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SIXTH DIVISION
July 29, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
VELMA WILLIAMS,)	Cook County
)	
Petitioner-Appellee,)	
)	
and)	No. 05 D 664
)	
CHARLES WILLIAMS,)	The Honorable
)	Nancy J. Katz,
Respondent-Appellant.)	Judge Presiding.

PRESIDING JUSTICE GARCIA delivered the judgment of the court.
Justices Cahill and R.E. Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* It was not against the manifest weight of the evidence to find the husband dissipated certain marital assets; it was within the trial court's discretion to hold the husband responsible for credit card debt that he incurred; and it was not an abuse of discretion to award 55% of the marital assets to the wife and the remainder to the husband.

¶ 2 *Pro se* respondent Charles Williams challenges the circuit court's findings, which included that he dissipated certain marital assets and was entitled to only 45% of the marital assets, as reflected in the judgment of dissolution of marriage. On the record before us, Velma presented sufficient evidence to shift the burden of disproving dissipation of marital assets to Charles, who failed to demonstrate through clear and specific evidence that he used those assets for a purpose related to the marriage. The court acted within its discretion in assigning to Charles the full value of credit card debt he incurred during the marriage. The trial court did not abuse its discretion in apportioning a greater percentage of the marital assets to Velma. We affirm.

¶ 3 BACKGROUND

¶ 4 Velma and Charles were married on May 22, 1982, and the marriage was registered in Cook County, Illinois. The couple had four children: Charles II, born January 29, 1984; Stephanie, born April 14, 1986; Alexandra, born April 17, 1995; and Victoria, born September 20, 1998. At the time of the dissolution judgment, Velma was 50 and Charles was 54. Velma holds a business degree in marketing and was at the time employed by a company known as ComputerShare. Charles was self-employed as a financial advisor and sold investment products to clients.

¶ 5 On January 21, 2005, Velma filed a petition for dissolution of marriage. On August 15, 2005, the parties entered into a Joint Parenting Agreement granting joint custody of the minor children and stipulating that the children would reside with Velma, but would have frequent and liberal visitation with Charles. On February 2, 2006, Velma filed notice of her claim that Charles dissipated marital assets.

¶ 6 The parties proceeded to trial, where they were both represented by counsel. The trial was heard over two years, beginning in March 2007 and concluding in June 2009. Both parties testified. Velma asserted that Charles dissipated marital funds through gambling, taking advances on credit cards, withdrawing cash through the refinance of the couple's home, liquidating a stock portfolio, and taking a loan against life insurance policies held by the couple.

¶ 7 In its memorandum opinion and judgment for dissolution of marriage, the court found that "despite the fact that the parties continued to live together after January 2005, the irretrievable breakdown of the relationship occurred on or about the beginning of January 2005." Pursuant to a February 3, 2008, court order, Charles refinanced the mortgage on the parties' home on April 2, 2008, to obtain \$65,000 cash for the parties' use to litigate their divorce. In addition to the court-order approved amount, Charles rolled \$65,000 of credit card debt into the refinanced mortgage, and obtained \$15,808.73 in cash. At trial, Velma's counsel asked Charles, "Nothing in the order [to refinance] states that you were to take any additional money out for any other reasons, is that right?" Charles responded, "I don't know if it says otherwise. But no, as far as I know."

¶ 8 In addressing the \$15,808.73 in cash Charles received at the mortgage refinance, the court found "Charles' general statements that he used the funds for marital purposes were insufficient evidence to overcome the evidence of dissipation and he presented no competent evidence to show how he used these funds." The court determined Charles's use of the funds constituted dissipation.

¶ 9 The court rejected Velma's claim that Charles dissipated marital funds through gambling. The court found Velma knew Charles gambled, the two had in fact gambled together on a few

occasions, and Velma had received at least \$500 in winnings from Charles. Velma testified that she "presumed" Charles used his gambling proceeds to pay family bills.

¶ 10 The court next addressed the couple's E-Trade stock, with a stipulated value of \$4,564.68, that Charles liquidated on or about December 4, 2006. He contended he did so to pay private school tuition. The trial court found, however, "no evidence was introduced by Charles to show a tie-in between the liquidation of the stock and payment of tuition." The court found Charles not "entirely credible" on this issue, and held he dissipated the stock portfolio.

¶ 11 Velma also contended Charles dissipated about \$138,288 in credit card cash advances. She contended he used the credit cards to pay gambling expenses, but Charles testified he used advances from one card to pay off another card. The trial court found "the evidence adduced at trial did not support Charles' testimony." It noted "some of the credit card advances *** were made at a casino after a May 2006 Court order that prohibited the parties from using credit cards for gambling purposes."¹ While the court rejected the amount of dissipation claimed by Velma, the court concluded some dissipation of credit card advances occurred.

"The evidence did establish that the parties had marital credit card debt at the time of the breakdown of the relationship. Charles testified, and the evidence supported that testimony, that his overall credit card debt decreased from over \$92,301.25 in December 2004, to approximately \$55,336.52 in December, 2006,

¹ On pages 2 and 3 of her brief, counsel for Velma states the amount of the advances taken out at the casino was "large" and "substantial," but the record citations do not support her claims. Counsel is reminded not to represent as facts claims unsupported by the record.

and then increased to about \$65,000 at the time of the refinance of the marital home.

However, the burden was on Charles to show the purpose of the cash advances and he failed to do so. Although the total debt load on the credit cards went down during the litigation, these cash advances with their attendant fees and interest added further substantial debt to the parties' marital debt load."

The court found "Charles dissipated the marital estate by taking numerous unexplained cash advances."

¶ 12 The court addressed Velma's claim that Charles dissipated of the parties's Mass Mutual Thrift Plan life insurance policy on or about December 16, 2006, by taking out a loan of \$8,722.13. Charles contended he needed the loan to pay his 2005 income taxes because he was self employed and had made quarterly tax payments; he asserted that in years past he relied on the tax withholdings from Velma's employment, but Velma refused to file a joint tax return. The court found "Charles presented absolutely no competent evidence that the funds were used to pay income taxes." The loan constituted dissipation.

¶ 13 In dividing the marital assets, the court relied on the 12 factors listed in section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (the "Act"). 750 ILCS 5/503(d) (West 2008). The court noted Charles owned an interest in real estate at 4727 S. Langley in Chicago, as well as vacant lots at 4721-25 S. Langley, all of which were non-marital property. It noted that "Charles has more upside potential to increase his future earnings than does Velma." The parties had stipulated that Charles would retain the marital residence, which the court followed by assigning Charles the residence along with all the debt on the property. Based on the factors in

section 503(d), the court awarded Velma 55% of the value of the marital residence and the retirement assets. The court ordered Charles to reimburse Velma 55% of each of the assets he was found to have dissipated: the refinance amount of \$15,808.73; the liquidated E-Trade account of \$4,564; and the loan on the Mass Mutual Thrift Plan of \$8,772.

¶ 14 The court held Velma responsible for her credit card debts to Bank of America of \$7,070 and to Target of \$1,237. Charles was held responsible for the \$65,000 in credit card debt he had accumulated and rolled into the refinance of the couple's home.

¶ 15 Regarding the court-authorized withdrawal of the home equity to cover litigation expenses, Velma used \$42,195, while Charles used about \$16,313, of the \$65,000. Though Charles was represented at trial, he did not have counsel for much of the litigation. Based on the "numerous problems with Charles' compliance with discovery," the court awarded Velma \$6,678 in attorney's fees under section 508(b) of the Act.² 750 ILCS 5/508(b) (West 2008). Based on this award, the court deemed Velma to have used \$6,678 less of the shared litigations expenses, and treated Charles as if he had used \$6,678 more, which reduced Velma's litigation expenses to \$35,517 and increased Charles's to \$22,991. The revised amounts meant Velma used approximately 61% of the parties's litigation funds and Charles used 39%, which the court deemed equitable under section 503 of the Act.

¶ 16 Charles filed a posttrial motion to vacate the judgment, which the court denied. This timely appeal followed.

¶ 17 ANALYSIS

¶ 18 Charles first contends Velma failed to establish a *prima facie* case that he dissipated marital assets. He argues the court therefore improperly shifted the burden of disproving

² It is unclear how the court derived this figure, but no challenge is made by Charles.

dissipation to him. Next, he contends the court abused its discretion in awarding a disproportionately large share of the marital estate to Velma. Velma counters she put forth sufficient evidence to shift the burden to disprove dissipation to Charles, which he failed to do by clear and specific evidence. Under these circumstances, the court properly awarded her a greater share of the marital estate.

¶ 19 Dissipation

¶ 20 "[T]he term 'dissipation,' as used in section 503(d)(1)³ of the Illinois Marriage and Dissolution of Marriage Act, refers to the 'use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown.' " *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497 (1990) (quoting *In re Marriage of Petrovich*, 154 Ill. App. 3d 881, 886 (1987)). A dissipation finding is reviewed against the manifest weight of the evidence. *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 205 (2005). "A factual finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence." *Samour, Inc. v. Board of Election Commissioners*, 224 Ill. 2d 530, 544 (2007).

¶ 21 Charles argues this case "falls squarely within the ambit" of *In re Marriage of Getautas*, 189 Ill. App. 3d 148, 154 (1989), which he reads as supporting the conclusion that Velma was required to establish some "triggering event" or cross some "threshold" before the burden shifted to him. He contends that because she did neither, "Velma added an unnecessary and wasteful burden to Charles without first alleging the dissipation charge."

¶ 22 Charles's reliance on *Getautas* is misplaced. The issue in *Getautas* was whether a spouse could be held responsible for dissipating assets *before* an irreconcilable breakdown of the

³ Now section 503(d)(2). 750 ILCS 5/503(d)(2) (West 2008).

marriage occurs. "Allowing lawyers, or possibly requiring them under a threat of malpractice, to question all expenses and economic decisions of a 20-year marriage (as we have before us) in the hope of uncovering something that could be called dissipation adds an unnecessary and wasteful burden of time and expense especially when no initial *triggering event or threshold* has been crossed." (Emphasis added.) *Getautas*, 189 Ill. App. 3d at 154-55. The "triggering event or threshold" language refers to the point "when the marriage is undergoing an irretrievable breakdown." *O'Neill*, 138 Ill. 2d at 497. The language does not refer to some event that gives rise to a spouse's duty to prove dissipation. *Getautas*, 189 Ill. App. 3d at 154-55. Nor did the *Getautas* court address when a *prima facie* case of dissipation is established. The court reiterated, however, "the general principle *** that a person charged with dissipation is under an obligation to establish by clear and specific evidence how the funds were spent." *Id.* at 154. *Getautas* does not support Charles' contention that the court erred in requiring Charles to establish by clear and specific evidence how the allegedly dissipated funds were spent.

¶ 23 It is true that some of the cases Charles cites identify a *prima facie* requirement before burden shifting occurs. See, e.g., *In re Marriage of Manker*, 375 Ill. App. 3d 465 (2007) ("once a *prima facie* case for dissipation has been made, the burden shifts to the party charged"); *In re Marriage of Murphy*, 259 Ill. App. 3d 336 (1994) (same)). Charles is mistaken, however, in his reliance on the *Manker* court's observation that "it is more equitable to require a preliminary showing of dissipation before the burden shifts to the party charged with dissipation to refute the allegations" to support his contention before us. *Manker*, 375 Ill. App. 3d at 476-77.

¶ 24 Based on the authorities cited by Charles, the issue before us is whether the record supports the circuit court's implicit finding that "a preliminary showing of dissipation" was made,

which triggered Charles' burden to prove the claimed expenditures were for the benefit of the marriage.

¶ 25 More than a year before the start of the trial, Velma gave notice of her claim that Charles dissipated marital assets. Charles was extensively cross-examined on each of Velma's dissipation claims, which Charles attempted to rebut with his own evidence. On the record before us, we find no basis to overturn the circuit court's determination that Velma presented sufficient evidence to establish a *prima facie* case of dissipation, which triggered Charles' burden to come forward with clear and specific evidence that dissipation did not occur. See *In re Marriage of Henke*, 313 Ill. App. 3d 159 (2000).

¶ 26 In *Henke*, although the wife "did not expressly charge [the husband] with dissipating *** money from her IRA, her attorney questioned [the husband] concerning those funds and what he had done with them." *Henke*, 313 Ill. App. 3d at 178. On the record before the *Henke* court, the removal of funds from the wife's IRA was sufficient to shift the burden to the husband to disprove dissipation by clear and specific evidence, which he failed to do. *Id.*

¶ 27 In *Vancura*, the wife testified that the husband had deposited in his personal bank account a check made out to the couple's jointly owned business. *Vancura*, 356 Ill. App. 3d at 205. Although the wife "testified that she did not know how the funds were spent," her testimony regarding the deposit of the check in the husband's separate account was enough to support a finding of dissipation when the husband was also unable to explain how the check funds was spent. *Id.* (the husband "did not meet his obligation to establish by clear evidence how the funds were spent, and the trial court's finding of dissipation was not against the manifest weight of the evidence.").

¶ 28 Here, the trial court addressed each of Velma's claims that Charles dissipated funds from the credit card cash advances, the E-Trade account, and the Mass Mutual Thrift Plan. Charles concedes that he was confronted at trial with evidence that he had withdrawn funds from these sources, and that he was asked to explain what became of the funds. *Cf. In re Marriage of Hahin*, 266 Ill. App. 3d 168, 171 (1994) (rejecting a finding of dissipation where "neither party accused the other of dissipation.").

¶ 29 Nonetheless, Charles argues he was deprived of the opportunity to refute the court's finding that he dissipated the \$15,808.73 he received through the refinance of the marital home because no express dissipation claim was made as to those funds. However, Charles was cross-examined about the details of the refinance, the refinance documents were admitted into evidence, and he testified he took out more than the court-approved amount of \$65,000 to cover litigation expenses.

¶ 30 Charles repeats the claim he made before the circuit court that the funds from Mass Mutual were used to pay income taxes. Charles does not point to record support to call into question the trial court's finding that he "presented absolutely no competent evidence that the funds were used to pay income taxes." See *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 654 (2009) (affirming finding of dissipation where husband presented "insufficient evidence" that he had properly used the funds in question). Nor does he argue that he met his burden as to the dissipation claims regarding the E-Trade account and the refinancing cash. Rather, he reasserts the already-rejected argument that the burden was improperly placed on him.

¶ 31 The trial court properly shifted the burden to Charles to prove that each of the funds he controlled and expended were for the benefit of the marriage. Consistent with the manifest

weight of the evidence, Charles failed to prove, by clear and specific evidence, that he did not dissipate those funds.

¶ 32 Apportionment

¶ 33 Charles next contends the trial court abused its discretion in apportioning a greater share of the marital estate to Velma. "A division of property must be reasonable and must meet the statute's objective which is to recognize and compensate each party for their contribution to the marriage and to place each party in a position to begin anew." *In re Marriage of Parker*, 252 Ill. App. 3d 1015, 1018 (1993). "An equal division of marital assets is not required, and one spouse may be awarded a larger share of the assets if the relevant factors warrant such a result." *Henke*, 313 Ill. App. 3d at 175.

¶ 34 Section 503(d) of the Act provides that marital assets may be equitably divided with the following factors in mind.

"(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including *** the contribution of a spouse as a homemaker or to the family unit;

(2) *the dissipation by each party of the marital or non-marital property;*

(3) the value of the property assigned to each spouse;

(4) the duration of the marriage;

(5) the relevant economic circumstances of each spouse when the division of property is to become effective, including the

desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;

(6) any obligations and rights arising from a prior marriage of either party;

(7) any antenuptial agreement of the parties;

(8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;

(9) the custodial provisions for any children;

(10) whether the apportionment is in lieu of or in addition to maintenance;

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(12) the tax consequences of the property division upon the respective economic circumstances of the parties." (Emphasis added.) 750 ILCS 5/503(d) (West 2008).

¶ 35 The apportionment of marital assets under section 503(d) is reviewed for abuse of discretion. *Vancura*, 356 Ill. App. 3d at 205. "A trial court abuses its discretion only where no reasonable person would have distributed the property as the trial court." *Henke*, 313 Ill. App. 3d at 175. "Abuse of discretion is the most deferential standard of review-next to no review at all." *Id.* at 204.

¶ 36 Charles deems it erroneous that "[d]espite the seemingly equal contributions [of the parties], the court determined that given the circumstances of the parties, Velma was entitled to '55% of the value of the marital residence and retirement assets.'" He contends that throughout the pendency of the case, he was required to maintain the marital home, pay the mortgage, taxes, and insurance on the home, pay for a new roof on the home, shoulder the burden of the children's educational expenses and after school care, pay for Velma's car note under threat of contempt, pay the marital credit card debt, and pay the tax liability related to the settlement of a credit card debt.

¶ 37 However, Charles does not provide a single record citation to show these contentions were presented to the circuit court. "The failure to provide proper citations to the record is a violation of [Supreme Court Rule 341(h)(7)], the consequence of which is the forfeiture of the argument lacking those citations." *People v. Sprind*, 403 Ill. App. 3d 772, 779 (2010). We find these contentions forfeited.

¶ 38 As to the division of the marital assets, the record demonstrates that the circuit court considered each of the 503(d) factors, with particular emphasis on the evidence that Charles' dissipated certain marital assets. The court also noted the greater opportunity Charles had to acquire capital assets and income than Velma, including his ownership of several parcels of non-marital property. Though Charles argues his income suffered during the economic downturn that began in late 2008, this does not undermine the trial court's finding that he has greater earning potential going forward than Velma. The circuit court concluded that he earned more than Velma in all but two years for which records were presented. Given these advantages, it cannot be said that the court abused its discretion in granting Charles 45% of the marital assets. There is

also no reason to question the trial court's finding that Charles was perfectly capable of beginning anew. *In re Marriage of Benkendorf*, 252 Ill.App.3d 429, 433 (1993) (husband not prevented from beginning anew when he received only 40% of the marital estate).

¶ 39 Nor do we question the circuit court's decision to hold Charles responsible for the credit card debt he incurred. While he disputes that the credit card cash advances constituted dissipation because the level of credit card debt actually decreased after the irretrievable breakdown of the marriage, he does not deny he was primarily responsible for incurring the debt in the first place. See *In re Marriage of Drury*, 317 Ill. App. 3d 201, 211 (2000) (no abuse of discretion in holding wife solely responsible for marital credit card debt); 750 ILCS 5/503(d)(1) ("the contribution of each party to the *** decrease in value of the marital or non-marital property" is a factor in apportioning marital property). Nor does Charles challenge the trial court's finding that "these cash advances with their attendant fees and interest added further substantial debt to the parties' marital load." Finally, we note that Velma was held responsible for her own credit card debt to Target and Bank of America. The court was within its discretion to order Charles to shoulder the burden of the credit card debt he incurred, whether or not that debt constituted dissipation, as the court held Velma responsible for the credit card debt she incurred. See *In re Marriage of Partyka*, 158 Ill. App. 3d 545, 550 (1987) ("Where a party has dissipated marital assets the court may charge the amount dissipated against his or her share of the marital property so as to compensate the other party."); *In re Marriage of Seversen*, 228 Ill. App. 3d 820, 828 (1992) ("The apportionment of dissipated funds may be charged against a spouse's share of the marital property so as to compensate the other party.").

¶ 40 Finally, we will not overturn the court's apportionment of 61% of the couple's litigation fund to Velma's counsel. The court expressly found this apportionment equitable as Velma's counsel was responsible for drafting pleadings, covering status calls, and handling administrative matters while Charles was *pro se*. As the court noted, Charles drove up litigation costs by failing to comply with discovery. Charles' argument that "Velma will receive at least 75% of the marital estate" after he pays taxes and fees associated with liquidating assets in order to pay Velma her share of the estate is forfeited as Charles provides no record support for this contention; nor does he explain how he calculated this percentage. See *People v. Agnew-Downs* 404 Ill. App. 3d 218, 231 (2010) (failure to develop an argument violates Supreme Court Rule 341(h)(7), which results in forfeiture of the argument).

¶ 41

CONCLUSION

¶ 42 Velma presented sufficient evidence of dissipation to require Charles to demonstrate by clear and specific evidence that he used the assets in question for a purpose related to the marriage. It was not against the manifest weight of the evidence for the circuit court to conclude he failed to make such a showing. In light of such dissipation and other factors duly considered by the trial court, it was not an abuse of discretion to award Velma 55% of remaining marital assets.

¶ 43 Affirmed.