award.

Affirmed in part, reversed in part, and remanded.