

No. 1-09-2694

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIFTH DIVISION  
March 25, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
JOANNE L. KARABETSOS,	)	Cook County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 06 D2 30304
	)	
THEODORE KARABETSOS,	)	Honorable
	)	Grace Dickler,
Respondent-Appellee.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Fitzgerald Smith and Justice Epstein  
concur in the judgment.

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**O R D E R**

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*HELD:* The trial court's finding that certain real estate acquired during the marriage was nonmarital property is not against the manifest weight of the evidence. The trial court retained jurisdiction to modify a discovery sanction order more than 30 days after judgment where a timely post-trial motion was filed.

Petitioner-appellant Joanne Karabetsos appeals from a judgment of dissolution of marriage entered by the circuit court of Cook County dissolving her marriage with respondent-appellee Ted Karabetsos. On appeal, Joanne argues: (1) the court erred when it ordered that William Karabetsos, her former father-in-law, be reimbursed for his financial contribution toward the purchase of the marital home; (2) the court erred when it determined that Ted's interest in a parcel of rental real estate, acquired during the marriage, is nonmarital property; and (3) the court lacked jurisdiction to vacate an order imposing sanctions against Ted for discovery violations.

For the reasons set forth below, we affirm.

#### BACKGROUND

Ted and Joanne were married in Chicago on May 19, 1991. Three children were born to the marriage: Elizabeth, born on February 21, 1991; and twins William and Michelle, born on November 22, 1993.

Ted is employed as a salesman for Coca Cola Enterprises, Inc., and has been so employed throughout the marriage. At the beginning of the marriage, Joanne worked as a general manager of a hair salon until her doctor advised her to leave while pregnant with the twins in 1993. Joanne has worked part time as a cosmetologist since April 2008.

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When Joanne filed her petition for dissolution of marriage she was 45 years old and Ted was 44 years old.

#### The Marital Home

The marital home, located on Linden Street in Park Ridge, was purchased by the parties in 1995. Ted's father, William, provided the parties with \$40,000 to help with the purchase. Joanne testified that she believed the money was a gift and that Ted told her the \$40,000 was a gift.

Ted testified that his father should receive a 1/3 share of the net proceeds of the house because they could not have purchased it without his help and his father was a co-owner of the house. At the time of purchase of the marital home the names of Ted and his father, William, were the only names placed on the deed. Joanne testified she did not know that William was on the title until years later. The last deed presented at the trial was a deed executed in 1998 by Ted and William which quit claimed ownership of the home to Joanne, Ted and William.

#### Harlem Avenue Property

During the marriage Ted acquired a 2/3 interest in an apartment complex located on North Harlem Avenue in Chicago. The property was purchased in December 2001 for \$1,150,000. The purchase price was paid in part with a \$850,000 mortgage with Ted, Andy (Ted's brother) and William named as borrowers. Ted

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testified the remaining \$312,000 needed to close the purchase was a gift from his father, William, with the exception of \$10,000 which came from the marital bank account and \$25,000 which was a loan from one of Ted's friends. In December of 2001, the property was placed in a land trust with Ted as owner of 2/3 of the beneficial interest and Andy, as owner of 1/3 of the beneficial interest. Ted testified that his father actually owned 1/3 of the property but he did not want his name to appear as an owner for tax purposes.

#### Judgment for Dissolution of Marriage

A judgment for dissolution of marriage was entered on March 27, 2009. In the judgment for dissolution, the trial court determined that William's contribution toward the purchase of the marital home was not a gift because William's name remained on the title and Joanne's name was not added until later. The court reasoned that had a gift been intended it is unlikely that Joanne's name would have been omitted in the first instance and William Karabetsos' name retained when Joanne's was later added.

The trial court ordered the parties to sell the marital home after the youngest children graduated from high school in June, 2012. The trial court awarded 1/3 of the net proceeds to be paid to William, as a co-owner of the marital home and the remaining proceeds be awarded to the parties with Joanne receiving 65% and

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Ted receiving 35% of the proceeds.

The trial court determined the Harlem Avenue property is nonmarital property. The trial court found Ted submitted sufficient evidence that the property was purchased with funds from Ted's father, William, or from nonmarital accounts. The trial court found that some marital funds were used to purchase the property and ordered Ted to reimburse the marital estate \$10,000. The trial court found Ted possessed a 2/3 interest in the property and his brother Andy owned the remaining 1/3 interest.

The parties joint parenting agreement was incorporated into the judgment for dissolution. Ted was ordered to pay child support. In the judgment, the trial court found Ted had dissipated \$21,638 in marital funds and he was ordered to reimburse the marital estate.

#### Joanne's Motion to Reconsider

On April 23, 2009, Joanne filed a motion to reconsider the judgment as it pertains to the division of the proceeds of the marital home. In her motion, Joanne alleged after the trial she had found newly discovered evidence. Attached to the motion was a photo copy of a quit claim deed for the marital home dated November 19, 2002. The 2002 deed recited that Ted, William and Ted's mother, Elizabeth, quit-claimed their interest in the

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marital home to Ted and Joanne. Joanne argues the 2002 deed proves that William was not a co-owner, as Ted had argued, and his \$40,000 contribution was a gift. Joanne requested that the trial court vacate its ruling awarding William 1/3 of the net proceeds from the future sale of the Park Ridge property because William was not an owner but had gifted the property to Ted and Joanne.

A hearing was held on Joanne's motion for reconsideration on May 27, 2009. After the hearing, the trial court modified the judgment with respect to the division of the proceeds from the sale of the marital home. The court ordered William to be paid \$54,000 from the net proceeds from the sale of the Park Ridge property, this sum represents the \$40,000 loan he provided for the purchase of the home plus interest.

#### Ted's Motion for Reconsideration

On April 24, 2009, Ted filed a post-trial motion. In his motion, he requested that the trial court reduce the sum he was found to have dissipated from \$21,638 to \$7,638, to allow the value of an automobile to be determined by an exhibit already in evidence, and to make a finding that he did not owe any more money for discovery sanctions. The court granted Ted the relief he requested. Joanne filed this appeal.

#### ANALYSIS

In order to distribute property upon dissolution of marriage, a trial court must first classify that property as either marital or nonmarital. *In re Marriage of Jelinek*, 244 Ill. App. 3d 496, 503 (1993). The trial court's determination that an asset is nonmarital property will not be disturbed on appeal unless that determination is against the manifest weight of the evidence (*Jelinek*, 244 Ill. App. 3d at 503) because that determination rests largely on the trial court's evaluation of the credibility of the witnesses. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 641 (1993). A court of review should not second guess the trial court's determination of whether money provided by a parent to a child and his/her spouse constitutes a gift or a loan when that finding is based upon the trial court's assessment of the credibility of witnesses and the weight it gives to their testimony, unless the trial court's findings are against the manifest weight of the evidence. *In re Marriage of Blazis*, 261 Ill. App. 3d 855, 869 (1994). A decision is said to be against the manifest weight of evidence only where "the opposite conclusion is clearly evident or where it is unreasonable, arbitrary, and not based on the evidence." *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 669 (2008).

All property acquired after marriage by either party is presumed to be marital. 750 ILCS 5/503(b)(1) (West 2008). A

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gift is an exception to this presumption under section 503(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(a) (West 2008)). A gift is a voluntary, gratuitous transfer of property by one person to another where the donor manifests an intent to make such a gift and absolutely and irrevocably delivers the property to the donee. *Moniuszko v. Moniuszko*, 238 Ill. App. 3d 523, 529 (1992). A gift to donee is not shown unless the donor has relinquished all present and future dominion and power over the subject matter of the gift. *Moniuszko*, 238 Ill. App. 3d at 529.

#### The Marital Home

On appeal, Joanne argues the newly discovered deed attached to her motion to reconsider the judgment disproved Ted's argument that William was a 1/3 owner of the marital home and proves the \$40,000 was a gift. Joanne argues the 2002 deed completely removed William's name from the title to the property and therefore it is evidence the money was a gift. *Moniuszko*, 238 Ill. App. 3d 523, 529.

Ted argues the 2002 quit claim deed was never admitted into evidence and Joanne never requested that the evidence be reopened so that the authenticity of the deed could be tested.

The deed which is attached to Joanne's motion for

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reconsideration is a photo copy that does not contain the certification of the Cook County Recorder of Deeds. A court may take judicial notice of a certified copy of a deed. *Swieton v. Landoch*, 106 Ill. App. 3d 292, 299 (1982). There is no certified copy of the 2002 deed in the record nor is there a stipulation in the record that the document is authentic. The record in this case also does not contain a transcript or bystander's report of the May 27, 2009, hearing which resulted in a modification of the judgment. Without a transcript or substitute available, we are unable to determine whether the deed, which is the lynchpin of Joanne's argument, was admitted at the hearing or what else may have occurred at this hearing.

"The appellant has the duty to present the reviewing court with a complete record on appeal; any doubts arising from the incomplete record are therefore resolved against the appellant, and those issues which depend for resolution upon facts not in the record mandate affirmance." *Palanti v. Dillon Enterprises*, 303 Ill. App. 3d 58, 66 (1999). Our supreme court has held that an appellee bears no burden to ensure that the record filed in the reviewing court is complete. *Webster v. Hartman*, 195 Ill. 2d 426, 436 (2001). That is "always the appellant's burden." *Webster*, 195 Ill. 2d at 436. The court also held that "a reviewing court cannot look beyond the record and speculate on

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what might have occurred in the trial court." *Webster*, 195 Ill. 2d at 436.

The resolution of the issue of whether the trial court erred when it modified the judgment to require the parties to reimburse William the \$40,000 depends upon what evidence the court considered at the May 27, 2009, hearing. We acknowledge the trial court modified the judgment after the hearing. However, we are unable to determine from the record what evidence the court may have considered in making its decision due to the lack of a transcript or substitute. Therefore, we cannot say the court's decision to modify the judgment to require the parties to reimburse William is against the manifest weight of the evidence because we do not know what evidence the court considered in making that decision. We must affirm the trial court on this basis alone. *Palanti*, 303 Ill. App. 3d 58, 66.

#### Harlem Avenue Property

Joanne claims the trial court's determination that the Harlem Avenue property is nonmarital is against the manifest weight of the evidence because Ted failed to prove by clear and convincing evidence that the property was nonmarital.

The trial court's classification of property as marital or nonmarital will not be reversed on appeal unless we can conclude that it was against the manifest weight of the evidence. *In re*

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*Heroy*, 385 Ill. App. 3d at 669.

Property acquired by either spouse after the marriage but prior to judgment of dissolution is presumed to be marital property regardless of how title is held. *In re Marriage of Davis*, 215 Ill. App. 3d 763, 768 (1991). The presumption is overcome by a showing that the property was acquired by a method listed in section 503(a) of the Act. *In re Marriage of DaMar*, 385 Ill. App. 3d 837, 850 (2008); 750 ILCS 5/503(a) (West 2008). Property acquired by gift is one of the exceptions to the presumption that all property acquired during a marriage is marital property. 750 ILCS 5/503(a)(1) (West 2008). To prevail on his claim that the Harlem property was nonmarital, Ted was required to prove by clear and convincing evidence it was acquired by one of the methods in section 503(a). *In re the Marriage of Didier*, 318 Ill. App. 3d 253, 262 (2001); 750 ILCS 5/503(a)(1) (West 2008).

Section 503(c)(2) of the Act provides for reimbursement when the marital estate contributes to the purchase of nonmarital property. 750 ILCS 5/503(c)(2) (West 2008).

Ted testified that the Harlem Avenue property was purchased for \$1,150,000. Of that sum, Ted, Andy and William acquired a mortgage in the amount of \$850,000 from a bank. Ted testified that William provided the remaining \$312,000 needed to close the

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purchase, with the exception of \$10,000 from the marital account, and a \$25,000 loan from one of Ted's friends.

Joanne claims that Ted's accounting for the funding of the purchase is inadequate. Joanne claims that Ted failed to establish by clear and convincing evidence that the funds came from a nonmarital source. Joanne claims that under *Didier*, Ted has the burden of showing the funds came from a nonmarital source by providing documentary evidence. *Didier*, 318 Ill. App. 3d at 262.

In *Didier*, a spouse in dissolution proceedings claimed certain property acquired during the marriage was nonmarital because she purchased it with nonmarital funds, without tracing the source of the funds. *Didier*, 318 Ill. App. 3d at 255. We reversed the trial court's finding that the spouse proved the property was nonmarital because there was no tracing of the source of the funds; "[d]espite Gail's testimony that she both constructed the Northbrook home and purchased the lot with funds obtained from the sale of her nonmarital condominium, the record contains neither testimony nor documentary evidence tracing those funds." *Didier*, 318 Ill. App. 3d at 262.

In this case, Ted provided copies of checks to document his claim the Harlem building was purchased with nonmarital funds and his testimony traced the funds to nonmarital accounts funded by

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his parents. Although Ted was both the remitter and payee in five of the six checks used for the purchase of the Harlem Avenue property, totaling \$287,300, Ted testified that the checks in question came from bank accounts belonging to his father and mother. Ted provided copies of bank statements to show his parents were owners of the accounts. Ted testified he went from bank to bank to get the funds for the closing and the banks erroneously named him as both payee and remitter.

In *Didier*, we did not hold that a party's testimony was never sufficient to constitute clear and convincing evidence:

"We do not hold that a party's testimony may never rise to the level of clear and convincing evidence on the issue of tracing.

\*\*\* We determine only that under the circumstances before us, the bare assertion of a nonmarital source of a particular sum of money, without supporting documentary evidence such as account records, deposit slips, canceled checks, etc., cannot be deemed clear and convincing." *Didier*, 318

Ill. App. 3d at 262.

The trial court observed Ted's demeanor and heard his testimony as well as observed the demeanor of the other witnesses

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and determined their credibility. It is the function of the trial court to resolve conflicting testimony by assessing the credibility of witnesses and the weight to be accorded their testimony. *In re the Marriage of Marcello*, 247 Ill. App. 3d 304, 314 (1993). The trial court believed Ted's testimony and determined the property was nonmarital.

Joanne presented no evidence to rebut Ted's testimony but infers that the funds are from a marital source. However, the record shows that Ted was the only wage earner supporting his family of five at the time the Harlem building was purchased in 2001. Ted's annual salary of approximately \$50,000 was only a fraction of the \$312,000 cash needed to close the purchase of the Harlem building. The record discloses the marital bank account did not have sufficient funds to make this purchase.

Based on the evidence in the record, we cannot say the trial court's determination, that Ted proved by clear and convincing evidence that the Harlem Avenue property is nonmarital, is against the manifest weight of the evidence.

#### Ted's Motion for Reconsideration

Joanne argues the trial court lacked jurisdiction to enter an order on May 27, 2009, 60 days after the judgment, to modify its earlier order for monetary sanctions against Ted for discovery violations. Joanne claims Ted's post-trial motion for

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reconsideration and/or clarification of judgment for dissolution of marriage was insufficient for the trial court to retain jurisdiction pursuant to section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2008)). We disagree.

First we note that Joanne also filed a post-trial motion in this case on April 23, 2009, within 30 days of the judgment. There is no dispute that her motion satisfied the requirements of section 2-1203. Since at least one of the parties filed a proper post-trial motion, the trial court retained jurisdiction to modify its orders until the trial court disposed of the last pending post-trial motion. Ill. S. Ct. R. 303(a)(1) (eff. Sept. 20, 2006). Since Joanne's post-trial motion was disposed of on May 27, 2009, the same day the court modified the judgment to reduce Ted dissipation order and resolve the sanction order, we cannot say the trial court lacked jurisdiction to modify its judgment for dissolution to resolve this issue of sanctions.

Notwithstanding the fact the court retained jurisdiction as a result of Joanne's post-trial motion, Ted's motion also complied with section 2-1203. The record shows that on July 11, 2007, the court assessed sanctions against Ted in the amount of \$100 per day for his failure to comply with discovery. Ted paid a \$10,000 fine for violating the trial court's order regarding discovery. In the judgment entered March 27, 2009, the trial

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court found that Ted had dissipated \$21,189 of marital funds and ordered Ted to pay Joanne 65% of that amount within 90 days. In the judgment, the trial court also denied Ted's motion to vacate the order imposing sanctions but no mention was made of the \$100 a day fine imposed by the order.

On April 24, 2009, Ted filed his post-trial motion. In his motion to reconsider, Ted requested that the amount of his dissipation be reduced and he requested the judgment be amended to find that he has paid his discovery sanction fine in full and owes no more ongoing penalties for the discovery violations.

Joanne cites *Hayes Machinery Movers v. REO Movers*, 338 Ill. App. 3d 443, 445 (2003), in support of her argument. In *Hayes*, after the trial court entered judgment, the defendant filed a post-trial "Motion for Findings," requesting the trial court to provide its findings of fact and conclusions of law that were the basis for the judgment. *Id.* at 444. We determined the defendant's motion for findings was not a proper post-trial motion under section 2-1203 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1203 (West 2008)) because it failed to request a rehearing, a retrial, or an order vacating judgment. *Id.* at 446. Therefore, we did not have jurisdiction of defendant's appeal pursuant to section 2-1203 of the Code because more than 30 days elapsed since entry of the judgment when defendant filed his

notice of appeal. *Id.* at 447.

In Ted's motion, he asks the court to modify the judgment to find that he dissipated less money and that he owed no more money on the \$100 per day sanction order. In his motion to reconsider, he is seeking substantive changes in the judgment for a determination from the trial court. He sought an order reducing the amount of money he owed Joanne and an order absolving him from responsibility for the \$100 per day fine that was previously ordered regarding the discovery violations, something not done in the original judgment. He has asked the trial court to amend, *i.e.*, change its judgment for dissolution. We cannot say Ted's request for an amendment is not "other relief" under section 2-1203 because the request for an amendment is similar to a request for a modification. *County of Cook, v. IFOPLC*, 358 Ill. App. 3d 667, 672 (2005). Therefore, we find the trial court had jurisdiction to enter the order of May 27, 2009, modifying sanctions.

#### CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court.

Affirmed.