

451 So.2d 936
District Court of Appeal of Florida,
Fourth District.

Barbara JONES, Appellant,

v.

Julius JONES, Appellee.

No. 83-739.

June 6, 1984.

Rehearing Denied July 19, 1984.

Wife appealed from a final judgment of the Circuit Court, Palm Beach County, Vaughn Rudnick, J., failing to grant her a special equity interest in marital home. The District Court of Appeal held that evidence did not support finding that only husband's credit allowed refinancing to thereby save home purchased by wife and her parents prior to marriage, and even if it did, that fact would not have affected wife's entitlement to a special equity interest in the home, where unrefuted testimony showed that wife and her family made down payment, made mortgage payments both before and after marriage and paid off second mortgage without assistance from husband.

Reversed and remanded.

West Headnotes (1)

[1] **Divorce**

 [Marital residence or homestead](#)

Divorce

 [Effect of contributions;reimbursement](#)

134 Divorce

134V Spousal Support, Allowances, and
Disposition of Property

134V(D) Allocation of Property and
Liabilities;Equitable Distribution

134V(D)2 Property Subject to Distribution or
Division

134k688 Particular Interests as Separate or
Marital Property

134k693 Marital residence or homestead
(Formerly 134k252.5(1))

134 Divorce

134V Spousal Support, Allowances, and
Disposition of Property

134V(D) Allocation of Property and
Liabilities;Equitable Distribution

134V(D)8 Marital Residence or Homestead

134k857 Effect of contributions;
reimbursement

(Formerly 134k253(2))

Evidence in dissolution action did not support finding that only husband's credit allowed refinancing to thereby save home purchased by wife and her parents prior to marriage, and even if it did, that fact would not have affected wife's entitlement to a special equity in the home, where unrefuted testimony at trial showed that wife and her family made down payment, made mortgage payments both before and after marriage and paid off second mortgage without assistance from husband.

[Cases that cite this headnote](#)

Attorneys and Law Firms

*936 James F. Simpson, West Palm Beach, and Amy Shield Levine of Levine & Levine, Boca Raton, for appellant.

C. Michael Shalloway of Lesser, Daniels & Shalloway, P.A., West Palm Beach, for appellee.

Opinion

PER CURIAM.

The wife appeals from a final judgment of dissolution contending that the trial court erred by failing to grant her a special equity interest in the marital home. We agree and reverse.

The parties were married in February, 1978, and separated in March, 1981. Trial testimony showed that the wife bought a house for \$26,950 under a contract for deed in 1973. Her parents took title to the home because of her inability to obtain credit, and assisted her in making a down payment of \$1,500.

In October, 1978, the wife's parents transferred their equity interest in the home to their daughter and son-in-law. According to the father, the transfer was made to enable his daughter to obtain a more favorable payment schedule by refinancing the home. He testified that while the husband's credit was needed to obtain the mortgage, the refinancing was not necessary to save the house.

*937 During the marriage the husband assisted in making the monthly mortgage payments and also contributed both labor and funds toward various home improvements. The wife alone has been making mortgage payments since the parties separated in March, 1981. She has also paid \$1,200 from her own funds to satisfy a second mortgage the parties assumed to cover closing costs when the home was refinanced.

The critical fact issue relevant to this appeal is whether the wife paid part of the purchase price for the marital home from her separate funds, thereby entitling her to a special equity interest in the marital home. The trial court apparently concluded that the property was not acquired by funds unconnected to the marriage, as it granted partition of the home on the theory that “[o]nly the husband's credit allowed the home to be saved.” This finding, however, is not supported by substantial competent evidence.

Unrefuted testimony at trial showed that the wife and her family made the down payment on the home, made mortgage payments both before and after the marriage, and paid off the second mortgage without assistance from the husband. The trial court may not ignore such

unrebutted testimony. See *Ackerly Communications, Inc. v. City of West Palm Beach*, 427 So.2d 245 (Fla. 4th DCA 1983). Although the husband testified that he “thought” the family was in danger of losing the property unless they obtained refinancing, the record is devoid of any evidence showing that the husband had personal knowledge of this fact. Consequently, his testimony is nothing more than speculation. Moreover, even if the record contained competent evidence showing that the husband's credit saved the house, we do not believe that fact would affect the wife's entitlement to a special equity interest in the home. It is clear that she paid for the home and, therefore, she is entitled to reimbursement for that effort.

Accordingly, we reverse the order granting partition of the home and remand with instructions to enter an order reflecting the wife's right to an automatic one-half share plus a special equity interest in the home equal to one-half the ratio which her contribution bears to the entire consideration. *Landay v. Landay*, 429 So.2d 1197 (Fla.1983); *Starcher v. Starcher*, 430 So.2d 991 (Fla. 4th DCA 1983).

REVERSED and REMANDED.

LETTS and HURLEY, JJ., and VOCELLE, L.B.,
Associate Judge, concur.

All Citations

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