

NOTICE
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2012 IL App (4th) 110407-U

Filed 3/27/12

NO. 4-11-0407

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of)	Appeal from
TERRY L. ADAMSON,)	Circuit Court of
Petitioner-Appellee,)	McLean County
and)	No. 09D643
DAVID D. ADAMSON,)	
Respondent-Appellant.)	Honorable
)	David W. Butler,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the evidence was lacking as to the propriety of a set-off, the trial court did not abuse its discretion in assigning the business assets and debts to respondent;
- ¶ 2 Where respondent's evidence was less than persuasive, the trial court did not abuse its discretion in distributing certain personal property;
- ¶ 3 Where the parties owned certain unique property that must be sold in the dissolution proceeding, the trial court did not abuse its discretion in requiring petitioner to make an equalization payment out of the proceeds on the sale of the property;
- ¶ 4 Where the parties' property must be sold, the trial court did not abuse its discretion in ordering each party to have exclusive possession for six months each year until it was sold.
- ¶ 5 In December 2010, the trial court issued a written opinion awarding certain property and debts in the dissolution of marriage between petitioner, Terry L. Adamson, and respondent, David D. Adamson. In January 2011, David filed a motion to reconsider and a

motion to vacate, both of which the court denied.

¶ 6 On appeal, David argues the trial court abused its discretion in the division of the marital property. We affirm.

¶ 7 I. BACKGROUND

¶ 8 David and Terry were married in May 1983. Three children were born to the parties during the marriage and are now emancipated. In December 2009, Terry filed a petition for dissolution of marriage. In January 2010, David filed a counterpetition for dissolution of marriage.

¶ 9 In October 2010, the trial court conducted a hearing on the issues. David testified he is a self-employed contractor at Adamson Siding and Roofing, which he opened in 1980. The shop for the business is located next door to the marital residence. He stated he has one checking account and he pays for business and personal expenses out of that account. He testified the marital residence consisted of a single family home in Bellflower and he asked the court to award it to Terry. David stated he would have to relocate his business. The parties also have 187 acres of property in Johnson County. Neither property had a mortgage. Purchased for \$75,000 in 1993, the Johnson County property is improved with a three-bedroom house and a wood shop. David proposed that the property be sold and hoped to "get top dollar for it."

¶ 10 Terry testified the parties had been married for 27 years. She is currently employed at Monsanto in Farmer City, where she works eight months out of the year and earns a gross income of approximately \$1,767 per month. She also cleaned a business on the side and made approximately \$400 per year. Prior to her work at Monsanto, Terry worked part-time jobs.

¶ 11 The Bellflower residence was valued between \$119,000 and \$135,000. Terry

stated the Johnson County property consisted of 187 acres with a three-bedroom cabin, detached shop, wood shed, pond, pavilion, and docks, which are surrounded by woods. She stated David has stayed at the Johnson County property from October to April for the past three or four years. Based on two valuations she received on the property, she valued it at \$619,853. She proposed David be awarded the Johnson County property with a buy-out provided to her. If the property was to be sold, Terry agreed the property should be marketed on a national level because of its location, acreage, and surrounding developments. Terry also wanted to handle the sale because she did not trust David.

¶ 12 In December 2010, the trial court issued its written opinion. The court awarded the marital residence to Terry and ordered David to vacate the premises by January 16, 2011. David was to have exclusive use of the separate shop building until March 1, 2011. The court awarded Adamson Siding and Roofing to David and held him responsible for any debts and/or other financial obligations associated with the business. The court ordered the Johnson County property to be sold with the net proceeds divided equally. The court found the distribution of all other debt and property resulted in Terry receiving \$75,621 more property than David. The court ordered Terry to pay David an equalization payment of \$37,810.50, which would be made from Terry's half of the proceeds from the sale of the Johnson County property. Until the property was sold, the court ordered Terry to have exclusive use of the property from October 1, 2011, until April 1, 2012, and David to have exclusive use from April 1, 2012, until October 1, 2012.

¶ 13 In January 2011, David filed a motion to reconsider and a motion to vacate judgment. Therein, David argued the trial court abused its discretion in its rulings on Terry's equalization payment, the debt associated with his business, certain personal property from the

marital residence, and the access to the Johnson County property.

¶ 14 In February 2011, the trial court entered the judgment of dissolution of marriage. In April 2011, the court issued its ruling on the motion to reconsider and motion to vacate judgment. Among other things, the court denied David's request for Terry's immediate payment of the equalization sum. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/503(d) (West 2008)) requires the trial court to divide marital property "in just proportions" considering the enumerated and relevant factors, which include:

"(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non[]marital property, including 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."

In dividing marital property, the distribution by the court need not be equal so long as it is equitable. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 649, 616 N.E.2d 1379, 1388 (1993). The division of marital property will not be reversed on appeal absent an abuse of discretion. *In re Marriage of Drury*, 317 Ill. App. 3d 201, 210-11, 740 N.E.2d 365, 371 (2000). In that regard, the court's distribution of assets will only be disturbed on appeal if no reasonable person would agree with the trial court's decision. *In re Marriage of Claydon*, 306 Ill. App. 3d 895, 898, 715 N.E.2d 1201, 1203 (1999).

¶ 17 A. Assignment of Marital Debt

¶ 18 David argues the trial court abused its discretion in assigning the business assets

and debts to him. We disagree.

¶ 19 Property acquired before the marriage constitutes nonmarital property. 750 ILCS 5/503(a)(6) (West 2008).

"When marital and non-marital property are commingled by contributing one estate of property into another resulting in a loss of identity of the contributed property, the classification of the contributed property is transmuted to the estate receiving the contribution ***; provided that if marital and non-marital property are commingled into newly acquired property resulting in a loss of identity of the contributing estates, the commingled property shall be deemed transmuted to marital property ***." 750 ILCS 5/503(c)(1) (West 2008).

"It is well settled that marital debts as well as marital assets must be distributed equitably." *In re Marriage of Lees*, 224 Ill. App. 3d 691, 693, 587 N.E.2d 17, 19 (1992).

¶ 20 In this case, David argues his business is nonmarital as it was created prior to the marriage. David accurately notes the property acquired after the marriage constitutes marital property. David, however, argues that a loan with Fisher National Bank and a loan to Jay Tinches for a dump trailer are marital debts that the trial court should have considered in dividing marital property. David argues he is entitled to a set-off for these two loans.

¶ 21 In a dissolution action, "it is the burden of both parties to provide the trial court with sufficient evidence to evaluate and distribute marital property." *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 663, 895 N.E.2d 1025, 1047 (2008). "However, parties should not be

allowed to benefit on review from failure to introduce at trial [(citation)]; therefore, a reviewing court will not reverse a trial court where parties have failed to produce evidence of value when there was ample opportunity to do so." *In re Marriage of Albrecht*, 266 Ill. App. 3d 399, 403, 639 N.E.2d 953, 956 (1994).

¶ 22 Here, the trial court awarded David his business and held him solely responsible for any debts or other financial obligations associated with the business. No values were placed on the business assets. It is not clear whether David asked for a set-off for the loans. Now on appeal, the figure David wants as a set-off is also not clear. The evidence, or lack thereof, fails to show an abuse of discretion on the court's part.

¶ 23 B. Distribution of Personal Property

¶ 24 David argues the trial court abused its discretion in distributing certain pieces of personal property. Although it is not entirely clear from David's brief, it appears he is arguing the court abused its discretion in not awarding him a grandfather clock, four plants he brought back from Florida, one-half of the outdoor furniture, and a set of dishes.

¶ 25 "The touchstone of whether apportionment of marital property was proper is whether it is equitable in nature; each case resting on its own facts." *In re Marriage of Joynt*, 375 Ill. App. 3d 817, 821, 874 N.E.2d 916, 920 (2007). "The trial court's distribution of marital property need not be equal as long as it is equitable [(citation)], and specific findings are not required." *In re Marriage of Blunda*, 299 Ill. App. 3d 855, 868-69, 702 N.E.2d 993, 1002 (1998).

¶ 26 In the case *sub judice*, the trial court generally awarded furnishings in the marital residence to Terry and those at the Johnson County property to David. The court awarded a wolf

print, stoneware dishes, bedding, and a photo album located at the Johnson County residence to Terry. As to property in the marital residence, the court awarded David a roll-top desk as well as a home-entertainment center and a bench that he built.

¶ 27 Although David contends on appeal that he specifically asked the trial court to grant him these individual pieces of property, the evidence presented at the hearing was less than clear. David did not provide to the court an exhibit specifically requesting the items. When asked whether he believed what was in Terry's bedroom was her property and what was in his bedroom was his property, David stated "that's fine with me." He then stated he wanted four plants and "maybe the grandfather clock and some dishes." He also stated he would "split the outside furniture" with Terry.

¶ 28 Here, David was specific that he wanted the home-entertainment center and the bench that he built. The testimony David offered in seeking the other items of property was less than persuasive. The trial court can only make an equitable distribution based on what the parties explicitly put forth through testimony and exhibits. We find no abuse of discretion.

¶ 29 C. Deferred Equalization Payment

¶ 30 David argues the trial court abused its discretion in ordering Terry to make an equalization payment from the sale of the Johnson County property, claiming it involves an indefinite period of time before the realization of the payout and forces the parties to continue associating with one another as tenants in common of the property.

¶ 31 In distributing marital property, the trial court has the discretion to require the parties to sell real estate and then split the proceeds. *In re Marriage of Gable*, 205 Ill. App. 3d 696, 699, 563 N.E.2d 1215, 1217 (1990); 750 ILCS 5/503(i) (West 2008).

"[W]e note the Illinois courts have criticized the division of marital property where the disposition may result in a party never receiving a possessory interest during his lifetime [(citation)], where the time for payment is not definite [(citation)], and where the parties are forced to continue associating with one another as tenants in common of property. [(citation)]." *In re Marriage of Riech*, 208 Ill. App. 3d 301, 309, 566 N.E.2d 826, 830 (1991).

¶ 32 In this case, the trial court ordered the Johnson County property to be sold and the net proceeds divided equally. Because the distribution of property resulted in Terry receiving \$75,621 more than David, the court ordered an equalization payment of \$37,810.50 be paid by Terry upon the sale of the property. The court also indicated it would choose a realtor if the parties could not agree on one.

¶ 33 Here, the Johnson County property is unique. It does not include the marital residence. Neither party had the ability to purchase the property. Although David stated it could take 18 to 24 months to sell the property, this does not amount to an indefinite period of time where one party might never receive an interest in the proceeds. There is no reasonable possibility that David will not receive payment in his lifetime. Moreover, although a tenancy in common is to be discouraged because of the friction it can create between divorcing spouses (*In re Marriage of Simmons*, 87 Ill. App. 3d 651, 656, 409 N.E.2d 321, 325 (1980)), the trial court ordered the property to be sold. Thus, the concerns about a never-ending battle over property is not present in this case. We find no abuse of discretion.

¶ 34 D. Access to the Johnson County Property

¶ 35 David argues the trial court abused its discretion in ruling he could not have access to the Johnson County property from October 1 to April 1 of each year until the property was sold. We disagree.

¶ 36 "The court may make such judgments affecting the marital property as may be just and may enforce such judgments by ordering a sale of marital property, with proceeds therefrom to be applied as determined by the court." 750 ILCS 5/503(i) (West 2008).

¶ 37 If the Johnson County property was not sold by October 1, 2011, the trial court awarded exclusive use of the property to Terry from October 1, 2011, until April 1, 2012. Thereafter, David would be entitled to exclusive use until October 1, 2012. Each party would be responsible for paying the utilities and ordinary upkeep during their exclusive possession.

¶ 38 The evidence indicated David spent much more time at the Johnson County property than Terry did over the last several years. He was also the one who maintained the property. However, David did not ask that the property be assigned solely to him. Both parties realized the property would have to be sold, and the trial court so ordered. Because a sale was necessary, both parties have an interest in getting "top dollar," as David hoped to receive. Awarding access to both parties encourages both of them to sell the property. Moreover, it also encourages them to maintain the property so they receive that top dollar once it is sold. We find no abuse of discretion.

¶ 39 III. CONCLUSION

¶ 40 For the reason stated, we affirm the trial court's judgment.

¶ 41 Affirmed.