

Circuit Court for Prince George's County
Case No. CAD14-07738

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1261

September Term, 2016

LAWRENCE PHILIP CHAPPELL

v.

LINDA CHAPPELL

Eyler, Deborah S.,
Arthur,
Shaw Geter,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: February 22, 2018

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

The Circuit Court for Prince George’s County granted a Judgment of Absolute Divorce to Lawrence “Phil” Chappell, the appellant, and Linda Chappell, the appellee.¹

Phil presents four questions for review, which we have rephrased:

- I. Did the trial court err by finding that Superior Tire, Inc. was marital property?
- II. Did the trial court err by finding that Superior Tire, Inc. produced between \$400,000 and \$500,000 in income annually?
- III. Did the trial court apply an incorrect legal standard in granting a monetary award to Linda, thereby abusing its discretion?
- IV. Did the trial court abuse its discretion by granting him only 25% of Linda’s pension?

For the reasons to follow, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

Linda and Phil were married in 1984. They had one child (who was emancipated by the time of the divorce proceeding). During the marriage, they purchased the marital home in Clinton and an unimproved tract of land in Dunkirk. They also purchased many vehicles, including cars, trucks, motorcycles, trailers, and a boat.

Linda works as a budget analyst for the United States Government. She has been a federal employee since 1982. In 2015, her annual income was \$139,523. She participates in the Civil Service Retirement System (“Pension”) and in the Thrift Savings Plan. She also has a Roth IRA.

¹ We shall use the parties’ first names for ease of discussion.

When the parties married, Phil was employed by Superior Tire Co., Inc. (“ST”), a company owned and operated by his father. As the name suggests, the company sold tires. A few months after getting married, Phil left ST and purchased a Texaco gas station, which he operated as a sole proprietorship. In 1994, after becoming embroiled in litigation with Texaco, he sold the gas station. He used that money to open Phil’s Custom Works (“PCW”), a business specializing in vehicle repair and exhaust work. Also in 1994, Phil’s father gave Phil all the shares of stock in ST as a gift. For two years thereafter, Phil’s father continued to operate ST and Phil operated PCW. Phil’s father then retired and Phil took over the operation of ST.

Although Phil testified that he “clos[ed] up” PCW when he took over operating ST, there was considerable evidence from Linda *and* from Phil that that is not what happened. Phil acknowledged that he continued to do business as PCW, including up to the time of trial, because ST stopped selling tires. According to Linda, Phil “moved [PCW] underneath [ST], a branch under [ST] so he didn’t have to pay that separate corporation.” He then put the money he earned from PCW into ST. All the equipment of PCW went into ST, and he kept a sign and business cards with the name PCW.

Phil testified that “I do business under Phil’s Custom Works because Superior Tire no longer sells tires[,]” that he does business as ST “trading as Phil’s Custom Works,” and that he does not file corporate tax returns for PCW. The work he does as ST is all “exhaust work on automobiles and whatever else comes in.” He has business accounts for ST but not for PCW. However, the credit card machine for ST is registered “under

Phil's Custom Works credit card machine account" and the receipts from PCW paid by credit card are put into ST's business account. In his proposed findings of fact submitted to the court post-trial, Phil referred to ST as "Superior Tire Incorporated (d/b/a Phil's Custom Works)" and in a footnote stated that he "informally changed the name of the company because his business no longer involves tires."

Phil never brought home a significant salary. He testified that his paycheck "used to be about \$1,800 a month net and then it progressively got a little bit more as time went on[,] . . . to . . . \$2,500." He has multiple retirement accounts and annuities.

Linda handled the family's accounts. She deposited her entire paycheck into the couple's joint savings account and deposited Phil's entire paycheck into their joint checking account. She used funds in the savings account to make payments on the parties' mortgage, line of credit, property taxes, and homeowners insurance. She used funds in the checking account for spending money and to pay other bills. Money from ST's business accounts was used to pay personal and family expenses, including motorcycles (a 2008 Harley Davidson Streetglide and a 2009 Harley Davidson Rocker), a 1998 Ford Mustang, a 2006 Dodge Magnum, and trailers. Phil also used money from ST's business accounts to pay for his hobbies (paintballing and racing) and the family's cell phone bills. In addition, he used ST money to purchase a tract of land in Upper Marlboro ("Upper Marlboro lot").

Linda testified that to avoid paying income tax Phil took a small salary from his businesses and then used money from ST accounts for personal and family expenses.

When asked why she believed motorcycles purchased by ST were marital property, she explained:

Phil always brought home a small check so he didn't have to pay Uncle Sam and he always said that the S[T] was our business, it was our work, it was the same hand. And by doing it [purchasing the Streetglide Motorcycle] through the business . . . it was a write-off. He didn't have to pay taxes for it. If he had been bringing home bigger, larger checks then we would have been able to afford things like this.

Phil did not dispute that he purposely brought home a diminished salary:

Q So would it be safe to say that when you add the personal expenses from the business account to what you're claiming your income is for federal income tax purposes, it's really more than the [amount of income you claimed?]

A Yes.

In fact, Phil admitted that the ST accounts were used for his and his family's personal expenses:

Q So, through the S[T] account, you're paying family bills and your own personal expenses too?

A Yes.

Throughout their marriage, Linda and Phil had disagreements over finances. Linda thought Phil spent too much money on his hobbies and placed his interest in those hobbies before their marriage. Phil thought nothing he did could ever satisfy Linda.

In 2013, Linda and Phil separated.² In 2014, Linda filed a Complaint for Absolute Divorce and Phil filed a Counter-Complaint. Neither party sought alimony but both requested a monetary award.

The parties disagreed about whether the following property was marital or non-marital: ST, the Upper Marlboro lot, Morgan Stanley accounts titled in ST's name, the BB&T account titled in ST's name, the BB&T account titled in Custom Worx LLC's name, the 2008 Harley Davidson Streetglide, the 2009 Harley Davidson Rocker, the 1998 Ford Mustang, the 2006 Dodge Magnum, a motorcycle trailer, and a car trailer. Phil argued that the aforementioned property was non-marital because it was purchased by/belonged to ST and ST had been given to him by his father. Linda agreed that ST was initially a gift to Phil but argued that it had become marital property because Phil commingled ST's assets with marital assets.

Following a merits hearing, the trial court issued an Opinion and Order granting the Judgment of Absolute Divorce. It found that ST and assets purchased by ST were marital property. It explained that ST was acquired during the marriage, but Phil maintained that it was a gift to him and therefore it and its assets were not marital property. The court agreed with Linda, however, that ST and property it purchased became marital property because Phil commingled ST's assets with marital assets. The

² Over a year later, Phil formed "Custom Worx LLC." Apparently, by the time of trial, no work had been performed by that entity. Nevertheless, Phil transferred money from an ST business account to a business account he opened for Custom Worx.

court determined that the commingling occurred in two ways: by Phil depositing the income he generated from PCW into ST's accounts and by Phil using ST's accounts to pay personal and marital expenses, instead of paying himself a higher salary with which to pay those expenses, in order to avoid paying income tax. In addition, the court found "all property which was purchased with funds from the S[T] . . . business accounts . . . also [was] marital property," including a number of motor vehicles.³ The court also found that the BB&T account belonging to Custom Worx LLC was marital property because the money in it came from ST.

After determining which property was marital, the court valued it. It found that the jointly titled marital property was valued at \$579,318; the marital property titled in Linda's name was valued at \$337,152; and marital property titled in Phil's, ST's, and Custom Worx LLC's name was valued at \$715,596. The latter valuation excluded the value of ST because "neither party . . . presented evidence of the value of the S[T] business itself." On the basis of the evidence before the court, therefore, ST's value was zero.

Next, the court considered the factors in Md. Code (1984, 2012 Repl. Vol.), section 8-205(b) of the Family Law Article ("FL"), in assessing whether to grant a monetary award. It decided to grant Linda a monetary award of \$200,000, to balance the

³ These vehicles are the 2008 Harley Davidson Streetglide, the 2009 Harley Davidson Rocker, the 1998 Ford Mustang, the 2006 Dodge Magnum, a motorcycle trailer, and a car trailer.

equities between the parties. It “allow[ed] [Phil] to keep S[T].” Finally, the court determined that Phil was “entitled to twenty five percent of [Linda]’s retirement, if as and when, in accordance with the *Bangs* Formula[.]”

Phil filed a timely notice of appeal.

STANDARD OF REVIEW

Whether property is marital or non-marital is a question of fact. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229 (2000). So too is the valuation of marital property. *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008). We review the trial court’s factual findings for clear error, *see* Md. Rule 8-131(c), meaning that we will not disturb a factual finding that is supported by competent and material evidence. *Innerbichler*, 132 Md. App. at 230. “[T]he ultimate decision regarding whether to grant a monetary award, and the amount of such an award, is subject to review for abuse of discretion.” *Flanagan*, 181 Md. App. at 521 (citing *Alston v. Alston*, 331 Md. 496, 504 (1993)). Although this standard of review is largely deferential, we note that the trial court abuses its discretion when it applies the incorrect legal standard. *Id.* at 522.

DISCUSSION

I.

Phil contends the trial court erred by finding that ST, ST’s accounts, Custom Worx LLC’s account, and vehicles and land purchased by ST were marital property.

Generally, marital property is “property, however titled, acquired by 1 or both parties during the marriage.” FL § 8-201(e)(1). Certain property is excluded from that

definition: property acquired before the marriage, property acquired by inheritance or gift from a third party, property excluded by valid agreement, and property directly traceable to the aforementioned sources. FL § 8-201(e)(3). Non-marital property can become marital, however. *Innerbichler*, 132 Md. App. at 227 (citing *Brodak v. Brodak*, 294 Md. 10, 26–27 (1982)). In addition, property can be partly marital and partly non-marital. *See Harper v. Harper*, 294 Md. 54, 81 (1982).

“[T]he party who asserts a marital interest in property bears the burden of producing evidence as to the identity of the property.” *Innerbichler*, 132 Md. App. at 227 (citing *Noffsinger v. Noffsinger*, 95 Md. App. 265, 281 (1993)). After property has been identified, the party who seeks to demonstrate that property acquired during the marriage is non-marital bears the burden of directly tracing the property to a non-marital source. *Noffsinger*, 95 Md. App. at 282 (“When attempting to demonstrate that property acquired during the marriage is non[-]marital, the party . . . must directly trace the property to a non[-]marital source.”).

There is no dispute in this case that ST originally was non-marital property because Phil received all the stock in ST as a gift from his father. Phil challenges the circuit court’s finding that ST transformed into marital property. Specifically, he argues that the court erroneously used the “‘commingling’ test” instead of “‘apply[ing] the ‘source of funds theory.’”

Commingling occurs when a spouse combines non-marital property with marital property. This could occur, for example, if a spouse places money he obtained by

inheritance, which is non-marital property, into a bank account that contains money from a paycheck he earned during his marriage, which is marital property. Commingling non-marital and marital property does not *necessarily* transform non-marital property into marital property. See *Dave v. Steinmuller*, 157 Md. App. 653, 671 (2004) (“[E]ven if a spouse commingles funds, the character of the non[-]marital property may be preserved if its origins can be traced to non[-]marital property.”). Rather, non-marital property becomes marital if the two are commingled “to the point that direct tracing is impossible[.]” *Melrod v. Melrod*, 83 Md. App. 180, 188 (1990).

The source of funds theory is used to determine what portion of a particular item of property is non-marital and what portion is marital when property was “acquired by an expenditure of both non[-]marital and marital property.” *Dave*, 157 Md. App. at 663 (quoting *Pope v. Pope*, 322 Md. 277, 281 (1991)); see also *Grant v. Zich*, 300 Md. 256, 276 n.9 (1984). For the source of funds theory to apply, some of the property or funds used to purchase the property at issue must be directly traceable to a non-marital source. This Court has held that property purchased with funds that were partly marital and non-marital would not itself be partly marital and non-marital when the funds used to purchase were commingled to the extent that direct tracing was impossible. *Melrod*, 83 Md. App. at 186–187. In so doing, we explained that “[d]irectly traceable’ [as set forth in FL § 8-201(e)(3)(iv)] is not synonymous with ‘attributable,’” dismissing the theory “that any expenditure out of the commingled funds . . . should be construed as an

expenditure of both marital and non-marital money in the same proportion that the marital and non-marital income bore to [the couple's] total income.” *Id.*

In this case, the source of funds theory had no application once the court found that ST and its accounts had been commingled with marital property to the point that they no longer could be directly traced back to the non-marital gift. We hold that there was sufficient evidence to support the court's finding.

The evidence concerning PCW and ST was sufficient in and of itself to support the trial court's finding that ST's account had been commingled with marital property to the point that ST, its assets, and any property ST had purchased were marital property. As a business formed and operated during the marriage, PCW was marital property. That was not in dispute. The evidence favorable to the verdict showed that once Phil took over the operation of ST, he changed its business purpose from selling tires to performing exhaust and related automotive work—the same business purpose as PCW. He continued PCW's operation, simply marketing it as PCW trading as ST, and deposited PCW's receipts into ST's accounts. This had been Phil's mode of operation for PCW and ST for almost 20 years as of the time of trial, from 1996 to 2015. As the trial court correctly noted, it was Phil's burden to trace ST's accounts and assets to non-marital sources; and his only evidence on that score—that his father had gifted ST's stock to him in 1994—did not address the commingling of PCW's income with ST's accounts from 1996 forward. The trial court did not err in finding that ST's accounts were sufficiently commingled with the

income generated by PCW to make ST, its assets, and its purchased property marital property.

II.

Phil contends the trial court erred by finding that ST's yearly earnings were between \$400,000 and \$500,000. He asserts that ST's tax returns, which were admitted at trial, showed that it had not generated gross income of more than \$100,000 in any year.

Contrary to Phil's view on the matter, we believe that the trial court's finding was based on ST's yearly retained earnings, not ST's yearly gross income. Our independent review of the record indicates that in the tax years 2011 and 2012 ST had retained earnings exceeding \$500,000. In any event, even if there was an error in the court's finding, it was not prejudicial to Phil. The court found that neither party submitted evidence sufficient to place a value on ST as a business entity, and therefore the value of ST—a marital asset titled to Phil— was not considered by the court in deciding whether to grant a monetary award to adjust the equities. Post-divorce, ST remained with Phil, whatever its value. Linda's monetary award roughly equalized the value of the marital property with no value ascribed to ST. That was to Phil's financial advantage.

III.

Relying on *Hoffman v. Hoffman*, 93 Md. App. 704 (1992), Phil contends the trial court erred in classifying ST as marital property and therefore in granting the monetary award it did. This argument is the same as his first argument, which we have rejected, and *Hoffman* does not lend support in any event. In that case, we held that property that

is non-marital does not become marital merely because it is titled in the names of both spouses. The trial court here did not rule that ST became marital property because of retitling. Rather, it ruled that it became marital property due to commingling, a finding that was supported by the evidence, for the reasons we have explained.

IV.

Finally, Phil contends the trial court erred by awarding him only 25% of Linda's Pension, if, as, and when it becomes available, under *Bangs v. Bangs*, 59 Md. App. 350 (1984).

Although it is difficult to discern from Phil's brief, it appears that he is arguing that the trial court must have decided not to use the *Bangs* formula, increasing the number of years worked by Linda (to include pre- and post-marriage) from which he would receive a portion of her Pension and thereby justifying an award of one-fourth of the Pension rather than one-half. He fails to take into account that the court expressly referenced the *Bangs* formula and that the case law is clear that marital assets need not be equally divided. Rather, they are to be equitably distributed. See *Innerbichler v. Innerbichler*, 132 Md. App. at 236–37. We see no error or abuse of discretion in the court's decision to award Phil one-fourth of the marital share of Linda's Pension. The court reasonably took into account that Phil would be receiving income from ST, a marital asset, post-divorce, and therefore his need to share in Linda's Pension would be diminished.

Phil argues that “[n]otwithstanding the court’s reference to the *Bangs* formula, the court failed to apply the *Bangs* formula, but instead stated that the Husband would receive 25% of the C[ivil Service Retirement System] pension.” Phil misstates the court’s order. The trial court “determine[d] it is fair and equitable that [Phil] be awarded twenty five percent (25%) of [Linda]’s pension, if as and when, in accordance with the *Bangs* formula.” This means that the court awarded Phil 25% of the *marital portion* of Linda’s Pension. It was within the court’s discretion to divide marital property in the percentage it deemed equitable, and the court did not abuse its discretion in doing so.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**