

IN THE FIFTH DISTRICT COURT
OF APPEAL OF THE STATE OF
FLORIDA

CASE NO. 84-1213

IN RE: THE MARRIAGE OF
JAMES R. BOGARD,

Appellant,

vs.

JUDITH J. BOGARD,

Appellee.

68,015

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CLERK, DISTRICT COURT
BY Chief Deputy Clerk

REPLY BRIEF OF APPELLANT

FILED
NOV 30 1984
FRANK J. HABERSHAW
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CLERK DISTRICT COURT OF APPEAL
FIFTH DISTRICT

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TABLE OF CITATIONS

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SPECIAL EQUITY IN MARITAL HOME

The appellee in her reply brief attempts to raise a "gift" issue in regards to the marital home. This weak attempt falls short of having any merit because the record does not reveal that the appellee offered any evidence on such an issue nor was the issue raised at the trial court level, a gift is established by proof of intent and not by the record being silence on the subject, Marsh v. Marsh, 419 So.2d 629 (Fla. 1982), and did not file any cross appeal to raise such in these proceeding.

The appellee also made a weak attempt at denying that the appellant contributed additional money to purchase the marital home. According to the appellee no additional money was required when they moved from the first home to the second (marital) home.

(R-52) Direct examination of appellee

Q. You used the money on the second home from where; the sale of the first home?

A. The first home was traded in on the second one.

The above testimony demonstrate the appellee's lack of knowledge regarding the purchase of the martial home. Taking the appellee's testimony (and ignoring the closing statement for the purchase of the marital home), the Mr. Bogard would have a special equity of 12.2%. Computation of this equity is as follows: Cash for first house and lot (\$7,800) divided by purchase price of marital home (32,000) divided by 2 = 12.2%.

The third point the appellee trys to make is that the trial may ignore both the Landay and McClung cases. The Lyons case cited by the appellee does not apply and has nothing to do with the determination of the amount of a special equity.

CONCLUSION

The appellant, Mr. Bogard, is entitled to have his special equity in the marital home determined in accordance with the previous rulings of this Court.

The issues regarding the creation of a present right out of some possible future income and the failure of the lower court to make each party responsible for their fair share of future income taxes are of great concern. The appellee's reply brief is not responsive to these issues as raised in appellant's initial brief and fails to recognize the distinction between a "vested" pension right and a vested property interest. It also does not recognize that the appellant is only attempting to make the appellee responsible for her fair share of income taxes attributable to the future pension income if and when it is received by Mr. Bogard. Otherwise, the appellee would be receiving 50% of the gross of the pension income and Mr. Bogard's 50% share would be correspondingly reduced by the amount of income taxes attributable to the entire pension income.

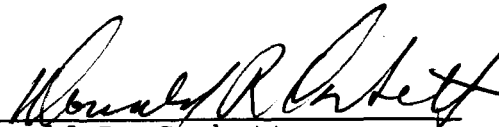
The appellant, Mr. Bogard, asks this Court to find that the trial court erred in failing to follow this Court's rulings in the Landay and McClung cases, erred in finding that future possible income to be a present asset and in its failure to address the tax question.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to FRANK A. TAYLOR, 320 N. Magnolia Ave., Orlando, Florida 32801, on this 29th day of November, 1984.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to DONALD R. CORBETT, P. O. Box 2363, Orlando, Florida 32802 on this the 13 day of November, 1984.



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