

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Divorce - Complaint**COURT MINUTES**

May 22, 2020

D-18-573154-D Lindsey Sharron Antee, Plaintiff
vs.
Bobby Lee Antee, Defendant.

May 22, 2020 9:45 AM Minute Order

HEARD BY: Hughes, Rena G.**COURTROOM:** Chambers**COURT CLERK:** Tiffany Skaggs**PARTIES:**

Bobby Antee, Defendant, not present
Lindsey Antee, Plaintiff, not present

Grayson Moulton, Attorney, not present
Jared Jennings, Attorney, not present

JOURNAL ENTRIES

- This matter was taken under advisement just prior to the COVID pandemic. The Court apologizes to the parties for the time it has taken to disseminate this decision. The Court's access to files and exhibits has been extremely limited over the last several weeks. To expedite the decision, the Court is entering a journal entry in a format that is not required to be implemented in the final Decree of Divorce. This format is informal and for the ease of the parties' interpretation of the information. This matter came on for a non-jury Trial on the disposition of property and dissolution of marriage. Plaintiff, Lindsey Antee, was present and represented by Jared Jennings, Esq. Defendant, Bobby Antee, was present and represented by Grayson Mouton, Esq. This is a short term marriage. The parties were married on November 25, 2017 in Las Vegas, Nevada. The parties do not have any minor children and Wife is not pregnant. On June 26, 2018 Wife filed a Complaint for Divorce. In September of 2018 Wife filed a Motion for Spousal Support. At the motion hearing on October 19, 2018, the Court granted Wife exclusive possession of the marital residence, ordered Wife to pay the mortgage associated with the marital residence, Husband to provide Wife with the name of the mortgage company, Husband shall pay all utility bills in his name, upon payment being made Husband shall present Wife with a copy of the bills paid and Wife shall reimburse Husband (bills were in Husband's name), Wife shall pay all past

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due utility bills, and an Evidentiary Hearing was scheduled.

On December 20, 2018 Wife filed a Complaint for Separate Maintenance in a separate action, case number D-18-581756-S. In January of 2019, Husband filed a Motion to Dismiss or in the Alternative Motion to Consolidate. At the motion hearing on February 13, 2019, the parties stipulated to grant Husband s request to dismiss Wife s Complaint for Separate Maintenance. The Court further denied attorney s fees and ordered the Trial in D-18-573154-D to remain as scheduled.

On January 8, 2020 Wife filed a Motion for Partial Summary Judgment. The Court granted Wife s request for an Order Shortening Time and the Wife s Motion was heard concurrently with the February 7, 2020 Trial.

At the February 7, 2020 Trial, the Court found there were material questions of fact precluding summary judgment.

On February 12, 2020, the Court held day two of the Trial and testimony resumed. The Court took the matter under advisement.

Most of the issues in dispute stemmed from the purchase of a marital home. Shortly after the parties married, they decided to purchase a residence. Wife did not have a good credit rating and could not qualify for a mortgage. Husband had a better credit rating, but little cash on hand, and some debts. Wife had cash on hand from her foundation.

TRIAL ISSUES:

1. Wife claimed Husband committed marital waste by paying the balance on his pre-marriage student loan of \$8,374.03 with funds she provided.

Disposition:

The parties entered into an agreement whereby Wife would receive funds from the equity of the marital residence in repayment for her separate property contribution.

Wife did not meet her burden of proof on the marital waste claim under Putterman. See, Putterman v. Putterman, 113 Nev. 606, 939 P.2d 1047 (1997).

Wife presented no evidence of compelling reasons such as hiding, wasting, misappropriating or using funds for Husband s personal gain. The student loans were required to be paid by the lender to purchase a community property asset.

Almost all marriages involve some disproportion in contribution or consumption of community property. Such retrospective considerations are not and should not be relevant to community property allocation and do not present compelling reasons for an unequal disposition; whereas, hiding or wasting of community assets or misappropriating community assets for personal gain may indeed provide compelling reasons for unequal disposition of community property.

Putterman, 113 Nev. 606, 609, 939 P.2d 1047, 1049-50.

FINDINGS OF FACT:

The Court finds Wife claims she had no knowledge that Husband would need to pay the balance of his student loans in order to qualify for the mortgage to purchase the marital residence. Wife s testimony in this regard was not credible.

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The Court finds Husband knew a month before the closing he would have to pay his student loans off to close. He discussed this with Wife. They both knew the lender required his student loans, as well as other debts, to be paid in order to close the purchase of the marital residence. Husband ended up paying his student loans before closing, which caused the lender to require an explanation into why he was conducting the transaction ahead of time, rather than at closing.

The Court finds both parties were frustrated with the lender s requirements throughout the qualification and closing process because they did not understand why the lender was requiring explanations of their numerous financial transactions.

The Court finds the lender required Husband to pay off the student loan in order to close on the purchase. The parties agreed Wife would be repaid an amount certain in exchange for contributing her separate property funds toward the purchase, which included paying off Husband s debts as required by the lender. For example, Husband had to pay off his car loan (the car had negative equity of \$4,060); pay off his student loans, and; other debts.

TRIAL ISSUES CONTINUED:

2. Wife claimed she did not gift funds to the community of her sole and separate property when she executed gift letters for purposes of Husband qualifying for a mortgage to purchase the marital residence.

Disposition:

Wife did not intend to gift funds to the community when she executed the gift letters.

FINDINGS OF FACT:

The Court finds that Husband and Wife agreed Wife would provide all funds for the down payment, escrow deposit, and to pay off certain pre-marriage debts Husband owed. Wife s sole and separate property funds were exclusively used for the down payment, escrow deposit, Husband s auto loan payoff, and student loan pay off. All funds are traceable to Wife s separate property.

The Court finds Wife did not intend the gift letters required by the mortgage lender to have the legal effect of a gift. The sole purpose for the gift letters was to help Husband qualify for a mortgage to purchase the marital residence.

The Court finds Wife s credit prevented her from qualifying for a mortgage, thus she was not included in the credit application.

The Court finds Wife evidenced her intent to not gift the funds to Husband more than once.

The Court finds that prior to the closing, Wife indicated it was not her intent to gift the funds when she attempted to cancel the purchase, even though she was not a party to the contract.

The Court finds at the closing, Wife required Husband to sign a letter agreement acknowledging the funds were not a gift before she would wire the funds to close the purchase. See, Exhibit 6, bates 108-110.

The Court finds Wife drafted and signed the letter agreement on the date of closing, January 17, 2018.

The letter agreement stated in pertinent part:

Lindsey Antee and Bobby Dee Antee are in agreement to the following with regards to:

If Divorce Takes Place \$75,000 is Returned to Lindsey Antee And The Remaining Equity Will Be Split

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50/50

I am aware of the community property law and upon divorce the property will be sold and \$75,000 will be returned to Lindsey prior to our 50/50 split.

The Court finds Wife sent the letter agreement, Exhibit 6, to Husband while he waited at the title company to finalize the purchase transaction. The parties had not discussed the terms of the agreement prior to Wife drafting and sending it to Husband.

The Court finds Wife s handwritten signature appears on Exhibit 6.

The Court finds there was another letter agreement, evidenced at Exhibit H, bates 337-339. Wife claims she never saw this version of the agreement, except through discovery in the litigation. Wife s signature does not appear on Exhibit H, and Husband s signature does not appear on Exhibit 6. The Court finds Wife s testimony that she did not see the second letter agreement, Exhibit H, until discovery is not credible. Wife sent a text message to Husband asking him if he was going to sign the updated agreement. It is clear Wife knew of two agreements, but it is unclear from the letter agreements which was first and which was second in time. Even so, Wife had knowledge of two letter agreements because she attached the one from Exhibit H to her Complaint for Separate Maintenance.

The Court finds the letter agreements have a different format but the operative terms only differ slightly. Exhibit H states in pertinent part:

Lindsey Antee and Bobby Dee Antee are in agreement to the following with regards to:
If Divorce Takes Place \$75,000 is Returned to Lindsey Antee And The Remaining Equity Will Be Split 50/50.

The Court finds the operative terms in common are that Wife will receive \$75,000, and the remaining equity will be divided 50/50. The only operative term not in common is that the home will be sold. The Court finds Wife s Complaint for Divorce filed 06/26/2018 alleged the Marital Residence should be awarded to her, and that Husband should repay a loan to Wife of \$75,000.

The Court finds the common term the parties agreed to is that Wife would receive \$75,000 from the equity of the home and the remaining equity would be divided 50/50. There was a meeting of the minds by the parties and they entered into a contract for this term. Wife is thus entitled to \$75,000 from the equity of the marital residence. The parties will divide the remaining equity 50/50.

The Court finds Wife communicated to Husband she would not wire the funds to close the sale if he did not sign a letter agreement, agreeing she would receive \$75,000 from the equity before an equal division, should the parties divorce.

The Court finds that at trial, Wife claimed she did not know she was wiring funds to close the sale. The Court finds Wife s testimony not credible. Wife was at the title company with Husband, then left to go to the bank and wire the funds. A wire transfer form is required to be completed at the bank, which Wife did.

The Court finds that in 2017, Wife added Husband s name to her bank accounts, but then closed the accounts and opened a new account in her name only. It was from this account Wife wired the funds

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to finalize the marital home purchase.

The Court finds that prior to wiring the funds, Wife sent a text message to Husband that she was sending the money, that she would sign a quitclaim deed, and go to heaven to be with [her son]. Yet at trial, Wife maintains she did not wire the funds.

The Court finds Wife asked for a divorce the same day she drafted and signed the letter agreement, and wired funds to the title company to close the transaction. Wife also claims she was shocked a couple of days after she wired the funds to find the funds were actually withdrawn from her bank account. It is difficult to find Wife s testimony credible, and this Court does not.

The Court finds the gift letters at EXHIBIT 18, Bates 486 487 were for: \$3,000 for the escrow deposit; \$4,060 to pay off Husband s car loan, and; \$65,000 towards the purchase price.

TRIAL ISSUES CONTINUED:

3. Wife claims Husband misappropriated \$26,100 of her separate property funds for either his use, or the community s use, and that she is entitled to reimbursement.

Disposition:

Wife did not meet her burden of proof that when she co-mingled her separate property funds, she did not intend a gift to the community.

Wife did not meet her burden of proof that Husband misappropriated Wife s separate property funds for his own use and benefit.

The managing spouse must keep the community and separate property segregated. See *Todkill v Todkill*, 88 Nev. 231, 495 P.2d 629 (1972). If community and separate property becomes intermingled, it is the managing spouse s burden to prove the separate nature of the property so claimed. See *Lucini v Lucini*, 97 Nev. 214, 626 P.2d 270 (1981).

FINDINGS OF FACT:

Prior to the parties marriage on November 25, 2017, Wife gave Husband substantial amounts of cash to deposit into his bank account to draw interest. Husband deposited a total of \$26,100 in cash from Wife into his savings account. Husband established the savings account prior to marriage and had funds in the account of approximately \$13,084 in his Goldman Sachs savings account before he made the deposits. See, Exhibit K.

In September and October 2017, Husband had his wages automatically deposited to the Goldman Sachs savings account. Thereafter, Husband had his wages deposited into One Nevada checking or Bank of America.

Transfers were then made to his Bank of America checking account to pay expenses as needed.

On 11/17/2017 Husband deposited \$15,000 of Wife s separate funds into his separate Bank of America savings account. On 11/21/2017 the funds were transferred to Husband s Goldman Sachs savings account. The Goldman Sachs account was accessible only on-line, so Husband first deposited them into his Bank of America account, then moved them to the Goldman Sachs account.

Husband similarly deposited Wife s separate funds (\$10,900 and \$3,000) to his One Nevada account,

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then transferred them to his Goldman Sachs savings account. See, Exhibit 18.

Separate property placed into joint tenancy is presumed to be a gift of a half interest to the other party, unless the presumption is overcome by clear and convincing evidence. The opinion of either spouse is of no weight; the party who wishes to overcome the presumption must do so by presenting substantial evidence of conduct, expressions or intent at the time of taking or during the holding of the property See Schmanski v Schmanski, 115 Nev. 247, 984 P.2d 752 (1999);Graham v. Graham, 104 Nev. 473, 760 P.2d 772 (1988)

Wife did not meet her burden of proof in this regard.

Wife agreed to co-mingle her funds with Husband s funds already in the account, and to use the combined funds for their use and benefit. It was the parties intent to co-mingle these funds as joint savings, to be maintained as a community asset.

The parties used Husband s American Express card for multiple purchases and entertainment expenses. Husband then paid his credit card from the co-mingled funds. Husband did not commit waste or misappropriate the funds for his own benefit. The charges to his credit card were community in nature.

NRS 123.170, either spouse may, without the consent of the other spouse, convey, charge, encumber or otherwise in any manner dispose of his or her separate property. All property of a spouse owned by him or her prior to marriage is his or her separate property. NRS 123.130.

TRIAL ISSUES CONTINUED:

4. Fraud:

a. Wife claims Husband committed fraud in placing the marital home in his name alone at the time of purchase.

Disposition:

Wife did not meet her burden of proof of fraud by clear and convincing evidence. To demonstrate fraud, Wife must demonstrate that Husband made a false representation or misrepresentations as to a past or existing fact; with knowledge or belief by Husband that representation is false or that Husband lacked a sufficient basis of information to make the representation; Husband intended to induce Wife to act in reliance on the representation; justifiable reliance upon the representation by Wife; causation and damages to Wife as a result of relying on misrepresentation; and all must be proved by clear and convincing evidence and be led with specificity. See J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc., 120 Nev. 277, 290 91, 89 P.3d 1009, 1018 (2004).

FINDINGS OF FACT:

Husband did not commit fraud upon Wife when he purchased the marital home in his name alone. The Grant, Bargain and Sale deed Wife signed at the closing transaction was required by lender in order to vest title in Husband s name. Wife claims she did not sign the deed, but her testimony is not credible. Wife signed the deed before a notary. Wife has since sued the notary and the realtor who sold the parties the home. See, Exhibit Q the Grant, Bargain and Sale Deed.

It was the parties intent to vest title in both names after the transaction closed, because, as between

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these parties, the marital home would be a community asset. Husband never intended to exclude Wife from ownership in the home. He always considered it their home.

The title was never changed, because by the time the transaction closed, serious marital discord existed in large part due to the Wife s distrust over how the transaction was conducted, although there was nothing illicit or fraudulent that occurred in the transaction. The terms of the transaction were not dictated by Husband, but by the lender and title company. Still Wife placed blame on Husband and the realtor.

Husband made no material misrepresentations to Wife to obtain her signature on the deed. The lender required the deed in order to keep title to the property clear and avoid any community property or spousal claim of interest. However, as between the parties, they agreed it was community property. The single fact of Husband not executing a deed to convey a community property interest to Wife was not fraud. Husband always acknowledged Wife owned an equal interest in the home. Unfortunately, marital discord resulted at the same time the purchase was occurring, so title never transferred. Still, Wife s interest remains a community property, equal interest (with the exception of the contracted separate property interest of \$75,000 to be reimbursed to Wife).

TRIAL ISSUES CONTINUED:

5. \$1,300 garnished from parties 2017 joint federal tax return to pay Husband s past-due child support obligation.

Disposition and Findings of Fact:

Wife did not agree to pay Husband s pre-marital child support obligation from the community funds they were to receive through a tax refund. Husband owes Wife reimbursement for one-half of the funds taken.

TRIAL ISSUES CONTINUED:

6. Wife s medical expenses incurred due to Husband removing her from insurance;

Disposition and Findings of Fact:

Wife provided insufficient evidence at trial of these expenses, so this claim must be denied for failure to meet her burden of proof.

TRIAL ISSUES CONTINUED:

7. Damages Husband caused to Wife s personal property when he removed his items from storage;

Wife provided insufficient evidence at trial of these expenses, so this claim must be denied for failure to meet her burden of proof.

TRIAL ISSUES CONTINUED:

8. Damages Husband caused to Marital Residence when he re-painted.

Disposition:

Wife provided insufficient evidence at trial of these expenses, so this claim must be denied for failure to meet her burden of proof.

9. Both parties requested attorney s fees and costs from the other.

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Disposition and findings of fact:

Each party may file a Motion for Attorney s Fees and Costs within 30 days of this decision and the Court will determine the matter on the papers, in chambers.

The marital residence shall be listed for sale with a realtor selected according to this process: Wife shall select 3 names of realtors within 10 days and provide them to Husband; Husband shall have 10 days to select one realtor from the list. The parties shall sign a listing agreement with the realtor within 10 days of selection. Both parties must approve of any contract to sell. The Court will maintain jurisdiction over all matters regarding property to settle disputes.

Wife shall continue to have exclusive possession of the marital residence and shall be solely responsible for the mortgage, HOA, utilities and expenses associated with the marital residence. From escrow at the time of sale, Wife shall receive from the net sale proceeds the contracted amount of \$75,000.00, then the remaining equity shall be disbursed from escrow 50/50.

TRIAL ISSUES CONTINUED:

10. Pre-marital debts:

A. Wife incurred a fee to break her lease agreement for an apartment she rented prior to marriage. Wife shall be solely responsible for this obligation for breaking her lease agreement. This is a sole and separate debt.

B. Wife under-reported her income which resulted in an IRS tax obligation for Wife in 2017. Wife shall be solely responsible for this obligation. This is a sole and separate debt.

11. Personal property:

A. An A/B list shall be drafted by Husband, within 10 days. Wife shall have 10 days to choose A or B, as a division of the parties personal property acquired during the marriage.

12. Sole and Separate personal property:

A. Each party shall retain his and her personal property acquired prior to marriage.

All property of a spouse owned by him or her prior to marriage is his or her separate property. NRS 123.130.

13. Reimbursement Husband requested:

A. Husband requested reimbursement from Wife for mortgage payments, HOA fees, and trash fees Husband paid for the marital residence while Wife lived there exclusively. Wife shall be solely responsible for the expenses for the marital residence while she lived there exclusively. At the October 19, 2018, the Court granted Wife exclusive possession of the marital residence and ordered Plaintiff to pay the mortgage and all utilities (current). Husband was ordered to pay any past-due utilities. Wife shall reimburse Husband all mortgage payments, HOA fees, and utilities he paid after October 2018. Husband shall be reimbursed from Wife s share of the equity proceeds of sale of the marital residence (after her \$75,000).

14. Husband requested reimbursement from Wife for charges to his Bank of America card for her non-profit Aiden s Army. Wife did not spend these funds for the community, but made a contribution to her separate property foundation, for which she should reimburse Husband.

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Husband shall be reimbursed in the same manner as in #1 above.

Consequently, Wife's Motion for Summary Judgment is denied as there were material questions of fact at issue.

The parties are restored to the status of single, unmarried persons. Wife may have her former name restored to her.

Neither party is entitled to receive, nor shall receive, alimony from the other. Neither party put on evidence of financial need, nor requested alimony.

Counsel for Plaintiff shall prepare a final Decree of Divorce with findings of fact and conclusions of law consistent with this journal entry. A status hearing in chambers is set for June 24, 2020 for submission of the final Decree.

Clerk's note, a copy, of today's minute order was emailed, to counsel, at the e-mail addresses, on file.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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