THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

PETITIONS FOR REHEARING

3355 - The State v. Leroy Wilkes	Pending
3356 - Kenney's Metal v. Palmieri	Denied 8-17-01
3357 - The State v. Richmond Truesdale, Jr.	Pending
3358 - S. C. Coastal Cons. V. SCDHEC	Pending
3360 - Beaufort Realty v. Beaufort County	Pending
3361 - The State v. Tommy Lee James	Pending
3362 - Johnson v. Arabi	Pending
3363 - Watts v. Metro Security Agency	Pending
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2001-UP-375 - Sutton v. Sutton Pending

2001-UP-376 - Eastwood v. Barnwell County Pending

2001-UP-377 - Miller v. The Ward Law Firm Pending

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2001-UP-269 - Wheeler v. Revco	Pending

of the Office of Appellate Defense, of Columbia, for respondent.

JUSTICE PLEICONES: We granted certiorari to review a circuit court order granting respondent post-conviction relief (PCR). The PCR judge concluded trial counsel rendered respondent ineffective assistance when she failed to challenge a search and when she allowed him to plead guilty, pursuant to a negotiated agreement, to both first and second offense drug charges in the same proceeding. We reverse.

Facts/Procedural History

Respondent was charged with possession of crack cocaine and unlawfully carrying a pistol based on an incident in January 1995. In June 1995, he was arrested and charged with possession of crack cocaine with intent to distribute (PWID). In addition, respondent faced two drug charges from 1994 and one from 1996. Pursuant to a negotiated agreement, the State dropped the 1994 and 1996 charges, and in August 1996 respondent pleaded guilty to possession of crack cocaine, second offense PWID, and carrying a pistol. He received concurrent sentences of twenty years suspended on service of fifteen with three years' probation (PWID), five years (possession), and one year (weapons charge).

Respondent did not file a direct appeal, but did file a PCR application. Following an evidentiary hearing, he was granted a new trial on all charges. We granted the State's petition for a writ of certiorari to review this decision.

Law/Analysis

In order to obtain relief on an ineffective assistance of counsel claim, a PCR applicant must establish both that his counsel's performance fell below an objective standard of reasonableness and that he was prejudiced

the facts would not support such a lesser charge. Cf. Gaines v. State, 335 S.C. 376 n.1, 517 S.E.2d 439 n.1 (1999)(explaining that in North Carolina v. Alford, 400 U.S. 25 (1970), United States Supreme Court held it was constitutional to allow accused to consent to imposition of sentence, although unwilling to admit culpability, where he intelligently concludes that a guilty plea is in his best interest and the evidence strongly supports his guilt).

While the PCR judge and respondent refer to the possession charge as "enhancing" the PWID charge to a second offense, this characterization overlooks the fact that this case involves a plea bargain. As such, the agreement is governed by contract principles,[2] and petitioner was free to negotiate this type of agreement. See Anderson v. State, supra.

All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea. Anderson v. State, supra. A review of both the plea record and respondent's PCR testimony[3] indicates he was well aware that he was pleading guilty both to first offense possession and to second offense PWID, and of the potential sentences he faced as a result. Further, there was a sufficient factual basis presented for both the PWID charge and the separate possession charge in the recitation made by the solicitor at the plea. This is all that is required, and the plea was proper.[4]

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[2]See State v. Thrift, 312 S.C. 282, 440 S.E.2d 341 (1994).

[3]Both records are considered on appellate review of a PCR matter. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

[4]We attach no significance to the order in which respondent pled to these offenses. As noted above, a defendant may constitutionally plead guilty to a charge he did not commit, so long as the plea is knowing, intelligent, and voluntary. In any event, respondent's second offense plea was based on his arrest in June 1995 while his plea to the first offense was

Respondent received the benefit of the agreement for which he bargained and cannot now complain. Cf. State v. Thrift, supra ("Whether a plea agreement is wise, or even in the best interests of the [party], is not the question before us").

There is no evidence in the record to support the PCR judge's finding that trial counsel was ineffective in allowing respondent to accept this plea bargain. A finding that is without evidentiary support must be reversed. Anderson v. State, supra.

Conclusion

For the reasons given above, the order granting respondent post-conviction relief is

REVERSED.

MOORE, WALLER, BURNETT, JJ., concur. TOAL, C.J., concurring in part and dissenting in part in a separate opinion.

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predicated on his January 1995 arrest. The actual sequencing of the pleas is immaterial, as is the issue of respondent's guilt-in-fact, since respondent received the benefit of his constitutional plea bargain.

not cured by the information he received at the plea hearing because the guilty plea judge was not fully informed Rollison was pleading to a second offense.[5]

There are two clear indications, evidenced in the record, that the plea judge was not clearly informed Rollison's charge of possession of crack cocaine with intent to distribute was enhanced to a second offense based on a first offense of simple possession which Rollison was pleading to at the same time. First, the following colloquy occurred during the plea:

> The Court: There are three indictments, sir. 96-4898 does allege, sir, that you did on or about June 23, 1995, possess a quantity of crack cocaine with intent to distribute in violation of the laws of South Carolina. Do you understand that charge?
>
> The Defendant: Yes, sir.
>
> The Court: Do you plead guilty or not guilty to that charge?
>
> The Defendant: Guilty, sir.

Therefore, when asking for Rollison's plea of guilty or not guilty, the court made no mention that he was pleading to a second offense.

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[5]I disagree with the majority's contention in footnote 1 that the plea judge's misunderstanding concerning the fact that Rollison had no previous drug convictions does not, standing alone, entitle Rollison to relief. The plea judge's knowledge is very much at issue. If the judge is misinformed, it is up to the defendant's counsel to correct his information. If counsel fails to correct the judge's perception, his representation has fallen below the objective standard of reasonableness.

Secondly, the sequence of the plea indicates the plea judge was not aware Rollison was pleading to a second offense which was based upon a first offense which was pled to at the same time. Rollison pled guilty to the second offense before he pled guilty to the first offense. Furthermore, the plea judge sentenced him for the second offense before the first offense. Therefore, there was no *conviction* for a first offense upon which to base an enhanced sentence for the second offense.

The definition of a second offense is contained in S.C. Code Ann. § 44-53-470 (Supp. 2000). It provides, "[a]n offense is considered a second or subsequent offense, if, *prior to his conviction of the offense*, the offender has at any time been *convicted* under this article." *Id.* (emphasis added). The plain meaning of the statute requires a *prior conviction* before an enhanced sentence can be imposed.

As this Court stated in *De Witt v. S.C. Dep't of Highways & Pub. Transp.*, 274 S.C. 184, 262 S.E.2d 28 (1980),

> When the State is prosecuting a person for an offense that carries an enhanced penalty on a conviction of a second or subsequent offense, the State is not required to prove the legality of the prior conviction, nor does it have to show the facts surrounding that conviction. *It is only necessary for the State to prove that a previous conviction exists, that the conviction was for an offense which occurred prior to the commission of the offense for which the defendant is being tried, and the defendant was the subject of that prior conviction.*

Id. at 187, 262 S.E.2d at 29-30 (emphasis added). The first offense (for which a defendant was convicted) must have occurred prior to the commission of the second offense. In Rollison's case, this is true. However, the transcript of the guilty plea shows Rollison first pled guilty to and was convicted and sentenced under the June 1995 offense, not the January 1995 offense. Therefore, Rollison

pled guilty and was *convicted* of a second offense before he pled guilty and was *convicted* of a first offense.

A defendant can enter a valid plea to a first and second offense at the same plea hearing. However, the court and/or counsel must clearly explain to a defendant the consequences of such a plea. Here, Rollison was not informed his plea to a second offense would result in an increase in his jail sentence by ten years. Furthermore, he was not told he could go to trial on the simple possession charge first before he pled guilty to the possession with intent to distribute second, and that this strategy could have helped him avoid the enhancement of his possession with intent to distribute charge.

There is ample probative evidence in the record to support the PCR court's findings. *See Anderson v. State*, 342 S.C. 54, 535 S.E.2d 649 (2000) (PCR court's findings should be upheld if supported by any probative evidence in the record).

Accordingly, I would **AFFIRM** the lower court's order granting PCR.

Donald E. Jonas, of Cotty & Jonas, of Columbia, for respondents.

JUSTICE BURNETT: This Court granted a writ of certiorari to review Tatum v. Medical University of South Carolina, 335 S.C. 499, 511, 517 S.E.2d 706, 713 (Ct. App. 1999), in which the Court of Appeals adopted the "dual persona doctrine" and held "where [an] employer-hospital and its physicians negligently treat an employee for a work-related accident and, in doing so, exacerbate the injury," a tort action may be maintained by the employee against the employer-hospital. We reverse.

FACTS

Respondent Tatum (Mrs. Tatum) injured her back in the course of her employment with Petitioner Medical University of South Carolina (MUSC). She was treated at MUSC's Employee Health Care Service and diagnosed with a midline broadly-based disc herniation.

Mrs. Tatum was later referred to Dr. Sunil J. Patel, a physician employed by MUSC as an assistant professor and neurosurgeon. Ultimately, Dr. Patel performed three surgeries on Mrs. Tatum's back.

Mrs. Tatum filed a medical malpractice action against MUSC alleging she suffered permanent damage to her spinal cord as a result of Dr. Patel's negligence. Her husband, Respondent Scarbrough, asserted a claim for loss of consortium. MUSC denied the allegations in Mrs. Tatum's complaint and claimed Mrs. Tatum's exclusive remedy was under the Workers' Compensation Act.

Finding workers' compensation was Mrs. Tatum's exclusive remedy, the trial court granted MUSC's motion to dismiss under Rule 12(b)(6), SCRCP. Mrs. Tatum appealed.

The Court of Appeals reversed. It reasoned 1) an employee injured within the scope of employment may maintain a malpractice action against a negligent treating physician; 2) the South Carolina Tort Claims Act prohibits Mrs. Tatum from maintaining a malpractice action against Dr. Patel because he is MUSC's employee 3) the provisions of the South Carolina Workers' Compensation Act preclude her from maintaining a tort action against her employer MUSC; 4) nonetheless, pursuant to the "dual persona" doctrine, Mrs. Tatum may maintain a malpractice action against MUSC, not as her employer, but as a provider of hospital services. Tatum, 335 S.C. 499, 517 S.E.2d 706.

ISSUE

Did the Court of Appeals err by holding an employee of a governmental entity/hospital who sustains a compensable work-related injury may maintain a tort action against the governmental entity/hospital for the negligence of the treating physician?[1]

DISCUSSION

This case asks us to resolve the conflict, if any, between the South Carolina Tort Claims Act (the Tort Claims Act)[2] and the South Carolina Workers' Compensation Act (the Worker's Compensation Act).[3]

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[1]Tatum holds *all* hospitals may be held liable in tort for the negligence of physicians who treat work-related injuries sustained by hospital employees. We have limited our discussion to the law relevant to the facts presented by this case.

[2]S.C. Code Ann. §§ 15-78-10 to -200 (Supp. 2000).

[3]S.C. Code Ann. §§ 42-1-10 to 42-17-90 (1985).

5.05[2][f] (2000) ("[w]hen an employee has sustained injuries which are compensable under the [Federal Employees] Compensation Act, and those injuries are aggravated, or others are sustained, in the course of treatment for the initial injuries, as for example, when there has been negligence or malpractice in the government hospital where the employee was sent, the employee may not prosecute a separate claim under the [Federal] Tort Claims Act for such aggravation or subsequent injuries. Here, too, the Compensation Act provides the exclusive remedy."). In keeping with the provisions of the Workers' Compensation Act, government employers, like private employers, are not liable in tort for work-related injuries sustained by their employees. § 15-78-40 (". . . governmental entities are liable for their torts in the same manner and to the same extent as a private individual in like circumstances . . . ").

Second, the exclusivity provision of the Workers' Compensation Act precludes an employee from maintaining a tort action against her employer where the employee sustains a work-related injury. § 42-1-540 (the remedies granted an employee to accept compensation excludes all other remedies against his employer). The State and its employees are subject to the exclusivity provision of the Workers' Compensation Act. § 42-1-320 (Supp. 1999).

Section 42-15-70 is particularly applicable. As noted above, § 42-15-70 provides:

> . . . [T]he employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of this section, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident and shall be compensated for as such.

Section 42-15-70 has been interpreted as providing "the aggravation of an injury by medical or surgical treatment necessitated by an original compensable injury is compensable and new injuries resulting

indirectly from the original injury or from medical or surgical treatment are likewise compensable." Whitfield v. Daniel Constr. Co., 226 S.C. 37, 41, 83 S.E.2d 460, 462 (1954); see 82 Am. Jur. 2d Workers' Compensation § 371 (1992) (". . . rule that a new injury or aggravation of an injury under treatment, as result of that treatment, arises out of and in the course of employment has been followed even where the aggravation of the work-related injury is caused by medical malpractice."). The original work-related injury is regarded as the proximate cause of the damage flowing from the subsequent negligent treatment. Whitfield, supra ("[e]very natural consequence which flowed from this injury, unless the result of an independent intervening cause, sufficient to break the chain of causation, is likewise compensable.").

We agree with the Court of Appeals that, in general, treating physicians, as third parties to the employer-employee relationship, do not fall within the immunity provisions of the Workers' Compensation Act and are subject to suit. § 42-1-540 (employee may maintain action at law against "any person other than the employer"); see 6 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 112.02[1][a] (1999) ("[w]hen a physician has no special status under the act conferring immunity, every jurisdiction dealing with the question has recognized in some form that a suit will lie against a physician who has aggravated a compensable injury by malpractice.").[5] Unlike a treating physician, however, the employer is not a third party amenable to suit. Section 42-1-540 authorizes suit against "any person other than the employer." Section 42-15-70 expressly states the employer shall not be liable in tort for the physician's malpractice. Instead, the consequences of the malpractice are compensated as part of the work-

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[5]Presumably, the employer would have a lien on any proceeds attributable to the negligence of the third-party physician. § 42-1-560(b) (1985); see Hardee v. Bruce Johnson Trucking Co., 293 S.C. 349, 360 S.E.2d 522 (Ct. App. 1987) (where workers' compensation claimant instituted third-party action against physician who allegedly exacerbated work-related injury by negligent surgery).

related injury without the necessity of the employee establishing traditional tort liability.[6] The plain language of the Workers' Compensation Act precludes suit by an employee against her employer. Lester, 334 S.C. 557, 514 S.E.2d 751 (if a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning).

Third, even if we were persuaded the Tort Claims Act and Workers' Compensation Act did not specifically preclude suit by a government employee against her government employer for the negligence of the treating physician, the "dual persona" doctrine would nevertheless be inapplicable under the circumstances of this case. Under the "dual persona" doctrine, "[a]n employer may become a third person, vulnerable to suit by an employee, if - and only if - it possesses a second persona so completely independent from and unrelated to its status as employer that by the established standards the law recognizes that persona as a separate legal person." Larson's Workers' Compensation Law § 113.01 [1] (1999). Larson suggests use of the term "persona" is dictated by the typical third-party workers' compensation statute which usually defines a third party as "a *person* other than the employer."[7] The "dual persona" concept is applied in situations where the law clearly recognizes "the duality of legal persons, so

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[6]See Balancio v. United States, 267 F.2d 135, 137-138 (2d Cir. 1959), cert. denied 361 U.S. 875 (" . . . the initial wrong is the cause of all that follows, even when there has intervened a succeeding negligent act that produced the aggravation. We interpret the [Federal Employees] Compensation Act as a substitute for the whole of the claim that, but for it, would have arisen under the [Federal] Tort Claims Act . . . [W]e cannot disregard the fact that Congress meant that, whenever 'compensation' was available to a Federal employee, it was to be his only remedy").

[7]S.C. Code Ann. § 42-1-540 (employee may maintain an action at law against "any *person* other than the employer") (italic added).

time of the work-related injury. Durham v. County Village Assoc., 1999 WL 169402 (Del. Super. 1999) (relying on "dual persona" doctrine, maintenance employee-tenant at apartment complex could not maintain action against employer-landlord after sustaining work-related injury); Estate of Donley v. Pace Indus., 984 S.W.2d 421 (Ark. 1999) (estate of employee killed in work accident involving machine precluded from maintaining products liability action against company that used to own machine and company's parent, both of which had merged three years earlier with employee's employer); Singhas v. New Mexico State Highway Dep't, 946 P.2d 645 (N.M. 1997) ("dual persona" doctrine did not provide exception to workers' compensation exclusivity provision so as to allow one state agency's employee to bring tort suit against another state agency for injuries sustained in work-related automobile accident); Samson v. DiConzo, 669 A.2d 760 (Me. 1996) (cocktail waitress injured by patron failed to establish employers who performed different functions and duties within restaurant in individual capacities were separate legal entity); Li v. C.N. Brown Co., 645 A.2d 606 (Me. 1994) (without alleging employer maintained separate legal identity as owner of premises where employee convenience store worker was shot and killed, exclusive remedy against employer was workers' compensation); Quinn v. DiPietro, 642 A.2d 1335 (Me. 1994) (employee could not maintain suit against employer who both operated business and co-owned building).

The "dual persona" theory is inapplicable to the facts of this case. Contrary to the Court of Appeals' assertion, MUSC did not take on the "legally distinct persona of [Mrs. Tatum's] treating hospital" by referring her to Dr. Patel for treatment. MUSC is only one legal entity even though it may act in many different capacities, including those of employer and medical provider. McAlister v. Methodist Hospital of Memphis, 550 S.W.2d 240, 246 (Tenn. 1977) (court refused to apply "dual persona" theory to permit suit against hospital-employer, recognizing "[t]he employer is the employer; not some person other than the employer."). Even if we were to adopt the "dual persona" doctrine, it is inapplicable in this situation.

Finally, the Court of Appeals' analysis assumes all employees

The decision of the Court of Appeals is reversed. The trial judge's order granting MUSC's motion to dismiss pursuant to Rule 12(b)(6), SCRCP, is reinstated. McEachern v. Black, 329 S.C. 642, 496 S.E.2d 659 (Ct. App. 1998) (trial court's grant of motion to dismiss will be sustained if facts alleged in the complaint do not support relief under any theory of law).

REVERSED.

MOORE, J., concurs. WALLER, J., concurring in a separate opinion. TOAL, C.J., dissenting in a separate opinion in which PLEICONES, J., concurs.

WALLER, A.J. (Concurring in result with the majority): Although I am sympathetic to Tatum, I am constrained to concur with the majority opinion. Pursuant to S.C. Code Section 42-15-70, it is patent that MUSC is not liable for the negligence of its treating physician, and Tatum's exclusive remedy is worker's compensation. Accordingly, as the legislature has not indicated an intent to allow Tatum to recover in this situation, I must concur with the majority.

Moreover, although I am not averse to adoption of the dual persona doctrine, I concur with the majority that it would have no application to the present case. There is a distinction between the doctrines of dual **capacity** and dual **persona**. As noted by Professor Larson,

> [A dual **persona**] is quite different than a person acting in a **capacity** other than that of employer. The question is not one of activity or relationship– it is one of identity. The Tennessee Supreme Court, brushing aside all the fictitious sophistry of 'dual capacity,' nailed down this point with breathtaking simplicity:
>
> The employer is the employer; not some person other than the employer. It is as simple as that.[9]
>
> The only way a court can break through this monolithic truism is to resort to a legal fiction.

6 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 113.01[2](2000).

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[9] Citing McAlister v. Methodist Hospital of Memphis, 550 S.W.2d 240, 246 (Tenn. 1977), in which the Tennessee Supreme Court held a hospital employee who sustained a compensable injury while at work, and thereafter sustained further injury after undergoing surgery in same hospital to correct her back injury, could not bring tort action against hospital or treating physician as workmen's compensation provided exclusive remedy.

To hold Tatum may recover in tort from MUSC is, in reality, simply an application of the legal fiction known as the dual capacity doctrine, a doctrine sharply criticized by Professor Larson, and previously rejected by this Court. Id.; Johnson v. Rental Uniform Service of Greenville, 316 S.C. 70, 447 S.E.2d 184 (1994).

CHIEF JUSTICE TOAL: I respectfully dissent. In my opinion, the Court of Appeals correctly held that Mrs. Tatum and Mr. Scarborough should not be precluded from pursuing these negligence and loss of consortium claims in light of the "dual persona" doctrine. Once MUSC undertook to act as Mrs. Tatum's medical provider, it took on a persona legally distinct from its status as her employer. I would dismiss the writ of certiorari as improvidently granted.

PLEICONES, concurs.

required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Copeland may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that John E. Copeland, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that John E. Copeland, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Copeland's office.

s/Jean H. Toal C.J.

Columbia, South Carolina

August 10, 2001

HEARN, C.J.: Susan Enid Cobb Bragg (Wife) and Raymond Wayne Cobb (Cobb), Wife's father, appeal from several aspects of a divorce decree. We affirm in part and reverse and remand in part.

Facts and Procedural History

The parties married in June 1989 in Alabama, and moved to South Carolina immediately thereafter. They have one son, born in 1996. At the time of the final hearing Husband was 43 years old, and Wife was 33 years old. Both parties were employed during the marriage. Husband has a bachelor's degree in engineering technology and is employed at INA Bearing Company earning a monthly salary of approximately $5,168. Wife has a master's degree in counseling and was employed as a teacher during the marriage. At the time of the divorce hearing, Wife had relocated to Alabama and was employed by a mental health center earning approximately $1,916 per month.

During the marriage, Wife obtained credit in her own name without Husband's knowledge or consent, accumulating approximately $33,800 in debt. In 1996, Wife filed for bankruptcy without informing Husband. During the bankruptcy proceedings, she gave false information to the bankruptcy court, failing to disclose her interest in the parties' marital home. By order of the bankruptcy court, Wife's debts were discharged and the proceeding dismissed based on the court's conclusion it was a "no asset" case.

In May 1997, Wife was admitted to Charter Hospital and treated for depression. She was diagnosed with major depressive disorder and prescribed therapeutic treatment and antidepressant medication. While at Charter, Wife told Husband about the bankruptcy proceeding.

Husband commenced this action against Wife in January 1998, seeking a divorce on the ground of physical cruelty, child custody, equitable division of marital assets and debts, and attorney fees. Wife answered and counterclaimed, requesting child custody, equitable apportionment, and attorney

We note that this case is distinguishable from those upholding the jurisdiction of the family court to equitably divide property titled in the name of a third party. See In re Sexton, 298 S.C. 359, 380 S.E.2d 832 (Ct. App. 1989), rev'd on other grounds, 310 S.C. 501, 427 S.E.2d 665 (1993) (holding marital property titled in Husband's mother's name can be equitably divided by the family court because Husband transferred title to his mother immediately before filing for divorce to keep property out of divorce proceeding). Here, Cobb purchased a one-half interest in the marital home for valuable consideration, and neither Husband nor Wife had any equitable interest in it after Cobb's purchase except to the extent that Husband continued to maintain the property. The bankruptcy court recognized this in its order by stating that the bankruptcy trustee sold Cobb a one-half interest in the marital home "free and clear" of Husband's interest and that "Cobb purchased an undivided one-half interest in the marital home, not merely an equitable interest." However, Husband may still be entitled to bring an action to recover costs he incurred for the property. As the bankruptcy court stated: "[Husband] may be able to equalize and recoup the 'equities' by adjusting any disparity in costs and expenses he paid post-petition through any subsequent partition of this property in state court."

Accordingly, once Cobb's one-half interest in the marital home became involved in the bankruptcy proceeding, the family court had no jurisdiction to include this portion of the home within its equitable division scheme. The bankruptcy court concluded Cobb owns a one-half interest because he paid valuable consideration for it; therefore, the family court had no jurisdiction to award this half of the marital home to any party. Because we find only one-half of the marital home was a marital asset, it is necessary for the family court to reapportion the couple's assets and liabilities to effectuate a 65%/35% division. Thus, we reverse the equitable apportionment of the parties' assets and remand for redetermination in light of this decision.