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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
MARY B. BEIDLER,	)	of Lake County.
	)	
Petitioner-Appellant,	)	
	)	
v.	)	Nos. 07-D-325
	)	07-D-328
	)	
REED L. BEIDLER,	)	Honorable
	)	Jorge L. Ortiz,
Respondent-Appellee.	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices Bowman and Birkett concurred in the judgment.

**ORDER**

*Held:* The trial court erred in striking wife's petitions for declaratory judgment without a hearing.

¶ 1 Petitioner, Mary B. Beidler, and respondent, Reed L. Beidler, raised three daughters and accumulated significant wealth during their 30-year marriage. The trial court found the marital estate to be worth more than \$7 million and awarded Mary 60%, or \$4.2 million; but the court denied her petition for maintenance after the judgment. Mary appeals several rulings leading to the judgment: (1) the trial court's dismissal of her petitions for declaratory judgment regarding her rights

in annuities held in two Bermuda Trusts, a Wisconsin vacation residence, and two commercial properties in Evanston; (2) the court's exclusion of expert testimony on the issues raised in the declaratory judgment petitions and the postponement of Mary's offers of proof until four weeks after the close of evidence; and (3) the court's rulings regarding temporary maintenance during the proceedings and permanent maintenance following the judgment. We reverse the trial court's order striking the declaratory judgment petition, and remand the cause for an evidentiary hearing on the petitions. On remand, the trial court also should revisit the overall property distribution and the issue of maintenance.

¶ 2

## I. BACKGROUND

¶ 3 Reed and Mary were married on October 8, 1977, and three daughters were born between February 1980 and September 1984. At the time of the trial, Reed was 61 years old and retired, Mary was 57 years old and a homemaker, and the parties' children were grown and self-supporting.

¶ 4 During the marriage, Reed initially worked in real estate development and Mary was a homemaker. In 1979, Reed purchased commercial property at 2100 Dempster Street in Evanston ("the Dempster Property") and converted it from a single-user building to a multi-tenant facility. Reed also purchased 1015 Davis Street in Evanston ("the Davis Property"), which was a commercial property. In 1984, Reed purchased Crane Plumbing, LLC (Crane), which manufactured plumbing fixtures. Prior to their separation in 2007, the parties had income from Reed's salary at Crane, the Evanston properties, and investments.

¶ 5

### *Beidler Family Limited Partnership and the 1983 Trust*

¶ 6 In 1983, Reed created the Beidler Family Limited Partnership ("BFLP"), which held various assets during the marriage, including title to the Dempster Property and stocks and bonds that Reed said he held before the marriage. On September 13, 1983, Reed and Mary entered into an agreement

to create the Reed Beidler Irrevocable Trust (“the 1983 Trust”), pursuant to which two trusts were established: “Mary’s Trust” and the “Children’s Trust”. Mary was the trustee of both trusts, and each trust received 49% of the limited partnership interest in the BFLP. Reed held a 1% limited partnership interest and a 1% general partnership interest in the BFLP. Section 3 of the 1983 Trust agreement provided that, if Reed and Mary stopped living together as husband and wife, the assets in Mary’s Trust would be distributed to the Children’s Trust. Thus far, the parties have provided little insight into the circumstances of the transaction, such as who drafted the trust agreement and how the terms were negotiated.

¶ 7 On August 13, 1984, the parties amended the articles of the BFLP. To the BFLP, Reed gifted various assets: land in Michigan; four properties in Evanston, including the parties’ residence; a condominium conversion building; the Dempster Property; the Davis Property; three condominium units in Chicago; stock in Dravo Corporation, a Pennsylvania bank; and municipal bonds and U.S. treasuries. At that time, the ownership interests in the BFLP remained the same. However, when the parties stopped living together in February 2007, the primary asset in Mary’s Trust, the Davis Property, was transferred to the Children’s Trust pursuant to section 3 of the 1983 Trust agreement.

¶ 8 *Vacation Properties and Hangar*

¶ 9 In 1984, the parties bought a vacation home on Lake Geneva in Williams Bay, Wisconsin (“the Wisconsin Property”). In the early 1990’s, Reed participated in the development of a condominium building in Steamboat Springs, Colorado (“the Steamboat Springs Property”) and received one of the units as compensation. Also during the marriage, Reed leased the Waukegan Hangar for his airplane hobby.

¶ 10 *1996 Bermuda Trusts*

¶ 11 On January 1, 1996, John Beidler, Reed’s father, established a trust in Bermuda (“the Cascade Trust”), which named Reed and the Beidler daughters as beneficiaries. The trust declaration identified John as the settlor, who deposited \$2,500 with the trustee, Harrington Trust, Ltd., which was based in Bermuda. A deferred variable annuity (“DVA 1065”) was purchased for \$41,500, and deposited into the trust. Mary alleges that Reed orchestrated the purchase using marital funds.

¶ 12 Reed personally loaned money to an entity called Bermuda Life Insurance Company Limited (“Bermuda Life”) to facilitate investments that Bermuda Life was to make for the benefit of the Cascade Trust. Reed loaned DVA 1065 \$2.2 million from Crane for the purpose of making investments.

¶ 13 On November 25, 1996, Reed created a second trust in Bermuda (“the September Trust”), and deposited into it a second annuity (“DVA 1069”) that he purchased for \$2.25 million. DVA 1065 repaid its loan to Reed so he could make the annuity purchase for DVA 1069 through Bermuda Life. The September Trust named Reed, the Beidler daughters, and the American Cancer Society as permissible beneficiaries. Mary also alleges that Reed used marital funds to create the September Trust.

¶ 14 *1996 Qualified Personal Residential Trust*

¶ 15 In 1996, Reed established a qualified personal residential trust (“QPRT”), which holds title to the Wisconsin Property. As trustee, Reed has use of the Wisconsin Property for 25 years, from 1996 to 2021. The QPRT specifies that, if Reed is living at the expiration of the term in 2021, his right to use the Wisconsin Property terminates and title to this property is to be transferred to a separate, irrevocable trust for the benefit of the Beidler daughters.

¶ 16 *1996 Transfer of BFLP to Reed*

¶ 17 In late 1996, Reed told Mary that the Dempster Property, the only asset remaining in the BFLP, was a risky investment and should not be in Mary's Trust. Reed alleges that he and Mary decided that Mary, as trustee of her trust, would gift Mary's Trust's 49% interest in BFLP to Reed. The parties executed the assignment on January 3, 1997, and Reed's lawyer, Jeffrey Taylor, testified that Mary was represented by counsel, Mary Harris, at the signing. Harris is now deceased, but Mary has maintained that she did not understand the transaction at the time. Mary alleges that she exchanged only pleasantries with Taylor and that Reed handed her a document to sign, saying just that it was something for the kids' trust and estate planning.

¶ 18 Also on January 3, 1997, Mary, as trustee, signed a document that sold the Children's Trust's 49% interest in the BFLP to Reed in exchange for his agreement to hold the Children's Trust harmless against any and all liabilities of the BFLP. According to Reed, after the assignments, 50% of the BFLP was marital property (49% purchased from the Children's Trust and his 1% limited partnership interest) and 50% was nonmarital property (49% from Mary's gift and his 1% general partnership interest). Mary alleges that she had relied on Reed to manage the family finances during the marriage and that Reed fraudulently induced her to transfer her entire interest in the BFLP to him.

¶ 19 II. THE DISSOLUTION PROCEEDINGS

¶ 20 The parties separated in February 2007, after Mary confronted Reed about infidelity. On March 30, 2007, Mary filed a petition for dissolution of marriage. On August 8, 2007, Mary filed a petition for temporary maintenance, supported by an affidavit filed under Local Rule 11.02. On September 17, 2007, the trial court awarded Mary \$36,574 per month for support during the proceedings. About two years later, the trial court determined that the temporary maintenance was awarded in error because Mary's affidavit of expenses was false and misleading. The court found

that, for the two years before the separation, Reed had given Mary \$12,000 per month for running the household.

¶ 21 On August 1, 2008, the trial court entered its Case Management Order. The court set August 30, 2008, as the deadline for filing third-party complaints, and November 30, 2008 for motions for summary judgment and declaratory judgment. Mary was ordered to identify her expert witnesses by September 1, 2008, and to disclose their opinions by October 1, 2008. The court gave Reed an extra month, ordering him to disclose his experts by September 30, 2008, and to turn over their reports by October 31, 2008. All depositions were to be completed by November 15, 2008. Mary's attorneys objected to the schedule, saying that it did not allow Mary sufficient time to prepare for trial, which was set for January 5, 2009.

¶ 22 On September 2, 2008, Mary moved to join Taylor, who was the protector of the Bermuda Trusts, as a necessary third-party defendant. Mary alleged that Reed had used the Bermuda Trusts to hold marital assets in annuities that Mary, the IRS, and creditors could not reach. Mary acknowledged that the circuit court had no jurisdiction over the trustee because it was based in Bermuda; however she argued that Taylor, as the protector, had the authority to remove and replace the trustee at any time, and at least as to the September Trust, the power to choose the controlling law of any other forum as long as the legality of the trust was preserved. Reed responded that Taylor could not order distributions but rather could only replace a trustee and appoint a successor protector. The trial court denied Mary's motion, ruling that Taylor was not a trustee or a person with an interest or title that the judgment might affect, and therefore, the court could make a complete determination of the controversy without Taylor's presence.

¶ 23 On October 8, 2008, Mary filed an Amended Petition for Dissolution of Marriage and a Motion for Declaratory Judgment, stating that additional discovery from trust-related documents had

revealed facts supporting her position that the Bermuda trusts should be deemed marital property. The proposed Amended Petition for Dissolution of Marriage added Taylor as a respondent. The Motion for Declaratory Judgment alleged that Reed had caused funds, which were presumed to be marital property, to be transferred to the Bermuda Trusts. Mary renewed her allegation that, while Reed previously had asserted that the Bermuda Trusts were “nonowned property,” the trusts were, in fact, illusory because Reed never gave up control over them. Mary alleged that, when the marriage began to deteriorate, Reed (1) funded the Bermuda Trusts with marital assets; (2) named Taylor, his personal attorney, protector of the trusts; and (3) retained control over the trusts and annuities by directing Taylor to manage the trusts as Reed desired.

¶ 24 Reed responded that Mary’s amended petition was an untimely third-party complaint that failed to meet the test for amending a pleading. He also argued that Mary’s prayer for relief that the court order Reed and Taylor to transfer the Bermuda Trusts’ assets to Lake County was, in fact, a request for a mandatory injunction. The court agreed with Reed’s arguments and denied Mary’s motions.

¶ 25 On October 14, 2008, at Mary’s request, the trial court extended the discovery deadline to January 5, 2009, and postponed the trial until March 9, 2009. Specifically, the court ordered Mary to complete disclosure of expert identities and opinions by November 24, 2008, and ordered Reed to complete disclosure of expert opinions by December 23, 2008.

¶ 26 Before the deadline expired, Mary disclosed Christian Luthi (Bermuda law) and Art Tepfer (Bermuda annuities) as experts. On November 21, 2008, the last business day before her deadline, Mary asked for another extension to submit expert reports of Dale Hibbard (the Wisconsin Property) and Michael Marous (the Dempster Property and the Waukegan Hangar). On November 25, 2008, a day after the deadline, Mary asked for an extension to submit an expert report of Robert Maddox

(the Steamboat Springs Property). Reed objected, arguing that Mary had not been diligent in adhering to the court's previous deadline extension.

¶ 27 The court commented that Mary was “trying to pull the wool over the court's eyes,” explaining that the October 14, 2008, written order granting the extension was intended to afford Mary the opportunity to disclose experts regarding properties in Canada and Ohio only. The court did not allow Mary to rely on the extension to introduce evidence on other topics, including the Wisconsin Property, the Dempster Property and Waukegan Hangar, the Steamboat Springs Property, and the Bermuda Trusts. Accordingly, the court modified the October 14, 2008, order to show that Mary was allowed to present only the Canada and Ohio appraisers. The court barred Mary from introducing evidence from Luthi, Tepfer, Hibbard, Marous, and Maddox because the previous extension had been granted to complete ongoing discovery, rather than to raise new issues that could have been addressed earlier.

¶ 28 On December 1, 2008, Mary revisited the property issues by filing two petitions for declaratory judgment, which are the subject of this appeal. The “Real Estate Petition” asked for a declaration of the parties' rights in the Wisconsin and Evanston Properties and the assets of the BFLP, specifically the Dempster Property. The “Bermuda Trusts Petition” asked for a declaration of the parties' rights in the Bermuda Trusts, which contain the annuities. Reed moved to dismiss the petitions under sections 2-615 and 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-615, 2-619 (West 2010). The trial court granted Reed's motion to strike both petitions with prejudice. The court ruled that the petitions (1) actually were untimely third-party complaints; (2) would not resolve a controversy because the court had no jurisdiction over the Bermuda trustees; and (3) did not seek a declaration of the parties' rights or obligations going forward, but rather sought a finding that

Reed's past conduct was improper, which was not an appropriate use of the Declaratory Judgment Act because Reed, as the annuitant, did not have rights under the trusts but only an expectancy.

¶ 29 After Mary's petitions for declaratory judgment were stricken, Reed filed motions *in limine* to bar evidence that would have been relevant to the petitions: (1) the Bermuda Trusts and annuities; (2) all fraud claims against Reed; (3) alleged marital difficulties before 2006; (4) the Davis Property; and (5) the Children's Trust. The trial court ruled in Reed's favor, barring Mary from introducing evidence regarding the Bermuda Trusts, the transfer of title in the Wisconsin and Evanston Real Estate, and the 1983 Trust agreement and the Children's Trust.

¶ 30 The trial court heard evidence over 14 days from March 4, 2009, to August 31, 2009, and entered a judgment of dissolution. Mary's timely notice of appeal followed.

¶ 31 ANALYSIS

¶ 32 Mary appeals (1) the trial court's dismissal of her two petitions for declaratory judgment regarding her rights in the Wisconsin Property, the Dempster and Davis Properties in Evanston, and the Bermuda Trusts; (2) the court's exclusion of expert testimony on the issues raised in the declaratory judgment petitions; (3) the postponement of Mary's offers of proof until four weeks after the close of evidence; and (4) the court's denial of permanent maintenance. Reed responds that (1) Mary's efforts to introduce evidence of the Bermuda Trusts and the Real Estate were untimely; (2) the trial court correctly granted his motions *in limine* because the property is nonmarital; and (3) the court did not abuse its discretion in denying Mary maintenance, considering that she received 60% of the marital estate.

¶ 33 The dispositive issue in this appeal is whether the trial court erred in striking Mary's petitions for declaratory judgment to assess her rights regarding the Bermuda Trusts and the Real Estate. For the following reasons, we hold that the trial court erred in striking these petitions

without a hearing, and we remand the cause for hearing on the petitions and for further proceedings consistent with this disposition.

¶ 34 A declaratory judgment action requires: (1) a plaintiff with a tangible, legal interest; (2) a defendant with an opposing interest; and (3) an actual controversy between the parties concerning such interests. 735 ILCS 5/2-701 (West 2010). In this case, Reed moved to strike or dismiss the petitions under sections 2-615 and 2-619 of the Code, and the trial court struck the petitions without an evidentiary hearing. A dismissal under section 2-615 admits all well-pleaded facts and attacks the legal sufficiency of the complaint and presents the question of whether the complaint states a cause of action upon which relief could be granted. 735 ILCS 5/2-615 (West 2010); *La Salle National Bank v. City Suites, Inc.*, 325 Ill. App. 3d 780, 790 (2001). A motion to dismiss under section 2-619, on the other hand, admits the legal sufficiency of the complaint but raises defects, defenses, or other affirmative matters that appear on the face of the complaint or are established by external submissions that act to defeat the claim. *Krilich v. American National Bank & Trust Co. of Chicago*, 334 Ill. App. 3d 563, 569-70 (2002); 735 ILCS 5/2-619(a)(9) (West 2010) (permitting involuntary dismissal where the claim “is barred by other affirmative matter avoiding the legal effect of or defeating the claim”). A motion to dismiss under either section 2-615 or section 2-619 of the Code admits all well-pleaded allegations in the complaint and reasonable inferences to be drawn from the facts. *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 184 (1997). A reviewing court must interpret all of the pleadings and supporting documents in the light most favorable to the nonmoving party. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367-68 (2003). While the trial court did not clarify whether it was striking the petitions for declaratory judgment under section 2-615 or 2-619, our review of a dismissal under either section is *de novo*. *Van Meter*, 207 Ill. 2d at 368.

¶ 35 Section 2-701(a) of the declaratory judgment statute states:

“No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby. The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination \*\*\* of the construction of any \*\*\* contract or other written instrument, and a declaration of the rights of the parties interested.” 735 ILCS 5/2-701(a) (West 2010).

¶ 36 Entry of a declaratory judgment is improper if it “would not terminate the controversy or some part thereof, giving rise to the proceeding.” 735 ILCS 5/2-701(a) (West 2010). We note that section 105(a) of the Marriage Act (750 ILCS 5/105(a) (West 2010)) incorporates our Civil Practice Law (735 ILCS 5/2-101 *et seq.* (West 2010)). Thus, the legislature expressly provided for the entry of declaratory judgments in dissolution of marriage cases. *In re Marriage of Best*, 228 Ill. 2d 107, 116 (2008). Applying these statutory provisions, a declaratory judgment of the parties’ rights regarding the Bermuda Trusts, the Evanston Properties (the BFLP), and the Wisconsin Property (QPRT) is proper if there is an actual controversy and entry of a declaratory judgment would terminate “some part” of that controversy. 735 ILCS 5/2-701(a) (West 2010)); *Best*, 228 Ill. 2d at 116-17.

¶ 37 An actual controversy exists when “a concrete dispute admitting of an immediate and definitive determination of the parties’ rights, the resolution of which will aid in the termination of the controversy or some part thereof.” *Northern Trust Co. v. County of Lake*, 353 Ill. App. 3d 268, 273 (2004). “Actual” in this context does not mean that a wrong must have been committed and injury inflicted. Rather, it requires a showing that the underlying facts and issues of the case are not moot or premature, so as to require the court to pass judgment on mere abstract propositions of law,

render an advisory opinion, or give legal advice as to future events. *Underground Contractors Association v. City of Chicago*, 66 Ill. 2d 371, 375 (1977).

¶ 38 Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (“Marriage Act”) calls for the equitable distribution of both spouses’ property on divorce and establishes the concept of marital property. 750 ILCS 5/503(d) (West 2010). Pursuant to section 503(b)(1), “all property acquired by either spouse after the marriage and before a judgment of dissolution \*\*\* is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership.” 750 ILCS 5/503(b)(1) (West 2010). Further, section 503(e) provides in pertinent part that “[e]ach spouse has a species of common ownership in the marital property which vests at the time dissolution proceedings are commenced and continues only during the pendency of the action.” 750 ILCS 5/503(e) (West 2010). Thus, during the pendency of the divorce proceedings Mary has a vested interest in all marital property regardless of which party holds title to it. 750 ILCS 5/503(e) (West 2010); *Hofmann v. Hofmann*, 94 Ill. 2d 205 (1983) (recognizing the “common enterprise” theory of marriage).

¶ 39 We conclude that Mary has sufficiently alleged that both parties had a tangible interest in the Bermuda Trusts and the Real Estate addressed in the petitions for declaratory judgment. She has alleged that the properties were created or acquired during the marriage, which arguably creates a presumption that they are marital property, or at least raises a question of fact of ownership despite any formalities of title. See *Johnson v. LaGrange*, 73 Ill. 2d 342, 359 (1978) (transfers of property are tested according to the intent of the donor to either retain or part with ownership). Mary has alleged that (1) Reed managed the Bermuda Trusts behind the scenes to give the false impression that he has no ownership interest in the annuities and (2) Reed fraudulently induced her to give him title to the Real Estate. Mary concludes that, once the fraud is exposed, the property at issue should

be distributed as martial property. Reed denies the fraud and has introduced evidence to rebut any presumption that the property is martial, but that is not a basis for striking the declaratory judgment petitions without a hearing. The parties have created factual questions that are properly answered by way of Mary's petitions for declaratory judgment.

¶ 40

A. Bermuda Trusts

¶ 41 Reed argues that the Bermuda Trusts are not marital property because (1) Mary's right to any martial property did not vest until the marital action was filed in 2007 and (2) at the time the proceedings started, Reed's beneficial interest in the trusts were expectancies and not subject to allocation in the divorce proceedings. Mary argues that the Bermuda Trusts are presumptively martial property because Reed used \$2.2 million obtained during the marriage to fund them. See 750 ILCS 5/503(a) (West 2010). Mary further contends that, regardless of whether the Bermuda Trusts were set up to benefit only one spouse, they are marital because they were not the result of a gift between spouses.

¶ 42 In their lengthy briefs and at oral argument, the parties have argued the merits over and over with virtually no recognition that, as a reviewing court, we view the substantive issues through the prism of the dismissal of Mary's petitions for declaratory judgment. That said, it is well established that "fraud against marital property is not to be condoned even though it occurs before dissolution." *Hofmann v. Hofmann*, 94 Ill. 2d 205, 220 (1983). When the characterization of a transfer of marital assets is questioned by a spouse, fraud is properly assessed by referring to the donative intent of the settlor. *Hofmann*, 94 Ill. 2d at 220. A "colorable" or "illusory" transaction exists where the transferor had no intent to convey any present interest in the property but intended to retain complete ownership. *Johnson*, 73 Ill. 2d at 359. Where the transfer is of real property, it can be voided only upon a showing of clear and convincing evidence. *Hofmann*, 94 Ill. 2d at 221.

¶ 43 Mary has alleged that the Bermuda Trusts were funded, at least in part, from a loan Reed obtained from Crane, which was a business he obtained during the marriage. By not disputing this allegation, Reed effectively admits that at least some money used to set up the trusts are presumptively marital property. While it is entirely possible that Reed may introduce evidence to rebut the presumption, the trial court never allowed for a hearing where such evidence might be presented and weighed. Thus, the trial court erred in striking the declaratory judgment petition regarding the Bermuda Trusts. We further note that, even if the trial court had been correct in ruling the Bermuda Trusts are nonmarital property, the trusts are not irrelevant: the trial court should have ascertained and considered their value when dividing the marital estate. See 750 ILCS 5/503(d)(3) (West 2010); *In re Marriage of Joynt*, 375 Ill. App. 3d 817, 822 (2007) (husband's ownership of substantial nonmarital assets is to be considered when dividing marital property).

¶ 44 The trial court also concluded that the Bermuda Trusts Petition would not resolve a controversy because the court had no jurisdiction over the Bermuda trustees. Consistent with the court's determination, Reed argues that neither he nor Taylor, the trusts' protector, had "any powers" over the trusts and that the trustee had "absolute discretion" regarding distributions to the beneficiaries, including Reed. Mary argues that the trusts were merely illusory and that Reed retained control over them despite purporting to transfer all authority to the trustee. Reed's repeated assertions that he has absolutely no control over the distribution of the annuities raises a question of fact as to whether the Bermuda Trusts are marital property.

¶ 45 Mary has alleged that Reed engaged in fraud in creating and managing the Bermuda Trusts, but the trial court declined to grant her an evidentiary hearing on the issue. If Mary were to establish that the Bermuda Trusts were colorable or illusory, the trial court could determine that the annuities they hold are marital property to be distributed equitably between the parties. Assuming that Mary's

well-pleaded allegations are true and viewing the Bermuda Trusts Petition in the light most favorable to her, we conclude that a question of fact precludes dismissal of the petition.

¶ 46 We also note that, even if Reed's interest in the Bermuda Trusts can be characterized only as an expectancy, he is a named beneficiary who might receive a distribution in the future. Even if the trial court has no power over the trustee and the annuities are deemed to be nonmarital, the court nevertheless should have taken the Bermuda Trusts into consideration in the overall property distribution. The court certainly has jurisdiction over Reed, and the court could order him to remit to Mary a portion of any future annuity payment he might receive. Reed offers no persuasive explanation for how a division of his expectancy in the Bermuda Trusts is different from the routine division of pensions and annuities seen in other dissolution cases. The court characterized the declaratory judgment petition as seeking only a finding that Reed acted improperly during the marriage, but that is not a basis for striking the petition and has no bearing on Mary's claim that the Bermuda Trusts are marital property. Some part of the controversy over the Bermuda Trusts could be resolved through Mary's petition for declaratory judgment, and the trial court erred in ruling otherwise.

¶ 47 **B. The Real Estate**

¶ 48 Next, we conclude that an actual controversy exists regarding the Real Estate and that Mary's declaratory judgment petition should have been heard to resolve some part of that controversy. Mary has asserted an interest in the Davis and Dempster Properties, which are held in the BFLP, and the Wisconsin Property, which is held in the QPRT. Mary's Real Estate Petition alleges that, during the marriage, Reed defrauded her by obtaining her signature on various documents that transferred her interests in the Real Estate to trusts that Reed controls. Mary alleges that in 1996, around the time the parties first discussed the possibility of divorce, Reed convinced

her to transfer her interest in the Dempster Property to him through the BFLP. Mary further alleges that, around that time, Reed established the QPRT, named himself trustee, and gave himself exclusive use of the Wisconsin Property for the ensuing 25 years, at which time title to the property was to be transferred to a trust for the Beidler daughters' benefit.

¶ 49 Reed argues that the declaratory judgment petition was properly struck because Mary did not adequately allege a confidential or fiduciary relationship that required Reed to disclose the legal effect of the documents she signed. We disagree. “To recover for breach of a fiduciary duty, a plaintiff must prove that a fiduciary duty exists, that the fiduciary duty was breached, and that the breach proximately caused the injury of which the plaintiff complains.” *Crichton v. Golden Rule Insurance Co.*, 358 Ill. App. 3d 1137, 1149 (2005). A fiduciary relationship exists where, by reason of friendship, agency, or business association and experience, trust and confidence are reposed by one party in another and the latter party gains an influence and superiority over the first as a result. *Maercker Point Villas Condominium Association v. Szymiski*, 275 Ill. App. 3d 481, 484 (1995). While a fiduciary relationship does not arise by marriage alone (*Pollard v. Pollard*, 12 Ill. 2d 441, 446 (1958)), Mary has alleged that she relied on Reed to handle the couple's finances and investments because he was exceptionally skilled in those areas. Specifically, Mary asserts that she relinquished her interest in the Dempster Property because Reed engaged in fraud in telling her that it was a risky asset and should be removed from her trust and transferred to Reed. Moreover, Mary alleges that she did not understand the modification of the BFLP, which caused her to be divested of all interest in the Dempster Property. Mary asserts that Reed told her only that it was something for estate planning and their daughters' trust. Also, it is unclear who hired Harris to represent Mary and why. Such questions are relevant to Mary's fraud allegation. Also, Reed's repeated assertions that the

transaction was for the couple's estate planning is undermined by the fact that someone believed that Mary needed to be represented by counsel when she transferred her interest in the BFLP to Reed.

¶ 50 The 1983 Trust provided that Mary's Trust, which contained the Davis Property, would be transferred to the Children's Trust if the parties separated, but the record does not indicate whether Mary was represented by counsel at the time the 1983 Trust was created. The parties dispute the circumstances surrounding the creation of the 1983 Trust, which presents obvious questions of fact that preclude dismissal of Mary's Real Estate Petition. Reed argues that the Beidler daughters would be deprived of their interests if the Real Estate is deemed to be marital property, but Mary's questions raises a question of fact as to whether their interests are possibly invalid and a result of Reed's fraud.

¶ 51 C. Timeliness of the Petitions and Expert Disclosures

¶ 52 Finally, we address the trial court's conclusion that the petitions should be dismissed as untimely third-party complaints. Consistent with striking the petitions as untimely, the court granted Reed's motions *in limine*, which barred Mary from presenting evidence about the Bermuda Trusts and the Real Estate.

¶ 53 On August 1, 2008, the trial court entered its Case Management Order. The court set August 30, 2008, as the deadline for filing third-party complaints, and November 30, 2008 for motions for summary judgment and declaratory judgment. On October 14, 2009, the court extended Mary's discovery deadline to January 5, 2009, and the trial was postponed to March 9, 2009. Throughout discovery, the court set deadlines for Reed that were one month longer than Mary's deadlines.

¶ 54 The court ordered Mary to complete disclosure of expert identities and opinions by November 24, 2008, and before the deadline expired, Mary disclosed Christian Luthi (Bermuda law) and Art Tepfer (Bermuda annuities) as experts. On the last business day before her deadline, Mary

asked for another extension to submit expert reports of Dale Hibbard (the Wisconsin Property) and Michael Marous (the Dempster Property and the Waukegan Hangar). One day after the deadline, Mary asked for an extension to submit an expert report of Robert Maddox (the Steamboat Springs Property). At the time of Mary's requests, the trial was more than four months away.

¶ 55 In barring the experts, the court commented that Mary was "trying to pull the wool over the court's eyes," in relying on the previous extension to introduce evidence regarding the the Wisconsin Property, the Dempster Property and Waukegan Hangar, the Steamboat Springs Property, and the Bermuda Trusts and annuities. The court believed that the previous extension was intended to afford Mary the opportunity to disclose experts regarding properties in Canada and Ohio. However, the transcript from the October 14, 2008, hearing provides little evidence that Mary knew or should have known that the extension was limited to the Canada and Ohio appraisals. The parties' argument at the hearing was long and wide-ranging, and the court's written order contained no limiting language.

¶ 56 In its Case Management Order, the trial court set Reed's discovery and pleading deadlines one month later than Mary's deadlines, even though the assets and documents at the heart of this appeal were within Reed's knowledge and control. The deadline discrepancy and the distant trial date shows that Reed was not prejudiced by Mary's disclosures or her failure to file the trust documents. We conclude that the court abused its discretion in barring Mary from introducing evidence on the other topics. On remand, the court should not bar Mary from seeking to introduce the expert opinions of Luthi, Tepfer, Hibbard, Marous, and Maddox.

¶ 57 Furthermore, we agree with Mary that the declaratory judgment petitions were not untimely third-party complaints. As discussed, the Real Estate Petition asked for a declaration of the parties' rights in the Wisconsin and Evanston Properties and the assets of the BFLP, specifically the

Dempster Property. The Bermuda Trusts Petition asked for a declaration of the parties' rights in the Bermuda Trusts and annuities. A third-party complaint is a pleading filed by a defendant, not a plaintiff, against an outside party who may be liable for some or all of the damages awarded against the original defendant. 735 ILCS 5/2-406(b) (West 2010). As they were filed by Mary, the Bermuda Trusts Petition and the Real Estate Petition do not qualify as third-party complaints, and thus were not subject to the deadline for that type of pleading. Mary attempted to join Taylor as a defendant, and joinder of a third-party defendant is an action whereby the court may add a defendant who has an interest in the controversy or whose presence maybe necessary to effectuate the judgment. 735 ILCS 5/2-405. Even if Taylor was not a necessary party for assessing the parties' rights regarding the Bermuda Trusts, the court should have examined the parties' rights by means of the declaratory judgment petitions.

¶ 58

#### CONCLUSION

¶ 59 Applying the relevant statutory provisions to the pleadings, we hold that a declaratory judgment of the parties' rights regarding the Bermuda Trusts, the Evanston Properties (the BFLP), and the Wisconsin Property (QPRT) is proper because there is an actual controversy and entry of a declaratory judgment would terminate "some part" of that controversy. 735 ILCS 5/2-701(a) (West 2010)); *Best*, 228 Ill. 2d at 116-17. We emphasize that we offer no opinion as to the parties' respective rights regarding these properties, only that the trial court should conduct an evidentiary hearing to determine those rights and incorporate the findings into the judgment of dissolution. Even if the properties are deemed to be nonmarital, the trial court should consider them in distributing the marital estate. To the extent that the trial court granted Reed's motions *in limine* to bar evidence that might pertain to the declaratory judgment petitions, those rulings are reversed as well. Our holding obviates the need to address the parties' remaining arguments. For the reasons

stated, we reverse the trial court's order striking Mary's petitions for declaratory judgment, and we remand the cause for further proceedings consistent with this disposition.

¶ 60 Reversed and remanded.