NOTICE
Decision filed 03/31/11. 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. 5-10-0167

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).

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
JUDY E. HECK,	)	Monroe County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 05-D-37
	)	
JOSEPH F. HECK,	)	Honorable
	)	Dennis B. Doyle,
Respondent-Appellant.	)	Judge, presiding.

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

RULE 23 ORDER

Held: The trial court's valuation of the parties' marital real estate was against the manifest weight of the evidence where the trial court based its valuation on speculative future events instead of factors present at the time of the dissolution of the marriage. The trial court's distribution of marital property was not an abuse of discretion where it carefully considered both parties' contributions to the marital assets.

The respondent, Joseph F. Heck (Joe), appeals the judgment entered by the circuit court of Monroe County dissolving his marriage to the petitioner, Judy E. Heck. On appeal he raises the following issues: (1) whether the trial court's valuation of the parties' marital real estate was against the manifest weight of the evidence and (2) whether the trial court's distribution of marital property was an abuse of discretion. For the following reasons, we reverse and remand.

The parties were married on November 12, 1988. On April 18, 2005, Judy filed a petition for the dissolution of the marriage. The matter proceeded to a trial on May 13, 2009.

At the time of the proceedings, the parties had entered into a stipulation providing for the distribution of the parties' marital property. However, the real estate properties remained in dispute. Those properties are described as follows: (1) 209 Heck Drive, a single-family residence with an undisputed value of $135,000, (2) 200 Heck Drive, a single-family residence with an undisputed value of $125,000, (3) two vacant lots located in the parties' subdivision development with an undisputed value of $110,000, (4) a 46-acre tract of property known as Grandview Acres Phase II, with a disputed value of $630,000 by Judy and $600,000 by Joe, and (5) 280 Heck Drive, the parties' marital residence, along with an 80-acre tract of land, with a disputed valued of $1.5 million by Judy and $680,000 by Joe.

Testimony at the hearing revealed the following. Joe was 73 years of age. He had retired from Chrysler Corporation in 1991 and receives a pension of $729 per month, as well as social security in the amount of $1,200 per month. Upon retiring in 1991, he opened and operated a trucking company.

Joe testified that he had purchased property in 1959 that the parties later developed into Grandview Acres. In 1969, he had purchased an additional 26 acres. The residence at 200 Heck Drive was purchased in 2004, during the parties' marriage. Joe testified that he had owned the rental property located at 209 Heck Drive since 1959. Joe had inherited the 80-acre tract of property during the parties' marriage, and the parties' marital residence at 280 Heck Drive was built in 2002.

Judy testified that she was 58 years of age, is employed full-time by the St. Clair County Inter-Governmental Grants Department and has worked there for 25 years. She is currently employed as a case management specialist. All of her earnings were contributed into the marital funds used to develop the parties' properties.

Judy testified that during the parties' marriage, they had developed a subdivision known as Grandview Acres. The development of the subdivision commenced in 1991 and

1992 and was finished by the summer of 1993. In addition, the subdivision had an undeveloped tract of land known as Grandview Acres Phase II, which is the 46-acre tract of property. The property is zoned and platted for single-family development, but it has no road or utilities. Judy acknowledged that Joe had purchased the property in his name only in the 1950s. After the parties were married, all the property was transferred into joint tenancy in 1989.

At the time of the trial, there were two remaining vacant lots in the original subdivision. The other 13 lots had been sold. The lots sold for approximately $25,000 to $30,000 per acre in the early 1990s. Around the time of the parties' separation in 2005, they held between $400,00 and $500,000 in various CD accounts, savings accounts, and checking accounts. Judy testified that the majority of those funds were the result of the sale of property in Grandview Acres.

Judy testified that in addition to her full-time employment, she had performed numerous jobs and activities with the development of the real estate. She testified that she had attended zoning meetings, prepared paperwork, developed the covenants, assisted the surveyor, assisted bricklayers, roofed, dry-walled, painted, laid hardwood floors, and completed the book work for the subdivision. She also testified that she had worked in Joe's trucking company. She testified that she had prepared all the certification, performed manual labor on the trucks, picked up supplies, and took telephone calls. According to Judy, the subdivision and trucking company was a "24/7" operation and "it was our life."

The evidence depositions of appraisers Scott Tade and Wayne Voss were admitted into evidence. Voss testified on behalf of Judy. Voss valued the 46-acre tract of land at $630,000, or $15,000 per acre. His valuation was based on the highest and best use of the property as agricultural with "future building sites expansion." He opined as follows: "[P]eople are always interested in expanding in Monroe County and *** people are going to

pay more for subdivision ground than agricultural ground. So any knowledgeable buyer would consider buying it and expanding."

Voss valued the 80-acre tract of property and marital residence at 280 Heck Drive at $1.5 million, or $15,000 per acre. He based this valuation on the same assumption that the property would eventually be developed for a use other than agricultural.

On cross-examination, Voss admitted that his appraisal report on page two indicated that the 80-acre tract had a highest and best use as agricultural. However, Voss's $1.5 million appraisal was based upon agricultural with "future expansion of development." Voss admitted that if the property was valued only as agricultural, its value would be between $6,000 and $7,000 per acre and that he would probably value the property at $6,500 per acre. He also admitted that vacant agricultural ground would not sell for $15,000 per acre. He further admitted that he had not considered any comparable sales of agricultural property in his valuation of the 80-acre tract of property even though the tract of land is currently zoned as agricultural and is not platted. He opined that the property would have to be rezoned and that the property would not realistically be marketable for four to six years.

Voss further admitted on cross-examination that the 46-acre tract of property was "ready to expand" in February 2007 but was not ready for development in May 2009. Voss testified that the development of property had "slowed down" and that the "slow down" was due to the fact that developers in Monroe County were simply selling off excess inventory. He also testified that he was not aware of any new residential developments being constructed in Monroe County. He opined that it would be at least be five years before the 46-acre tract of property, which he valued at $15,000 per acre, would be marketable.

Scott Tade testified on behalf of Joe. Tade indicated that the 46-acre tract of property had a highest and best use as a single-family development, and he valued the property accordingly at $600,000, or $14,500 per acre. Tade opined that the 46-acre tract of property

was more readily available for development, and for that purpose he used single-family comparable valuations as opposed to agricultural.

Tade testified that the 80-acre tract of property had a highest and best use as agricultural, and he valued the property at $680,000, or $5,000 per acre. In coming to this valuation, he had used appropriate comparable appraisals of agricultural property. He testified as follows: "[T]here is an overabundance of property down in Monroe County right now that is sitting. There is [*sic*] a lot of single-family subdivisions that got started. There is [*sic*] a lot of lots that are sitting in inventory right now. Even though this is fairly close to Waterloo there, like I said, there is an overabundance of land that is available for development. For that reason, I felt the highest and best use at this time would be for agricultural."

Tade explained that the determination of property as agricultural versus single family impacts the price per acre because ground readily available for development will bring a much higher price per acre. According to Tade, the difficulty in the present case is that for the 80-acre tract of property to be readily available there must be a market for it, there must be utilities on the property, there must be easy ingress and egress, and the property must be properly zoned with the county or city. Tade further testified that at the time of the hearing the property had only one way to enter or exit. Most municipalities require at least two entrances/exits and utilities on the property. Tade addressed Voss's appraisal and indicated that while Voss found that the highest and best use of the 80-acre tract was agricultural, all of his comparable sales were for parcels that were "readily available for development."

On cross-examination, Tade was asked whether he thought that the property would ever be developed or if the property would always have a highest and best use as agricultural. Tade responded as follows:

"I can't say that it's always going to have a highest and best use of agricultural, but

with the downturn in the economy and the way things are right now I can tell you that there is a [*sic*] overabundance of lots that have already been developed that are sitting in inventory that people would like to sell. Other developments have just come to a screeching halt. And how long it's going to take for this economy to turn around, I cannot tell you. The fact that this one was already platted out indicates to me that it does have a better chance of being developed. And as I said earlier, the fact that this piece of property there is only one way in and one way out, many of the municipalities will not allow for that to happen. They want to see two entrances and exits, which means that it might take other ground around it to develop before this can."

Accordingly, Tade testified that there were impediments to the development of the 80-acre tract of property. When pressed for a time frame for when the property might be developed, Tade opined that it could be "20, 30, 40 years down the road."

The trial court entered the judgment of dissolution on March 11, 2010. The trial court awarded the marital assets as indicated in the stipulation. The trial court valued the 46-acre tract of land at $615,000. As to the 80-acre tract and marital residence known as 280 Heck Drive, the court accepted Voss's valuation of $15,000 per acre, or a value of $1.5 million. The court indicated, "The Court has further considered that the parties themselves have been developing the property in phases and that there is no reason to believe that the 80-acre tract cannot be developed in the same manner as the subdivision and the 46-acre tract." The court awarded Joe the marital residence and 80-acre tract of property and awarded all the other property to Judy. To "equalize" the value of the property awarded to each party, the court ordered Joe to pay Judy $344,000. Joe filed a timely notice of appeal on April 5, 2010.

Joe first argues that the court's valuation of the 80-acre tract of property is against the manifest weight of the evidence. He argues that the evidence in the record is insufficient to support a finding that the 80-acre tract of property should be valued at $15,000 per acre. Joe

contends that the appropriate value of the property is $5,000 per acre, which was the value of the property at the time of the dissolution of the marriage.

The valuation of marital property is a factual question that is subject to the manifest-weight-of-the-evidence standard on review. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700 (2006). A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83 (1995). Any conflicts in testimony regarding the valuation of marital assets are matters to be resolved by the trier of fact. *In re Marriage of Lee*, 246 Ill. App. 3d 628, 636-37 (1993). The trial court must value marital assets as they exist on the date of the dissolution. *In re Marriage of Claydon*, 306 Ill. App. 3d 895, 900 (1999). The trial court cannot speculate on future values or events when valuing marital assets. *In re Marriage of Claydon*, 306 Ill. App. 3d at 900.

In the instant case, the court heard testimony from both appraisers concerning the value of the marital property, including the 80-acre tract of property and the 46-acre tract of property. Tade and Voss both opined that the 46-acre tract of property, which is currently zoned as single family and is ready for development, would not even be marketable for at least five years. The court also heard evidence from Tade that, due to the downturn in the economy, it could be 20 to 40 years before the 80-acre tract of property could be marketable.

Voss's report indicated that the 80-acre tract of property's highest and best use is agricultural with "future expansion of development," and he valued it at $15,000 per acre, the same as he valued the 46-acre tract of land already zoned as single family. Despite admitting that the 46-acre tract of land was already zoned as single family and that it would not even be marketable for at least five years, Voss still opined that the 80-acre tract of agricultural land was worth the same, or $15,000 per acre. However, on cross-examination

Voss admitted that if the property was valued only as agricultural, its value would be between $6,000 and $7,000 per acre and that he would probably value the property at $6,500 per acre. Voss further admitted that due to the market, the land could not be sold at $15,000 per acre as agricultural property at the time of the dissolution of the marriage.

In coming to its valuation of the marital property, the trial court had to speculate about many future factors, including whether the economy will recover to allow for new development in Monroe County, whether the property can be replatted and rezoned to allow development within four to six years, whether the county and local officials would permit the rezoning for single-family development, and whether a buyer would pay $15,000 an acre for agricultural property. The court held, "The Court has further considered that the parties themselves have been developing the property in phases and that there is no reason to believe that the 80-acre tract cannot be developed in the same manner as the subdivision and the 40-acre tract." The court came to this determination despite evidence that the 80-acre tract of property is zoned as agricultural, is not platted for single-family residences, has only one entry/exit, and has no utilities on the property. Due to the change in the real estate market, there are no new subdivisions under development in Monroe County. In fact, developers are trying to sell excess inventory and lots are sitting vacant.

These factors and evidence presented to the court should have put the court on notice that the valuation of the 80-acre tract of property is speculative at best. Accordingly, we conclude that the trial court's valuation of the 80-acre tract of property is against the manifest weight of the evidence. The court improperly considered speculative future factors to arrive at the valuation instead of valuing the property based on the factors on the date of the dissolution of the marriage. Therefore, we reverse and remand this matter to the circuit court with directions for a redetermination of the property value based on the factors that existed at the time of the dissolution of the marriage.

We next address Joe's argument that the trial court abused its discretion regarding the distribution of the marital property where the court failed to consider Joe's contribution of his nonmarital property to the marital estate. Joe argues that the court was required to consider the parties' respective contributions in making its determination of the division of the real estate. According to Joe, the court simply divided the parties' property equally between them even though virtually all the liquid assets owned by the parties were the result of the sale of the real estate that Joe had owned and paid for prior to the marriage.

Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) provides as follows:

> "(d) In a proceeding for dissolution of marriage or declaration of invalidity of marriage, or in a proceeding for disposition of property following dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's non-marital property to that spouse. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors, including:
>
> > (1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including (i) any such decrease attributable to a payment deemed to have been an advance from the parties' marital estate under subsection (c-1)(2) of Section 501 and (ii) the contribution of a spouse as a homemaker or to the family unit;
> >
> > (2) the dissipation by each party of the marital or non-marital property;
> >
> > (3) the value of the property assigned to each spouse;
> >
> > (4) the duration of the marriage;
> >
> > (5) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of

awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;

(6) any obligations and rights arising from a prior marriage of either party;

(7) any antenuptial agreement of the parties;

(8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;

(9) the custodial provisions for any children;

(10) whether the apportionment is in lieu of or in addition to maintenance;

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(12) the tax consequences of the property division upon the respective economic circumstances of the parties." 750 ILCS 5/503(d) (West Supp. 2009).

The Act provides that the trial court shall divide marital assets "in just proportions" considering all the relevant statutory factors. 750 ILCS 5/503(d) (West Supp. 2009); *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 979 (1992). The touchstone of the apportionment of marital property is whether the distribution is equitable in nature; the division need not be equal to be equitable. *In re Marriage of Tietz*, 238 Ill. App. 3d at 979. The distribution of marital property rests within the sound discretion of the trial court. The trial court's distribution of marital property will only be disturbed on review where the trial court has abused its discretion and no reasonable person would take the view adopted by the trial court. *In re Marriage of Claydon*, 306 Ill. App. 3d at 899.

The record reveals that the trial court considered all the statutory factors in coming to its determination of the distribution of the marital property. It is undisputed that the major assets owned by the parties were held in the form of marital real estate, more specifically, Grandview Acres, the 46-acre tract of land known as Grandview Acres Phase II, and the 80-acre tract of land. It is also undisputed that Joe acquired all the property prior to the parties' marriage and that the property was eventually transferred to a joint tenancy between the parties shortly after their marriage.

However, the trial court also considered Judy's contributions to the marital assets during the parties' marriage, which Joe seems to ignore. The parties were married for 21 years, and during that time, Judy had a full-time job with the St. Clair County Inter-Governmental Grants Department. Throughout the course of the marriage, all of Judy's earnings were contributed into the marital funds. Those funds were used in the development of the real estate.

Judy testified that she had attended zoning meetings, prepared paperwork, developed the covenants, assisted the surveyor, assisted bricklayers, roofed, dry-walled, painted, laid hardwood floors, worked as a brick hod carrier, repaired rental houses, and was responsible for the book work for the subdivision. She also testified that she had worked in Joe's trucking company, set up all the certification for his trucking company, performed manual labor, picked up supplies, and took telephone calls. "A marriage is not a business relationship. To succeed, it depends on an alliance of husband and wife. Often, the marital estate is the result of this mutual effort. The fact one party's contribution to the estate can be readily quantified in dollars in no way maximizes that party's interest over another's. All facts must be considered." *In re Marriage of Stralow*, 95 Ill. App. 3d 235, 238 (1981). A spouse's financial contribution to the acquisition of marital property is only one of several factors the trial court considers when fashioning an equitable distribution of marital assets.

In re Marriage of Polsky, 387 Ill. App. 3d 126, 136 (2008). In a long-term marriage, the source of the assets used to acquire marital property becomes less of a factor and a spouse's role as a homemaker becomes greater. *In re Marriage of Polsky*, 387 Ill. App. 3d at 136. Certainly the trial court took all the factors into consideration, including both parties' contributions to the marital assets. We conclude that the trial court did not abuse its discretion in making an equitable distribution of the marital property.

For the foregoing reasons, we reverse the valuation of the marital residence and 80-acre tract of property and remand with directions for a redetermination of the value based on the factors that existed at the time of the dissolution of the marriage. We further direct that the circuit court redetermine the distribution of marital assets based on the redetermination of the value of the tract of land, consistent with this order, for an equitable distribution of the marital property.

Reversed; cause remanded with directions.