

No. 1-10-2158

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF:)	Appeal from the
DIANA BARR CRECOS,)	Circuit Court of
)	Cook County
)	
Petitioner-Appellee,)	
)	No. 07 D 10902
and)	
)	
GREGORY CRECOS,)	Honorable
)	Jeanne M. Reynolds,
Respondent-Appellant.)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.

ORDER

HELD: Trial court's judgment finding respondent dissipated marital income and allocating marital estate is affirmed.

Respondent Gregory Crecos appeals from an order of the circuit court dissolving his marriage to petitioner Diana Barr Crecos and distributing the parties' assets.

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Gregory contests the court's allocation of the marital estate, arguing that the court erred in (1) ruling that Gregory dissipated marital income and (2) making an inequitable distribution of the marital estate. We affirm.

Background

Gregory and Diana married in 2000 and had two children together. Diana filed a petition for dissolution of the marriage in 2007. On December 24, 2009, the court entered a judgment dissolving the parties' marriage; setting custody and child support; finding Gregory dissipated the marital estate; determining marital versus nonmarital property; barring Diana from collecting maintenance; and allocating the marital estate. On June 24, 2010, pursuant to Gregory's motion to reconsider and Diana's motion to clarify, the court amended its judgment and reallocated the marital estate. Gregory appeals from the judgments. He challenges only the court's finding that he dissipated marital income and its allocation of the marital estate. The relevant facts are as follows.

Before the marriage and through the dissolution proceedings, Gregory was the sole shareholder, chief executive officer and managing director of Gregory Michaels and Associates (GMA), an executive recruitment firm. He received the majority of his income from GMA. He earned in excess of \$3.3 million in 2004, \$1.6 million in 2005, \$2.3 million in 2006 and \$2.5 million in 2007. Gregory was in sole control of GMA and the entire net income of GMA was available to him as personal income. Before and during the marriage, Gregory bought real estate properties for investment purposes.

Diana worked as an executive recruiter prior to the marriage. After the marriage,

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she worked full and part-time for GMA. She also was involved in the acquisition and rehabilitation of the parties' investment properties and was responsible for leasing and managing those properties. In November 2007, after she filed for dissolution of the marriage, Gregory terminated her employment with GMA. At that time, she was receiving an annual salary of \$100,000. In March 2009, she took a full-time job earning a \$100,000 annual base salary plus bonuses.

In the court's judgment for dissolution of marriage, it noted the parties' stipulation that the intended marital home, which was uninhabitable because it was under renovation, and four investment properties were marital property. The parties also stipulated that GMA (including Zoe Aviation, an aviation company of which GMA is the sole shareholder) and one investment property bought by Gregory prior to the marriage were Gregory's nonmarital property. The parties disputed the classification of assorted GMA assets, including a \$365,000 payroll tax refund; the airplane owned by Zoe Aviation; and a checking account maintained by GMA. They also disputed the classification of an investment property at 4651-53 N. Wolcott, in Chicago. Diana asserted it was marital property and Gregory asserted it was nonmarital.

Gregory had purchased the Wolcott property, an apartment building, in January 2008, after Diana had filed for divorce. He bought the property for \$3,850,000. Gregory obtained a \$3,250,000 mortgage loan for the purchase. He financed the earnest money and down payment with approximately \$300,000 in GMA funds and a \$300,000 loan from his sister. GMA paid Prairie Title Company directly for the earnest

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money and down payment. Title to the property was held by 4653 Wolcott LLC, a limited liability company of which Gregory was the sole shareholder. All the parties' investment properties were held by individual limited liability companies of which Gregory was the sole shareholder.

Gregory testified that he bought the Wolcott property after Diana filed for dissolution and he did not inform Diana he was buying it. He stated GMA had loaned the monies used for the earnest money and down payment to Wolcott LLC. He stated Wolcott LLC had not repaid GMA for the "loans" and he did not know that it ever would. He stated he structured the Wolcott property "deal" the way he did "to protect [his] assets." Asked whether he wanted to make the Wolcott property a nonmarital asset, he stated that he did.

Also in 2008, Gregory had GMA pay his sister \$100,000 as repayment for her loan. In 2009, he had GMA pay \$65,000 in expenses related in the Wolcott property. By the time of the dissolution hearing, the value of the property had dropped to \$2,925,000, a \$925,000 loss in value and \$212,669 less than the amount of the mortgage lien on the property.

The court found that the Wolcott property was marital. It held that, given the Wolcott property was purchased during the marriage, there was a rebuttable presumption that the property was marital property and Gregory had not shown by clear and convincing evidence that his nonmarital funds were used to acquire the property during the marriage. The court also found Gregory had diverted his income from GMA,

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which was marital income, to the purchase of the property.

Gregory claimed a 2008 income of approximately \$300,000. The court disagreed, finding the income stated in Gregory's disclosure statement not credible and unsupported by the evidence. It held that, although Gregory's 2008 income was reduced due to the economic downturn's impact on his business, it was still more than \$700,000. The court found Gregory engaged in deceptive income strategy during the pendency of the dissolution proceedings in order to reduce his income. It determined that, after taxes and Gregory's \$300,000+ compensation were paid, GMA's total available income was \$426,179. Instead of disbursing this amount to himself as he usually did, Gregory made the decision to have GMA invest the money directly, without Diana's knowledge, in the Wolcott property, through Wolcott LLC, which neither GMA nor Zoe Aviation owned and of which Gregory was the sole shareholder. The court found Gregory usually deposited any GMA income, whether in the form of bonuses or other distributions, into his personal accounts. He would then use those personal funds to buy investment property.

The court found that, after Diana filed the petition for dissolution, Gregory changed his usual practice and, instead, had GMA invest monies in the Wolcott property directly. The court stated that Gregory intentionally directed GMA to make payments on his behalf versus using marital income to purchase investment property as he had historically done before the breakdown of the marriage. Noting that Gregory had the entire net income of GMA at his disposal as personal income, the court held

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that, had Gregory not directed GMA to make the Wolcott-related payments, none of which were related to GMA's core business, then Gregory's actual income for 2008 would have been in excess of \$700,000.

The court found Gregory dissipated a total of \$1,049,825 in marital property and charged those funds against his share of the marital estate. Of relevance here is the court's finding that Gregory dissipated in excess of \$515,000 in marital income in 2008 and 2009 when he directed GMA to make payments for his sole benefit for what Gregory had testified he intended to be a nonmarital property, the Wolcott property. GMA did not own the Wolcott property and Gregory had bought it without Diana's knowledge or consent. The court held that Gregory admitted he intentionally directed GMA, which did not own the property, to make the payments on his behalf in order to avoid the Wolcott property from being characterized as a marital asset. The court found this was a personal investment for Gregory and not an investment of GMA.

Looking to the allocation of marital assets, the court found that, given the parties' contributions of marital and premarital property, a disproportionate division of the marital assets to either Gregory or Diana was not appropriate. Then, however, it stated that a disproportionate share of the marital estate was appropriate for Diana in lieu of maintenance and as a result of Gregory's dissipation. After outlining and considering all the relevant factors to be considered pursuant to the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/503(d), 504(a) (West 2010)), the court determined that a larger property allocation to Diana and a greater marital debt allocation to

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Gregory would serve in lieu of maintenance to Diana and as reimbursement to Diana of Gregory's dissipation of marital assets. The court set forth its classification of the parties' marital and nonmarital assets, determinations regarding the value of the assets and allocation of marital property and debts.

In the court's June 24, 2010, order clarifying and amending the judgment for dissolution, the court reiterated its holding that a disproportionate division of the marital estate, with Diana receiving a larger percentage of the assets and Gregory a larger share of the debts, was warranted in lieu of maintenance to Diana and as reimbursement to Diana for Gregory's dissipation of the marital estate. It amended some of its earlier findings, reiterated its finding that Gregory dissipated marital income through the Wolcott purchase and reallocated the marital property to reflect its amendments. The court awarded Diana \$25,394 in nonmarital property and \$1,540,843 in marital property (58% of the marital estate). It awarded Gregory \$1,425,182 in nonmarital property and \$1,099,173 in marital property (42% of the marital estate). In Gregory's allocation, the court included the \$515,000 in marital income it had determined Gregory dissipated when he bought the Wolcott property.

Gregory filed a timely notice of appeal on July 23, 2010.

Analysis

Gregory argues the court's dissolution judgment should be reversed because the court erred in (1) finding Gregory dissipated marital income by using GMA funds to purchase the Wolcott property; and (2) inequitably allocating Diana more than 50% of

the marital estate.

Pursuant to section 503(d) of the Act, the trial court must divide marital property in “just proportions.” 750 ILCS 5/503(d) (West 2006); *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 650 (2009). In allocating property pursuant to the Act, the court must consider any “dissipation by each party.” 750 ILCS 5/503(d)(2) (West 2006); *In re Marriage of Sanfratello*, 393 Ill. App. 3d at 652. Dissipation is “ ‘the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown.’ ” *In re Marriage of Sanfratello*, 393 Ill. App. 3d at 652-53 (quoting *In re Marriage of Petrovich*, 154 Ill. App. 3d 881, 886 (1987)). We review a trial court's factual findings on dissipation under the manifest weight of the evidence standard and its final property distribution under an abuse of discretion standard. *In re Marriage of Tabassum and Younis*, 377 Ill. App. 3d 761, 779 (2007).

1. Dissipation

Gregory argues the court erred in finding he dissipated marital assets when he directed GMA income to the purchase and expenses of the Wolcott property. Pursuant to the Act, there is a rebuttable presumption that all property acquired by any spouse after the date of marriage but before entry of the dissolution judgment is marital property. 750 ILCS 5/503(b) (West 2010); *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2009). It is irrelevant that title to property acquired after marriage is in the name of only one spouse. 750 ILCS 5/503(b) (West 2010); *In re marriage of Hegge*,

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285 Ill. App. 3d 138, 143 (1996). Dissipation occurs when a spouse uses marital property for his or her own benefit, for a purpose unrelated to the marriage, during a time when the marriage is suffering from an irreconcilable breakdown. *In re Marriage of Tabassum and Younis*, 377 Ill. App. 3d at 779.

The spouse charged with dissipation has the burden of establishing by clear and convincing evidence how the expenditures alleged to constitute dissipation were spent. *In re Marriage of Sanfratello*, 393 Ill. App. 3d at 653. If that spouse cannot show by clear and specific evidence, through adequate documentation, that those expenditures were spent for a legitimate family expense, a finding of dissipation is appropriate. *In re Marriage of Asher-Goettler (Goettler)*, 378 Ill. App. 3d 1023, 1031 (2008); *In re Marriage of Awan*, 388 Ill. App. 3d at 215. "General and vague statements that the funds were spent on marital expenses or to pay bills are not enough to avoid a finding of dissipation." *Berger v. Berger*, 357 Ill. App. 3d 651, 662 (2005).

We review the trial court's factual findings on dissipation under the manifest weight of the evidence standard. *In re Marriage of Awan*, 388 Ill. App. 3d at 217. Accordingly, we will not reverse the court's finding that Gregory committed dissipation unless a review of the record clearly demonstrates that the proper result is the one opposite that reached by the trial court. *In re Marriage of Awan*, 388 Ill. App. 3d at 217.

Here, Diana presented evidence that Gregory's usual practice was to have any income he received from GMA deposited into his personal accounts, and he would then use the monies in the accounts to pay family expenses and buy investment properties.

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She showed that, after she filed for dissolution, Gregory did not following this usual practice when he bought the Wolcott property and paid related expenses. Instead, without her knowledge or consent, he used GMA funds directly to fund the purchase of the property, to repay his sister for her loan toward the purchase and to pay other expenses related to the property, while at the same time failing to pay family expenses.

The parties agree that GMA is Gregory's nonmarital property. Pursuant to the Act, income from the nonmarital property of one spouse becomes marital income unless it is shown by clear and convincing evidence that the income was not attributable to the personal efforts of the spouse. *In re Marriage of Schmitt*, 391 Ill. App. 3d at 1018. As the trial court found, Gregory had complete control over GMA's funds. Any net GMA income was available to Gregory as personal income and that income was earned entirely through Gregory's personal efforts. Therefore, GMA income earned during the marriage, whether in the form of distributions to Gregory or of direct payments for investments not related to GMA's core business, is marital income. *In re Marriage of Schmitt*, 391 Ill. App. 3d at 1018-22.

Accordingly, Diana's evidence showed that, at a time when the marriage was suffering from an irreconcilable breakdown, Gregory used marital income to buy an investment property without his spouse's knowledge or consent. And that, by diverting GMA marital income directly to the purchase rather than to his personal accounts, he did so in a manner different from that which he had employed before the marriage irretrievably broke down. After Diana presented her evidence of dissipation, the burden

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shifted to Gregory to show by clear and convincing evidence that he used that GMA marital income and/or bought the property for the benefit of the family/marriage. *In re Marriage of Awan*, 388 Ill. App. 3d at 216. He failed to do this.

By Gregory's own admission, he used marital income without his spouse's knowledge to buy what he intended to be a nonmarital asset, after the marriage had broken down. Granted, he used his non-marital property as collateral for the loan on the Wolcott property but this does not take away from the fact that he used in excess of \$500,000 in marital income to finance and support a purchase that he intended solely for his own benefit. Gregory testified that GMA owned Wolcott LLC but the evidence shows Gregory is the sole member of the LLC.

Gregory makes no showing that he used the GMA marital income for the benefit of the marriage or the family, that he used the GMA marital income for legitimate family expenses. Instead, he asserts that a spouse may continue his investment activities during the course of divorce litigation and "bona fide investments of marital property which prove to be losers are not classified as dissipation." As a spouse with a history of using marital income to make investments during the marriage, Gregory could indeed continue to make investments using marital income after the marriage irreconcilably broke down, even if those investments ultimately lost money, without those investments automatically being considered dissipation. See *In re Marriage of Phillips*, 229 Ill. App. 3d 809, 825-26 (1992); *In re Marriage of Drummond*, 156 Ill. App. 3d 672, 683-84 (1987). However, as with any expenditure of marital funds during the period of

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irreconcilable marital breakdown, those investments can be the subject of a dissipation claim. In order to overcome such a claim, as with any claim involving dissipation of marital assets, the investing spouse must be able to show by clear and convincing evidence that his use of marital income for the investments during a period of marriage breakdown was not for his sole benefit. *In re Marriage of Phillips*, 229 Ill. App. 3d at 825-26.

The issue here has little to do with the fact that Gregory continued investing in real estate after Diana filed for dissolution or that the Wolcott property investment decreased in value after Gregory purchased it. Instead, the issue is whether Gregory can show that he made the Wolcott investment, using marital income during the period of marital breakdown, for the benefit of the marriage/family rather than for his sole benefit. He cannot. By his own admission, Gregory intended the Wolcott property to be nonmarital; used GMA marital income to buy the "nonmarital" property without letting Diana know; and used that marital income to buy the property in a way different from how he used marital income to buy investment properties before Diana filed for dissolution, *i.e.*, he used the GMA funds/marital income directly versus funneling it through his bank accounts as he usually did. He made no showing by specific evidence that the Wolcott property investment was intended for the benefit of the family and, indeed, his own testimony would belie such an assertion. Accordingly, Gregory failed to meet his burden to show by clear and convincing evidence that his use of the marital funds was for a legitimate family expense.

Gregory states he is appealing "the narrow question of whether the court erred in ruling he dissipated marital property by losing money on his purchase of the Wolcott [property]." He asserts that what occurred "is that the trial court took the losses (the monies spent on the property less its current market value) on the [Wolcott property] and improperly turned them into a 'dissipation' entry on the marital balance sheet and unloaded them on Greg." (Emphasis in original.) He asserts "the court erred in having characterized legitimate and ordinary business losses as dissipation when Greg did nothing more than make an unfortunate business decision in his real-estate business." This argument is entirely unsupported by the evidence.

Having closely reviewed both of the court's orders, we find nothing to show that the court came up with the \$515,000 dissipation amount by looking to the loss in value of the Wolcott property. The orders clearly show that the court calculated the \$515,000 dissipation based on the monies Gregory diverted from GMA for the purchase of the Wolcott property. Nowhere does the court tie its dissipation finding to the fact that the property is now worth less than what Gregory paid for it. The court's opinion does not even mention the purchase price. Indeed, given that Gregory bought the property for \$3,850,000 and it was worth \$2,925,000 at the time of the dissolution judgment, had the court based the dissipation amount on the loss in value, it would necessarily have found that Gregory dissipated \$925,000, not \$515,000.¹

¹ Marital assets are generally valued as of the date of the dissolution judgment. *Helber v. Helber*, 180 Ill. App. 3d 507, 511 (1989).

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Gregory failed to meet his burden to show by clear and convincing evidence that his unusual direct use of GMA income to pay costs associated with the purchase of the Wolcott property during the period of irreconcilable marital breakdown was for a legitimate family expense. The court's decision that Gregory dissipated marital income by diverting the GMA monies to the purchase of the Wolcott property and payment of related expenses is not against the manifest weight of the evidence.

2. Allocation of Marital Estate

Gregory argues the court erred by making an inequitable allocation of the marital estate. He asserts the court "originally intended to allocate the marital estate equally between the parties" but improperly refused to reallocate the estate to reflect this division. The court awarded Diana 58% of the marital estate and Gregory 42%. Notwithstanding Gregory's argument to the contrary, the court never intended that the marital estate be divided 50/50 between the parties. The court clearly stated, in both its original judgment for dissolution and its amended judgment for dissolution, that a "disproportionate share of the marital estate" was warranted to reflect the fact that Diana would receive property in lieu of maintenance and as reimbursement for Gregory's dissipation.

Pursuant to section 503(d) of the Act, the court must divide marital property, both assets and debts, in "just proportions." *In re Marriage of Orlando*, 218 Ill. App. 3d 312, 319 (1991). "Just proportions" mandates an equitable, rather than an equal, division of marital property. *In re Marriage of Orlando*, 218 Ill. App. 3d at 319. In determining the

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allocations, the court must take into consideration all relevant factors including the duration of the marriage, the economic circumstances of each spouse upon division of the property, the amount and source of each spouse's income, whether the apportionment is in lieu of or in addition to maintenance, the employability of both parties, their ages, health, occupations; the reasonable opportunity of each spouse to acquire assets and income in the future; and each spouses contributions to the marriage. *In re Marriage of Abma*, 308 Ill. App. 3d 605, 614 (1999); *In re Marriage of Orlando*, 218 Ill. App. 3d at 319. "Each case rests upon its own facts." *In re Marriage of Orlando*, 218 Ill. App. 3d at 319.

We will not reverse a court's distribution of marital assets unless it is against the manifest weight of the evidence and, therefore, an abuse of the court's discretion. *In re Marriage of Abma*, 308 Ill. App. 3d at 614.

"[A] trial court's resolution of property division is fettered only by the range of reason. * * * The question is not whether we agree with the trial court but rather whether the trial court acted arbitrarily without the employment of conscientious judgment or, in view of all circumstances, exceeded the bounds of reason so that no reasonable person would take the view adopted by the trial court." *In re Marriage of Siddens*, 225 Ill. App. 3d 496, 500 (1992).

The court's allocation of the marital assets here was entirely reasonable.

The court chose to allocate Diana property instead of maintenance. The Act makes the division of marital property the primary means of providing for the parties'

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future financial needs, such that each party is in the position to begin anew. *Marriage of Brackett*, 309 Ill. App. 3d 329, 338 (1999) (citing *Hollensbe v. Hollensbe*, 165 Ill. App. 3d 522, 527-28 (1988)). In contrast, maintenance is intended for the support and maintenance of the recipient spouse, to meet the spouse's reasonable needs as determined by the parties' standard of living during the marriage, until such time, if ever, that spouse is able to become self-sufficient. *Marriage of Harlow*, 251 Ill. App.3d at 158. The court should grant maintenance only "when it finds the spouse seeking maintenance lacks sufficient property, including marital property, to provide for her reasonable needs and is unable to support herself through employment or is otherwise without sufficient income." *In re Marriage of Harlow*, 251 Ill. App.3d 152, 157 (1993); 750 ILCS 5/504(a) (West 2002). The propriety, amount and duration of maintenance lie within the trial court's discretion. *In re Marriage of Hasabnis*, 322 Ill. App. 3d 582, 592 (2001).

The court allocated a greater percentage of the marital estate to Diana in lieu of maintenance. At the time of dissolution, Diana's had \$25,394.35 in nonmarital assets, earned a \$100,000 salary and had limited earning capacity. Gregory had \$1,425,182.68 in nonmarital assets, an income in excess of \$700,000 and vastly greater earning capacity. Comparing the parties' circumstances, it is clear that, unless Diana receives a maintenance award or a larger property allocation, she would not be able to support herself in any semblance of the lavish standard of living she enjoyed during the marriage. Gregory's standard of living, although diminished, would not be

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nearly as heavily impacted by the dissolution as Diana's.

The court's decision to award Diana property, including an income producing apartment building, instead of maintenance was entirely reasonable. Its decision reflects the Act's preference for making a property award the primary means of providing for a spouse's future financial needs and the economic realities facing both parties. This is so regardless of whether Gregory dissipated marital assets or not. With or without the dissipation finding, the circumstances of the parties warrant a disproportionate property award to Diana in lieu of maintenance. Looking at each spouses' economic circumstances upon division of the property, amount and source of income, employability, ages, health, occupations, reasonable opportunity to acquire future assets and income and contributions to the marriage, we find the court did not abuse its discretion in awarding Diana 58% of the marital estate in lieu of maintenance. The division of assets may not be equal, but it is equitable.²

Conclusion

For the reasons stated above, we affirm the decision of the trial court.

Affirmed.

² Since the parties do not contest the values the court placed on the dissipation or the parties' marital and nonmarital assets, we will not belabor them.