## **Transmutation**

#### Case law

## **Johnson**

**Facts** 

Each party brought previously acquired property into the marriage. Among other things, Dr. Johnson owned a house at Wellington Green, which the parties used as the marital residence; a 1976 Mercedes automobile, [296 S.C. 293] which he let Mrs. Johnson use as her own during the marriage; over \$33,000 of household contents; a Keogh account valued at the time of divorce at \$189,428; Individual Retirement Accounts (IRA's) valued at the time of divorce at \$9574; a Kiawah Island property; a Belle Meade property; and a MayApple property. For convenience, we shall refer to these items as the "disputed property."

## Results

We hold the family court erred in concluding the "disputed property" was transmuted. The record discloses a clear, consistent intent of Dr. Johnson to maintain the nonmarital character of all property he acquired before the marriage. In particular, the antenuptial agreement stated plainly that neither party would acquire any interest in the separately titled property of the other by reason of the marriage. Although the antenuptial agreement is not an enforceable contract, it is evidence of Dr. Johnson's intent to maintain his previously acquired, nonmarital property as separate property. Unless subsequent acts of the parties during the marriage showed a change of intent, the property could not be transmuted.

## Black Letter Law

Identification of marital property is controlled by the provisions of the Equitable Apportionment of Marital Property Act. [1] The Act defines marital property as all real and personal property acquired by the parties during the marriage which is owned as of the date of filing or commencement of marital litigation, regardless of how legal title is held. Section 20-7-473; see also, Berry v. Berry, 290 S.C. 351, 350 S.E.2d 398 (Ct.App.1986), affirmed, 294 S.C. 334, 364 S.E.2d 463 (1988) (marital property is all property acquired during the marriage which does not fall within some established exception).

The spouse claiming an equitable interest in property upon dissolution of the marriage has the burden of proving the property is part of the marital esate. Cf., Roberts v. Roberts, 296 S.C. 93, 370 S.E.2d 881 (Ct.App.1988). If she carries this burden, she establishes a prima facie case that the property is marital property.

If the opposing spouse then wishes to claim that the property so identified is not part of the marital estate, he has the burden of presenting evidence to establish its nonmarital character. Miller v. Miller, 293 S.C. 69, 358 S.E.2d 710 (1987).

Under the Act, property acquired by either party before the marriage is nonmarital property. Section 20-7-473(2); see also, Sauls v. Sauls, 287 S.C. 297, 337 S.E.2d 893 (Ct.App.1985). Property acquired during the marriage in exchange for property acquired before the marriage is

also nonmarital property. Section 20-7-473(3). Likewise, any increase in the value of nonmarital property during the marriage is nonmarital property, except to the extent the increase resulted directly or indirectly from the efforts of the other spouse during the marriage. Section 20-7-473(5); see also, Miller v. Miller, supra.

[296 S.C. 295] If the opposing party shows that an item of property was either acquired before the marriage or falls within a statutory exception, this rebuts the prima facie case for its inclusion in the marital estate. However, it does not necessarily end the matter.

In certain circumstances, nonmarital property, as defined by the Act, may be transmuted into marital property during the marriage. Property, nonmarital at the time of its acquisition, may be transmuted (1) if it becomes so commingled with marital property as to be untraceable; (2) if it is titled jointly; or (3) if it is utilized by the parties in support of the marriage or in some other manner so as to evidence an intent by the parties to make it marital property. Trimnal v. Trimnal, 287 S.C. 495, 339 S.E.2d 869 (1986); Wyatt v. Wyatt, 293 S.C. 495, 361 S.E.2d 777 (Ct.App.1987).

As a general rule, transmutation is a matter of intent to be gleaned from the facts of each case. [2] 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. Such evidence may include placing the property in joint names, transferring the property to the other spouse as a gift, using the property exclusively for marital purposes, commingling the property with marital property, using marital funds to build equity in the property, or exchanging the property for marital property. [3] The mere use of separate property to [296 S.C. 296] support the marriage, without some additional evidence of intent to treat it as property of the marriage, is not sufficient to establish transmutation. [4] The primacy of the parties' intent in determining if property is marital or nonmarital is underscored by the Act itself, which permits the parties to exclude property from the marital estate by written agreement. See Section 20-7-473(4).

# Tolar

Facts

The husband purchased the farm for \$20,000 in 1980. Of this amount, \$16,250 represented proceeds he obtained from the sale of real property he inherited in 1976. The husband personally built the marital residence on the farm, spending about \$36,000, not including the value of his own labor. This money came from the sale of the parties' prior marital residence in Charleston. The farm is titled jointly in the names of the husband and wife. The husband valued the farm acreage at \$48,000 and the residence at \$40,000 for a total of \$88,000. The wife valued the residence and acreage together at \$87,500.

The court also deducted \$16,250 from the value of the marital property as a "credit" to the husband for the proceeds from his inherited property.

Credit for nonmarital contribution toward marital property

Footnote 1: "[1] Since the farm is marital property, its full value should be taken in valuing the marital estate, without deduction for the husband's inheritance. The correct way to treat the inheritance is as a contribution by the husband to the acquisition of marital property. This contribution should be taken into account in determining the percentage of the marital estate to which the husband is equitably entitled upon distribution."

#### Peterkin

Facts

Prior to and during the marriage, husband acquired, by gift and inheritance, interests in land and a trust, and stocks. Wife asserts the following properties were transmuted into marital property and should have been included in the equitable division: a) Husband's vested interest in a trust, inherited during the marriage; b) Stock given to husband prior to the marriage and stock inherited by husband during the marriage; c) Husband's life estate interest in the Lang Syne Farm acreage; and, d) Husband's interests in two (2) other tracts of land.

Income generated by these properties was placed into the parties' personal account and used for personal expenses of the family or placed into the farm account and drawn upon for family expenses. In addition, marital property was mortgaged and the proceeds used to purchase husband's father's one-half interest in the farm operation and to pay a farm debt. Wife also asserts her direct and indirect contributions increased the value of the property.

#### Results

The trial judge properly found husband's interests in the two (2) tracts of land, his vested interest in the trust and the stocks acquired through gift and inheritance were his separate property. Merely using the income derived from these items in support of the marriage does not transmute them into marital property. See Brooks v. Brooks, 289 S.C. 352, 345 S.E.2d 510 (Ct.App.1986) (Inherited property does not lose its separate nature because a portion of the inheritance is used in furtherance of the marriage).

The trial judge also found the Lang Syne Farm acreage was husband's separate property. However, he found the farm house, its contents and the farm equipment had been transmuted into marital property. In our opinion, husband's life estate in the farm acreage lost its nonmarital character as well, and became subject to equitable distribution when it was ultilized in support of the marriage. In contrast to the other properties husband brought into the marriage, the Lang Syne Farm, and not merely the income the farm produced, was used in support of the marriage. Therefore, the trial judge erred in failing to find husband's life estate in the Lang Syne Farm acreage was transmuted into marital property subject to equitable distribution. See Rampey v. Rampey, 286 S.C. 153, 332 S.E.2d 213 (Ct.App.1985); Cooksey v. Cooksey, 280 S.C. 347, 312 S.E.2d 581 (Ct.App.1984); cf. Canady v. Canady, 289 S.C. 512, 347 S.E.2d 115 (Ct.App.1986); Cooper v. Cooper, 289 S.C. 377, 346 S.E.2d 326 (Ct.App.1986).

## **Brooks**

Facts

The wife inherited \$16,000.00 from her father's estate in 1978. She spent \$1,000.00 on the marital home. She placed \$1,500.00 in a savings account for one of the parties' sons. She evidently used \$3,500.00 to buy their other son an automobile and stereo and to start a savings

account for him. She deposited the remaining \$10,000.00 into a savings account along with \$1,000.00 from another account.

The family court included this \$11,000.00 in the marital estate.

#### Results

We hold this was error as to the \$10,000.00 representing the remainder of the wife's inheritance. This \$10,000.00 is not subject to equitable distribution as part of the marital estate. Hussey v. Hussey, 280 S.C. 418, 312 S.E.2d 267 (Ct.App.1984). The husband impliedly argues if any portion of an inheritance is used in the furtherance of the marriage, the entire sum loses its independent status and becomes marital property. We reject this argument as meritless.

## Roof

Results

## D. TRANSMUTATION

The husband argues that the doctrine of transmutation should not have been applied to some of the items of personal property.

The record reveals that most of the personal property [298 S.C. 63] consisted of furniture and utensils used during the marriage. Therefore, the doctrine of transmutation was properly applied.

Furthermore, each of the parties was granted possession of most of the items they requested. The wife received property valued at approximately \$6,300 and the husband's property was valued at approximately \$4,800. Much of the property received by the wife consisted of furniture for the children, such as beds and a crib. The trial judge did not abuse his discretion in applying the doctrine of transmutation.

## Widman

Law

Further, while property acquired by either party by inheritance from a party other than the spouse is generally considered nonmarital property, nonmarital property may be transmuted into marital property if: (1) it becomes so commingled with marital property as to be untraceable; (2) it is jointly titled; or (3) it is utilized by the parties in support of the marriage or in some other manner so as to evidence an intent by the parties to make it marital property. Jenkins v. Jenkins, 345 S.C. 88, 98, 545 S.E.2d 531, 536-37 (Ct.App.2001). Transmutation is a matter of intent to be gleaned from the facts of each case, and 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. Id.

Holding

In this case, Husband claims that three stocks in the Merrill Lynch account are part of his inheritance from his Aunt Kathryn. He asserts, because the account is listed in his name only, and is included in his financial declaration and financial statement provided to banks, the stocks must be [348 S.C. 117] deemed his nonmarital property. However, Husband points to no testimony indicating the three stocks in question came from this inheritance, and the paper trails he provided are woefully inadequate to support his assertion. Appellant has the burden of convincing this court that the trial judge committed error in his findings.

We find that by commingling the inheritance funds with funds from the parties' marital account so as to become untraceable, and generally using funds from the account to support the marriage, any such assets from the inheritance were transmuted into marital property. We therefore find no error.

#### Greene

Results

Here, there is no question that the parties used Husband's premarital home and surrounding property in support of the marriage. They lived in the home and operated a [351 S.C. 339] horse business and farm on the surrounding property. However, the record clearly indicates Husband deliberately kept his premarital property separate and distinct from their marital property. Husband maintained a joint account with Wife and separate accounts funded with his separate property; he used money from his separate accounts to maintain the home and pay the homeowner's insurance premiums. He also subsidized the horse business and farm with money from his separate accounts. In our view, these efforts are evidence of Husband's intent to treat his premarital home and other premarital properties as nonmarital property. Therefore, we find the family court properly determined that these properties were nonmarital and not subject to equitable distribution.

# Nestberg

Holding

The facts of this case demonstrate that Paul and Hala regarded the property as common property of the marriage. In addition to the fact that they lived in the home for the duration of their marriage, Hala's primary role in paying the mortgages for five years after Paul lost his job tips the scale in favor of transmutation. Her salary from both jobs was placed into a joint checking account until Paul's December 2006 divorce filing. The joint checking account contained marital funds that were used to build equity in the property by paying the mortgages. Paul agreed he relied on Hala's income and credit cards to develop the land he transferred to Eastview and that, "to a degree," Hala " had been carrying the majority of the income for five years." Hala testified that after she quit contributing to the joint checking account, Paul could not make the mortgage payments. Finally, Paul conceded that even after he got business capital from his business partners in the Danielson Company, he still needed Hala's income to pay for his personal expenses, including the mortgages on the property. Because the property was transmuted into marital property, it remained marital after Paul transferred it to Eastview Development Company. Therefore, we agree with the family court that Eastview and the home are marital property.

## **Sanders**

**Facts** 

At trial, Wife presented evidence that she inherited at least \$196,000 from her mother, father, and sister. In addition, the record reveals several different instances in which Wife would deposit an inheritance check into the parties' joint checking account with Bank of America (joint account), only to transfer the exact sum a few days later into her AG account. Based on this information alone, we agree with Wife that the act of depositing an inheritance into the parties' joint account

does not automatically render the inherited funds to be marital property. Here, however, the evidence shows the funds from the AG account were often used by Wife in support of the marriage, evincing her intent to make it marital property. When questioned at trial, Wife conceded funds were used from the AG account to improve the marital residence, purchase furniture, cover medical expenses, go on vacation, and to pay for household expenses. Moreover, Wife admitted on cross-examination that money readily moved back and forth from Husband's business account into the joint account and from the AG account into the joint account to pay for marital expenses. Wife's concession was corroborated by the testimony of Husband's expert witness, Wyatt Henderson (Henderson), who informed the family court he was able to trace transactions in which money was moved from Husband's business account to the joint checking account and then the same day transferred into the AG account. In addition, Henderson could only trace \$81,000 of the total amount Wife claimed to have inherited, rendering the remaining funds " so comingled as to be untraceable."

## Results

Based on this evidence, the family court found "Wife's AG Edwards [396 S.C. 417] account was commingled with marital funds to the extent the inherited and gifted funds can no longer be traced and identified." We agree with the family court that Husband proved assets from the inheritance were transmuted into marital property. Husband demonstrated Wife commingled the inheritance funds with funds from the parties' marital account and used funds from the account to support the marriage.

## Kendall

#### Results

The husband contends that since he purchased the house before the marriage, it is non-marital property under the Act. In essence, he implies that since the Act does not expressly provide for transmutation of non-marital property into marital property, the pre-existing case law relating to transmutation was overruled by these statutes. We disagree.

# Canady

## **Facts**

Mr. Canady contends the trial judge erred in equitably dividing a 25 acre tract of land with improvements conveyed to him by his grandmother during the couple's marriage. The couple lived on the property since they married and had been married for ten years at the time of the conveyance from the grandmother. After the conveyance, the parties took out a series of joint loans to make renovations and improvements. The mortgage covered the entire 25 acres. The parties were jointly responsible for the payments which were made from joint funds.

## Results

In the instant case, not only did the parties use the property in support of their marriage and jointly discharge indebtedness incurred, but also there is evidence the husband considered the property marital property. Throughout the trial, Mr. Canady referred to the home as the marital residence and admitted the wife probably retained an equitable interest in the property. We therefore hold under the circumstances of this case this property was transmuted into marital property.

Mr. Canady also contends that since the improvements were to the house and not the acreage, only the home could be considered transmuted. We disagree. The mortgage covered

the entire 25 acre tract. Both parties were responsible for the mortgage payments. We find the entire 25 acre tract was thus transmuted.

Mr. Canady further claims the trial judge erred in awarding Mrs. Canady 40 per cent of the value of the property in question. He argues the wife played no role in acquiring the property and therefore should receive no part of it. Like inherited property, property received as an inter vivos gift may be transmuted into marital property. Canady, supra 347 S.E.2d at 117. In such a case, a spouse seeking to prove transmutation of a gift of property to the other spouse would not have acquired the property. If Mr. Canady's theory is followed, there would be no point to the doctrine of transmutation of an inter vivos gift. Therefore, we find no merit to this argument.

#### Wannamaker

Facts

The husband's parents made gifts to him of stock before and during the marriage. The husband kept a bank account in Orangeburg through which he bought and sold stock and deposited dividends. The husband occasionally used funds from this account for marital purposes. The trial judge by the appealed order held that all of the husband's stock was either a gift to him or purchased with nonmarital assets. This holding is supported by the record.

#### Results

The Orangeburg account was kept in the husband's name. Good records were kept as to the deposits and disbursements in this account. We hold that the preponderance of evidence establishes that the funds of the Orangeburg account used to purchase stock were traced to the individual property of the husband. The argument that if any portion of the husband's separate estate is used in the furtherance of the marriage, the entire account loses its independent status and becomes marital property is without merit.

## **Edwards**

Facts

Here, the family court found (1) the jointly owned Certificate of Deposit (\$20,000.00), (2) the income from the cellular tower lease, and (3) the life estate in the produce business were all transmuted to marital property "by their title and use in support of the marriage." Although there is no evidence the disputed property was ever jointly titled, evidence supports the family court's determination that the property was used by the parties in support of the marriage.

Profits from the produce stand along with rental income from the cellular tower provided Husband and Wife their main sources of income. Additionally, the parties intended to treat the produce stand as property of the marriage and used the income from the produce stand to provide for their family. In turn, the parties used marital funds to build equity in the produce stand. Wife testified she and Husband used income generated by the produce stand to construct the new stand.

Husband admits the parties' main source of income came from the produce stand and rental income from the cellular tower. Husband testified the parties "lived off" the income generated by the produce stand. Wife worked seven days a week during the produce stand's thirty-two week selling season. Her responsibilities included running the cash register, purchasing inventory, and unloading produce. Wife testified she ran the daily operations of the produce stand with the help of several workers until two years before the parties separated, when she operated the business on her own. Wife did not receive any wages for her work at the produce stand.

Furthermore, the building permits obtained for the construction of the produce stand named both Husband and Wife as owners of the property.

## Result

Because the parties utilized the produce stand in support of their marriage and demonstrated their intent to treat it as marital property, we find the family court did not err in determining the produce stand was transmuted into marital property, and we affirm its finding.

#### Pittman

Subtopic

After the parties married, Wife started working only three days a week at her nursing job and made up the difference between what she would have earned had she continued full-time work as a nurse and what she was earning on the part-time schedule by working at Pittman Professional Land Surveying. Wife later reduced the time she spent at her nursing job to one day per week. Wife served as corporate secretary and handled financial matters for the business. Because Wife was older than Husband, the parties agreed to raise her salary instead of Husband's salary in order to increase her social security income so that they would have more money during their retirement. During the parties' marriage, the business prospered through their joint efforts, grossing over \$800,000 in 2006. Wife's salary at Pittman Professional Land Surveying was \$4,200 per month when she left the company.

#### Result

We agree with Wife the record supports the family court's finding that Husband intended to treat Pittman Professional Land Surveying as a marital asset. Wife was listed as secretary for the corporation. After the parties married in 2000, Wife, with Husband's consent, reduced the hours she worked at her nursing job to work full-time in the business and thus contributed less to her 401K and retirement accounts. Most significantly, Husband and Wife agreed that the business would pay Wife a higher salary for her services than what her services warranted with the expectation that this business decision would benefit both parties during their retirement together. Under these circumstances, we decline to disturb the finding that Pittman Professional Land Surveying had been transmuted. (" [T]he family court's factual findings will be affirmed unless 'appellant satisfies this court that the preponderance of the evidence is against the finding of the [family] court.' ").

#### **Fitzwater**

**Facts** 

Husband and Wife were married on September 20, 1997, and had no children. Husband owned several properties, including a home on Antioch Church Road in Alabama (Antioch property), a commercial property located at 205 South Broadway Street in Alabama (commercial property),[2] and a home in Darlington County located at 3941 Hill Billy Way in McBee, South Carolina (Hill Billy Way property).[3] Husband purchased the Antioch property in 1982 and the commercial property in 1992. Husband mortgaged the Antioch property to finance improvements to the commercial property. Mortgage payments. on the Antioch property were paid out of the parties' joint bank account. However, Wife's name was never added to the mortgage, and therefore, she was never an obligor on the note or mortgage. Further, Husband maintained a retirement account with Megan Corporation (Megan retirement fund) valued at \$14,953.93. Upon marriage, the parties moved into Husband's residence and farm on the Hill Billy Way property

## Results

The evidence in the record supports the family court's finding that the Antioch property was nonmarital. The parties never used the Antioch property as a marital home, never placed the property in Wife's name, and Husband never made any substantial improvements to the property during the marriage. In addition, Husband, as the sole mortgagee, did not mortgage the Antioch property for the purpose of its acquisition, but mortgaged it to pay for improvements on the commercial property. While the parties paid the mortgage payments out of a joint bank account, Wife was never an obligor. Husband mortgaged the Antioch property to support the parties' marriage, and the record contains no other evidence of intent to treat the property as marital property.

#### Crossland

#### Facts

Husband and Wife were married in 1997 and separated for the final time on September 6, 2006. Prior to his marriage, Husband had been employed with the United States Air Force, Hobart Manufacturing Company, and the State of South Carolina, but he had been retired for twenty years when he married Wife. His income prior to and during the marriage consisted of social security benefits, Air Force retirement benefits, and Veterans disability benefits. At the time the parties married, Husband owned two mobile homes, a house he purchased in 1955,[1] and savings in the form of stocks, savings accounts, certificates of deposits, and mutual funds. Shortly after the parties married, Husband added Wife to the accounts identified as his " savings"; however, after Wife left Husband the final time he transferred the money in the joint accounts to an annuity fund in his name only. At the time Wife left Husband, the parties estimated the savings accounts contained approximately \$180,000,

## Results

The evidence in the record supports the family court's finding that the annuity fund was marital property. Shortly after marrying Wife, Husband added Wife's name to the various accounts that made up what he referred to as his "savings." Husband transferred the funds from these accounts into the annuity fund in his name only after the parties separated for the final time. Husband testified he added Wife's name to the accounts after they married so she would have access to his savings in case anything happened to him. In addition, Wife testified she contributed what little income she had to the accounts and lived frugally pursuant to Husband's directives in order to preserve the funds in the accounts. Accordingly, the family court's finding on the issue of transmutation of the annuity fund was proper.

## Ray

## **Facts**

The parties moved into the marital home in 1971. They substantially remodeled the house-lowered the ceilings, added a bath and utility room, and put in new flooring. At that time the house was owned by the husband's step-mother. In 1976 the husband acquired title to the house as a gift from his step-mother. The parties remained in the home until they separated in 1985.

## Results

The wife has failed to show transmutation. At the time of the remodeling, the house was owned by the step-mother; hence any evidence regarding the remodeling efforts cannot be considered as evidence of an intent to transmute the house since it was not the husband's property to transmute. The only evidence of transmutation after the husband acquired title is that the parties lived in the house for nine years. As we have noted, the mere use of nonmarital 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.

#### Pirri

#### **Facts**

In 1958, Husband purchased the property that housed his veterinary clinic, then became the shooting range, and later was leased in 1998 to Widewater for hotel development. Wife did not draw a salary after 1973, and her support was always from Husband's income from the clinic and shooting range. Wife testified at the final hearing that she did not have control over the money from the lease of the Connecticut property and that sometimes the money was placed in the parties' joint account while it went "other places" at times. Husband testified at the hearing that he used money from the rental property to purchase equipment for the farm. Husband and Wife began living together in Connecticut in 1971. They never had a ceremonial wedding. After hearing the evidence, the family court issued a final order declaring a common law marriage came into existence between the parties in 1996, when they moved to South Carolina.

## Results

Wife argues the family court erred in failing to find that property obtained in Husband's name prior to the move to South Carolina was transmuted into marital property. The family court determined that any transmutation must have occurred, if at all, after the 1996 date of the common law marriage. Reviewing the evidence, the court determined that Wife failed to meet her burden of proving transmutation of the Fidelity Investment account and the profits of the Connecticut property. Although money from Husband's separate property was used to purchase items for the farm or to benefit the parties, nothing in the record shows Husband's intent to transmute the property or that the proceeds from the lease became commingled with marital property. Further, mere use of the income from Husband's separate property in support of the marriage does not transmute them into marital property. Accordingly, Wife failed to prove transmutation of Husband's separate property acquired prior the 1996 marriage.

## Smallwood

## Facts

Husband and Wife were married in March 1993. In 1992, prior to the parties' marriage, Husband purchased three rental properties in Summerville, South Carolina. According to Husband's testimony, the rental properties were operated under his company, Smallwood Properties, Inc., and their mortgages were paid with rental income. During their marriage, Husband and Wife lived briefly in two of the properties. According to Wife's testimony, she assisted Husband in managing the rental properties by cleaning, checking tenant references, filing evictions, and handling tenant disputes until the parties moved to Charlotte, North Carolina in 1998. After Husband and Wife moved to Charlotte, the rental properties were managed by property management companies. The mortgages on the rental properties were fully paid at the time of the final hearing.

## Results

We find the family court erred in determining the rental properties were transmuted into marital property. Wife failed to carry her burden of producing objective evidence showing Husband regarded the rental properties as the common property of the marriage. Husband purchased the rental properties prior to parties' marriage and testified at trial they were his property and did not belong to Wife. The record contains no evidence Husband ever placed the rental properties in Wife's name or transferred the properties to Wife as a gift. Although Husband and Wife lived in the 106 Roberta Drive property for several months at the beginning of their marriage, Wife failed to present any evidence Husband intended to treat that property, or any of the other rental properties, as marital. See id. (holding "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").

Furthermore, we do not agree with Wife's argument that the assistance she provided Husband in managing the rental properties was evidence of the parties' intent to treat the properties as marital. According to Wife's testimony, she helped manage the rental properties by cleaning and handling tenant matters until the parties moved to Charlotte in 1998. However, Husband testified Wife only assisted him for a few months after they married and before she returned to work. Thereafter, according to Husband, he employed other individuals and property management companies to manage the rental properties. After 1998, the rental properties were managed by property management companies. While we recognize Wife's contributions of time and labor during the parties first five years of marriage, they are insufficient to prove transmutation. See Murray v. Murray (holding Wife's contributions of time and labor in maintaining the marital home and rental properties did not prove transmutation).

Additionally, the record included no evidence Hu sband commingled the rental properties with marital property, used the rental properties exclusively for marital purposes, or used marital funds to build equity in the rental properties. Husband testified he paid the mortgages on the rental properties with rental income. No evidence is in the record that marital funds were ever used to pay the mortgages. Husband also testified property management companies deposited the income from the rental properties into his Smallwood Properties bank account. The record does not reflect that rental income was ever deposited into the parties' joint bank accounts. Furthermore, Husband's admission he used funds from the parties' joint SURF account to support his business is insufficient evidence of intent to treat the rental properties as marital. Husband did not testify as to how much money was used from the SURF account or how the money was used to support the rental properties. Thus, based on the preponderance of the evidence, we find Husband did not intend to treat the rental properties as marital property, and, therefore, they were not transmuted.

## Murray

### **Facts**

The parties were married in August, 1972, in Florida. This was a second marriage for each. At the time they separated in 1989, she was seventy-nine years old, he eighty-five. They had been married for approximately seventeen years. The marital residence was purchased by Mr. Murray in 1940 and paid for by 1951, some twenty years prior to this marriage. The three rental properties were also all purchased and paid for by Mr. Murray prior to the marriage. It is undisputed that Mrs. Murray helped maintain and improve the marital home and the rental properties. The record does not reflect, however, the value of these services or how her contributions affected the value of the property. The income received from the rental units was deposited into the parties' joint checking accounts. It was from these jointly held funds, which also included retirement and Social Security incomes, that any improvements or necessary expenditures were made to the marital home and rental units. Mrs. Murray relies on these facts in arguing the property is all marital property.

#### Results

The parties lived in the marital home for the duration of the marriage. Although this was Mrs. Murray's home for over seventeen years, 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. Mrs. Murray contends her contributions of labor and time to the improvement and maintenance of the marital home and rental properties are evidence that the parties considered the properties were marital property. While improvements made by a spouse to nonmarital property may result in the spouse's receiving an equitable interest in the property, contributions of time and labor do not necessarily prove transmutation. In this case, Mr.

Murray paid for all of the properties prior to marriage. Mrs. Murray failed to produce evidence that any appreciable amount of marital funds was expended on improvement of the properties. Furthermore, the record indicates Mrs. Murray's efforts were largely routine duties such as cleaning and painting

## **Pruitt**

**Facts** 

Husband testified that he started clearing the lot on which he built the marital home in 1979 and began construction of the home in 1983. Husband's mother, Dorothy Pruitt (Mother), testified that Husband started building the marital home on land owned by his grandmother, but that it was not completed when Husband married Wife in 1988. Wife's sister also testified that the home was not completed when Wife moved into it, and that Wife helped Husband complete the construction. Mother also testified that she inherited the land on which Husband built the home when Husband's grandmother died and that she later conveyed the land to Husband after he married Wife. Husband conveyed the property back to Mother when he suspected Wife was having an affair in 1995, but Mother reconveyed the property to Husband a few months later. In May 2006, Husband conveyed the property to Sister.

As to Wife's contributions to the marital home's improvements, Mother testified that Wife helped with installing fans and adding a carport and another bedroom to the home. Wife testified that she helped to hang siding, replace the kitchen floor, install glass in the sunroom, paint and install flooring in the master bedroom, and build a carport. However, she also testified that she did not know where the money to pay for the materials came from and that Husband " always seemed to have cash on him." Notably, Husband denied that the cash used to pay for the improvements came from marital funds but rather claimed that the cash came from Sister. In any event, Wife did not carry her burden of showing that the improvements to the home were paid for with marital funds.

#### Results

Wife failed to carry her burden of producing objective evidence showing that Husband regarded the home as the common property of the marriage, which is essential for a transmutation claim. This case is similar to Murray v. Murray. In Murray, the parties had lived in the marital home for the duration of their seventeen-year marriage, and wife had worked on improvements to the marital home during that time. Here, similar to the wife in Murray, Wife lived in and worked on improvements to the marital home during her nineteen-year marriage to Husband. However, the record does not reflect that marital funds paid for the materials used to improve the home. Further, there is nothing in the record to show the value of Wife's contributions or how those contributions affected the value of the home. Court remanded the case to the family court to determine any appreciation of the marital home's value resulting from Wife's contributions and to reapportion the marital estate.

## Myers

**Facts** 

Husband and Wife were married for nine years prior to Wife filing for divorce. Wife contends the F-150 truck was purchased with funds from the parties' joint checking account, which automatically rendered the truck a marital asset. Specifically, Husband testified at trial that he deposited a \$64,000 check from his father's estate and then wrote a check for the F-150 less than twenty-four hours after he made this deposit. This testimony was corroborated by the parties' asset sheet submitted to the family court.

## Result

Even if the inheritance was deposited into the parties' joint account, this does not automatically render the inherited funds or the F-150 truck to be marital property. Miller v. Miller (" An unearned asset that is derived directly from nonmarital property also remains separate unless transmuted, [391 S.C. 320] as does property acquired in exchange for nonmarital property." ). Wife admitted Husband told her that he purchased the truck with his inheritance. However, Wife stated that she included the truck on her financial declaration because she did not know whether Husband bought it with his inheritance " for sure." Wife's testimony is inadequate in light of Husband's testimony that he purchased the truck with nonmarital funds. Because Husband was the only party who ever withdrew or deposited funds into this account, and the transaction for the truck occurred within twenty-four hours of the inheritance funds being placed in the account, Wife failed to establish that these funds were so commingled as to be " untraceable."

## **Smith**

#### **Facts**

At trial, Grandmother testified that she gave Father the funds to purchase the tobacco bonds and Sumter residence from her personal savings account. If the money found in Grandmother's savings account qualified as nonmarital property, the tobacco bonds and Sumter residence should also be characterized as nonmarital property. Father opened Grandmother's savings account after the sale of the Florida residence. While Grandmother lived in the Florida residence, Mother and Father paid \$9,635 in mortgage payments and \$5,500 for repairs on the house from their joint account. However, once the Florida residence was sold, the proceeds from the sale, \$73,982.33, were transferred into Mother and Father's joint account. From these proceeds, Grandmother reimbursed Mother and Father for the mortgage payments and repairs. Additionally, Grandmother reimbursed Mother and Father for closing costs and other expenses they provided for the Sumter residence. This was accomplished by Father deducting these unreimbursed expenses from the proceeds of the sale of the Florida residence, which remained in Mother and Father's joint account. Then, Father transferred the remaining proceeds from the sale of the Florida residence to Grandmother's newly opened savings account. Thus, all marital funds spent on the Florida residence were fully reimbursed to Mother and Father with the sale of the Florida residence. Additionally, all remaining proceeds from the sale of the Florida residence were used to create Grandmother's savings account.

#### Result

Because all marital funds spent on the Florida residence were reimbursed, Grandmother's savings account qualified as nonmarital property. From Grandmother's savings account, the tobacco bonds and Sumter residence were purchased. As a result, these assets were also nonmarital property and not subject to equitable division, unless they became transmuted into marital property. At trial, no testimony was introduced evidencing an intent for these assets to become marital property.

## Carpenter v. Burr

#### . Results

Burr acquired the house more than one year before the parties married and had it titled in his own name and the names of several members of his extended family. Although Carpenter was listed on numerous insurance policies on the house and paid a share of the premiums, we concur in the family court's finding that this participation was not sufficient to infer that Burr intended to treat the home as marital property; rather, it reflected Burr's concern that Carpenter be protected because her personal effects were in the home. Furthermore, contrary to Carpenter's contention that she was unaware that she was not on the deed until after the parties' separation, the record contains an exhibit indicating otherwise. We further believe that the short duration of the marriage, the lack

of evidence that the parties took out any joint loans to improve the property, and fact that Carpenter's contributions to the equity in the property were not significant support a finding that the home had not been transmuted.

## **Simpson**

Results

("Although the evidence shows that the husband acquired the land by gift from his father during the marriage, it also shows, and we so find, that the property lost its nonmarital character and therefore became subject to equitable distribution when the husband, nine years before the parties separated, erected the marital home thereon and thereby used the 1.4 acre tract in support of the marriage." ). Accordingly, we find the family court properly concluded the house was transmuted into marital property.

## LaFrance

Results

The family court judge instructed that Wife bore the burden of proving the jewelry in existence at the time of filing the marital litigation was owned prior to the marriage. Wife met that burden. Once it was established the jewelry was premarital, Husband bore the burden of proving transmutation in order for the jewelry to be considered marital. Husband met that burden by demonstrating that "the premarital items were mixed with other items of jewelry and modified using marital funds." Wife did not refute Husband's evidence. Therefore, the family court appropriately declared the jewelry marital property.

#### Deidun

**Facts** 

It is undisputed that Husband purchased his 1973 Corvette when it was new for \$5,900, and he paid off the balance owing on the car a year before the parties married. Wife testified the Corvette was Husband's "prized possession," and Husband described it as his "toy" and "weekend pleasure vehicle." With the exception of an eighteen-month period when it was necessary for Husband to drive the car on a daily basis, the car was not regularly used. While the parties lived in Michigan, the Corvette was stored and not insured during the winter months every year. Husband primarily drove the Corvette, although Wife occasionally drove it. During the marriage, Husband maintained the vehicle and made improvements to it including installing new calipers, a stainless steel exhaust system, and new wheels, for a total cost of \$1,500. At the time of the final hearing, the Corvette had increased in value to \$15,000. The family court specifically held that the Corvette was the nonmarital property of Husband.

## Results

Despite Wife's argument that the car was at times used during the marriage by both parties, the evidence indicates the car was more of a pleasure vehicle and not necessary for transportation for the parties. Although the Corvette was maintained and insured during the marriage from the parties' joint account, to which both parties contributed, nothing indicates the parties' intentions that the Corvette change from nonmarital to marital property. Because this car was not used for the benefit of the marriage, we find the car was not transmuted.

## **Jenkins**

**Facts** 

The family court found the parties used Husband's farm (35 acre tract aquired from husband's mother) as a second home, and planned to make the farm their primary residence when Husband retired. They attempted to generate income from the property hoping to defer some of the costs for maintaining and improving the property. Primarily through Husband's direct contributions, the parties spent over \$115,000 on the home and over \$20,000 on improvements to the property. Wife was primarily responsible for the general care and maintenance of the property from 1987 until 1995, and she worked to improve the aesthetic appearance of the property. Moreover, Husband executed a will leaving all of his property, including the Georgetown property, to Wife.

#### Results

The parties treated the Georgetown farm and home in such a manner during the marriage as to evidence their intent that it become their common property. The court properly included the property in the marital estate for purposes of equitable distribution.

## Pool

#### **Facts**

With respect to the disputed property, the husband owned the Fitness Connection before the marriage. The wife testified she contributed to the business by suggesting new advertising, cleaning the gym, working with female clients, and managing it when her husband was not there. The husband, on the other hand, testified his wife had almost no involvement with the business and did not perform the services she claimed. Both parties offered expert witnesses on the value of the Fitness Connection. The husband had experience in bodybuilding [321 S.C. 88] and fitness and testified the Fitness Connection had no real worth as a business without him because of its service oriented nature. He admitted he purchased approximately \$10,000 worth of equipment for the business during the marriage and testified the equipment had a fair market value of \$3300 at the date of filing.

## Results

As to the identification and valuation of the marital property, the court found the Fitness Connection was owned by the husband before the marriage. The business operated at a leased location and the property consisted primarily of exercise equipment. While the husband used income from the business to support the family during the marriage, there is no additional evidence of intent to treat the business as marital property. However, the husband testified he purchased approximately \$10,000 worth of exercise equipment for the business during the marriage which he valued at \$3300 as of the date of filing. The parties' joint 1990 tax return shows they reported rental income from the Fitness Connection for leased equipment. We conclude the husband utilized marital funds to purchase \$10,000 worth of equipment during the marriage and, he failed to establish the equipment was separate property. Therefore, the equipment purchased during the marriage was marital property even though the business was nonmarital.