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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4178-14T3

RAJAT CHANDA,

Plaintiff-Respondent/
Cross-Appellant,

v.

KRISHNA SEN,

Defendant-Appellant/
Cross-Respondent.

Argued May 31, 2017 – Decided August 31, 2017

Before Judges Ostrer and Moynihan.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Morris County, Docket No. FM-14-1240-10.

Bonnie C. Frost argued the cause for appellant/cross-respondent (Einhorn, Harris, Ascher, Barbarito & Frost, attorneys; Ms. Frost and Jennifer Fortunato, on the briefs).

Marcia Kuttner Werner argued the cause for respondent/cross-appellant.

PER CURIAM

Defendant-wife Krishna Sen appeals and plaintiff-husband Rajat Chanda cross-appeals from their final judgment of divorce.

Both parties challenge the court's equitable distribution decision and its denial of their counsel fee motions. In addition, plaintiff asserts he should have been awarded alimony.

We affirm in part, substantially for the reasons set forth in the trial court's thirty-four-page decision. But we are constrained to remand for the court to evaluate a marital asset it omitted.

I.

Plaintiff filed for divorce in the spring of 2010 after less than eight years of marriage. When they married, plaintiff was sixty-one, and defendant was fifty. They had no children between them, though both had children from prior marriages.

At the start of the marriage, both parties worked full time. However, plaintiff was laid off less than two years later. He tried to find another job for a short time, but ultimately decided to retire. By contrast, defendant worked in the information technology industry throughout the marriage, her income fluctuating between \$62,000 and \$120,000 annually. Most recently, she worked as a contract consultant without health insurance benefits. She had no pension but plaintiff irrevocably named her a contingent beneficiary of his pension.

Although plaintiff did not work, he still provided for the household by using the substantial amount of money he had deposited

in various bank and investment accounts during his career. Disbursements from these accounts and from his social security and pension covered most of the couple's living expenses. They also paid for major renovations to defendant's home, which became the marital residence, and paid down a significant portion of defendant's mortgage debt. Although plaintiff added defendant's name to many of his accounts in 2007, she never contributed her own earnings and rarely withdrew money from the accounts.

By contrast, defendant paid for relatively little of the couple's daily expenses. As a result, she was able to deposit her earnings in accounts in her name only. She contributed to the household in non-pecuniary ways, undertaking most of the household chores.

After a nine-day trial, the court denied plaintiff's request for alimony, denied both parties' motions for counsel fees, and ordered the distribution of marital assets. Thereafter, the court denied defendant's motion for reconsideration, which challenged the distribution to plaintiff of his bank accounts. This appeal followed.

II.

We defer to the trial court's fact findings that are rooted in its familiarity with the case, its opportunity to make credibility judgments based on live testimony and its expertise

in family matters. Cesare v. Cesare, 154 N.J. 394, 411-13 (1998). Trial courts have broad discretion to determine alimony and allocate marital assets subject to equitable distribution. Clark v. Clark, 429 N.J. Super. 61, 71 (App. Div. 2012).

Accordingly, "we will affirm an equitable distribution as long as the trial court could reasonably have reached its result from the evidence presented, and the award is not distorted by legal or factual mistake." La Sala v. La Sala, 335 N.J. Super. 1, 6 (App. Div. 2000), certif. denied, 167 N.J. 630 (2001); see also Perkins v. Perkins, 159 N.J. Super. 243, 247-48 (App. Div. 1978) ("An equitable distribution will be affirmed even if this court would not have made the same division of assets as the trial judge."). We review the trial court's legal conclusions de novo, however. La Sala, supra, 335 N.J. Super. at 6. Additionally, the trial court is obliged to make necessary findings of fact and explain the basis for its conclusions. Strahan v. Strahan, 402 N.J. Super. 298, 310 (App. Div. 2008); R. 1:7-4(a).

On appeal, the parties challenge specific aspects of the court's ordered distribution of assets and its counsel fee decision. Additionally, plaintiff challenges the trial court's denial of his alimony claim. We turn first to the equitable distribution decision.

A.

The parties challenge the court's equitable distribution of their bank accounts. Defendant contends the court erred when it concluded she was not entitled to any money from the accounts to which she was joined in 2007, but plaintiff was entitled to half of her marital earnings that were deposited in her own accounts. Plaintiff argues that the court also failed to account for one of defendant's certificates of deposit. For the reasons set forth below, we are persuaded only by the latter argument.

We begin by reviewing the trial court's findings regarding the accounts at issue.¹ The trial court found that when plaintiff joined defendant to his bank accounts in 2007, they became marital assets subject to an equitable distribution analysis. But, after conducting this analysis, the court concluded that defendant was not entitled to receive a distribution of those assets. Crediting plaintiff's testimony, the court found that he only agreed to join defendant to the accounts "to keep peace" within the home after defendant's consistent badgering. Moreover, the court noted that the accounts functioned as if they were separately held. Defendant "did nothing to add to the value" of the premarital funds that were in the accounts; "[s]he did not control the accounts and

¹ We address only those accounts in dispute noting that the court awarded defendant one hundred percent of various other accounts.

never took a withdrawal herself from any of those accounts"; "[t]here was no expectation that the defendant would ever take over these accounts"; and the parties "attempted to maintain their accounts separately to the extent they could"

By contrast, the court found plaintiff was entitled to a portion of the assets in defendant's accounts. The court highlighted the fact that defendant was able to deposit money she earned during the marriage into these accounts because the couple lived almost entirely off of plaintiff's premarital funds. Accordingly, while defendant was "entitled to keep those premarital accounts to which she did not add money earned while working during the marriage," plaintiff was entitled to fifty percent of the money she had earned during the marriage and deposited in the accounts. Defendant challenges both decisions on appeal.

"[T]he goal of equitable distribution . . . is to effect a fair and just division of marital assets." Steneken v. Steneken, 183 N.J. 290, 299 (2005) (internal quotation marks and citation omitted). As set forth in Rothman v. Rothman, a trial judge's task regarding the equitable distribution of property involves three steps:

[H]e must first decide what specific property of each spouse is eligible for distribution. Secondly, he must determine its value for

purposes of such distribution. Thirdly, he must decide how such allocation can most equitably be made.

[65 N.J. 219, 232 (1974).]

When engaging in step three, the trial court must consider the sixteen statutory factors set forth in N.J.S.A. 2A:34-23.1. Sauro v. Sauro, 425 N.J. Super. 555, 576 (App. Div. 2012), certif. denied, 213 N.J. 389 (2013). And, notably, the sixteenth permits the court to consider "[a]ny other factors which [it] may deem relevant." N.J.S.A. 2A:34-23.1(p). Accordingly, the court's work at step three is highly fact-sensitive. Scherzer v. Scherzer, 136 N.J. Super. 397, 400 (App. Div. 1975), certif. denied, 69 N.J. 391 (1976).

Applying our deferential standard of review, we are satisfied that the court properly followed these legal guideposts (except as noted below with respect to one asset the court did not expressly identify). We note that the first two steps are essentially uncontested. We discern no error in the court's determination that plaintiff's accounts became marital assets once they were jointly owned, see Pascarella v. Pascarella, 165 N.J. Super. 558, 564 (App. Div. 1979) (stating that pre-marital property became marital property subject to equitable distribution upon husband's execution of deed conveying title to himself and wife), as did defendant's earnings during the marriage, Thieme v. Aucoin-

Thieme, 227 N.J. 269, 285 (2016) ("[T]he property to be divided [by equitable distribution] is that which was earned, or otherwise acquired, during [the marriage].").² In addition, there is no dispute over the court's valuation either of the joint accounts or of defendant's earnings deposited into her own accounts. Instead, defendant argues the court abused its discretion in balancing the equities when it provided defendant with no share of the assets in the joint accounts, yet provided plaintiff half of defendant's earnings that were deposited in her accounts.³

² The court's conclusion regarding the joint accounts was fact-specific. Even when there is a change in title to property, that is merely evidential, not conclusive proof, of donative intent. See Dotsko v. Dotsko, 244 N.J. Super. 668, 676 (App. Div. 1990) (stating that property was exempt where husband's aunt and father each gave \$10,000 to the husband, which he briefly placed in a joint account, then transferred to his own account). Likewise, commingling exempt property with marital property need not always convert it into property subject to equitable distribution. Compare Ryan v. Ryan, 283 N.J. Super. 21 (Ch. Div. 1993) (husband's personal injury settlement proceeds for pain and suffering were non-exempt when they had been deposited in the same account as wife's related loss of consortium recovery and then invested in a dwelling held in joint names), with Wadlow v. Wadlow, 200 N.J. Super. 372, 380-81 (App. Div. 1985) (wife's \$20,000 of pre-marital exempt funds continued to be exempt, although commingled with marital funds during the parties' ten-year marriage, where husband acknowledged their separate nature and provided that they be treated separately in his will).

³ At certain points, defendant argues that the court found plaintiff's joint accounts were not "eligible for distribution," suggesting defendant interpreted the court's opinion as having concluded plaintiff's assets were not "marital assets" and thus barred from distribution under step one. To the extent this is

Regarding plaintiff's accounts, the mere fact that something is a marital asset does not automatically require that both parties share in it equally or that both parties must necessarily receive a portion of it. The court must avoid a "mechanistic approach to equitable distribution." DeVane v. DeVane, 280 N.J. Super. 488, 493 (App. Div. 1995); see also Gibbons v. Gibbons, 174 N.J. Super. 107, 114 (App. Div. 1980) (stating that the trial judge "does not fulfill his heavy judgmental obligation by routinely or mechanistically dividing the marital assets equally"), rev'd on other grounds, 86 N.J. 515 (1981). For that reason, our courts have rejected the presumption that the spouse must receive half of all assets, see Rothman, supra, 65 N.J. at 232 n.6, or half of any individual asset, see DeVane, supra, 280 N.J. Super. at 492-93. Furthermore, an unequal allocation of an asset favoring one party may be offset by the unequal allocation of one or more other assets favoring the other party. See Goldman v. Goldman, 275 N.J. Super. 452, 457 (App. Div.) (noting that the trial court's

defendant's argument, it misinterprets the court's holding. In its written opinion, the court explicitly found that once defendant was placed on plaintiff's accounts, the joint accounts "became marital assets subject to equitable distribution." Moreover, during a later colloquy on defendant's motion for reconsideration, the court clarified that its holding on the joint accounts was based on its "look at the equitable distribution." Accordingly, the court's holding regarding plaintiff's accounts plainly rested on a step three analysis.

"ultimate obligation [is] to effectuate a distribution of marital assets which, overall, [is] equitable to both parties"), certif. denied, 139 N.J. 185 (1994).

The court's fact-findings – demonstrating that plaintiff's assets were joint in name but not in function – are relevant considerations under N.J.S.A. 2A:34-23.1(p) that buttress the court's allocation. Other statutory factors are supportive. For example, N.J.S.A. 2A:34-23.1(c) requires the court to consider "[t]he income or property brought to the marriage or civil union by each party." Also, N.J.S.A. 2A:34-23.1(i) requires the court to consider "[t]he contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property" See Pascale v. Pascale, 274 N.J. Super. 429, 435 (App. Div. 1994) (noting that a "trial court is permitted to recognize that the acquisition of certain property may be traced more directly to one partner than the other"), aff'd in part and rev'd in part on other grounds, 140 N.J. 583 (1995). Where, as here, one spouse has contributed nothing to creating an asset before the marriage and contributed only to depleting it during the marriage, the trial court may conclude he or she is not entitled to what remains after the marriage.

We will also not disturb the court's distribution of defendant's saved marital earnings. The court properly applied our case law's conception of marriage as a joint enterprise in which both spouses work together to uphold and sustain each other. See Rothman, supra, 65 N.J. at 229. Accordingly, we have long held that equitable distribution should reflect spouses' "non-pecuniary as well as pecuniary contributions" Perkins, supra, 159 N.J. Super. at 247. Even a premarital asset may be subject to some equitable distribution if it increases in value during the marriage and that increase is "attributable to the expenditures of the effort of" the other spouse. Scherzer, supra, 136 N.J. Super. at 401; see also Valentino v. Valentino, 309 N.J. Super. 334, 338 (App. Div. 1998).

Here, although defendant's bank accounts were always in her sole name, plaintiff contributed to their increase in value. Because the vast majority of the couple's day-to-day expenses were paid by plaintiff's premarital funds, defendant was able to save most of the money she earned. Thus, in contrast to the negative impact defendant had on the value of the nominally joint accounts plaintiff brought to the marriage, plaintiff had a positive impact on the value of defendant's accounts. Her saved income was plainly a product of the parties' joint marital enterprise, and the court's

decision to distribute those savings evenly was sufficiently supported by the evidence.

In short, we conclude that the court in large part applied the appropriate legal framework to relevant facts when considering the parties' bank accounts. There is one exception. As plaintiff notes, the trial court failed to address one of defendant's bank accounts, an ING Direct certificate of deposit worth \$72,000 as of 2010.

Defendant testified at trial that some amount of her income during the marriage was deposited into this account:

Q: And then we have another ING Direct CD of 72,000?

A: Right. . . .

Q: Is that premarital?

A: This one, part of the money, the seed money that I put in to start the account, is premarital. But then I put in additional money when I . . . was working.

Defendant never specified how much money she placed in the account, nor did plaintiff seek such clarification during the hearing.

Arguably, plaintiff should have raised this issue before the trial court, as minor calculation errors in distribution that go unnoticed by the parties during the trial do not always warrant remand. See Kothari v. Kothari, 255 N.J. Super. 500, 511-12 (App. Div. 1992) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229

(1973)) (refusing to consider an allegedly "obvious error" in the court's distribution calculation that was a "product of [the party's] own mistake" and could have been, but was not, raised during trial). On the other hand, defendant bore the burden of showing that an asset was exempt from equitable distribution because she claimed the exemption. Painter v. Painter, 65 N.J. 196, 214 (1974); Weiss v. Weiss, 226 N.J. Super. 281, 291 (App. Div.), certif. denied, 114 N.J. 287 (1988).

Nonetheless, the trial court did not, as required, address this rather substantial asset at all.

In every case . . . the court shall make specific findings of fact on the evidence relevant to all issues pertaining to asset eligibility or ineligibility, asset valuation, and equitable distribution, including specifically, but not limited to, the factors set forth in this section.

[N.J.S.A. 2A:34-23.1.]

Notwithstanding the parties' contribution to the court's oversight, we must uphold this statutory requirement and remand for appropriate findings regarding this asset. See Strahan, supra, 402 N.J. Super. at 310 ("We ordinarily remand to the trial court to make findings of fact if the trial court failed to do so.").

We express no view on how the asset should be valued or distributed in accord with the statutory factors.⁴

B.

The parties also challenge the court's distribution of assets related to the marital home, which was and remained defendant's premarital property. Specifically, the court reimbursed plaintiff for part of his financial contributions to the renovation and mortgage pay down. Defendant contends the court's distributions were arbitrary, while plaintiff apparently argues he was entitled to a larger distribution because of the home's market value rise. We discern no abuse of discretion.

First, we reject plaintiff's assertion of what he was owed. The residence was not a marital asset since defendant purchased it before their wedding and not "in specific contemplation of . . . marriage." See Weiss, supra, 226 N.J. Super. at 287. As with all such assets, the non-owning spouse is entitled to a partial distribution for "contributions and efforts by one or both spouses toward the asset's growth and development which directly

⁴ In particular, we do not presume that the court must apply the same proportion that it did to defendant's other accounts. Conceivably, the court found that the marital contribution to the account was minimal and intended to distribute a greater share, if not all of the account, to defendant. We might have accepted such thinking, but the court failed to set forth its reasoning in sufficient detail for us to do so.

increase its value." Valentino, supra, 309 N.J. Super. at 338. Conversely, a property "whose value fluctuations are based exclusively on market conditions" remains immune from distribution. Ibid.; see also Mol v. Mol, 147 N.J. Super. 5, 7 (App. Div. 1977).

Accordingly, the court quite properly avoided considerations of the property's general increase in market value during the marriage in its decision. Instead, the court based its distribution on the specific impact of plaintiff's investment on the home's market value (in the case of his renovation work) and the investment itself (in the case of the mortgage pay down). We now review the specific distributions in turn and find, contrary to defendant's assertions, they were reasonable.

In considering plaintiff's renovation expenditures – totaling about \$70,000 – the court relied on the presentations of both parties' experts regarding their impact on the home's market value. Plaintiff's expert opined that its value increased by \$20,000. Defendant's expert did not separately calculate the net impact, but instead argued that the valuation of plaintiff's expert was skewed. Specifically, he opined that the expert had double-counted one aspect of the renovation valued at \$5,000, and contended that another aspect of the renovation added nothing. If one accepted

the rest of the plaintiff's expert's calculations, a more accurate estimate of the net increase was thus \$10,000.

The court relied both on the calculations of plaintiff's expert and on the defense expert's critique, finding that the property value increased \$15,000 from the renovations. Noting that defendant conceded the renovation payments came from joint funds, the court awarded plaintiff half of the value added from the renovations – that is, \$7,500.

Defendant argues that the court's step three analysis resulting in this fifty-fifty distribution of the renovation-related market value increase was arbitrary. But we see no abuse in the court's discretion. The court found that plaintiff was entitled to half of that increase because the payments were made from marital assets – that is, the jointly held accounts. Accordingly, defendant had equal authority over the use of the funds. Moreover, as defendant testified, she was a driving force behind the renovation projects. In light of these relevant facts, we see no cause to overturn the court's distribution. See N.J.S.A. 2A:34-23.1(p).

Turning to the mortgage pay down, the court found that the plaintiff immediately took over the lion's share of payments once the two wed, paying \$81,500 out of the \$113,500 principal reduction during the marriage. The court awarded plaintiff only a quarter

of his contribution, however, because it determined that the initial figure should be halved twice for two independent reasons. The figure was reduced, first, because plaintiff's post-2007 payments came from nominally joint funds. It was reduced again because plaintiff would have paid living expenses even if he had not married and the \$81,500 he paid over eight years was an "extremely low rate."

Notably, the court opted not to consider this payment in the same way it did plaintiff's contribution to the renovation work. In other words, the court did not investigate whether the mortgage pay down contributed in some way to an increase in the market value of defendant's home – a method we have accepted in the past. See Valentino, supra, 309 N.J. Super. at 340 (noting "a non-owner spouse's contribution to the enhancement in a pre-owned asset could consist of a mortgage pay-down during the marriage and could convert an immune, pre-acquired asset into one whose appreciation is eligible for distribution"). Instead, the court considered the mortgage pay down itself as a marital asset subject to equitable distribution – a method which we have similarly affirmed. See Mol, supra, 147 N.J. Super. at 6-7, 9 (affirming the trial court's distribution of a mortgage pay down, while remanding so that the court could separately reconsider its distribution of the home's increased market value).

We will not disturb this categorization of the pay down. Nor do we discern any abuse of discretion in the court's decision, after weighing the relevant factual circumstances, to award plaintiff a twenty-five percent portion of his investment.

C.

The remaining arguments of the parties lack sufficient merit to warrant extended discussion, R. 2:11-3(e)(1)(E), and we affirm the trial court's conclusions with only brief comment.

Plaintiff's claim for limited duration alimony lacked support.⁵ As the Court has explained, "[a]limony is an economic right that arises out of the marital relationship and provides the dependent spouse with a level of support and standard of living generally commensurate with the quality of economic life that existed during the marriage." Quinn v. Quinn, 225 N.J. 34, 48 (2016) (internal quotation marks and citation omitted); see Cox v. Cox, 335 N.J. Super. 465, 472-73 (App. Div. 2000) (applying this principle to limited duration alimony). Plaintiff was not the dependent spouse during the marriage. To the contrary, he paid for the vast majority of the couple's living expenses – a fact that plaintiff himself has emphasized when defending the


⁵ Plaintiff initially characterized his claim as one for "reimbursement alimony" – in other words, as a means to recoup his support of defendant. The court correctly found the request was ill-founded. See N.J.S.A. 2A:34-23(e).

court's equitable distribution of his accounts. Moreover, he left the marriage with sufficient assets to support himself.

We similarly reject the parties' challenges to the court's denial of their respective counsel fee requests. Each alleges the other litigated in bad faith. Such challenges to the trial court's exercise of discretion may be disturbed "only on the rarest occasion." Strahan, supra, 402 N.J. Super. at 317 (internal quotation marks and citation omitted). Having reviewed the record, we are satisfied the present case is not one.

Affirmed in part and remanded in part. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION