

2015 WL 3986136

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District Court of Appeal of Florida,
Second District.

Brent Allan SMITH, Appellant,
v.
Jodie Bear SMITH, Appellee.

No. 2D13–4831. | July 1, 2015.

Synopsis

Background: Spouse brought dissolution action. The Circuit Court, Manatee County, Gilbert A. Smith, Jr., and Diana L. Moreland, JJ., entered final judgment dissolving marriage. Husband appealed.

[Holding:] The District Court of Appeal held that vehicle that husband purchased after action was filed, but before final judgment, was not marital property.

Affirmed in part, reversed in part, and remanded with directions.

West Headnotes (5)

[1] **Divorce**



An appellate court reviews de novo a trial court's determination of whether an asset is marital or nonmarital.

Cases that cite this headnote

[2] **Divorce**



When the parties to a dissolution of marriage action do not enter into a marital settlement agreement, the applicable date for determining whether assets and liabilities are classified as marital or nonmarital is the date of the filing of the petition for dissolution of marriage. West's F.S.A. § 61.075(7).

Cases that cite this headnote

[3] **Divorce**



Assets and liabilities not in existence on date of the filing of the petition for dissolution of marriage should not be classified as marital. West's F.S.A. § 61.075(7).

Cases that cite this headnote

[4] **Divorce**



Vehicle that husband purchased after dissolution action was filed, but before final judgment, was not marital property for purposes of equitable distribution. West's F.S.A. § 61.075(7).

Cases that cite this headnote

[5] **Divorce**



District Court of Appeal lacked jurisdiction to review issue of award of attorney fees in dissolution action, where the trial court's ruling on attorney fees and costs only addressed entitlement and did not set an amount.

Cases that cite this headnote

Appeal from the Circuit Court for Manatee County;
Gilbert A. Smith, Jr., and Diana L. Moreland, Judges.

Attorneys and Law Firms

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for Appellant.

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Sarasota, for Appellee.

Opinion

PER CURIAM.

*1 Brent Allan Smith appeals the final judgment dissolving his marriage to Jodie Bear Smith. Mr. Smith raises numerous issues on appeal. We reverse as to one of the vehicles included as a marital asset in the equitable distribution scheme; we dismiss as premature Mr. Smith's appeal of the award of attorney's fees and costs. In all other aspects, we affirm.

[1] [2] [3] We review de novo a trial court's determination of whether an asset is marital or nonmarital. *Broadway v. Broadway*, 132 So.3d 953, 954 (Fla. 1st DCA 2014). Because the parties in this case did not enter into a marital settlement agreement, the applicable date for determining whether assets and liabilities are classified as marital or nonmarital is the date of the filing of the petition for dissolution of marriage. *See* § 61.075(7), Fla. Stat. (2012). "Assets and liabilities not in existence on that date should not be classified as marital." *Fortune v. Fortune*, 61 So.3d 441, 445 (Fla. 2d DCA 2011).

[4] In this case, the trial court included as marital assets in

Footnotes

1 Mr. Smith testified that he sold the truck for approximately \$3000 and then, several days later, purchased the Scion for \$3000 to replace the truck. There was no contradictory testimony or evidence presented.

the equitable distribution scheme both a Ford truck, which was owned by Mr. Smith at the time the petition was filed but sold during the pendency of the divorce, and a Scion, which was purchased by Mr. Smith after the date of filing but prior to the final judgment.¹ We conclude that it was error to include the Scion in the equitable distribution scheme. *See id.* Accordingly, we reverse and direct the trial court to strike the Scion from the equitable distribution scheme and reduce the equalizing payment owed to Ms. Smith by \$1500.

[5] Mr. Smith also alleges that the trial court abused its discretion in awarding attorney's fees and costs to Ms. Smith. The trial court's ruling on attorney's fees and costs only addressed entitlement and did not set an amount. Thus, we lack jurisdiction to review this issue. *See Card v. Card*, 122 So.3d 436, 437 (Fla. 2d DCA 2013) (dismissing for lack of jurisdiction the former wife's challenge to an award of attorney's fees and costs where the final judgment determined only entitlement and not amount); *see also McIlveen v. McIlveen*, 644 So.2d 612, 612 (Fla. 2d DCA 1994) (holding "an order which only determines the right to attorney's fees without setting the amount is a nonappealable, nonfinal order"). Accordingly, we dismiss for lack of jurisdiction Mr. Smith's challenge to the award of attorney's fees and costs.

Affirmed in part; reversed in part with directions; dismissed in part.

ALTENBERND, CASANUEVA, and KHOUZAM, JJ.,
Concur.

All Citations

--- So.3d ----, 2015 WL 3986136

