

NOTICE
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NO. 4-10-0301

Filed 01/07/11

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: the Marriage of)	Appeal from
MARTIN GRAY,)	Circuit Court of
Petitioner-Appellee)	Woodford County
and)	No. 08D46
ROBIN GRAY,)	
Respondent-Appellant.)	Honorable
)	John B. Huschen,
)	Judge Presiding.

JUSTICE MYERSCOUGH delivered the judgment of the court. Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

Held: Where the parties to a marriage that was short in duration used approximately \$40,000 in marital funds to pay off the mortgage on the husband's nonmarital property bought for \$60,000, the trial court erred by not ordering that the marital estate be reimbursed for its contributions to the husband's nonmarital property. Further, the trial court did not err in refusing to award the wife (1) a portion of the husband's workers' compensation settlement where the record did not refute the trial court's finding that the evidence and testimony showed that no funds from the settlement remained because the husband had spent those funds on his living expenses, or (2) attorney fees.

Respondent, Robin Gray, appeals portions of the judgment dissolving her marriage to petitioner, Martin Gray. Robin argues the trial court erred by (1) not reimbursing the marital estate for its contributions to Martin's nonmarital property, (2) failing to award her a portion of Martin's workers' compensation settlement, and (3) not ordering Martin to pay Robin's interim

attorney fees. We affirm in part, reverse in part, and remand.

I. BACKGROUND

We confine our discussion of the facts to those relevant to the issues on appeal, *i.e.*, the trial court's distribution of (1) the marital contributions to Martin's nonmarital home, (2) the proceeds from Martin's workers' compensation claim, and (3) Robin's request for interim attorney fees.

In March 2004, prior to the parties' marriage on March 20, 2006, Martin bought a home at 1124 Sunset Drive in East Peoria, Illinois (Sunset Drive residence). The purchase price was \$60,000 and Martin put \$5,000 down. Robin contributed \$9,500 from her nonmarital estate toward paying down the mortgage on the Sunset Drive residence. Further, the parties contributed marital funds to paying down the mortgage, eventually paying it off in March 2008. Martin contends the marital estate paid \$40,000 on the mortgage. Robin contends the parties used \$41,469 in marital funds to satisfy the mortgage. The principal balance on the mortgage on the date of marriage cannot be discerned from the record. An exhibit labeled "Plaintiff's Exhibit D," but contained in the volume of the record titled "Defendant's exhibits," contains two pages showing monthly payments made on the Sunset Drive residence and the resulting balance after each payment. The first page shows payments made between March 15, 2004, and February 15, 2005, after which there was a principal balance of

\$50,481. The second page shows payments made between January 15, 2007, with a beginning balance of \$25,959.07, and June 15, 2007, with a balance of \$19,298.70.

On December 26, 2006, Martin was injured at work and received \$627.22 per week in temporary total disability benefits until January 3, 2008, totaling 53 weeks. In February 2008, a settlement for permanent disability between Martin and his employer was approved by the Illinois Workers' Compensation Commission. Under the terms of the settlement, Martin received \$47,500. After attorney fees of \$9,500 and payment of a medical bill in the amount of \$1,249, only \$36,751 of the settlement remained.

Martin filed the petition for dissolution of marriage on May 7, 2008. On April 28, 2009, Robin filed a petition for temporary relief and attorney fees. Robin's petition alleged, in part, that during the marriage the parties incurred \$10,942.81 in credit-card debt for their joint living expenses. While the credit cards were solely in Robin's name, the debt thereon was incurred for the benefit of both parties. Since the parties' separation, Martin had refused to contribute toward that marital debt. Robin believed Martin had received a large workers' compensation award but claimed Martin had refused to reveal the amount. Robin also asked that Martin be required to pay her interim attorney fees, which she estimated to be about \$2,500.

On June 15, 2009, the trial court entered an order denying Robin's petition for temporary relief and attorney fees. The court found the credit-card debt to be marital debt. However, the court denied the petition after finding that (1) Martin was unemployed as of May 15, 2009; (2) Martin was not receiving unemployment compensation or temporary disability payments through workers' compensation; and (3) Robin was earning \$2,728 per month.

On July 16, 2009, Robin's attorney filed a motion to withdraw. The trial court granted the motion. Robin then proceeded *pro se*.

On October 27, 2009, a trial was held after which the trial court took the matter under advisement. On January 12, 2010, the court entered a judgment for dissolution of marriage in which it divided the property as follows. Martin received the Sunset Drive residence as his nonmarital property. Robin was reimbursed for her \$9,500 contribution of her nonmarital funds. The court denied Robin's claim for a portion of Martin's workers' compensation settlement. In doing so, the court stated no proceeds from the award existed at the time of trial and the evidence established that the proceeds were spent on Martin's living expenses as he remained responsible for the expenses of the residence after the parties separated.

The trial court also awarded Martin half of the marital

portion of Robin's Wachovia retirement account through entry of a qualified domestic relations order (QDRO). Martin was left with assets having a net value of \$5,065 while Robin was left with debt of \$15,453 after the court's division of the rest of the parties' marital property and debts. To equalize the division of marital assets and debt, the court ordered Martin to pay a \$10,259 equalization payment to Robin. After the equalization payment, the parties were each left with a net debt of \$5,194. The trial court ordered each party to pay their own attorney fees.

On February 10, 2010, Robin filed a motion to reconsider. On March 22, 2010, the trial court denied Robin's motion to reconsider by docket entry.

This appeal followed.

II. ANALYSIS

As stated, the only issues on appeal are whether the trial court erred by (1) not ordering that the marital estate be reimbursed for marital contributions to Martin's nonmarital residence, (2) denying Robin's claim that she was entitled to a portion of Martin's workers' compensation settlement, and (3) failing to order that Martin pay Robin's interim attorney fees.

We apply an abuse-of-discretion standard to both the distribution of property award (*In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 648, 913 N.E.2d 1077, 1084 (2009)) and the

trial court's decision to award or deny attorney fees (*In re Marriage of Schneider*, 214 Ill. 2d 152, 174, 824 N.E.2d 177, 190 (2005)). A trial court will be found to have abused its discretion when it "'acted arbitrarily without conscientious judgment or, in view of all of the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial injustice resulted.'" *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1240, 799 N.E.2d 1037, 1041 (2003), quoting *In re Marriage of Suriano*, 324 Ill. App. 3d 839, 846, 756 N.E.2d 382, 288 (2001).

A. The Trial Court Erred By Failing To Reimburse the Marital Estate For Its Contributions to Martin's Nonmarital Property

Robin contends the trial court erred when it failed to reimburse the marital estate for its contributions of marital funds to Martin's nonmarital residence. Specifically, Robin contends the marital estate should have been reimbursed for its contributions in the form of marital funds expended to (1) pay off the mortgage on the Sunset Drive residence and (2) make improvements to the Sunset Drive residence. Martin contends the marital estate has benefitted from the use of the Sunset Drive residence and therefore need not be reimbursed. For the reasons stated below, we agree with Robin's first contention, but not her second.

1. *Marital Estate Should Have Been Reimbursed for Its Contribution of Marital Funds To Pay the Mortgage Debt on Martin's Nonmarital Residence*

Section 503(c) (2) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(c) (2) (West 2008)) provides a right to reimbursement for contributions made by one estate to another estate in certain situations. Section 503(c) (-2) states as follows, in pertinent part:

"When one estate of property makes a contribution to another estate of property, or when a spouse contributes personal effort to non-marital property, the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation; provided, that no such reimbursement shall be made with respect to a contribution which is not retraceable by clear and convincing evidence[.] *** The court may provide for reimbursement out of the marital property to be divided or by imposing a lien against the non-marital property which received the contribution." 750 ILCS 5/503(c) (2) (West 2008).

"The reimbursement is made to the contributing estate, not to the contributing spouse." *In re Marriage of Albrecht*, 266 Ill. App. 3d 399, 401, 639 N.E.2d 953, 954 (1994).

The trial court determined, and Robin does not argue

otherwise, that the Sunset Drive residence was Martin's nonmarital property. The parties agree that a significant portion of the mortgage on the Sunset Drive residence was paid using marital funds. Robin alleges \$41,469 in marital funds and Martin alleges \$40,000 in marital funds, a difference of \$1,469, was contributed to satisfy the mortgage on the Sunset Drive residence. Martin contends the marital estate has already been compensated for its contribution of marital property and relies on *In re Marriage of Crook*, 211 Ill. 2d 437, 813 N.E.2d 198 (2004), and *In re Marriage of Snow*, 277 Ill. App. 3d 642, 660 N.E.2d 1347 (1996), as support for his position.

In *Crook*, the husband farmed land owned by the wife's family. *Crook*, 211 Ill. 2d at 439, 813 N.E.2d at 199. The wife was raised on the farm and had spent most of her life there. *Crook*, 211 Ill. 2d at 439, 813 N.E.2d at 199. The farmhouse in which the parties lived during most of the marriage originally belonged to the wife's parents, who deeded the farmhouse and five acres of the farm to her in 1983. *Crook*, 211 Ill. 2d at 439, 813 N.E.2d at 199. The property also contained a machine shed, a barn, a crib, a shop, and a steel grain bin which were used as part of the farming operation. *Crook*, 211 Ill. 2d at 439-40, 813 N.E.2d at 199. In approximately 1993, the parties jointly borrowed money to build a new shed on the property to replace a barn that had been used to store farm equipment and had burned.

Crook, 211 Ill. 2d at 440, 813 N.E.2d at 199.

The parties agreed to sell the farm equipment after the husband quit farming. Fifty thousand dollars of the proceeds of the sale of some of the farm equipment was placed into the parties' joint bank account. *Crook*, 211 Ill. 2d at 440, 813 N.E.2d at 199. After the husband filed for a dissolution of marriage, the wife used \$40,000 from the parties' joint account to pay off the shed construction loan. *Crook*, 211 Ill. 2d at 440, 813 N.E.2d at 199.

Our supreme court held that the marital estate had reaped the benefit of the wife's nonmarital contributions because the wife's nonmarital contribution provided the marital estate with a home, free of rent or mortgage payments, and the buildings necessary to sustain a successful farming operation for most of the marriage. *Crook*, 211 Ill. 2d at 455, 813 N.E.2d at 207. The parties jointly incurred the debt to build the machine shed, a necessary part of the farming operation, to replace a barn that was used throughout the marriage to store farm equipment. *Crook*, 211 Ill. 2d at 455, 813 N.E.2d at 207. The court stated the record showed that the farming operation provided substantial income to the marital estate. *Crook*, 211 Ill. 2d at 455, 813 N.E.2d at 207. "Due to the long duration of the marriage and substantial compensation to the marital estate resulting from [the wife's] nonmarital contributions during the marriage, [the

supreme court] determine[d]" the marital estate was not entitled to reimbursement. *Crook*, 211 Ill. 2d at 455, 813 N.E.2d at 207.

The marital estate in *Snow* contributed \$25,000 to the husband's nonmarital estate through payment of the mortgage on his nonmarital residence. *Snow*, 277 Ill. App. 3d at 646, 660 N.E.2d at 1350. The appellate court, citing *Albrecht*, 266 Ill. App. 3d at 401, 639 N.E.2d at 955, stated that "the marital estate would not be entitled to reimbursement for mortgage payments contributed to nonmarital property if the marital estate has already been compensated by the use of that property." *Snow*, 277 Ill. App. 3d at 650, 660 N.E.2d at 1352. The appellate court then concluded that the trial court could reasonably have concluded that the marital estate had already been compensated for its contributions because the parties lived in the house for at least 10 years, which the court considered a "substantial period of time." *Snow*, 277 Ill. App. 3d at 650, 660 N.E.2d at 1352. Additionally, the court also noted that there is no right to reimbursement for interest payments. *Snow*, 277 Ill. App. 3d at 650, 660 N.E.2d at 1352. In *Snow*, no evidence was presented on how much of the marital contribution went to principal and how much went to interest payments. *Snow*, 277 Ill. App. 3d at 650, 660 N.E.2d at 1352.

In other cases, Illinois courts have ordered that the marital estate be reimbursed for its contributions in paying off

mortgage debt on one of the spouse's nonmarital property. *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 657, 698 N.E.2d 1084, 1089 (1998) (affirming trial court's order requiring that the marital estate be reimbursed for its contributions to husband's nonmarital residence in which the parties lived in during their six-year marriage); *In re Marriage of Leisner*, 219 Ill. App. 3d 752, 763, 579 N.E.2d 1091, 1098 (1991) (remanded for determination of amount of reimbursement when some mortgage payments on nonmarital residence were made with marital funds); *In re Marriage of McCoy*, 225 Ill. App. 3d 966, 968, 589 N.E.2d 141, 143 (1992) (finding that marital estate should have been reimbursed for the more than \$22,000 it contributed to improvements and paying down mortgage on husband's nonmarital residence); *In re Marriage of Booth*, 255 Ill. App. 3d 707, 712, 627 N.E.2d 1142, 1146 (1993) (finding marital estate should be reimbursed for the \$19,333 it contributed to paying debt on the husband's nonmarital property and remanding for determination of how the reimbursement should be allocated).

Clearly, where the marital estate contributes to one spouse's nonmarital estate by paying a mortgage on that spouse's nonmarital residence, section 503(c)(2) of the Act allows reimbursement to the marital estate if the contributions are traceable and the marital estate has not already been compensated by its use of the property. Here, approximately \$40,000 in marital

assets were used to pay the mortgage off on Martin's nonmarital residence. However, unlike the marital estates in *Crook* and *Snow*, the marital estate in the case *sub judice* has not already been compensated for its contributions. As stated, the parties in both *Crook* and *Snow* lived in the nonmarital residences for at least 10 years. Here, the parties' marriage was just over two years in duration, yet they paid the remaining \$40,000 in mortgage debt, which was two-thirds of the \$60,000 purchase price. Under the circumstances of this case, it is inequitable for Martin to be awarded 100% of the marital contribution to his nonmarital asset while equally dividing all other marital debts and assets, including the marital portion of Robin's retirement account.

Additional circumstances distinguish the case *sub judice* from *Crook* and *Snow*. Unlike in *Snow*, there is no question here as to how much of the marital contribution went to pay the principal and how much went to paying interest. See *Snow*, 277 Ill. App. 3d at 650, 660 N.E.2d at 1352. Here, the parties do not dispute that they paid the remaining principal of the debt on the Sunset Drive residence. Similarly, this case is distinguishable from *Crook* in that the debt in *Crook* was jointly incurred to replace a necessary part of the farming operation that provided the marital estate with substantial income. Here, the marriage was neither long in duration nor did the marital estate receive

substantial income from the nonmarital contribution like the marital estate did in *Crook*.

The marital funds expended to pay the mortgage on Martin's nonmarital residence are traceable. Moreover, while the marital estate has benefitted by the use of the residence during the marriage, it has not fully been compensated as the marital estate spent at least \$40,000 and the parties only lived there a little more than two years. Therefore, we conclude the trial court abused its discretion and the marital estate should be reimbursed for the funds it contributed to the mortgage debt on Martin's nonmarital estate.

On remand, the trial court should allocate this reimbursement, considering previous evidence and previous distributions, and follow the dictates of section 503 of the Act.

2. The Marital Contributions Spent To Make Improvements to Nonmarital Residence Were Not Clearly Traced

The trial court did not abuse its discretion by failing to order reimbursement to the marital estate for funds expended on making improvements to the Sunset Drive residence. For the contributing estate to be reimbursed, the contribution must be traceable by clear and convincing evidence. *Albrecht*, 266 Ill. App. 3d at 401, 639 N.E.2d at 955. However, "[e]vidence of appreciation in value to a nonmarital residence is not necessary under section 503(c)(2) where a marriage is of short duration and clear and convincing evidence of contributions of marital funds

exists." *Albrecht*, 266 Ill. App. 3d at 401, 639 N.E.2d at 955, citing *In re Marriage of Adams*, 183 Ill. App. 3d 296, 304-05, 538 N.E.2d 1286, 1292 (1989). In *Albrecht*, the court noted that the wife presented some receipts for the improvements that were made and stated "[t]he trial court must determine based on the evidence already presented whether those contributions the marital estate made to respondent's nonmarital residence were clearly proved, and whether the marital estate has already been compensated." *Albrecht*, 266 Ill. App. 3d at 401, 639 N.E.2d at 955. No such evidence exists in this case. Robin's brief describes the improvements she alleges were made, *i.e.*, aging doors and windows were replaced, and the attached garage was renovated into two bedrooms, a hallway, and a laundry room. However, Robin then acknowledges these contributions are not traceable when she says "[t]here is no way to provide proof although the house itself is proof." Therefore, Robin has not traced the marital the contribution by clear and convincing evidence. Because she has failed to trace these contributions with any evidence, reimbursement to the marital estate cannot be ordered.

B. The Trial Court Did Not Err by Failing To Award Robin a Portion of Martin's Workers' Compensation Settlement

Robin contends the trial court erred by failing to award her a portion of the \$36,751 that remained from Martin's workers' compensation settlement. We disagree.

A workers' compensation award that arises out of a

claim that accrued during the marriage is a marital asset. *In re Marriage of DeRossett*, 173 Ill. 2d 416, 421, 671 N.E.2d 654, 656 (1996). Where settlement "proceeds are expended by the spouse on living expenses they no longer exist as a marital asset and thus cannot be apportioned as marital property under section 503 of the [Act]." *In re Marriage of Bauer*, 138 Ill. App. 3d 379, 388, 485 N.E.2d 1318, 1323 (1985) (discussing insurance-settlement proceeds arising from a burglary that were used to pay marital debt and living expenses); see also *In re Marriage of Kudit*, 107 Ill. App. 3d 310, 315, 437 N.E.2d 777, 781 (1982) (stating it would seem apparent that when settlement proceeds from the spouse's personal-injury claim were expended by the spouse on living expenses it no longer existed as a marital asset and thus could not be apportioned as marital property under section 503).

In denying Robin's request to be awarded part of Martin's settlement, the trial court reasoned that the testimony and evidence showed that the funds no longer existed because Martin had used them for living expenses. The court also pointed out that Robin did not claim dissipation. Following *Bauer* and *Kudit*, the trial court did not abuse its discretion because the evidence showed Martin used these funds on living expenses and Robin did not claim dissipation. While Martin's claim to have spent over \$36,000 on living expenses after separation when living without a mortgage may seem high, the record does not

contain a bystander's report, agreed statement of facts, or a transcript of the trial for this court to review the testimony on which the trial court based its decision. In fact, nothing in the record indicates that a court reporter was present for the hearing. "In the absence of such record on appeal, we must presume that the circuit court followed the law and had a sufficient factual basis for its ruling." *In re Marriage of Manhoff*, 377 Ill. App. 3d 671, 677, 880 N.E.2d 627, 632 (2007). Accordingly, the trial court did not abuse its discretion.

C. The Trial Court Did Not Err by Denying Robin's
Request for Attorney Fees

Robin contends the trial court erred by not ordering Martin to pay her interim attorney fees. We disagree.

The trial court's order indicates it considered the parties' financial affidavits, the exhibits presented, and the parties' proffer. Martin's affidavit shows income of \$300 per month and expenses of \$1,826. Robin's affidavit shows income of \$2,728 before taxes and expenses of \$2,535. The court determined Martin did not have the ability to pay since he was unemployed and was not receiving temporary disability payments at that time. We find no abuse of discretion in the trial court's decision to deny Robin's request for attorney fees.

III. CONCLUSION

We reverse that portion of the trial court's judgment with respect to the Sunset Drive residence. The remainder of the

court's order is affirmed. This cause is remanded to the trial court for proceedings according to the findings expressed in this order.

Affirmed in part and reversed in part; cause remanded with directions.