

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5768-12T2

ESTATE OF MILAGROS BELTRA,

Plaintiff-Respondent,

v.

ENRIQUE BELTRA,

Defendant-Appellant.

Submitted November 17, 2014 - Decided March 10, 2015

Before Judges Lihotz and Espinosa.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FM-12-1323-10.

Gilberto M. Garcia, attorney for appellant.

Cosner Youngelson, attorneys for respondent (Alan G. Cosner and Rebecca A. Hand, on the brief).

PER CURIAM

This matter examines relief imposed by the Family Part following our remand order. We have considered the arguments presented, the record and the applicable law. We affirm.

On January 10, 2010, plaintiff Milagros Beltra filed a matrimonial action seeking to terminate her thirty-four-year marriage to defendant Enrique Beltra. Plaintiff was terminally

ill and passed away six months later, prior to final hearing. Plaintiff's executor, the parties' oldest son, moved to be substituted in the matrimonial litigation. See R. 4:34-1(b). The Family Part judge granted the motion and the Estate of Milagros Beltra was substituted in the action.

A five-day trial to determine the equitable distribution of the assets acquired during the marriage ensued. In his written opinion, the judge found the executor not "a totally credible and candid witness," and found defendant was "the least credible of all the witnesses." The judge stated defendant's "non-verbal actions were extraordinary in demonstrating his lack of candor with the [c]ourt" regarding his various assets, noting he was "evasive" and his testimony "inconsistent."

The judge "believe[d] that [d]efendant made substantial cash contributions toward the purchase of properties in Argentina and the Dominican Republic[,] "made substantial deposits of cash generated from his business in foreign banks[,] "engaged in purchases of foreign assets with cash payments" and "had interests in a number of spin-off businesses." The judge felt obligated to report his findings regarding unreported cash generated from defendant's business enterprises to the United States Attorney's Office, the Internal Revenue Service, the New Jersey Division of Taxation and the

Middlesex County Prosecutor's Office. Finally, the judge noted defendant "did not 'forget'" to reveal assets on his case information statement; rather, "he attempted to hide them."

Based on his factual findings, the judge concluded the identified assets and liabilities were to be divided equally, except for a personal judgment against defendant and his brothers that resulted from their business dealings. An order memorializing this decision was filed on August 5, 2011. Defendant appealed.

Following our review of the issues on appeal, we vacated the order, concluding the record was "inadequate to support the entry of an equitable distribution order following plaintiff's death." Beltra v. Beltra, No. A-0297-11 (App. Div. Apr. 11, 2013) (slip op. 6). We recited the general principle that death ends a divorce action. Because equitable distribution is awarded upon final dissolution of a marriage, Carr v. Carr, 120 N.J. 336, 342 (1990), the death of one spouse prior to entry of a final judgment generally makes equitable distribution "unavailable." Kay v. Kay, 405 N.J. Super. 278, 283 (App. Div. 2009), aff'd, 200 N.J. 551 (2010). We also noted the exceptions to this rule. Specifically, equitable relief is warranted and equitable distribution can be determined to prevent unjust enrichment and fraud. See id. at 284.

Accordingly, although plaintiff's complaint for divorce alleged defendant's fraud and that he secreted assets, we reversed the August 5, 2011 order and remanded the matter for further review because the judge had not made the necessary findings to demonstrate the need to impose equitable relief. Beltra, supra, slip op. at 7.

On May 31, 2013, a plenary hearing was held in compliance with our ordered remand. The hearing consisted of written submissions and oral argument; neither party offered testimony.

While the judge remarked secreting assets would be an exceptional circumstance requiring equitable relief to prevent unjust enrichment, defendant stressed plaintiff produced no evidence of the value or nature of such alleged assets. In fact, the trial judge found, "I've got no proof of secretion of assets because I don't know what the assets are." Plaintiff's counsel, however, replied by reminding the court of the trial evidence, which included evidence of a "man caught at the airport with a suitcase full of cash, [and] the testimony from the friend who said he saw [defendant] in Punta Cana with a pile full of cash paying for [a] condo."¹

¹ The appellate record contains only the trial decision, not the trial transcript.

On June 14, 2013, the trial judge issued a one page order "determin[ing] that exceptional circumstances exist that warrant the granting of the equitable relief to [p]laintiff's estate." He relied upon counsels' letter submissions and oral argument, and reaffirmed the August 5, 2011 distribution of marital assets and liabilities. Further, the judge imposed a constructive trust so assets held by defendant would include the estate's interest.

Defendant appeals from that order, challenging factual support for the judge's finding of exceptional circumstances, which justifies use of a constructive trust. He argues plaintiff's estate was not insolvent, and actually had "more assets" than he. Defendant also suggests plaintiff's estate was unable to prove he had dissipated assets.

In our review of a non-jury trial, we accord deference to the Family Part's fact-finding when supported by adequate, substantial and credible evidence. Finamore v. Aronson, 382 N.J. Super. 514, 519 (App. Div. 2006). We accord special deference to determinations garnered from the judge's superior ability to gauge the credibility of the witnesses who testify before the court, because the judge develops a "'feel of the case' that can never be realized by a review of the cold record." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J.

88, 104 (2008) (quoting N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 293 (2007)). See also Cesare v. Cesare, 154 N.J. 394, 412 (1998) ("Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility." (citation and internal quotation marks omitted)). Our review of the cold record alone "can never adequately convey the actual happenings in a courtroom." N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012) (citing E.P., supra, 196 N.J. at 104).

Reversal is warranted only when we conclude the trial record contains insufficient evidentiary support for the Family Court's findings; that is, when the stated findings are "so wide of the mark that a mistake must have been made." M.M., supra, 189 N.J. at 279 (citations and internal quotation marks omitted). This court's review of a trial court's legal conclusions is de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

We first consider whether the record supports the judge's finding the circumstances presented warrant the imposition of equitable relief, including dividing the parties' assets and liabilities, notwithstanding plaintiff's death prevented the entry of a final judgment of divorce. As we noted, the Family Part, as a court of Chancery, may impose equitable remedies to

prevent unjust enrichment where equitable distribution under the statute becomes unattainable. Carr, supra, 120 N.J. at 351-53.

In Carr, the Supreme Court reviewed a wife's claim for equitable distribution following the death of her husband of seventeen years, who left his entire estate to his children from a prior marriage. Id. at 340. Examining the policies animating the equitable distribution and probate statutes, the Court considered "whether the dual statutory schemes express a design to deny any relief at all" in the event divorce proceedings terminate upon the death of one party. Id. at 346. It explained:

Statutory equitable distribution is based on the philosophy that marriage is a joint enterprise in which the interest in and entitlement to its underlying property is also joint and mutual. The entitlement to marital property is not dependent on economic contributions as such.

. . . .

[T]he cognizable rights of spouses in marital property . . . arise from the marital relationship in which, presumptively, both parties contribute in varied ways to the creation, acquisition and preservation of their familial property and, thereby, secure a protectable interest to share, possess, and enjoy that property.

. . . .

We conclude, therefore, that the principle that animates both statutes is that a spouse may acquire an interest in marital property

by virtue of the mutuality of efforts during marriage that contribute to the creation, acquisition, and preservation of such property. This principle, primarily equitable in nature, is derived from notions of fairness, common decency, and good faith.

[Id. at 347-49.]

The Court concluded, "if warranted by the evidence," a court may impose a constructive trust and apply principles of quasi-contract to prevent unjust enrichment where equitable distribution under the statute becomes unavailable due to the death of one spouse prior to entry of a judgment of divorce. Id. at 351-54.

In Kay v. Kay, 200 N.J. 551 (2010), the Court applied these principles where the deceased spouse's estate sought relief from the surviving spouse, who was alleged to have diverted marital assets. Id. at 552. The Court held equitable relief may be invoked to "promote fair dealing between spouses by ensuring that marital property justly belonging to the decedent will be retained by the estate for the benefit of the deceased spouse's rightful heirs and by preventing unjust enrichment of the surviving spouse." Id. at 552. This decision was anchored upon two considerations: first, the allegation decedent's interest in marital assets had been wrongfully diverted by the surviving spouse, such that the claim "was not merely one for equitable distribution of an agreed-upon universe of marital property."

Id. at 553. Second, the "estate merely [sought] to continue claims raised before death . . . which, in fairness, should not be extinguished lightly or prematurely . . ." Id. at 554. The Court noted the decedent spouse's estate was insufficient to satisfy funeral costs and attorney's fees; however, that was not the basis of the holding. See id. at 551; Kay, supra, 405 N.J. Super. at 282; see also Kay, supra, 200 N.J. at 551. Rather, the conclusion was grounded on "[a] basic equitable maxim [] that he who seeks equity must do equity." Marino v. Marino, 200 N.J. 315, 345 (2009) (first alteration in original) (citations and internal quotation marks omitted).

Here, plaintiff's estate seeks to invoke the court's equitable powers to prevent defendant's unjust enrichment were he to retain all jointly held marital assets, as well as those assets he is alleged to have deceptively obtained. A claim that defendant "secreted" marital assets was included in plaintiff's divorce complaint. Plaintiff's estate asserts the divorce was not finalized because defendant intentionally delayed the proceeding because he knew plaintiff would soon pass away.

During the remand hearing, plaintiff's counsel highlighted the trial evidence as laid out in the trial court's August 5, 2011 opinion. This evidence included testimony from Rafael Diaz, found by the trial judge to be "a credible witness," who

witnessed defendant pay \$50,000 in cash to buy a Dominican Republic condominium; testimony of the parties' younger son that defendant kept a large but undetermined amount of cash, some of which he stored in the marital home; testimony alleging defendant was stopped at the airport with a suitcase full of cash; and defendant's testimony that he gave plaintiff \$124,000 and left \$80,000 in cash in her home safe before she died, a claim found to lack support. The facts were so flagrant and defendant's offered explanation so unbelievable, the judge reported the apparent unreported income to regulatory and law enforcement agencies.

Defendant contends plaintiff failed to prove the nature or value of the assets, a suggestion we find specious. Defendant alone knew the information surrounding monies he secreted and whether the funds were used to purchase assets abroad as plaintiff suspected. Despite her discovery demands, defendant was twice cited for contempt because he refused to comply with court orders to release requested information. As the trial judge noted, "defendant did not 'forget'" to list assets on his case information statement but rather "attempted to hide them." Plaintiff provided what information she could obtain, most of which was not contested. Moreover, defendant's explanation for the excessive cash was found incredible. In such instance we

conclude, "'it would be unreasonable to place the burden of proof on a party not having access to the evidence necessary to support that burden of proof.'" Ozolins v. Ozolins, 308 N.J. Super. 243, 249 (App. Div. 1998) (quoting Frantz v. Frantz, 256 N.J. Super. 90, 93 (Ch. Div. 1992)).

The totality of these facts and circumstances reflect defendant had large sums of cash that were not accounted for, whether he purchased assets in addition to the Dominican Republic condominium or the assets were hidden. Their actual value remained unknown because of defendant's lack of candor, not because of plaintiff's lack of effort. This evidence adequately supports the trial judge's findings defendant diverted marital assets and his conduct justifies the conclusion exceptional circumstances required equitable remedies to prevent unjust enrichment. Finamore, supra, 382 N.J. Super. at 519.

We also reject defendant's contention the trial judge's use of a constructive trust was erroneous. Defendant suggests the value of plaintiff's estate exceeds all assets titled to him. This is unsupported. In fact, the trial judge stated defendant's "lack of credibility, his lack of forthright testimony as to his current employment/income, and his lack of testimony relating to the marital assets" precluded a determination of his actual economic circumstance.

Nevertheless, the imposition of equitable relief is not reserved for instances necessary to save a party from poverty. Here, the judge was convinced defendant diverted assets, which were the subject of the parties' disputed divorce claims. Indeed, defendant repeatedly refused to disclose information which would have allowed a reasoned determination of the parties' respective claims. This conduct triggers the use of tools to prevent defendant from being unjustly enriched by his inequitable conduct supporting his diversion of marital assets to which both spouses had a "cognizable" right. Carr, supra, 120 N.J. at 348-49, 351-52. See also Kay, supra, 200 N.J. at 553-54 (reflecting the availability of relief in the form of a constructive trust was anchored in defendant's diversion of marital funds). As the Court explained in Kay, the Family Part must protect the right to claim marital assets in a matrimonial action, which "in fairness, should not be extinguished lightly or prematurely" simply because a party passed away before the divorce was final. Kay, supra, 200 N.J. at 554.

Following our review, under the circumstances presented, the equitable use of a constructive trust was appropriate and not "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to

offend the interests of justice." Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION