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No. 3--09--0794

Order filed June 8, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
REGINA PLEIN,)	of the 21st Judicial Circuit,
)	Kankakee County, Illinois,
Petitioner-Appellee,)	
)	
and)	No. 04--D--91
)	
DAVID PLEIN,)	Honorable
)	Michael D. Kramer,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Wright and O'Brien concurred in the judgment.

ORDER

Held: The trial court's classification of David's business, commercial properties, and marital home as marital property was not an abuse of discretion.

David and Regina Plein were married in 1982. The parties filed for dissolution of marriage in 2004. In its judgment for dissolution, the trial court found that Plein Plumbing and Heating, Inc. (PPH), and the properties David inherited from his parents were marital property. Afterwards, David filed a motion

for reconsideration and to reopen evidence. The trial court denied the motion. David appeals the trial court's denial of his motion to reconsider and reopen evidence. We affirm.

FACTS

David and Regina Plein were married May 22, 1982. At the start of the marriage, David worked for his father's business, PPH. When David's father began spending more time at his home in Florida, he entrusted David with the management of PPH. Regina also worked for PPH during the marriage as a clerk and bookkeeper.

Following the parties' wedding, David's father provided them with a home, located at 718 North Dixie Highway, Momence, Illinois (718 Dixie). The parties worked together to repair this home. However, David and Regina never took title to 718 Dixie, and it was owned by PPH at the time the trial court issued its judgment for dissolution of marriage.

In 1984, the parties' son was born. Sometime after their son's birth, the parties moved to 728 North Dixie Highway, Momence (728 Dixie). PPH purchased this property from Regina's parents in 1990. When the parties moved into 728 Dixie, 718 Dixie was rented out.

In 1986, David's father died. His will devised to David his complete interest in PPH. At the time, PPH owned 718 Dixie, 728 Dixie, 713 Locust Street (713 Locust), and 15 South Ash Street

(15 Ash), all located in Momence. Additionally, David's father individually owned 629 North Chestnut (629 Chestnut), and approximately 48 acres located on Route 114 (the farm), both in Momence. According to David, these two properties were transferred to him by two trusts after his father's death. David testified that Regina was never a beneficiary of these trusts but he did not introduce the trust documents into evidence. Nevertheless, Regina testified that she helped David maintain the 629 Chestnut property.

After the death of David's father, David's mother was moved into a nursing home. David and his two brothers then sold her home. The proceeds from the sale were used to purchase 201 Mechanic Street, Momence (the garage). At trial, David testified that the garage was held by a trust and he was one of the three named beneficiaries. Additionally, he introduced a trust agreement, which corroborated his testimony. David and his brothers created D.M.D. Properties to manage the garage. David testified that he used his share of the income from the partnership to pay property taxes, insurance, and maintenance expenses on his various properties.

The parties began building their marital home on the farm property in 1990. Although the parties did not take out a mortgage to finance their home construction, both parties testified that they assisted in building the home. Additionally,

funds from PPH paid for the home expenses. In August of 1993, David sold 15 Ash and used the proceeds to pay construction costs. The home was mostly completed by 1996.

In 1999, David traded 728 Dixie for a former hotel located at 5 Dixie Highway, Momence (the hotel). The hotel was then transferred to a land trust. David testified that he was the named beneficiary of this land trust. Later, David and Regina's son was named a successor beneficiary. Regina was never named a beneficiary. However, Regina testified that she assisted with the maintenance and upkeep of the hotel's rental units.

On March 4, 2004, Regina filed a petition for dissolution of marriage. At trial, Regina testified that she worked for PPH from the start of the parties' marriage until 2004. However, she stopped receiving a salary once David became the owner. Similarly, David testified that he received a salary from PPH until he inherited the business from his father. Afterwards, both parties stated that PPH paid their personal and family expenses, and David testified that he would sporadically take paychecks. Additionally, David stated that he did not maintain an individual checking account, and he used PPH's accounts as his own.

The trial court determined that 718 Dixie and 713 Locust were David's nonmarital property. However, PPH was marital property because "[David] freely admitted that the business paid

all of the family's living expenses and that he never had a separate checking account and rarely paid himself wages or salary." Consequently, "the identity of David Plein and [PPH] *** became one." The trial court found that the remaining assets were acquired during the marriage and therefore were presumed to be marital property. Further, David failed to offer clear and convincing evidence to rebut this presumption, and the trial court found that he was "simply not a believable witness." Nevertheless, the trial court awarded to David his nonmarital property, and the following marital property: PPH, the hotel, his one-third interest in the garage, and 629 Chestnut.

David filed a motion requesting the trial court to reconsider its property classification and to reopen evidence. The trial court denied David's motion. David appeals.

ANALYSIS

On appeal, David's issue heading states that he challenges the trial court's denial of his motion to reconsider and reopen evidence. However, David solely argues that the trial court erred in denying his motion to reconsider. Therefore, we limit our analysis to the trial court's denial of David's motion to reconsider.

A trial court's decision to deny a motion for reconsideration will not be reversed absent an abuse of discretion. *In re Marriage of Gowdy*, 352 Ill. App. 3d 301

(2004). We review a trial court's exercise of discretion for arbitrary actions made " 'without the employment of conscientious judgment.' " *Gowdy*, 352 Ill. App. 3d at 307 (quoting *In re Marriage of Aud*, 142 Ill. App. 3d 320, 326 (1986)).

David's motion to reconsider challenged the trial court's classification of certain property. Before a trial court can dispose of property upon dissolution of marriage, it must determine if the property is marital or nonmarital. *In re Marriage of Didier*, 318 Ill. App. 3d 253 (2000). A trial court's classification of real property as marital or nonmarital "will not be disturbed unless it is against the manifest weight of the evidence." *In re Marriage of Samardzija*, 365 Ill. App. 3d 702, 706 (2006).

Section 503 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/503(a) (West 2008)) creates a rebuttable presumption that all property acquired by either spouse after the marriage is marital property. To overcome this presumption, a party must show by clear and convincing evidence that the property falls within one of the exceptions listed in section 503(a) of the Marriage Act. *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010 (2009). The party claiming that the property is nonmarital has the burden of proof. *Id.* "[A]ny doubts as to the nature of the property are resolved in favor of finding that the property is marital." *Id.* at 1017.

Transfers from a parent to a child are presumed to be a gift. *Didier*, 318 Ill. App. 3d 253. This presumption may be overcome by clear and convincing evidence to the contrary. *Id.* Property that a spouse receives by gift or inheritance during the marriage is generally nonmarital property. 750 ILCS 5/503(a)(1) (West 2008). However, gifted or inherited property that is commingled with marital property is transmuted into marital property. See *In re Marriage of Smith*, 77 Ill. App. 3d 858 (1979) (inherited property of one spouse that was put into a joint account became marital property).

David first argues that the trial court erred in classifying PPH as marital property. Specifically, he contends that his marital use of PPH's assets was not significant enough to transmute PPH into marital property. See *In re Marriage of Siddens*, 225 Ill. App. 3d 496 (1992).

On the contrary, we find that David's commingling of PPH assets with marital property was substantial and significant. Both David and Regina testified that PPH paid their family and personal expenses. David further testified that he did not maintain a personal checking account. Therefore, the marital and nonmarital funds provided by PPH lost their individual identity because they were commingled to purchase marital assets and pay family bills. See *In re Marriage of Davis*, 215 Ill. App. 3d 763 (1991). Consequently, David's use of PPH as both his employer

and personal bank made it impossible to differentiate PPH from the marital estate.

Next, David argues that the trial court incorrectly classified 629 Chestnut and the farm as marital property. He asserts that his testimony and proffered documents showed that 629 Chestnut and the farm were inherited nonmarital property because he received them from trusts established after his father's death. Furthermore, David states that Regina testified that these parcels were inherited.

Despite David's contentions, his testimony and the limited documentary evidence in the record failed to satisfy his burden of proof. The farm and 629 Chestnut properties were acquired after the parties' marriage, and thus were presumptively marital. See 750 ILCS 5/503(b) (West 2008). We find that David failed to overcome this presumption. We note that the record does not contain trust documents establishing the disposition of these two properties. We further note that the trial court found that David was "not a believable witness." Because property classification "rests largely on the trial court's evaluation of the credibility of the witness[]," we defer to the trial court's findings. *In re Marriage of Hegge*, 285 Ill. App. 3d 138, 140 (1996). Consequently, we agree with the trial court that David's evidence fell "well short of the required standard of clear and convincing evidence."

We also find that the farm was used to build the parties' marital home and thus was transmuted into marital property. A marital residence owned by both spouses, " 'even if one spouse has furnished all the consideration for it out of nonmarital funds,' " is presumptively marital property. *Samardzija*, 365 Ill. App. 3d at 706 (quoting *In re Marriage of Johns*, 311 Ill. App. 3d 699, 703 (2000)). The record indicates that the nonmarital property David contributed to build the marital home lost its separate identity when it was commingled with marital funds. See *Davis*, 215 Ill. App. 3d 763. In particular, the sale proceeds from 15 Ash became marital property when it was combined with Regina's construction assistance and PPH's expense payments. As a result, the farm was transmuted into marital property.

Finally, David contends that the hotel and his interest in the garage were nonmarital property because he purchased both with inherited property. David states that Regina never contradicted the fact that PPH owned 728 Dixie and he provided documents showing its trade for the hotel. Similarly, David argues that the garage was nonmarital property because it was acquired with inherited funds and was held in a trust, in which he was a beneficiary.

We note that the hotel and David's interest in the garage were acquired during the parties' marriage and are presumptively marital property. See 750 ILCS 5/503(a) (West 2008). David

failed to prove by clear and convincing evidence that these properties were nonmarital. See *Schmitt*, 391 Ill. App. 3d 1010. Although the hotel and the garage were acquired with inherited property, David used the rental income from these properties to pay property taxes, insurance, maintenance and other family expenses. Furthermore, Regina's testimony indicates that she assisted with the maintenance of the hotel. The parties' efforts and resulting income from these two properties thus became significantly commingled with the parties' marital property and were transmuted into marital property.

CONCLUSION

For the forgoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

Affirmed.