



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 13 March 2015
STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

WT & others v KT (933/2013)[2015] ZASCA 9 (13 March 2015)

The SCA today handed down judgment in a case concerning whether assets of a discretionary family trust form part of the joint estate of parties married in community of property.

W (the plaintiff in the court below and the first appellant) who was married to K (the defendant in the court below and the respondent) in community of property, instituted divorce action in the Gauteng Local Division, claiming a decree of divorce as well as ancillary relief. Whilst K did not oppose the decree of divorce sought by her husband, she filed a counterclaim relating to the extent of the assets of their joint estate. In her counterclaim, K claimed that assets of a trust established prior to the marriage formed part of the joint estate of the parties.

K's contention that assets of the trust formed part of the joint estate was based on:

- (a) W deceiving her.
- (b) The trust being W's alter ego.

The high court found in favour of K that the joint estate included the assets of the trust.

On appeal, the SCA held that there was no evidence supporting K's contention of W's deception. The SCA further held that K's belief that she would be an equal owner of the matrimonial home, which had been registered in the name of the trust, was not corroborated and was improbable given the undisputed evidence relating to establishment of the trust.

The SCA found further that there was no factual or legal basis for the finding of the high court that the trust formed part of the joint matrimonial estate of the parties.

The SCA accordingly held in the circumstance of the case, that the appeal had to succeed against the declaratory order made by the high court. Therefore, the SCA ordered that the appeal is upheld with costs and the order of the high court was set aside with a declaratory order that the assets of the trust do not form part of the joint estate of the parties.

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