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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2402-20**

MARIA PAPAMARKOS,

Plaintiff-Appellant,

v.

ANTONIOS PAPAMARKOS,

Defendant-Respondent.

Submitted March 22, 2022 – Decided April 28, 2022

Before Judges Currier and Smith.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Cape May County,
Docket No. FM-05-0211-18.

Michael H. Schreiber, attorney for appellant.

The DeWeese Law Firm, PC, attorneys for respondent
(David S. DeWeese, on the brief).

PER CURIAM

Plaintiff, Maria Papamarkos, appeals from a judgment of divorce, specifically the equitable distribution of certain assets. After review of the record and applicable law, we are satisfied that the evidence supports the Family Part's order. We are also satisfied that plaintiff was afforded all her due process rights.

I.

Rather than recite the history of the parties' divorce and disputed assets in their entirety, we incorporate by reference the factual findings and legal conclusions contained in the Family Part's decision. We add the following brief comments.

During the bench trial on March 25, defendant, Antonios Papamarkos, was represented by counsel and plaintiff represented herself. After both parties rested, the court reserved decision on all matters in dispute and delivered a written decision on March 31, 2021. The written decision outlined all issues in contention and itemized every asset, property, business, and bank account the court was asked to divide.

The final order did not include 201 Properties, LLC, and asset which owned property in Chadds Ford, Pennsylvania, and 4601 WHP, LLC. At trial plaintiff testified that she agreed to split the cost of an appraiser for 201

Properties and then "buy [defendant] out and . . . move forward." The judge confirmed this with her, stating: "[I]t wouldn't be a trial issue What we would do is the [c]ourt would order an appraisal . . . that you and [defendant] would split the cost of . . . and whatever the appraisal [is], 25 percent of that you would be responsible for paying or buying out [defendant]." Plaintiff replied: "I'm okay with that. I agree on that." Plaintiff stipulated to the same arrangement regarding 4601 WHP, LLC.

The Family Part's comprehensive decision found that defendant was the more credible witness overall and portions of plaintiff's testimony were aggrandized. Plaintiff appeals, challenging several portions of the Family Part's equitable distribution decision, and arguing that she was denied due process.

II.

We review a Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's "special jurisdiction and expertise in family matters." Cesare v. Cesare, 154 N.J. 394, 413 (1998). Thus, "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411–12 (citing Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). A trial judge's identification and valuation of the parties' assets and liabilities will be affirmed if those decisions are supported by

adequate credible evidence in the record. Rothman v. Rothman, 65 N.J. 219, 233 (1974).

N.J.S.A. 2A:34–23(h) authorizes the Family Part to distribute assets "in all actions where a judgment of divorce, dissolution of civil union, divorce from bed and board or legal separation from a partner in a civil union couple is entered." "[The statute] reflects a public policy that is at least in part an acknowledgment that marriage is a shared enterprise, a joint undertaking, that in many ways [] is akin to a partnership." Thieme v. Aucoin-Thieme, 227 N.J. 269, 284 (2016) (second alteration in original) (internal quotations and citations omitted). Ultimately, the purpose of equitable distribution is "to divide fairly assets acquired when both parties contributed to the marital enterprise, whether by earned income or as a homemaker." Carr v. Carr, 120 N.J. 336, 346 (1990).

There are three phases to a court's equitable distribution of property: (1) identification of the property subject to distribution, (2) valuation of that property, (3) and division of the property between the parties. See Rothman, 65 N.J. at 232. Under N.J.S.A. 2A:34-23(h), only property acquired during a marriage or civil union is subject to equitable distribution. See Smith v. Smith, 72 N.J. 350, 361 (1977) (assets acquired by joint efforts of parties "while shared enterprise continues" should be eligible for distribution when enterprise

terminates); Genovese v. Genovese, 392 N.J. Super. 215, 226 (App. Div. 2007) (marital assets acquired in course of "joint undertaking" fairly should be included in marital estate subject to equitable distribution). See also Thieme, 227 N.J. at 285 (property to be divided is that earned or acquired during period in which parties acted in pursuit of shared enterprise).

The equitable distribution statute provides explicitly that any property – real, personal, or otherwise – acquired by either party individually via gift, devise, or intestate succession is not subject to equitable distribution. N.J.S.A. 2A:34-23(h). The exception does not include any gifts between the parties themselves; those gifts remain part of the marital assets subject to equitable distribution. See Dugan v. Dugan, 92 N.J. 423, 428 n.2 (1983) (gifts, devises, and bequests, except interspousal gifts, are excluded from equitable distribution).

Moreover, any property already owned by one party to a marriage or a civil union at the time of the marriage or civil union will not qualify as an asset eligible for equitable distribution; instead, it will remain the separate property of the party who originally owned it. See Painter v. Painter, 65 N.J. 196, 214, n.4 (1974). However, the commingling of separate funds . . . with marital

property can convert those funds into marital property. Ryan v. Ryan, 283 N.J. Super. 21, 25 (App. Div. 1993).

III.

A.

Turning first to plaintiff's asset distribution challenges, she asserts that the Family Part abused its discretion when distributing the following assets: the Cape Harbor Motor Inn business, the marital home, the Frankfurt & Vienna, LLC business, and the CHMI Properties business. We are not persuaded.

Regarding the Cape Harbor Motor Inn business, it was undisputed that each party had a 25% equity stake in that entity; however, plaintiff argued that the \$94,000 awarded to her for her 25% share was too low because it only considered the value of the business up to 2018. Prior to trial, the parties had agreed to hire a joint expert to provide a valuation of plaintiff's 25% share and that defendant would buy out plaintiff's share. As part of this agreement, plaintiff approved a "Date of Complaint" valuation which prevented the appraiser from assessing the years beyond 2018.

After considering these circumstances, as well as plaintiff's failure to provide evidence contradicting the accuracy of the expert's valuation and the

agreed "Date of Complaint" term, the Family Part distributed this asset in accordance with the agreement and appraised value.

As to the marital property, plaintiff does not dispute the Family Part's order to sell the property and split the proceeds 50/50 between the parties. She does, however, challenge the order requiring her to give defendant a credit for 50% of the real estate taxes and insurance premiums "for years 2018, 2019, 2020 and every year thereafter until the property is sold." Plaintiff objected to this credit when it was suggested at trial, but she offered no evidence or testimony to support her argument other than: "I don't want him having any credit. He should be paying for all of it . . . [because] he locked me out . . . [and] changed the locks."

The Family Part found it "reasonable for defendant to be given these credits" as they were for "expenses associated with [the] real estate ownership" of the marital home. The court ordered defendant to receive a "50% credit for all real estate taxes and insurance premiums paid by him" for the designated years because "[f]ailure to reimburse [him] . . . would result in plaintiff's unjust enrichment."

Plaintiff also challenges the judge's distribution of the Frankfurt & Vienna, LLC assets. She claims that this was not a marital asset subject to equitable distribution.

According to the record, Frankfurt & Vienna, LLC was used to purchase property in Galloway Township. Plaintiff testified that her father provided cash which she used, along with marital funds, to purchase the property through this LLC. She also testified that she used marital funds to pay the real estate taxes. Defendant confirmed this in his testimony. The Family Part found that plaintiff had commingled cash from her father with marital funds to purchase the Galloway properties. Therefore, it considered the property marital, Ryan, 283 N.J. Super. at 25, and concluded defendant was entitled to 50% of plaintiff's interest. As for the Frankfurt & Vienna bank account, the court found it should be split in the same manner for the same reasons.

Finally, plaintiff argues the Family Part erred by failing to equitably distribute the CHMI Properties business because defendant's interest in this business was a passive interest subject to equitable distribution. The judge heard testimony from both witnesses on this business. The record reflects that the testimony regarding CHMI was uncontroverted. Both parties testified that defendant received his interest in the company through a gift from his parents.

The Family Part made findings consistent with the testimony and determined CHMI was not a marital asset subject to distribution. For the same reasons, the court found plaintiff's gifted assets, Patras, LLC and Owl Motel, LLC, were also exempt from distribution.

Based on our review of the record, the Family Part's equitable distribution of these assets is well supported by substantial, credible evidence in the record. Every asset subject to distribution was itemized and equitably allocated in accordance with the Family Part's findings of fact. We discern no basis to disturb its findings.

B.

We turn next to plaintiff's argument that she was denied due process by: (1) being unfairly prejudiced by the remote nature of the proceeding; and (2) the court's failure to entertain her argument that a portion of the Janney Montgomery investment account was funded by premarital money.

Regarding the fairness of the remote proceedings, the crux of plaintiff's claim is that she was treated differently by the court and opposing counsel because she was representing herself. To support this contention, plaintiff claims that opposing counsel decided against submitting a trial brief so as not to provide plaintiff with information regarding her burden of proof. She also points

to her and opposing counsels' expressed concerns to the court about conducting this matter via Zoom, and some instances of lost connection throughout the trial.

We are not persuaded. The record indicates that all connectivity issues were resolved shortly after they occurred. Moreover, although plaintiff expressed a preference for having an in-person trial, she did not argue during the proceeding that the remote nature of the hearing violated her due process rights.

Regarding plaintiff representing herself pro se, we note that plaintiff had counsel at the outset of the divorce proceedings, but counsel withdrew for reasons not in the record. Plaintiff had nine months before trial to retain an attorney but chose to represent herself.

Plaintiff's argument about the Janney investment account is also without merit. The Family Part made specific findings on the account and concluded that it was marital property subject to equitable distribution because it was funded with commingled premarital and marital funds. The court acknowledged that it was originally funded by proceeds from plaintiff's personal injury settlement before the marriage. However, it emphasized that the parties continued to invest in this account throughout the marriage. The court

determined that by commingling separate property with marital property the account lost its separate character. See Ryan, 283 N.J. Super. at 25.

In sum, there is no evidence in the record to suggest that plaintiff was prejudiced by the remote nature of the proceedings. She was exposed to COVID-19 shortly before trial, so accommodations were made to hold the trial virtually on its originally scheduled date. Her argument regarding the investment account is meritless: the record shows the issue was thoroughly addressed. We find nothing in the record to indicate plaintiff was denied due process.

C.

Plaintiff alleges that the trial court failed to include two assets in its decision: 201 Properties Inc, LLC and 4601 WHP, LLC. She also asserts that she is unable to sell her mother's 50% interest in 201 Properties Inc, LLC.

Both of these alleged "missing" entities were discussed at trial. The record shows that plaintiff and defendant agreed to have these assets appraised and that plaintiff would either buy out defendant's interest or they would be sold by the parties and the proceeds split accordingly. This is why the 4601 WHP, LLC and 201 Properties, LLC assets were not included in the written decision. Plaintiff's

argument that these entities are missing from the decision is not supported by the record.

Plaintiff's claim on appeal that she is unable to sell her mother's 50% interest in 201 Properties, LLC was not before the Family Part. Generally, issues not raised below, even constitutional issues, will not ordinarily be considered on appeal unless they are jurisdictional in nature or substantially implicate public interest. See, e.g., Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). The division of that asset was set by an agreement between the parties, not by the court. As such, there is no judicial order requiring plaintiff to sell her mother's 50% interest and no appealable issue before us.

We affirm the Family Part's decision. There is sufficient credible evidence in the record to support its equitable distribution of the parties' assets. The Family Part did not deny plaintiff due process by holding the trial virtually, nor did it err by excluding the two properties the parties divided themselves through an agreement outside of court.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION