

NOTICE

Decision filed 02/25/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0395

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
ARTIE W. MYERS,)	Bond County.
)	
Petitioner-Appellant,)	
)	
and)	No. 07-D-42
)	
PAULA M. MYERS,)	Honorable
)	Keith Jensen,
Respondent-Appellee.)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justices Donovan and Wexstten concurred in the judgment.

RULE 23 ORDER

Held: The trial court did not err in its classification of real and personal property as marital, nor in its determination regarding the contributions of the parties to the acquisition or preservation of property or the increase or decrease in the value of property, nor in its findings of dissipation. The trial court's findings regarding the valuation and the distribution of the marital real property and the maintenance award are reversed, and the cause is remanded for a proper determination of property values. The trial court is instructed to account for dissipation in its distribution of the marital property, to avoid double-valuing a semitruck, and to address the disposition of the marital corporation.

In this divorce case, the petitioner, Artie W. Myers (Artie), raises the following issues on appeal, which we have restated as follows: (1) whether the trial court erred by classifying real and personal property as marital, (2) whether the trial court erred in its division of marital property, and (3) whether the trial court erred by granting Paula M. Myers (Paula) maintenance in gross. The issues on appeal are limited to matters in the judgment for the dissolution of the marriage, entered on October 29, 2008, and an order entered on June 26, 2009. We note that there are several orders listed in the notice of appeal for which no issues

were briefed. Therefore, any issues related to those orders are forfeited pursuant to Supreme Court Rule 341(h)(7) (eff. March 16, 2007).

FACTS

The parties were married on July 12, 1980. No children were born to the parties. On July 20, 2007, Artie filed a petition for a dissolution of the marriage. At the hearing on the petition, Paula testified that when the parties met in 1976, Artie's parents owned a farm consisting of 140 acres (the Myers farm), where Artie worked with his father and resided with his parents. Later, a home was built next door, where the parties resided after they married (the marital residence). Paula testified that she did not bring any cash or real property into the marriage. However, she testified that she and Artie worked equally on the farm year-round. In addition, Paula maintained the marital residence. Her chores included milking cows, driving tractors, combining, baling hay, cooking, cleaning, doing laundry, and paying bills.

Respondent's Exhibit 15 contains, *inter alia*, a trustee's warranty deed providing that real property was deeded by the trust of Ruth Myers to Artie and Paula in joint tenancy as husband and wife on January 22, 1987, for the consideration of \$20,000. An additional trustee's warranty deed in Respondent's Exhibit 15 provides that real property was deeded by the trust of Bill Myers to Artie and Paula in joint tenancy as husband and wife on January 22, 1987, for the consideration of \$15,500. Both warranty deeds were filed by the Bond County Recorder of Deeds on January 26, 1987. In addition, a warranty deed in Respondent's Exhibit 15 provides that Bill and Ruth Myers deeded real property to Artie and Paula in joint tenancy as husband and wife on January 2, 1992, for the consideration of one dollar. The deed was filed with the Bond County Recorder of Deeds on January 3, 1992.

Paula testified that during the marriage, the parties jointly purchased land known as the Jacobs property and the Gall property. The parties also accumulated farm machinery over

the years. Paula testified that she and Artie formed Ready View Corporation (Ready View) in 1991, of which the parties are equal shareholders. Paula noted that she and Artie used the Ready View checkbook not only for corporate expenses but also for personal items such as groceries and clothing.

Paula testified that she and Artie separated in June 2007. Paula admitted that she did not approve of Artie's proposed expenditure for fertilizer for the 2008 planting season because he requested more than that which was necessary for Ready View. Paula explained that Artie farmed property owned by his girlfriend, Brenda Hess, and Paula did not want Ready View to purchase fertilizer for Hess's land. Paula testified that she also rejected Artie's request for Ready View to pay for his semitruck license because since the separation, Artie had failed to give an accurate accounting of personal income generated by the use of the semitruck. Paula added that Artie sold beans from Ready View in Brenda Hess's name and subsequently changed it to his mother's name.

Mark Beatty testified that he is the president of First Bank in Greenville and has been involved with Paula and Artie since Ready View incorporated in 1991. At the time of the hearing, Ready View had three loans through First Bank, all of which were in good standing. The first was a line of credit that was renewed annually and was used for farm expenses, with a balance of \$149,505 (the credit line). Beatty testified that Ready View, as well as Paula and Artie as individuals, were responsible for the credit line. The second loan was for two separate parcels of real estate totaling 120 acres. Artie and Paula as individuals were responsible for this loan, which was taken out in February 1998 and had a balance of \$18,852. The third loan was taken out in February 2007 for machinery and carried a balance of \$27,379. Ready View, as well as Artie and Paula individually, were responsible for this loan. Beatty testified that on June 20, 2007, the date the parties separated, Artie drew \$3,000 on the credit line. Artie also drew \$5,500 on July 16, 2007, \$805.76 on July 23, 2007, and

\$700 on October 11, 2007. Beatty added that such withdrawals were not unusual.

Michael Gregg testified that he moved to the Myers farm in September 2005 and operated a dairy for 2½ years. Gregg testified that over the last year the dairy earned profits of \$12,000 per month for him and \$8,000 per month for Artie and Paula. Gregg averred that his relationship with Artie gradually deteriorated and worsened after Artie and Paula announced their divorce. Gregg testified that after that time Artie began removing equipment from Ready View and leaving other equipment in disrepair, thereby negatively impacting the dairy operation. Gregg testified that he moved his family and the dairy operation to Oklahoma in March 2008 because he and Artie argued so frequently and the future of Ready View was uncertain.

Artie initially testified that the Myers farm was nonmarital because his father had gifted it to him and deeded it only in his name. However, after inspecting Respondent's Exhibit 15, Artie conceded that all the real estate from his parents was deeded to both him and Paula in joint tenancy as husband and wife. Artie testified that he and Paula incorporated Ready View in 1991 and that neither party received a paycheck from Ready View. However, all of their household bills as well as corporate expenses were paid out of the Ready View account. Artie testified that after the marriage, the Gall property and the Jacobs property were purchased, consisting of 80 acres and 38 acres, respectively.

Artie testified that he generated income for Ready View between June 2007 and January 2008 by hauling with the semitruck. Artie admitted that after hauling for Ted and Susan Willman, he instructed them to make the check payable to his father. He also acknowledged that he sold beans in Brenda Hess's name and later had the check tendered in his mother's name. Artie testified that Paula did not approve the expense of licensing the semitruck in the then-current year because Artie's proposed split of the profits from the hauling was not satisfactory to her. Artie testified that because he was lacking income, he

hailed part-time for Henderson Trucking, which provided the fuel and the semitruck.

Ty Langham testified that he is a certified appraiser of farm machinery. Langham had the opportunity to appraise all the equipment and machinery at Ready View. After testifying in detail about the value of individual pieces, Langham testified that he appraised the equipment at a total of \$380,000 to \$420,000.

On October 29, 2008, the trial court entered a judgment for the dissolution of the marriage. The trial court found, *inter alia*, that the Myers farm was "contributed to the marriage by [Artie], directly and through gifts from his parents to the parties," but was later transmuted into marital property due to the contributions made from the efforts of Artie and Paula over the 27-year marriage, along with the reinvestment of marital funds in maintaining, improving, and replacing assets. In its division of the property, the trial court considered many factors, pursuant to section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d) (West 2008)). We discuss here only the three that Artie challenges on appeal: (1) the contribution of each party to the acquisition or preservation of the property or the increase or decrease in the value of the property, (2) dissipation, and (3) property values.

First, in examining the factor of the contribution of each party to the acquisition or preservation of the property or the increase or decrease in the value of the property, the trial court noted that Artie contributed most of the farm ground, equipment, and machinery, while Paula conceded that she contributed nothing except labor and support. The trial court concluded that both parties contributed equally in their labor and efforts during the marriage, which represented an equal contribution between the parties. Accordingly, the trial court found "that both parties are entitled to an award of essentially half of the marital assets."

Second, dissipation was a factor considered. In its judgment, the trial court compared the once successful operation of Ready View with the drastic downturn subsequent to the

separation. The trial court acknowledged that both parties acted with distrust and suspicion of each other, as well as a lack of communication which ultimately resulted in a failure to maximize the assets and income of the parties. The trial court concluded that both parties were equally at fault regarding the decline in income, and the court attributed the dissipation to neither party in that regard. However, pursuant to Michael Gregg's testimony that he left Ready View because of Artie's behavior, the trial court held that Artie dissipated \$32,000, which was calculated at \$8,000 per month in lost earnings for the four months between Gregg's departure in March 2008 and the hearing in July 2008. In its allocation of the marital debts, the trial court noted that the dissipation of the assets due to Michael Gregg's departure was attributable to Artie. However, the amount of the dissipation is not reflected in the allocation of the marital property or the marital debt.

Third, regarding the factor of property values, the trial court, *inter alia*, awarded Artie the 80 acres of the Gall property and valued it at \$376,000. It also awarded Artie the 38 acres of the Jacobs property, which included a house and four grain bins, at a value of \$278,000. The court awarded Paula the 140 acres of the Myers farm, including two houses, the milking parlor, silos, two large machine sheds, a small machine shed, and a barn, at a value of \$665,000.

In determining maintenance, the trial court considered the factors set forth in section 504(a) of the Act (750 ILCS 5/504(a) (West 2008)), after which Paula was awarded maintenance in gross of \$800 per month for five years, totaling \$48,000. Subsequently, the trial court deducted \$39,070.99 from the maintenance award to compensate for the disproportionate value of the property awarded to Paula, leaving Artie with an obligation to Paula in the amount of \$8,929.01 for maintenance.

On June 26, 2009, a hearing was held regarding all the remaining issues in the case, and the testimony and evidence was as follows. Artie testified that his father previously

owned a life insurance policy through Country Insurance and cashed it in on June 21, 2004, for just over \$24,000. Artie testified that his father then gave the money to him, and he rolled it over into another insurance policy on June 24, 2004, which Artie described as a "paid-up" policy because it required no premiums. Artie claims that the policy is nonmarital because nothing was added to or subtracted from it during the marriage. Artie testified that Deanna Grice, who previously worked for Artie and Paula, was listed on the policy as the beneficiary "sometime in 2004." On cross-examination, Artie testified that neither he nor Ready View ever maintained a life insurance policy on his father, nor did Artie know about the policy until his father cashed it in and gave the money to him.

Paula testified that the premiums of Artie's father's life insurance policy were paid for with marital funds. Paula was not told when the policy was cashed in and transferred to Artie, nor was she told that Deanna Grice had been named the beneficiary of the policy. On cross-examination, Paula conceded that the policy had been purchased prior to Ready View's incorporation and that "it was just in Artie's name." Paula testified that she was unable to produce the contract for the purchase of the policy because her name was nowhere on it. She agreed that her attorney had attempted to obtain the information for several months. The trial court classified the insurance policy as marital in an order dated June 26, 2009, and ordered Artie to pay Paula \$8,919 for her interest in the policy. Artie filed a timely notice of appeal. The particulars of certain findings of the trial court, as well as other additional facts, will be provided as necessary throughout the remainder of this order.

ANALYSIS

I. Classification of Property

Artie's first issue on appeal is whether the trial court erred by classifying all the property as marital. Artie's challenges are limited to the original Myers farm, the equipment and machinery that the parties did not purchase as a married couple, and the Country

Insurance policy.

A. Myers Farm

"Before a trial court may dispose of property upon dissolution of marriage, the property must be classified as either marital or nonmarital." *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2009). "The trial court's classification will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Id.* "A decision is against the manifest weight of the evidence when the opposite conclusion is clearly evident or where it is unreasonable, arbitrary, and not based on the evidence." *In re Marriage of Berger*, 357 Ill. App. 3d 651, 660 (2005).

Section 503(b)(1) of the Act states as follows:

"all property acquired by either spouse after the marriage and before a judgment of dissolution of marriage ***, including non-marital property transferred into some form of co-ownership between the spouses, is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy ***." 750 ILCS 5/503(b)(1) (West 2008).

"Any doubts as to the nature of the property are resolved in favor of finding that the property is marital." *In re Marriage of Gattone*, 317 Ill. App. 3d 346, 352 (2000).

Pursuant to Respondent's Exhibit 15, the only deeds in the record of any transfers of property from Artie's parents reflect transfers to both Artie and Paula, as husband and wife, in joint tenancy. This is contrary to the trial court's finding that the Myers farm was contributed to the marriage by Artie but later transmuted into marital property. However, we can affirm the findings of the trial court on any basis appearing in the record. See *In re Marriage of Siegel*, 271 Ill. App. 3d 540, 544 (1995). Accordingly, we find that the Myers farm is marital property, pursuant to section 503(b)(1) of the Act (750 ILCS 503(b)(1) (West 2008)).

B. Equipment and Machinery

Artie contends that the equipment and machinery owned by his father prior to the marriage is nonmarital because it was gifted to him by his father. We are mindful of section 503(a)(1) of the Act, which provides that if property is acquired by gift, legacy, or descent, it is considered nonmarital. 750 ILCS 5/503(a)(1) (West 2008). However, even assuming, *arguendo*, that the equipment and machinery which once belonged to Artie's father was considered nonmarital as a result of a gift from father to son, we find that it was transmuted by means of transferring it to Ready View, of which Artie and Paula are equal owners. See *In re Marriage of Brown*, 110 Ill. App. 3d 782, 784-85 (1982) (a transmutation occurs by converting nonmarital property into common ownership). We also find that the equipment and machinery was transmuted by means of commingling it with the other marital property so that it lost its identity as nonmarital. See 750 ILCS 5/503(c)(1) (West 2008) (nonmarital property commingled with marital property resulting in a loss of the identity of the contributed property is deemed transmuted). Moreover, there is no evidence whatsoever that Artie attempted to keep separate any of the machinery or equipment as nonmarital. See *In re Marriage of Brown*, 110 Ill. App. 3d at 785. In fact, Mark Beatty testified that the equipment and machinery served as the collateral for loans taken out by Ready View, for which Ready View, as well as Artie and Paula as individuals, are responsible. Accordingly, we find that it was not against the manifest weight of the evidence for the trial court to classify the equipment and machinery not purchased by the parties after the marriage as marital property.

C. Country Insurance Policy

Regarding the policy through Country Insurance, Artie contends it is nonmarital property because it was purchased with the funds from his father's life insurance policy that was gifted to him. Artie emphasized that no premiums were ever paid on the policy by him,

Paula, or Ready View. Artie testified that he knew nothing about his father's life insurance policy until it was cashed in and given to him. Paula, on the other hand, testified that the life insurance policy for Artie's father was paid for with marital funds.

As previously noted, property acquired by gift is considered nonmarital. See 750 ILCS 5/503(a)(1) (West 2008). Moreover, Illinois case law provides that property which is transferred from a parent to a child is presumed to be a gift. *E.g., In re Marriage of Wanstreet*, 364 Ill. App. 3d 729, 736 (2006). As this court discussed in *In re Marriage of Wanstreet*, this presumption conflicts with the presumption set forth in section 503(b)(1) of the Act that any property received after a marriage and before a divorce is presumed to be marital. *Id.* However, we held that these "conflicting presumptions cancelled each other." *Id.* at 737. "Because the presumptions conflict, neither party should have to prove his or her case by clear and convincing evidence." *Id.* Accordingly, "[d]ecisions made by the trial court under these circumstances will not be disturbed on review unless they are contrary to the manifest weight of the evidence." *Id.*

In this case, the pertinent evidence the trial court had to consider was the testimony of the parties. No documentation was provided by either party to show who paid for either policy, nor did Artie provide proof that his father gave him the money after cashing in the policy. Moreover, although Artie's father testified in this case, he said nothing about the policy at issue. Accordingly, this issue is a matter of credibility between Artie and Paula. "It is a well-established rule that the credibility of witnesses should be left to the trier of fact because it alone is in the position to see the witnesses, observe their demeanor, and assess the relative credibility of witnesses where there is conflicting testimony on issues of fact." *In re Marriage of Kaplan*, 149 Ill. App. 3d 23, 28 (1986). Applying these principles to the case at bar, we defer to the determination of the trial court regarding the credibility of Artie and Paula on this issue. Accordingly, because there is no evidence to consider other than the

testimony of the parties, we find that it was not against the manifest weight of the evidence for the trial court to classify the Country life insurance policy as marital.

II. Division of Property

The second issue on appeal is whether the trial court erred in its division of the property. As an initial note, we emphasize that Ready View is a corporate entity to which land and property was transferred. However, there is no mention in the trial court's judgment of the issue of dissolving the corporation or distributing its assets, nor did either party raise the issue. The factors used in the consideration of the division of marital property are set forth in section 503(d) of the Act, which provides that the trial court "shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors." 750 ILCS 5/503(d) (West 2008). Artie challenges the trial court's findings regarding three of these factors.

A. The Contribution of the Parties to the Acquisition or Preservation of the Property or the Increase or Decrease in the Value of the Property

Artie challenges the trial court's findings regarding the contribution of the parties to the acquisition or preservation of property or the increase or decrease in the value of property. See 750 ILCS 5/503(d)(1) (West 2008). The trial court noted in its order that both parties contributed equally in their labor and efforts during the marriage, which represented an equal contribution by the parties. As Artie aptly notes, the trial court acknowledged in its order and Paula testified to the fact that she brought no land or money into the marriage but provided support and labor. Artie contends that, pursuant to section 503(c)(2) of the Act (750 ILCS 5/503(c)(2) (West 2008)), he is due reimbursement because he contributed the original Myers farm. We disagree.

While it is true that Paula brought no land or money into the marriage itself, the deeds in the record reflect that the land transferred from Artie's parents was deeded to both Artie

and Paula as husband and wife in joint tenancy. Artie provides no evidence to support his position. Accordingly, the trial court did not err in its determination with regard to this factor.

B. Property Values

1. Real Property

Artie also challenges the determination of the value of the real property. "The manifest weight of the evidence standard is used when assigning value to an asset after classification because valuation of marital assets is generally a factual determination." *In re Marriage of Lundahl*, 396 Ill. App. 3d 495, 505 (2009). "For a trial court to apportion marital assets under section 503, the proper value of such assets must be established." *Kundit v. Kundit*, 107 Ill. App. 3d 310, 314 (1982). "Where the record lacks proper evidence of valuation, there is no basis upon which an appellate court can review the propriety of a trial court's apportionment of marital property." *Id.*

In this case, the trial court placed a value on the real property in its distribution. However, the only evidence in the record regarding the valuation of the real estate is an appraisal conducted by Bernhardt & Cain. Pursuant to the appraisal, "Per your instructions only the value of the farm land has been appraised ***." On these terms, the Myers farm, the Gall property, and the Jacobs property were appraised at \$4,750 per acre. Although the trial court acknowledges in its judgment the presence of houses, grain bins, a milking parlor, silos, machine sheds, and a barn, there is no evidence of any appraisal to establish their value. Consequently, the evidence is insufficient for the trial court to have determined a proper value for the entirety of the real property in this case. Accordingly, there is no basis upon which we can review the propriety of the property distribution. See *Kundit*, 107 Ill. App. 3d at 314. On that ground, we reverse and remand for a determination of an appropriate valuation of the property so it can be divided in just proportions.

2. Personal Property

Artie points out that the Ready View semi was accounted for twice by the trial court in its property distribution. The trial court awarded Artie the semitruck, which it valued at \$22,000. The trial court also ordered an equal split of the equipment and machinery, which it valued at \$400,000, pursuant to Ty Langham's appraisal. However, the semitruck is explicitly included in Langham's appraisal. Therefore, on remand the trial court should make more specific its findings with regard to this personal property, addressing Artie's allegations of double-counting the semitruck.

C. Dissipation

Artie also challenges the trial court's determinations that he dissipated marital assets and that Paula did not. The trial court's determinations regarding dissipation are reviewed under a manifest-weight-of-the-evidence standard. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699 (2006). "Dissipation contemplates a diminution in the marital estate's value due to a spouse's actions. Although a spouse may not necessarily derive a personal benefit from the acts that constitute dissipation [(citation)], expenditures that form the basis for dissipation should have some detrimental effect upon the marital estate." *In re Marriage of Miller*, 342 Ill. App. 3d 988, 994 (2003). In this case, the trial court took note of the fact that actions by Artie resulted in a delay in requested expenses being approved, which led to a decline and interference in Ready View's income and operation. Moreover, the trial court based its decision that Artie dissipated \$32,000 worth of assets due to four months of lost earnings following the departure of Michael Gregg. The evidence on this issue consists of the conflicting testimony of Gregg, Artie, and Paula. As previously mentioned, the assessment of the credibility of the witnesses is left to the trier of fact. See *In re Marriage of Kaplan*, 149 Ill. App. 3d 23, 28 (1986). Accordingly, we defer to the trial court in that regard. Upon our review of the evidence, we cannot say that the opposite conclusion is clearly evident or

that the trial court's decision was unreasonable, arbitrary, and not based on the evidence. See *In re Marriage of Berger*, 357 Ill. App. 3d at 660. Accordingly, we affirm the trial court's findings that Artie dissipated assets and that Paula did not. However, we remand this matter with directions for the trial court to account for the \$32,000 dissipation, upon the allocation of the marital property and/or marital debts.

III. Maintenance

The third issue Artie raises is whether the trial court erred by granting Paula maintenance in gross. Section 504(a) of the Act provides all the factors for the trial court to consider in its determination of a maintenance award. One factor is "the income and property of each party, including marital property apportioned *** to the party seeking maintenance." 750 ILCS 5/504(a)(1) (West 2008). A review of the trial court's maintenance award in this case cannot be determined until a proper determination of the property values is made and the property divided. Accordingly, we reverse the trial court's maintenance award to Paula and remand for a determination of whether maintenance is appropriate, after the trial court determines the appropriate valuation of the property and distributes the property in just proportions.

CONCLUSION

For the foregoing reasons, we affirm the trial court's classification of the real property, the machinery, the equipment, and the Country Insurance policy as marital. We affirm the trial court's findings with regard to the section 503(d) factors of contribution of the parties to the acquisition or preservation of property or the increase or decrease in the value of property and its dissipation. We reverse the trial court's valuation and distribution of the marital real estate, and we remand for a proper determination of the value of that property so that it may be divided in just proportions and maintenance reconsidered accordingly. Regarding dividing the marital property, we direct the trial court to account for its findings

regarding dissipation, to avoid the double-valuation of the semitruck, and to address the disposition of Ready View, Inc., as it relates to the division of the marital assets.

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