

NOTICE
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2012 IL App (4th) 110727-U

Filed 6/1/12

NO. 4-11-0727

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

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

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

ORDER

¶ 1 *Held:* The trial court erred by counting nonmarital funds as part of marital funds when distributing funds between the parties to a marriage after reimbursing the marital estate for funds contributed to husband's nonmarital property.

¶ 2 Respondent, Robin K. Gray, appeals from the judgment of the trial court on remand reimbursing the marital estate for its contributions to the nonmarital property of petitioner, Martin L. Gray. The court previously set aside to Robin \$9,500 in nonmarital funds she contributed to Martin's nonmarital property and, after reimbursing the marital estate for \$40,000 in marital funds the parties contributed to Martin's nonmarital property, subtracted those same \$9,500 in funds from Robin's share of the reimbursement. We affirm as modified and order each party to receive half of the reimbursed marital funds, which amount to \$33,750 after crediting Martin's nonmarital property with the benefit the marital estate received, as Martin's

nonmarital property provided a home to the parties during the marriage.

¶ 3

I. BACKGROUND

¶ 4 In March 2004, prior to the parties' marriage on March 20, 2006, Martin bought a home at 1124 Sunset Drive in East Peoria, Illinois. The purchase price was \$60,000 and Martin made a \$5,000 down payment. Robin contributed \$9,500 from her nonmarital estate toward paying down the mortgage on the Sunset Drive residence. Further, the parties contributed \$40,000 in marital funds to the mortgage, eventually paying it off in March 2008.

¶ 5 On May 7, 2008, Martin filed a petition for dissolution of marriage. On January 12, 2010, the trial court entered a judgment for dissolution and divided the property. Martin received the Sunset Drive residence as his nonmarital property. Robin received \$9,500 for contribution of her nonmarital funds. The court awarded Martin half of the marital portion of Robin's retirement account. Robin was given none of Martin's workers' compensation settlement. Martin had used all of the settlement proceeds for living expenses. After dividing the rest of the assets and debts of the parties, Martin was left with assets having a net value of \$5,065 while Robin was left with debt of \$15,453. To equalize the division of marital assets and debt, the court ordered Martin to pay \$10,259 to Robin. This left each party with a net debt of \$5,194. The court ordered the parties to pay their own attorney fees.

¶ 6 On February 10, 2010, Robin filed a motion to reconsider, which was denied. Robin appealed to this court arguing the trial court erred by (1) not ordering the marital estate be reimbursed for marital contributions to Martin's nonmarital residence, (2) denying Robin's claim she was entitled to a portion of Martin's workers' compensation settlement, and (3) failing to order Martin to pay Robin's interim attorney fees. On January 7, 2011, we concluded the trial

court did not err in denying Robin's claim to a portion of Martin's workers' compensation settlement and denying Robin's request Martin pay her interim attorney fees. *In re Marriage of Gray*, No. 4-10-0301, slip order at 1 (Jan. 7, 2011) (unpublished order under Supreme Court Rule 23). We did find the trial court erred in failing to reimburse the marital estate for its contributions to Martin's nonmarital property. Specifically, we stated

"On remand, the trial court should allocate this reimbursement, considering previous evidence and previous distributions, and follow the dictates of section 503 of the [Illinois Marriage and Dissolution of Marriage] Act." *In re Marriage of Gray*, No. 4-10-0301, slip order at 13 (Jan. 7, 2011) (unpublished order under Supreme Court Rule 23).

¶ 7 On April 5, 2011, the trial court held a hearing on the issue of reimbursing the marital estate for the marital contribution to Martin's nonmarital property. The parties agreed not to present additional evidence and were granted time to file written arguments. Robin filed her written argument. She requested Martin receive no more than 50% of the \$40,000 reimbursement to the marital estate. She argued the court should not make an adjustment downward to the amount reimbursed to her because she only benefitted by living in the home for two years during the marriage. Martin benefitted by living there for the past seven years. She noted Martin will receive the entire proceeds when he sells the house; he is currently renting it and receiving income from it; and the couple used marital funds to pay property taxes and insurance as well as needed maintenance during the marriage. Robin argued these expenses offset any benefit she received by living there two years.

¶ 8 Martin filed his written argument. He contended, contrary to his prior pleadings in the case and the record on appeal in the prior appeal to this court, the \$9,500 Robin contributed was part of the \$40,000 necessary to pay off the mortgage on the residence and, therefore, the money due to the marital estate in reimbursement was only \$30,500. He previously concurred with Robin the entire \$40,000 was marital funds. Martin also argued, while Robin only lived in the Sunset Drive residence for approximately two years, the marriage lasted from March 20, 2006, to the date the dissolution order was entered on January 12, 2010, or 45 months. Thus, the benefit to the marital estate was a residence for 45 months. He further contended the rental value of the property was \$800 per month and, if that was applied to 45 months, no remaining equity was available for reimbursement to the marital estate.

¶ 9 On May 18, 2011, the trial court entered its order. The court found the parties married in March 2006 and separated on April 29, 2008. During that time, the parties contributed \$40,000 to the marital estate by paying off a mortgage secured by Martin's nonmarital property, the Sunset Drive residence. Therefore, the marital estate was entitled to be reimbursed \$40,000. The court further found the marital estate benefitted by the use of the residence between March 2006 and April 2008, or 25 months. The court then set a fair market rental for the property at \$250 per month based on a 5% return on the \$60,000 value of the house. The court concluded the marital estate received a benefit of \$6,250. The court noted Robin received \$9,500 for her nonmarital contribution to the residence. The court proceeded to calculate the amount due each party by subtracting the \$6,250 benefit received by the marital estate from \$40,000 for a net due the marital estate of \$33,750. The court calculated one half of that amount was \$16,875. However, the court then subtracted the \$9,500 Robin previously received for her

nonmarital contribution to find Robin was owed only \$7,375 as her share of the reimbursement to the marital estate.

¶ 10 Robin appealed. She argues her nonmarital contribution of \$9,500 was just that, nonmarital, and was already properly set aside to her as her nonmarital property. The court erred in subtracting it from the marital contribution amount of \$40,000. Martin has cross-appealed from the rental value of \$250 set by the trial court, arguing he was currently renting the property in question for \$700 per month and it was worth at least that on a monthly basis. Thus, at \$700 rent per month, over the 45-month marriage, the marital estate benefitted in the amount of \$31,500 and there was no further amount to be distributed to the parties because when the \$9,500 nonmarital contribution of Robin is subtracted from the \$40,000, the result is only \$30,500.

¶ 11

II. ANALYSIS

¶ 12 The questions to be determined are whether the trial court properly (1) reimbursed the marital estate for the amount paid toward the Sunset Drive residence and (2) divided the reimbursement amount between the parties. The proper standard of review is whether the court abused its discretion. *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 648, 913 N.E.2d 1077, 1084 (2009).

¶ 13 There is no dispute the Sunset Drive residence is the nonmarital property of Martin. The parties initially contributed nonmarital funds to the mortgage on the property, including \$9,500 by Robin, but the parties contributed the remaining \$40,000 from marital funds to retire the mortgage during their marriage. Where contributions are made by one estate (in this case the marital estate) to another estate (in this case the nonmarital estate of Martin) the contributing estate is entitled to reimbursements for those contributions where those contribu-

tions are traceable. 750 ILCS 5/503(c)(2) (West 2010) (text eff. until July 1, 2011). In our earlier order, we determined the \$40,000 in contributions from the marital estate were traceable; thus, the marital estate should be reimbursed in that amount. In their arguments to this court, Robin alleged the parties contributed \$41,469 in marital funds while Martin alleged the correct amount was \$40,000. For purposes of this appeal, Robin has adopted the \$40,000 amount determined by this court as correct.

¶ 14 The record includes the common-law record but no transcripts from court proceedings. Nothing in the common law record indicates Martin, prior to this appeal, contended the \$9,500 in nonmarital funds contributed by Robin to the Sunset Drive residence was *part* of the \$40,000 paid to retire the mortgage on the property. His references were always to \$40,000 in marital funds or to funds paid during the marriage. Neither party ever suggested Robin's nonmarital contribution of \$9,500 should be included in the \$40,000 amount contributed during the parties' marriage. We decline to consider it as such now. Our order to the trial court was to consider "previous evidence" and did not anticipate new evidence being presented. The parties agreed before the trial court not to present any further evidence and they did not. Arguments by parties are not evidence.

¶ 15 We hold, as directed in our remandment, the sum of \$40,000 should be reimbursed to the marital estate for its contribution in that amount to Martin's nonmarital property. Further, Robin's nonmarital contribution of \$9,500 to Martin's nonmarital property, already set aside to her as her nonmarital property, is not a part of the marital estate contribution to Martin's nonmarital property. It should not be subtracted from the amount due her in distribution of the marital estate assets.

¶ 16 Martin claims the amount to be reimbursed to the marital estate is required to be reduced by the amount the estate received in benefits, as his nonmarital property provided a home for the parties during their marriage. See *In re Marriage of Crook*, 211 Ill. 2d 437, 454-55, 813 N.E.2d 198, 206-07 (2004). This court recognized this principle in its earlier order, noting the marital estate benefitted by the use of the residence during the marriage but had not been fully compensated, as it had spent \$40,000 and the parties only lived in the residence a little more than two years. The trial court was correct on remand to calculate an amount for fair market rental value for the residence over the two years the parties lived there together.

¶ 17 However, Martin claims the trial court erred because the fair rental value of his nonmarital property is at least \$700 per month and not the \$250 per month allocated by the trial court. The parties agreed not to present additional evidence, and neither party presented evidence as to the fair market rental value of the property. Martin's assertions as to its rental value now are argument and not evidence. Martin also contends the trial court should have used a time of 45 months for the duration of the marriage when determining the benefit the marital estate received. The court used the amount of time the parties lived in the home as a married couple, two years.

¶ 18 An abuse of discretion is found only when a court "acted arbitrarily without conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial injustice resulted." *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1240, 799 N.E.2d 1037, 1041 (2003) (quoting *In re Marriage of Suriano*, 324 Ill. App. 3d 839, 846, 756 N.E.2d 382, 388 (2001)). The trial court in this case did not abuse its discretion in determining, for purposes of finding the benefit to the marital estate, the fair market rental value of Martin's nonmarital property was \$250 per month and the

operative time period the marital estate benefitted was two years. The estate thus received a total benefit of \$6,250.

¶ 19 The parties' marriage was of short duration, a total of four years. The parties only lived together in the Sunset Drive residence for two years. The residence itself had a value of approximately \$60,000. In determining the value the marital estate received from the residence, the trial court apparently took into account (1) the fact the marriage relationship, as a real relationship, lasted only two years, not four, (2) the fact the marital estate contributed \$40,000 in mortgage payments in only two years, (3) the fact the parties separated almost immediately after the mortgage was paid off, and, (4) the relatively inexpensive purchase price of the residence. Martin retains the residence as his nonmarital property and is entitled to whatever rent it can generate or the price he can receive upon its sale. The court's credit to the marital estate was not an abuse of discretion.

¶ 20 The trial court previously divided the marital property and debt equally after setting aside to each party their nonmarital property. We find each party's share of the reimbursement due the marital estate also should be divided equally. The reimbursement amount to the estate is \$40,000 and the benefit received by the marital estate was calculated at \$6,250, leaving an amount of \$33,750 to be divided between the parties. The amount due Robin should not be reduced by her nonmarital contribution of \$9,500. Thus, each party is owed \$16,875 as their share of the reimbursement due the marital estate.

¶ 21

III. CONCLUSION

¶ 22 For the foregoing reasons, we affirm the trial court's judgment as modified and the amount due to each party as reimbursement to the marital estate for its contributions to the

mortgage on Martin's nonmarital home is \$16,875.

¶ 23 Affirmed as modified.