

[Cite as *Hood v. Hood*, 2010-Ohio-3618.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Karen D. Hood, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 09AP-764
 : (C.P.C. No. 06DR-09-3654)
 Toby D. Hood, : (REGULAR CALENDAR)
 :
 Defendant-Appellee. :

D E C I S I O N

Rendered on August 5, 2010

Golden & Meizlish Co., LPA, Keith E. Golden, and Jodie K. Meizlish, for appellant.

James Wilmore Brown, for appellee.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations.

FRENCH, J.

{¶1} Plaintiff-appellant, Karen D. Hood ("Karen"), appeals the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, which granted Karen and defendant-appellee, Toby D. Hood ("Toby"), a divorce and ordered a division of marital property. For the following reasons, we affirm in part and reverse in part.

{¶2} Karen and Toby were married on August 6, 2003. No children were born as issue of the marriage. Karen filed a complaint for divorce on September 6, 2006, and Toby filed an answer and counterclaim for divorce on October 19, 2006. A final hearing commenced January 8, 2009, after which each party submitted proposed balance sheets. The trial court issued a Judgment Entry-Decree of Divorce ("Judgment Entry") on July 20, 2009, finding, pursuant to the parties' stipulations, that each party was entitled to a divorce on the grounds of incompatibility and having lived separate and apart for more than one year. Also in accordance with the parties' stipulations, the trial court concluded that the de facto termination of the marriage was January 12, 2006, when the parties separated, and that the duration of the marriage for purposes of property valuation and division was August 6, 2003 through January 12, 2006.

{¶3} The issues on appeal concern the trial court's property division, specifically with respect to the real property located at 2488 Lytham Road, Columbus, Ohio (the "Lytham property") and Karen's request that she be credited for expenditures of her separate funds during the term of the marriage.

{¶4} When Toby and Karen met in 2002, Toby and his son were living in the Lytham property, which Toby had been awarded in a previous divorce and which he was in the process of enlarging and renovating. Prior to their marriage, Toby and Karen decided to complete the renovation of the Lytham property and to sell it for a profit. In June 2003, Toby and Karen refinanced Toby's existing \$127,315.15 mortgage on the Lytham property and obtained a new mortgage in the amount of \$160,000. With the exception of \$2,888.22 used to pay off Karen's pre-marital debt and \$6,000 loaned to Toby's daughter, the remaining mortgage proceeds were primarily used to pay off

Toby's pre-marital debt. At the same time as the refinancing, the parties also obtained a home equity line of credit on the Lytham property in the amount of \$68,300, which was later extended to \$90,400. Although the parties intended to use the line of credit to pay for materials to complete the renovation of the Lytham property, the majority of the line of credit was spent on personal expenses, vacations, Karen's custody litigation with her ex-husband, and living expenses.

{¶5} Despite the parties' initial intention of completing the renovation and selling the Lytham property within six to 12 months, the renovation remained incomplete when the parties separated in January 2006. Toby moved back into the Lytham property when the parties separated and continued working on the renovation, but he ceased work on the renovation in late 2007. As of the date of trial, the renovation was not complete. Arthur Russo, a licensed realtor and broker, who also acts as a property manager, builder, and renovator, testified that an additional investment of \$40,000 to \$50,000 and three to four months would be required to complete the renovation of the Lytham property and list it for sale.

{¶6} The trial court found the value of the Lytham property at the time of the parties' marriage to be \$228,300. The trial court valued the Lytham property, in its condition as of the final hearing date, at \$210,000, a loss of \$18,300 from its 2003 value. As of the de facto termination date, the balance due on the mortgage was \$149,070.40, and the balance on the home equity line of credit was \$89,512, resulting in total debt of \$238,582.40 secured by the Lytham property. Subtracting the total debt as of the de facto termination date from the value of the Lytham property as of the final hearing date, the trial court stated that there was negative equity of \$28,582.40.

Nevertheless, the court also found marital contributions to equity in the Lytham property totaling \$8,041.38, representing the reduction in the mortgage balance during the marriage.

{¶7} The trial court allocated the Lytham property to Toby and found that the following should be equally divided between the parties: (1) the property's \$18,300 loss in value during the term of the marriage; (2) marital debt of \$89,512, representing the balance on the home equity line of credit; and (3) marital equity of \$8,041.30. The trial court characterized the remaining balance on the mortgage as Toby's separate property.

{¶8} In addition to the Lytham property, the parties also owned real property located at 2482 Powell Avenue, Bexley, Ohio (the "Powell property"), which they purchased for \$194,000 in June 2004 after Karen sold her pre-marital home. A \$39,000 down payment on the Powell property consisted of \$25,000 of Karen's separate property from the proceeds of her pre-marital home and \$14,000 of marital property from the Lytham property home equity line of credit. The trial court valued the Powell property at \$175,000. As of the de facto termination date, the mortgage balance on the Powell property was \$148,633.58, and the trial court subtracted that balance from the market value to find home equity of \$26,366.42. Apportioning the equity in proportion to the marital and separate contributions to the down payment, the trial court concluded that \$9,465.54 represented marital equity and that \$16,900.88 represented Karen's separate equity. The trial court allocated the Powell property to Karen.

{¶9} Ultimately, after allocating the remaining marital assets and liabilities, the trial court ordered Karen to pay Toby the sum of \$54,150.08 to equalize the property division.

{¶10} Karen filed a timely notice of appeal, and she raises the following assignments of error:

I. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FAILING TO INCLUDE A NUMBER OF FINANCIAL ITEMS IN EQUALIZING THE PROPERTY DIVISION BETWEEN THE PARTIES.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN NOT ORDERING A SALE OF [THE LYTHAM PROPERTY], OR IN THE ALTERNATIVE, IN VALUING THE PROPERTY AT \$210,000.00.

{¶11} By her first assignment of error, Karen contends that the trial court erred by failing to factor into the property division her payment of a \$10,354.30 Lowe's credit card balance, representing the purchase price of kitchen cabinets for the Lytham property, and her use of her separate funds totaling \$11,650 to pay miscellaneous marital expenses. Both the Lowe's payment and the \$11,650 originated from a pre-marital account that Karen held with American Funds.

{¶12} Consistent with the parties' proposed balance sheets, the trial court valued the American Funds account at \$14,230 and found that \$9,462 of that balance was Karen's separate property. Also consistent with the proposed balance sheets, the court characterized the remaining \$4,768 as marital property, which it allocated to Karen. Karen's arguments under this assignment of error are illustrated by her proposed

balance sheets, which include in her column negative entries of \$11,000¹ and \$11,650, representing her payments or withdrawals from the American Funds account during the marriage. In essence, Karen argues that the trial court erred by failing to credit her with the entire value of the identified expenditures from the American Funds account, as her separate property, in the property division.

{¶13} A domestic court has broad discretion to make divisions of property. *Middendorf v. Middendorf*, 82 Ohio St.3d 397, 401, 1998-Ohio-403, citing *Berish v. Berish* (1982), 69 Ohio St.2d 318. In divorce proceedings, the trial court must classify property as marital or separate property, determine the value of the property, and divide the marital and separate property equitably between the spouses. R.C. 3105.171(B); *Roberts v. Roberts*, 10th Dist. No. 08AP-27, 2008-Ohio-6121, ¶16. We review a trial court's classification of property as marital or separate under a manifest weight of the evidence standard and will affirm if some competent, credible evidence supports the classification. *Taub v. Taub*, 10th Dist. No. 08AP-750, 2009-Ohio-2762, ¶15. We will uphold a trial court's valuation and division of property absent an abuse of discretion. *Roberts* at ¶16; *Middendorf* at 401. Abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. If there is some competent, credible evidence to support the trial court's decision, there is no abuse of discretion. *Middendorf* at 401, citing *Ross v. Ross* (1980), 64 Ohio St.2d 203.

¹ The \$11,000 entry relates to the payoff of the Lytham cabinets, although the actual amount paid was \$10,354.30.

{¶14} "Marital property" includes "[a]ll real and personal property that currently is owned by either or both of the spouses * * * and that was acquired by either or both of the spouses during the marriage" and "[a]ll interest that either or both of the spouses currently has in any real or personal property * * * and that was acquired by either or both of the spouses during the marriage." R.C. 3105.171(A)(3)(a)(i) and (ii). By contrast, "separate property" includes "[a]ny real or personal property or interest in real or personal property that was acquired by one spouse prior to the date of the marriage" and "[p]assive income and appreciation acquired from separate property by one spouse during the marriage." R.C. 3105.171(A)(6)(a)(ii) and (iii). Commingling separate property with other property of any type does not destroy its identity as separate property, except when the separate property is not traceable. R.C. 3105.171(A)(6)(b).

{¶15} A party requesting that an asset be classified as separate property bears the burden of tracing that asset to his or her separate property. *Dunham v. Dunham*, 171 Ohio App.3d 147, 2007-Ohio-1167, ¶20, 26. When parties contest whether an asset is marital or separate property, there is a presumption that the asset is marital property, unless proven otherwise. *Miller v. Miller*, 7th Dist. No. 08 JE 26, 2009-Ohio-3330, ¶20. An appellate court's job is not to reweigh the evidence but to determine whether there was competent, credible evidence to support the trial court's findings. *Dunham* at ¶27.

{¶16} We first address Karen's argument concerning her payoff of the charge for the Lytham cabinets. Toby purchased kitchen cabinets for the Lytham property for \$10,354.30 in April 2004 on a Lowe's credit card that offered no interest for 12 months. At the end of the 12-month, interest-free period, Karen undisputedly paid the entire

balance with pre-marital money from her American Funds account to avoid paying interest on the cabinet purchase. While Toby testified that Karen's payment "was a choice decision she made," Karen disputed the characterization of her payment as voluntary. (Tr. 445.) Karen testified that she was not happy about paying the Lowe's balance, but that she "did it so that we didn't get hit with more interest." (Tr. 276.) It is undisputed that the cabinets are now installed in, and add value to, the Lytham property.

{¶17} The trial court neither classified Karen's payment as marital or separate property, despite Karen's request that it be characterized as separate property and credited to her in the property division, nor made any factual findings relating to that payment. Karen argues that the trial court abused its discretion by failing to find that the separate money she paid on the Lowe's account remained her separate property and by failing to credit her for that payment in the property division. Toby responds that Karen's pre-marital funds lost any separate character once paid to Lowe's and that the trial court properly recognized that there was no asset to allocate because the tangible assets, the cabinets, were incorporated into and became part of the Lytham property. Given the absence of factual findings relating to Karen's \$10,354.30 payment, we cannot discern the basis on which the trial court denied Karen a credit.

{¶18} In *Neighbarger v. Neighbarger*, 10th Dist. No. 05AP-651, 2006-Ohio-796, this court addressed a divorcing party's claim to recover separate funds traceable to improvements to marital real estate. There, the husband paid \$5,000 from his separate annuity fund for renovations to marital real estate, and this court affirmed the trial court's

characterization of the \$5,000 payment as the husband's separate property. We stated, at ¶32, as follows:

* * * The "separate property" under consideration here is appellant's \$5,000 from his annuity fund. Appellee does not challenge appellant's assertion that the money came from his annuity fund, which appellee agreed was appellant's separate property. To determine that the \$5,000 was separate, and remained separate, we need not determine whether his expenditure resulted in appreciation. Rather, our inquiry arises from R.C. 3105.171(A)(6)(b), which provides that the commingling of separate property (the money from the annuity fund) with other property (the [real estate]) does not destroy the identity of the separate property as separate property, except when the separate property is not traceable.

In *Neighbarger*, the husband's testimony concerning how much he spent, what he purchased, and what renovations he made constituted competent, credible evidence that the husband's \$5,000 from his separate annuity fund remained his separate property despite his payment of those funds for improvements to the marital real estate. See also *Okos v. Okos* (2000), 137 Ohio App.3d 563, 584 (that money spent on home improvements may not realize a dollar-for-dollar increase in the value of real property does not change the separate nature of the property). But see *Paras v. Paras* (Dec. 7, 2000), 8th Dist. No. 77253 (rejecting husband's claim of separate property used to improve the marital home where there was no evidence establishing a definable trail for the separate funds after they were deposited into the parties' joint account and "no evidence showing what portion of the increased value of the home is directly attributable to [the] improvements").

{¶19} Like in *Neighbarger*, there is no dispute that Karen's \$10,354.30 payment originated from her separate funds in the American Funds account. In light of

Neighbarger, it is arguable that Karen's payoff of the Lytham cabinets was traceable and remained her separate property. See also *Varnier v. Varnier*, 170 Ohio App.3d 448, 2007-Ohio-675, ¶19-21 (suggesting that a party may be entitled to a credit for separate money contributed to items used for improvements to real property if the party presents evidence to trace the expenditure solely to the party's separate money).

{¶20} In allocating property between divorcing parties, a trial court must indicate the basis for its award in sufficient detail to enable an appellate court to determine whether the award is fair, equitable, and in accordance with the law. *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 97. The duty to indicate the basis of its award in sufficient detail extends to the court's duty to characterize the parties' property and liabilities as either marital or separate. *Clark v. Lintner-Clark* (June 30, 2000), 7th Dist. No. 720, citing *Shuman v. Shuman* (Apr. 5, 1995), 9th Dist. No. 16836 (" '[w]hen a trial court fails to classify all of the parties' property as either marital or separate and then fails to value that property in its findings, an appellate court cannot effectively review the accompanying entry' "). Here, the trial court made no written findings regarding Karen's \$10,354.30 payoff of the Lytham cabinets from her separate funds. Accordingly, there is no basis upon which this court can determine or review the trial court's rationale denying Karen credit for that payment. We must, therefore, remand this matter for the trial court to make written findings regarding that payment and to recalculate the division of marital property if necessitated by those findings.

{¶21} Also under her first assignment of error, Karen maintains that the trial court erred by failing to credit her with an additional \$11,650 that she transferred from her American Funds account into the marital checking account during the course of the

marriage. Although the Judgment Entry similarly contains no findings relating to this money, here we conclude that the trial court did not abuse its discretion by denying Karen's requested credit of \$11,650. There is no dispute that the \$11,650 for which Karen requested a credit originated from her pre-marital American Funds account and was originally her separate property. Nor is it disputed that Karen transferred a total of \$11,650 from her American Funds account into the joint, marital checking account. Although Karen argues in her appellate brief that those funds were used to pay marital household expenses, the record contains no evidence tracing the funds transferred from Karen's American Funds account to any purchases or payments once they were deposited into the marital account, which was depleted and which the trial court valued at \$2 as of the de facto termination date. Given the absence of evidence tracing any portion of the \$11,650 to any expenditure or asset, we cannot conclude that the trial court's refusal to credit Karen with \$11,650 constituted an abuse of discretion.

{¶22} Finally, the trial court's characterization of \$4,768 from the American Funds account as marital property does not affect our determination of Karen's first assignment of error. Indeed, both parties' proposed balance sheets listed \$4,768 of the American Funds account balance as marital property. Karen expressly testified that she deposited \$4,768 in marital funds into the American Funds account over the course of the marriage, but she claimed those deposits were made for the purpose of repaying the money previously transferred out of that account. There is no evidence, however, of any agreement that Karen's transfers from her American Funds account, totaling \$11,650, constituted a loan to be repaid. Toby described the deposits, totaling \$4,768, as "our saving deposits" and explained simply, "[w]e were saving money." (Tr. 473,

386.) The trial court was entitled to judge the credibility of the parties and, based on the testimony, could have concluded that there was no agreement between the parties that those deposits were intended to reimburse separate funds expended by Karen to pay marital obligations. Regardless of the trial court's characterization or treatment of Karen's expenditures from the American Funds account, competent, credible evidence supports the trial court's finding that \$4,768 of the balance remaining in that account was marital property.

{¶23} For these reasons, we sustain Karen's first assignment of error with respect to Karen's \$10,354.30 payoff of the Lowe's account, representing payment for the Lytham cabinets, and we remand this matter for the trial court to issue findings with respect to that expenditure and to recalculate the property division if necessitated by those findings. In all other respects, we overrule Karen's first assignment of error.

{¶24} By her second assignment of error, Karen argues that the trial court erred by not ordering that the Lytham property be sold and, alternatively, that the court erred in assigning the Lytham property a market value of \$210,000. We will not reverse a trial court's valuation and distribution of property absent an abuse of discretion. See *Alexander v. Alexander*, 10th Dist. No. 09AP-262, 2009-Ohio-5856, ¶7, citing *Roberts* at ¶16, and *Middendorf* at 401.

{¶25} Karen first contends that the trial court abused its discretion by not ordering that the Lytham property be sold and by, instead, allocating the property to Toby. Karen's primary argument regarding the allocation of the Lytham property stems from the parties' intention, since they refinanced the property before their marriage, to rehabilitate and sell the Lytham property for a profit. Karen also argues that a sale is

necessary for the parties to retire the debt incurred in renovating the property and in meeting their living expenses during the renovation process. A trial court has broad discretion in effectuating property divisions in divorce cases. *Middendorf* at 401. Although ordering a sale of the Lytham property was undisputedly within the trial court's discretion, the trial court's refusal to do so in this case was not unreasonable, unconscionable or arbitrary.

{¶26} Toby does not dispute Karen's characterization of the parties' intentions during the marriage, and the trial court specifically found that, "[p]rior to their marriage, the parties mutually decided to complete the renovation * * * with the intention of eventually selling [the Lytham property] for a profit." That undisputed fact, however, does not preclude the trial court from awarding the property to Toby as part of an equitable division of property. The trial court allocated one piece of real property to each party. Although the parties jointly refinanced the Lytham property prior to their marriage, the Lytham property had previously been Toby's separate property, and Toby stated his desire to retain the property. Apparently recognizing the court's discretion to allocate the Lytham property to Toby, Karen submitted alternative proposed balance sheets to the court, including one providing for the allocation of the Lytham property to Toby. Although Karen contends that the trial court was not entitled to allocate the Lytham property to Toby while deviating from other elements of her proposed balance sheet, the allocation was itself within the court's discretion and does not amount to reversible error.

{¶27} We next turn to Karen's argument that, assuming no abuse of discretion in the allocation of the Lytham property to Toby, the trial court abused its discretion in

valuing the Lytham property. Karen admits in her appellate brief that, although the "key date" for valuation of the Lytham property was the de facto termination date accepted by the trial court for purposes of valuation and property division, neither party submitted evidence of the Lytham property's value as of the de facto termination date, January 12, 2006.

{¶28} Evidence of the Lytham property's value is found in the testimony of Karen's expert witness, Russo, who visited the property two to three weeks prior to trial "to give an idea of what the value was and what needed to be taken care of in the property to make it sell." (Tr. 12-13.) Russo testified that, although the renovation required a permit, no permit was posted at the Lytham property during his walkthrough. (Tr. 20-21.) Russo further testified that, although Toby told him he was living in the Lytham property, no occupancy permit was visibly posted and that "[t]here's just no possible way you could get an occupancy permit for this house." (Tr. 26.) At trial, Russo described an extensive list of tasks to "make [the Lytham property] livable and pull an occupancy permit" and testified that the list would take three to four months to complete, at an estimated cost of \$40,000 to \$50,000. (Tr. 33.) According to Russo, it would be difficult to market the Lytham property without an occupancy permit because banks would not lend money on it.

{¶29} Were the tasks identified by Russo completed and all relevant permits obtained, Russo testified that he would list the Lytham property for between \$350,000 and \$375,000. He later stated that he would probably list the property for \$379,900 and that he would expect an offer of approximately \$330,000, from which the buyer and seller would negotiate. Russo testified that, if he finished the property himself, he would

probably price it closer to \$400,000. The trial court rejected Russo's projections of the market value of the Lytham property upon completion as "speculative and without sufficient factual basis," and no party has identified the court's rejection of that testimony as error.

{¶30} The evidence of the Lytham property's value in its unfinished condition is limited. Russo described the market for the property in that condition as "bargain basement price." (Tr. 47.) He described the potential buyer for the unfinished property as an investor looking for a good deal on a property to finish. Russo established that he had previously purchased and rehabilitated 50 to 75 properties for the purpose of reselling those properties for a profit.

{¶31} In his direct testimony, Russo did not state an "as is" value for the property, but agreed with counsel's assessment that valuing the property in its current condition was "tantamount to trying to hit a moving target." (Tr. 48.) On cross-examination, however, counsel pressed Russo to state a value for the Lytham property as of the date of trial. On the condition that a temporary occupancy permit be obtained, Russo responded that the ballpark value of the Lytham property in its current, unfinished condition would be \$250,000 to \$275,000, again with a limited market of investors. Although the record also contained the Franklin County Auditor's tax valuation of the property at \$247,200, Russo opined, generally, that auditor valuations are not accurate reflections of current market values.

{¶32} After Russo testified as to the \$250,000 to \$275,000 value, Toby's counsel went on to inquire what Russo, himself, would pay for the property "as it sits today, no permits." (Tr. 56.) Russo testified that, as someone who rehabilitates properties for

sale, "since I buy everything at bargain basement, I would probably do between 2 and 220." (Tr. 57.) He carefully qualified that \$200,000 to \$220,000 is what he would personally be willing to pay, "not somebody else, just myself," and stated that the "220ish range" is "my price stealing it." (Tr. 57, 61.) Nevertheless, the court itself questioned Russo to clarify that the stated price of \$200,000 to \$220,000 would be Russo's price as an investor looking to make a profit and as part of the limited market that Russo had described for the Lytham property in its unfinished state.

{¶33} In its Judgment Entry, the trial court noted the figures expressed by Russo on cross-examination and ultimately assigned the Lytham property a market value of \$210,000 as of the final hearing date. Karen argues that the evidence does not support the trial court's valuation. Specifically, she maintains that Russo's "bargain basement" price is not evidence of the fair market value of the Lytham property in light of Russo's testimony that the value is between \$250,000 and \$275,000. We disagree.

{¶34} Russo testified that the limited market for the property in its current condition would consist entirely of investors looking to make a profit by finishing and selling the property and would yield a "bargain basement price." Russo placed himself squarely within that limited market prior to offering his testimony that he would pay between \$200,000 and \$220,000 for the property in its current state, without an occupancy permit. Although Toby testified that he had an occupancy permit for the Lytham property, the evidence was undisputed that there was no permit visible when Russo walked through the property, and Russo opined that there was no way that an occupancy permit had been issued with respect to the property. Given the conflicting testimony, the trial court was entitled to weigh the witnesses' credibility and make a

determination of that issue as it related to the value of the property. Although the trial court could have valued the property at the higher value stated by Russo, valuation of the property in its current condition at \$210,000 was not unreasonable, arbitrary or unconscionable, given the record before the trial court. Therefore, the trial court's valuation of the Lytham property did not rise to the level of an abuse of discretion. Because we conclude that the trial court did not err in allocating the Lytham property to Toby or in valuing the Lytham property, we overrule Karen's second assignment of error.

{¶35} In conclusion, we sustain in part and overrule in part Karen's first assignment of error, we overrule her second assignment of error, and we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations. We remand this matter to that court for further findings relating to Karen's payoff of the \$10,354.30 charge representing the Lytham cabinets.

*Judgment affirmed in part,
reversed in part, and cause remanded.*

BRYANT, J., concurs.

TYACK, P.J., concurs in part and dissents in part.

TYACK, P.J., concurring in part and dissenting in part.

{¶36} Since I believe the trial court judge properly addressed all the property division issues in this case, I dissent from the majority's decision to vacate the trial court's decision with respect to the payment to Lowe's and to remand the case for further proceedings.

{¶37} No one forced Karen Hood to pay the Lowe's bill from her own funds. She chose to do so rather than risk a substantial amount of interest being owed to Lowe's

and/or GE Money Bank. The debt was for kitchen cabinets installed in real estate owned by Toby Hood, real estate owned since a time before the couple was married.

{¶38} Karen Hood's decision to pay the debt may have been smart and it may have saved the couple money, but the decision converted her separate funds into marital funds. She paid a marital debt with funds she had from before the marriage. Her payment made the funds marital funds.

{¶39} R.C. 3105.171(A)(3)(a) specifically defines "marital property" and provides that marital property includes appreciation on separate property. The house owned by Toby Hood was separate property, but the increase in its value attributable to the new kitchen cabinets being installed was marital property. Karen Hood chose to invest her separate property in the house and received the financial benefit of the increase in its value attributable to that investment. Unfortunately, the investment did not turn the house into a positive asset, but that fact does not change the conversion of Karen Hood's separate property into marital property. The funds were commingled and disappeared when used to pay a debt on an asset with negative value. Funds which do not exist cannot be traced for purposes of R.C. 3105.17.1(A)(6)(b).

{¶40} The trial court judge was bound by the statutory definitions of "marital property" and "separate property" in R.C. 3105.17.1(A)(3)(a) and (A)(6)(a). The trial court properly applied those definitions. I see no reason to overturn his handling of the issue. Since the majority of this panel does, I respectfully dissent from that portion of the decision.
