THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Family Court

Robert E. Guess, Family Court Judge

Case No. 2011-DR-46-1905

Op. No. 5450 (Shearouse Adv. Sh. No. 42 at 47)

Tzvetelina Miteva, ... Petitioner,

v.

Nicholas Robinson, ... Respondent.

PETITION FOR WRIT OF CERTIORARI

John S. Nichols
SC Bar No. 4210
Bluestein Nichols Thompson & Delgado, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
jsnichols@bntdlaw.com

Attorney for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

INTRODUCTION

This is a domestic relations case. Pursuant to Rules 240 and 242, SCACR, Tzvetelina Miteva (Wife) petitions this Court to issue a Writ of Certiorari to review the Court of Appeals' decision in *Miteva v. Robinson*, 418 S.C. 447, 792 S.E.2d 920 (Ct. App. 2016), which affirmed as modified the decision of the family court.

CERTIFICATE OF COUNSEL

Pursuant to Rule 242(d)(1), SCACR, Counsel for Petitioners certifies that a Petition for Rehearing was made to the Court of Appeals on December 12, 2016 (App. pp. 15-26) and denied by the Court of Appeals on January 20, 2017. (App. p. 27).

QUESTIONS PRESENTED

I. Did the Court of Appeals Err in Affirming the Family Court's Order Denying Wife a Divorce on the Ground of Habitual Drunkenness?

   A. Wife Proved Husband's Habitual Drunkenness Contributed to the Breakup of the Marriage and Impacted the Parties' Economic Circumstances

   B. Failure to Grant the Divorce on this Ground Did, in Fact, Prejudice Wife

II. Did the Court of Appeals Err in Affirming the Family Court's Order of Equitable Apportionment?

   A. The Family Court Committed Numerous Errors in Identifying the Marital Estate

   B. The Family Court Committed Error in the Apportionment of the Marital Estate 50-50

   C. The Family Court Erroneously Found Wife Committed Marital Misconduct That Impacted the Parties' Economic Circumstances

III. Did the Court of Appeals Err in Failing to Reverse Fully the Family Court's Order Requiring Wife to Pay a Portion of Husband's Attorneys' Fees and Costs?

   A. Under the Facts of the Case Each Party Should Bear His or Her Own Fees

   B. This Issue Is Related to Other Issues in the Appeal

STATEMENT OF THE CASE

This is a domestic relations case involving a marriage of very short duration (3 years and 9 months). The parties were married on November 25, 2007 and on August 30, 2011, Wife filed an action for divorce. Husband filed his response.

Following discovery the matter was tried to the family court on May 8 and May 9, 2013. On September 12, 2013, the family court entered an order granting the divorce and equitably apportioning the marital estate.

Wife filed a motion for reconsideration which the family court denied. Wife appealed and, following oral arguments, the Court of Appeals affirmed as modified, reducing the amount Wife had to contribute towards Husband's attorney's fees but otherwise affirming.

Wife filed a petition for rehearing which the Court of Appeals denied. This Petition follows.

ARGUMENTS

I. Denial of Divorce for Husband's Habitual Drunkenness

In agreeing with the family court that Wife failed to prove Husband's habitual drunkenness, the Court of Appeals stated "[b]ecause the parties presented conflicting evidence about the nature of Husband's drinking, we find the family court was in the best position to determine the credibility of the witnesses." 418 S.C. at ___, 792 S.E.2d at 924. In deferring to the family court, the Court of Appeals focused on the testimony by Mr. Pierman, Husband's appearance displaying "self-control," and the lack of any reference to alcohol in the police reports. In upholding the family court's decision, the Court of Appeals overlooked or misapprehended the preponderance of the evidence in the record, Wife's arguments on this point, and the applicable law.

To prove habitual drunkenness, there must be a showing that the abuse of alcohol caused the breakdown of the marriage and that such abuse existed at or near the time of filing for divorce. *Epperly v. Epperly*, 312 S.C. 411, 440 S.E.2d 884 (1994). "Habitual drunkenness" is the fixed habit of frequently getting drunk; it does not necessarily imply continual drunkenness. *Rooney v. Rooney*, 242 S.C. 503, 505, 131 S.E.2d 618, 619 (1963). Based on this definition, one need not be an alcoholic to be guilty of habitual drunkenness; it is sufficient if the use or abuse of alcohol causes the breakdown of normal marital relations. *Curry v. Curry*, 402 S.C. 488, 741 S.E.2d 558 (Ct. App. 2013); *Lee v. Lee*, 282 S.C. 76, 316 S.E.2d 435 (Ct. App. 1984).

All of the evidence on this point established that Husband drank frequently, even daily, at or near the time Wife filed for divorce. Even Husband's own witnesses testified that they saw Husband drink frequently, although they claimed that they *never* saw him "drunk." The witness who tipped the scale in the eyes of the family court (and apparently the Court of Appeals) was Mr. Pierman (R. p. 12), but Mr. Pierman saw Husband *at most* once per year at the time the parties were married and had not been to their home at or near the time of filing. (R. p. 164, ll. 19 - p. 165, l. 3; p. 170, ll. 19-21). Husband's ex-wife, Nasrin Robinson, had been to the parties' home, but the duration was at most a total of 10 hours spread out over a 5-year period. (R. p. 153, l. 24 - p. 154, l. 2). As for the two police reports, the record demonstrated that Husband hid in the basement and refused to talk to the police because he was afraid he would be arrested. (R. p. 61, l. 20 - p. 62, l. 10; p. 94, l. 21- p. 95, l. 2; p. 95, ll. 13-15; p. 96, l. 19 - p. 97, l. 1; S. R. p. 1).

Husband's habitual drunkenness and his behavior that resulted "at or near the time of the divorce" caused the breakdown of the marriage. The overwhelming evidence, far beyond the preponderance of the evidence, demonstrated his daily use of alcohol, often to excess, impacted his employability and his participation in the home flipping enterprise.

The Court of Appeals also stated "Wife admitted that, on April 30, 2009, she wrote a note indicating if something happened to her, she would like her daughter to stay with Husband." 418 S.C. at ___, 792 S.E.2d at 923. Like the family court, the Court of Appeals overlooked that Wife made that statement in 2009—nearly *two years* prior to the separation. By the time she left the home in 2011, however, "life was unbearable." (R. p.

60, ll. 1-3). Wife testified Husband's alcohol consumption got worse during the marriage and Husband's consumption of alcohol and abuse of prescription drugs resulted in the termination of the marriage. (R. p. 66, l. 12-25).

The Court of Appeals also concluded "Wife suffered no prejudice by the family court's ruling" since "granting of a divorce to Wife on the ground of habitual drunkenness would not have dissolved the marriage any more completely...." 418 S.C. at ___, 792 S.E.2d at 924. The Court of Appeals overlooked that the family court granted the divorce on the no-fault ground of one-year separation while habitual drunkenness is a fault-based ground, and Husband's fault impacted the parties' economic circumstances so as to be relevant in apportionment of the marital estate. *See* S.C. Code Ann. § 20-3-620(B) (2) (2014) (the family court "must give weight in such proportion as it finds appropriate to...marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce as such, if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage"). Therefore, although it is true that Wife would not be divorced "more completely," it is *not* true that she suffered no prejudice from the family court's rejection of her evidence of Husband's habitual drunkenness.

The Court of Appeals erroneously relied upon *Mick-Skaggs v. Skaggs*, 411 S.C. 94, 766 S.E.2d 870 (Ct. App. 2014) as further supporting its ruling that this issue does not matter. 418 S.C. at ___, 792 S.E.2d at 924. The Court overlooked that in *Mick-Skaggs*, both parties committed adultery so there was no evidence Husband's adultery caused the

breakup of the marriage. Although the Court in *Mick-Skaggs* noted its *de novo* review, the Court deferred to the family court "under the circumstances." *Id.* at 101, 766 S.E.2d at 874.

II. Identification of Marital Estate

The Court of Appeals affirmed the family court's identification of the marital estate, rejecting Wife's contentions that mobile homes Husband owned had been transmuted and that the Ferguson Meadow and Montibello Drive properties were not marital. In so ruling, the Court of Appeals overlooked or misapprehended several arguments Wife made in support of her positions.

A. The Mobile Homes

In rejecting Wife's argument these properties were transmuted, the Court of Appeals concluded "Wife did not present *any* evidence specifically proving she paid off Husband's credit card debt associated with the mobile homes and did not prove the parties regarded the mobile homes as common properties of the marriage." 418 S.C. at ___, 792 S.E.2d at 925 (emphasis added). In so holding the Court of Appeals overlooked the evidence Wife did, in fact, present on this point.

Wife testified that at the time of the marriage Husband owned these mobile homes titled solely in his name. (R. p. 76, ll. 4-8). There were no mortgages on the properties. (R. p. 76, ll. 9-10). Husband told her he purchased the mobile homes with credit cards, and he brought this credit card debt into the marriage. (R. p. 76, ll. 11-17; p. 117, l. 16 - p.

118, l. 8). Wife listed the properties at their tax value. (R. p. 76, ll. 18-20). Wife provided Husband with the funds to pay the credit cards and to pay for repairs to the properties. (R. p. 76, ll. 21-24; p. 77, ll. 15-19; S. R. p. 25). Wife acknowledged that some of the checks predated their marriage. (R. p. 77, ll. 6-14). Some of the checks were for Husband to repay his debt, including obligations from his previous separation agreement. (R. p. 77, ll. 17-24). After they married the amount was about $30,000. (R. p. 77, l. 25 - p. 78, l. 2).

Wife testified the four mobile homes were marital property. (R. p. 79, ll. 19-21; p. 91, ll. 6-8). Wife primarily satisfied the debt on the properties. (R. p. 79, ll. 22-24). Husband was not working during this time. (R. p. 79, l. 25 - p. 80, l. 2). Wife was the sole source of income for the house. (R. p. 80, ll. 3-4).

Contrary to the Court of Appeals' opinion, this testimony was *some* evidence that Wife paid off the credit card debt associated with the mobile homes.

The Court of Appeals also failed to consider that Husband admitted the *only* property he listed on his financial declaration as non-marital was the Messina Road property. (R. p. 253, l. 10 - p. 255, l. 17; p. 259, ll. 21-23). He did not list the mobile homes. (R. p. 255, ll. 6-7; p. 282, l. 3 - p. 283, l. 20; S. R. p. 306). This is also *some* evidence that Husband did not view the mobile homes as his separate property, which would support Wife's claim that the property was transmuted.

B. Ferguson Meadow and Montibello Drive

The Court of Appeals agreed with the family court that the Montibello Drive property was marital property and the Ferguson Meadow property was transmuted into marital property. 418 S.C. at ___, 792 S.E.2d at 925-926. In so ruling, the Court misapprehended or overlooked several points.

(1) Ferguson Meadow

The family court held that 3222 Ferguson Meadow was transmuted into marital property even though it was purchased with non-marital funds. (R. pp. 16-17, ¶ I(1)). The court stated the property was transmuted "when it was purchased," apparently a reference to the fact that both parties' names were on the settlement statement. (S.R. p. 36). Both Wife and Mr. Brice explained why that was done, and that Husband merely acted for Wife at the foreclosure sales.

Wife paid cash for property at Ferguson Meadows in 2009 that "was solely to be for [A], her daughter." (R. p. 86, ll. 3-11; S. R. p. 36). The funds for the purchase came from Bulgaria. (R. p. 86, ll. 16-18; p. 129, ll. 18-23). The settlement statement listed the buyers as both Husband and Wife. (R. p. 115, ll. 6-11; S. R. p. 121). The agreement to purchase lists only the seller, Dion Evans, and Husband as the buyer. (R. p. 116, ll. 9-14; S. R. p. 127). Husband was listed as the landlord on the residential lease for the property. (R. p. 115, l. 18 - p. 116, l. 1; S. R. p.123).

The evidence does not establish that Wife intended to transmute this property, which all parties agreed was purchased with the funds Wife received from Bulgaria.

(2) Montibello Drive

The family court found 5017 Montibello Drive, which was titled in Wife's name, was marital property. The evidence reveals the proceeds for the funds stemmed from buying and selling but always originated from Wife's Bulgarian money and Wife considered the property to be nonmarital. (R. p. 85, ll. 19-24; p. 91, ll. 13-15). Husband conceded that he did not object when Wife put Montibello and all the other properties in her name only. (R. p. 280, ll. 3-5).

Although there was evidence that $200,000 from the home equity line of credit (HELOC) went to Wife and she stated those funds went into Montibello, the funds were repayment to her for Bulgarian money and Wife's savings that she had given to Husband. (R. p. p. 78, ll. 3-6; p. 79, ll. 10-18; p. 81, ll. 14-16; p. 118, l. 9 - p. 119, l. 21). Wife expected Husband to repay those funds. (R. p. 119, l. 24 - p. 120, l. 2). Husband offered to pay the funds back from accounts he had, and he eventually did pay her back $200,000 from the HELOC. (R. p. 81, l. 17 - p. 82, l. 3; p. 110, ll. 21-25).

Wife considered this to be partial repayment of the money she advanced to him. (R. p. 82, ll. 4-6). Wife was surprised when Husband asked her in 2011 where the $200,000 had gone. (R. p. 111, ll. 1-13). She admitted that he asked in an email and she responded that the money went into Montibello. (R. p. 111, l. 17 - p. 112, l. 2; S. R. p. 113). She estimated the "ballpark" figure to be $200,000 to $300,000. (R. p. 120, ll. 9-17).

The evidence does not establish Wife intended to transmute those funds or the

property purchased with them into marital property, or that she intended for Montibello to be part of the marital estate.

III. Apportionment of Marital Estate

The Court of Appeals held the family court's apportionment of the property of this marriage of short duration was "fair, and it did not abuse its discretion by apportioning 50% of the marital estate to Wife and 50% to Husband." 418 S.C. at ___, 792 S.E.2d at 928. The Court of Appeals held Wife failed to provide satisfactory evidence that she contributed $200,000 of her own funds toward the acquisition of the marital property, and held the funds were "marital" because the Court of Appeals agreed the properties were transmuted.

The Court of Appeals also affirmed the family court's conclusion that Wife was in a better financial position than Husband, describing that finding as a matter of discretion. The Court next affirmed the family court's finding of "marital misconduct" related to the $115,000 investment in the solar panel company. These decisions overlooked or misapprehended several points.

First, Wife outlined the relevant factors under Section 20-3-620, set forth the evidence under each factor and why those factors mitigated in favor of an apportionment favoring her rather than a 50-50 split. (App. pp. 66-79). For example, (a) the marriage was less than 4 years long, (b) the family court erroneously considered Husband's age so as to require Wife to support him, (c) the marital misconduct factor favored Wife given

Husband's drunkenness and the court's erroneous finding against Wife regarding the $115,000, (d) Wife's contention as to error regarding identification of marital property, (e) the flaws in the family court's findings regarding relevant contributions by the parties, (f) the error regarding Husband's higher income over Wife's, that is, not a "wash," (g) the errors regarding the nonmarital property of each party, (h) the error in treating the imbalance in the existence of retirement benefits, (i) the family court's tacit award to Husband of support in the form of higher apportionment due to age differential, (j) the error in the disparity of values of homes awarded each where the family court viewed them as "equal," (k) the family court's erroneous view of the "support obligation" factor, (l) the family court's erroneous identification and treatment of debt, (m) the family court's erroneous view of the custody factor, and (n) the family court's erroneous violation of *Panhorst v. Panhorst*, 301 S.C. 100, 390 S.E.2d 376 (Ct. App. 1990) and *McDavid v. McDavid*, 333 S.C. 490, 496 n. 5, 511 S.E.2d 365, 368 n. 5 (1999) by accounting for a perceived waste of marital funds that no longer existed.

The Court of Appeals also overlooked the errors in the manner in which the family court treated the payments for education of [A] and Husband's children. The family court also erroneously penalized Wife for bringing the funds into the Country the way she did even though there was no evidence of illegality or impropriety.

For the reasons outlined in Wife's briefs and in this Petition, the Court should reverse the 50-50 division and either adjust the division according to its view *sua sponte*, or should remand the matter to the family court for it to reconsider this issue.

IV. Payment of a Portion of Husband's Attorney's Fees

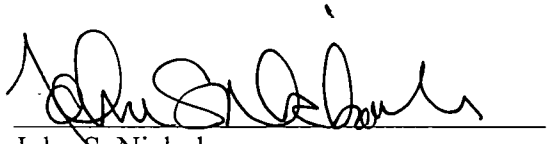
The Court of Appeals agreed with Wife that the family court erroneously ordered her to pay all of Husband's attorney's fees. However, the Court disagreed with Wife that each party should have been required to pay his or her own fees. Instead the Court merely reduced the amount Wife had to pay, even though the Court agreed there was little evidence to support the family court's determination that Wife was not cooperative in discovery.

Wife reiterates her argument that the factors relevant to an award of fees dictated that each party pay his or her own fees. (App. pp. 79-80; p. 25). Furthermore, Wife raises this point in the event this Court agrees that the overall results should be modified. *Srivastava v. Srivastava*, 411 S.C. 481, 499 n. 6, 769 S.E.2d 442, 452 n. 6 (Ct. App. 2014) (attorney fee award reversed where substantive results achieved by counsel reversed on appeal).

CONCLUSION

For the reasons stated the Court should grant this Petition to review the Court of Appeals' decision. The Court should reverse the family court's order and remand the matter for further proceedings consistent with that ruling.

Respectfully submitted,



John S. Nichols
SC Bar No. 4210
Bluestein Nichols
Thompson & Delgado, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
jsnichols@bntdlaw.com

Attorney for Petitioner

February 21, 2017

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Family Court

Robert E. Guess, Family Court Judge

Op. No. 5450 (S.C. Ct. App. filed Nov. 2, 2016)

Tzvetelina Miteva, ... Petitioner,

v.

Nicholas Robinson, ... Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with a copy of the *Petition for Writ of Certiorari* and *Appendix* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

Jennifer M. Creech, Esquire
Law Office of Jennifer M. Creech, LLC
1117 Charlotte Avenue
Rock Hill, SC 29732

Thomas F. McDow, IV, Esquire
Erin K. Urqhart, Esquire
Mcdow & Urquhart, LLC
PO Box 891
Rock Hill, SC 29731-6891

February 21, 2017

Erin Bridges
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC