

**THE STATE OF SOUTH CAROLINA
in The Court of Appeals**

APPEAL FROM RICHLAND COUNTY
In the Family Court

George M. McFaddin, Jr., Family Court Judge

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S.C. SUPREME COURT

Civil Action No. 2014-DR-40-3574

Ivery M. Chestnut, Appellant,

v.

Mashell Chestnut, Respondent.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

1. Wife's seeking part-time employment was not a decision that Husband encouraged and she did not forgo earnings opportunities to support the marriage

Wife argues that her decision to seek part-time employment was an accommodation to the parties and their children and justifies the award of \$750.00 per month in permanent periodic alimony. Wife's initial brief, p. 3.

However the record reflects that Wife's part-time employment was her unilateral decision, that she worked full-time during the marriage, that Husband typically got the children ready for school because she had to be at work at 5:00 a.m. R. 55-56; TT, p. 26, line 25-p. 27, line 11. The record further show that Husband's sister often assisted in the child care. R. 52-53; TT, p. 20, line 1-p. 21, line 9.

Wife was working as a bus driver and bus monitor for Richland School District Two when she met Husband. R. 68; TT, p. 68, lines 9-14. Wife worked part time at times during the marriage because that was what was available. R. 62-63; TT, p. 37, line 22-p. 38, line 8. Husband denied encouraging Wife to remain in part time work. R. 63; TT, p. 38, lines 9-11. Wife claimed she "was, always, looking for full time employment" during the married. R. 74-75; TT, p. 82, line 24-p. 83, line 3. At trial she claimed she continued to look for full time employment. R. 85; TT, p. 112, lines 12-14. She noted her job with the school district was considered "full time." R. 74; TT, p. 82, lines 14-20.

Wife did not forgo income and earning opportunities during the marriage in order to assist the parties and their children. Rather she continued to work at the job she had when the parties met.

2. That Husband owned household furnishings at issue when the parties were engaged is evidence that they were not marital

Wife argues that much of Husband's personal property at issue on appeal was owned by him while the parties were engaged in support of her claim of transmutation. Wife's initial brief, p. 5. That Husband owned this personal property prior to the marriage is evidence against it being marital property.

S.C. Code § 63-3-620(A)(2) holds that property is not marital if it is "property acquired by

either party before the marriage.” That Husband owned this property while the parties were engaged is evidence it was not marital. Wife acknowledged that Husband had “a house full of furniture” when they moved in together prior to the marriage. R. 71; TT, p. 78, lines 2-7. Meanwhile Wife brought nothing but her clothes with her when they began cohabitation because she had just been evicted from her trailer. R. 61; TT, p. 36, lines 10-25.

“The mere use of separate property to support the marriage, without some additional evidence of intent to treat it as property of the marriage, is not sufficient to establish transmutation.” *Taylor-Cracraft v. Cracraft*, 417 S.C. 570, 576, 790 S.E.2d 423, 426 (Ct.App. 2016). Wife cites no evidence in the record demonstrating Husband’s intent to treat this personal property as marital. The family court erred in treating this property as marital. The property was not so commingled to be untraceable as Husband clearly traced this furniture to items he owned prior to the marriage, which Wife does not contest.

“The spouse claiming transmutation must produce objective evidence showing that, during the marriage, the parties themselves regarded the property as the common property of the marriage.” *McMillan v. McMillan*, 417 S.C. 583, 591, 790 S.E.2d 216, 220 (Ct.App. 2016). Wife cites not objective evidence that Husband considered his premarital furniture to be “common property.” The family court erred in holding this property to be transmuted.

3. There is no evidence that Wife contributed to the mortgage on Husband’s premarital home

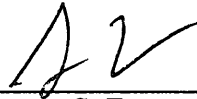
Wife argues that her contribution to household expenses included contributions to the mortgage on Husband’s premarital home. Wife’s initial brief, p. 8. However the testimony she cites never mentions her contributing directly to the mortgage but simply shows her making indirect contributions to household expenses. Wife’s initial brief, p. 8. Given the household of eight people, including three children of the Wife, her contribution to household expenses is not evidence of an intention to make his residence marital property.

CONCLUSION

The family court erred in awarding Wife \$750.00 per month in permanent periodic alimony when she worked part time but was capable of full-time employment, especially when Husband had significant expenses for his adult children. The family court erred in finding household furnishings Husband owned prior to the marriage were transmuted. It erred in finding Husband's premarital home was transmuted and further erred in awarding Wife half the equity in that home. If the family court erred in any of these areas, its award of attorney's fees to Wife should be reversed or remanded.

Respectfully submitted,

April 24, 2017



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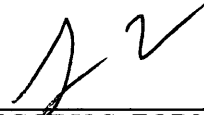
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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



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