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2012 IL App (4th) 111006-U

Filed 8/13/12

NO. 4-11-1006

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

|                          |   |                  |
|--------------------------|---|------------------|
| In re: the Marriage of   | ) | Appeal from      |
| SARA J. ARMSTRONG,       | ) | Circuit Court of |
| Petitioner-Appellee and  | ) | Morgan County    |
| Cross-Appellant,         | ) | No. 98D122       |
| and                      | ) |                  |
| DAVID R. ARMSTRONG,      | ) | Honorable        |
| Respondent-Appellant and | ) | Tim P. Olson,    |
| Cross-Appellee.          | ) | Judge Presiding. |

JUSTICE McCULLOUGH delivered the judgment of the court.  
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court's valuation of the marital farming operation profits was not against the manifest weight of the evidence, and the court properly considered the tax consequences of its distribution of the farming profits.

(2) The trial court did not abuse its discretion in (a) awarding the ex-wife prejudgment interest on her share of the marital farming operation profits and (b) *sua sponte* lowering the interest rate from 9% to 5%.

¶ 2 David and Sara Armstrong married in September 1976 and separated in April 1998. On July 22, 2003, the trial court granted the parties a dissolution of marriage. David and Sara had three daughters, all of which were emancipated at the time of dissolution. David appealed the July 2003 judgment, challenging various aspects of the property distribution. Sara cross-appealed, arguing in part the court erred in denying her request for a share of the profits from the marital farming operation in Morgan County. On August 20, 2004, we affirmed in part,

reversed in part, and remanded. *In re Marriage of Armstrong*, No. 4-03-0976 (Aug. 8, 2004) (unpublished order Supreme Court Rule 23). Relevant to this appeal, we reversed the trial court's finding that Sara was not entitled to a share of the profits from the marital farming operation. We remanded with specific directions for the court to determine the "marital farming operation's profits from the time of the parties' separation until the July 22, 2003, dissolution judgment" and allocate the profits between the parties. *Armstrong*, No. 4-03-0976, slip order at 20. We further instructed the court that it "must keep in mind it has already included as marital property 10,000 bushel of beans in storage valued at \$47,500 and 128,000 bushel of corn in storage valued at \$256,000." *Armstrong*, No. 4-03-0976, slip order at 20.

¶ 3 In February 2005, we issued our mandate to the trial court, directing the court to determine the value of and distribute the marital farming operation profits. In January 2006, following the filing of numerous motions to compel discovery, various subpoenas, and motions to quash subpoenas, the court found sufficient evidence to warrant discovery to determine whether "portions of the family farming operation were shifted to the children during the separation of the parties." Following the January 2006 order, Sara and David engaged in a five-year discovery process in which the parties attempted to determine the number of acres of farmland attributable to the marital farming operation during the course of their separation and what the profits were.

¶ 4 On May 10, 2010, the trial court issued a pretrial order directing the parties to file a statement with the court containing the following:

"1) A listing of the acreage farmed by the parties the crop year prior to separation[;]

2) A listing of all farm leases of the parties for the crop year prior to separation[;]

3) A listing of all farm leases transferred to a relative of either or both parties after separation[;]

4) A listing of all governmental payments received during the years of separation for any acreage, including the lease acreage transferred or assigned to relatives for the relevant time period[;]

5) The number of bushels of crop harvested each relevant year from all acreage farmed by Mr. Armstrong and any acreage from any lease transferred to a relative after separation[;]

6) The amount of grain sold each year from the same acreage as #6 [*sic*] above[;]

7) A listing of all expenses claimed by any party for each relevant year for the acreage in #6 above[;]

8) A calculation of net farm profit for each relevant year, as required by the Appellate Court[;]

9) A calculation of net profit from those leases that were transferred to relatives during the relevant years as determined by the Appellate Court."

Sara filed a statement as directed by the court, but David did not. David instead relied solely on tax returns for his representation of what the net farming profits were from 1998 to 2003.

¶ 5 On August 6, 2010, at the trial court's next pretrial conference, the court voiced its

discontent with David's continued position that tax returns actually reflected the marital farming operation profits. The court stated the following:

"Now, this is, and I don't—for the record, this is a very lucrative farming operation. That's what it is. These people have amassed substantial wealth over the years, that he farms a lot of acres and is not one of these farmers barely making it. Mr. Armstrong is a very successful, lucrative farmer period, and the record plays that out.

And if they want to present a position statement that they only made about twenty grand a year where they qualified for food stamps, they can do that. They can do that. I'll ignore it as not being credible. I'll state it for the record right now, that would not be a credible submission to the [c]ourt to come in with a highly lucrative farm operation where these people travel around the world at will. You know, the answer's no.

So you can submit what you want to submit. But if you submit something that's ridiculously incredible based upon the real world, I don't care about tax returns. All I—oh, I care about them. But frankly, we all know, and the Appellate Courts know, that farm tax returns aren't anywhere near the real world or what is in that farming operation. We know it. It's all legal. Nothing illegal. But that's a fact. So if they want to \*\*\* put in that garbage I got from

Mr. Keith before, fine. Fine. Then what they are left with is your submission. And they want to live with it, so be it."

The court also advised David that any farmland belonging to the marital farming operation prior to separation that was later transferred to his daughters or other relatives before the dissolution, would be considered dissipation on his part and would still be included in the marital estate. The court gave the following instructions:

"While we're here, if in fact, I'll say it right now, if they were farming acreage here, acreage here, acreage here, lease here, here, here, and if Mr. Armstrong unilaterally transferred that to his sister or daughter or another operation, that's dissipation. It's, he can do it. But it's going to be attributed to him. I'm going to add it in at trial and whatever came out of that, so if they don't give me real figures on those, then I'll just go by gross.

I'm just telling you right now—I don't want to hear any comment. That's what im going to do, because if it is shown, for example, that Lease A was farmed by Mr. Armstrong while the marriage was in effect, and right afterwards he transferred that lease that he's farmed for a while to a daughter, well, you might, you know, that's his, and it will be considered by the [c]ourt as his marital property, period."

¶ 6 A five-day hearing commenced in March 2011. In September 2011, the trial court determined the value of the marital farming operation profits to be \$1,777,973. The court found

Sara was entitled to one half of the profits, or \$888,986.50, less \$121,400 previously awarded in the July 2003 dissolution judgment. The court initially awarded Sara prejudgment interest in the amount of \$414,498, or 9%, accruing at a rate of \$189.26 per day but *sua sponte* reduced that amount to \$230,276, or 5%, accruing at a rate of \$105.15 per day. David appeals, arguing (1) the trial court's valuation of the marital farming operation profits was against the manifest weight of the evidence, (2) the trial court failed to consider the tax consequences of its distribution of the marital farming operation profits, and (3) the trial court abused its discretion in awarding Sara prejudgment interest. Sara cross-appeals, arguing the trial court abused its discretion in *sua sponte* lowering the prejudgment interest rate from 9% to 5%. As the parties are familiar with the testimony and the evidence presented at trial, we will only discuss those facts relevant to our analysis.

¶ 7 We begin with David's argument that the trial court's valuation of the marital farming operation profits was against the manifest weight of the evidence. See *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700, 843 N.E.2d 478, 482 (2006) (concluding the proper standard of review for the trial court's determination of the valuation of marital property is manifest weight of the evidence). David argues it was against the manifest weight of the evidence for the court to (1) find that the marital farming operation consisted of 3,200 acres of farmland; (2) find that the net farming income for 1997, the year before the parties separated, was \$274,709 or \$86 per net acre; (3) find that the following years, specifically 1998-2003 "were equal or better crop years," warranting a valuation of the marital farming operation at \$100 per net acre; and to (4) divide the marital farming operation profits for the years 1998 to 2000. We address each of David's arguments in turn.

¶ 8 "Valuation of marital assets is for the trier of fact, and a valuation within the range presented by the evidence will not be disturbed on appeal." *In re Marriage of Moll*, 232 Ill. App. 3d 746, 752, 597 N.E.2d 1230, 1234 (1992). The parties to the proceedings have the burden to present evidence for the trial court's consideration, and the court cannot make a determination on the value of marital assets without competent evidence. *Moll*, 232 Ill. App. 3d at 752, 597 N.E.2d at 1234. "We will not reverse and remand an order of distribution when a party had ample opportunity to present evidence of value and failed to do so." *Moll*, 232 Ill. App. 3d at 752, 597 N.E.2d at 1234.

¶ 9 Before we address David's specific arguments, we briefly address the nature of the evidence presented in this case. The record shows David was in the best position to present competent evidence to the trial court and was the only person privy to the true acreage farmed and the yields from that acreage. David's own expert witness, Allen Worrell, an accredited farm manager, a farm real estate appraiser, and a farm real estate broker, testified that the farmer is the individual who would have access to the appropriate records in this case. Worrell testified the only way to ascertain the yield from a specific farm "is to have production evidence either through yield monitors and yield maps or scale tickets and delivery sheets from an elevator." He also testified that such records are "privileged information between the elevator and the producer. They're not public information, but any producer that brings grain to an elevator is provided scale tickets, delivery sheets, as proof of evidence of what they brought for sale."

¶ 10 David himself explained to the court, through his testimony, how such records were normally prepared and kept. David testified he received government programs payments established by the United States Department of Agriculture (USDA) to supplement his farming

income. Such payments were coordinated through the local Farming Service Agency (FSA), a division of the USDA. To receive program payments from the FSA office, David would have to bring settlement sheets from the elevator to the FSA office, listing how much crop was taken from various farmlands. The yield of a particular farm could then be calculated by dividing the amount of crop hauled to the elevator by the farm acreage. David testified he and his daughters used two methods in determining what the yield of each farm was and described how they attributed each yield to a particular farm. David explained the following:

"Well, there is two ways we'd go about that. One which we keep a notebook in the truck, and whoever's driving the truck writes that down on a sheet of notebook paper. We got lines in there to put your net and gross and your bushels on there and the farm that it comes off of.

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And then from time to time we'll call the elevator and make sure them bushels add up to the same number they got added up. And at that time, them sheets are no use to us. But most generally we always keep the tickets that we get from the elevators and write on there which farm they are. And two, three times during the fall we'd add them tickets all up per farm so we'd know what bushels per acre they made."

David said he would keep these elevator settlement sheets one to three years, but no longer than three years. In regard to the first method of recording crop yield in notebooks, David testified

that some of the notebooks would remain in the trucks for three or four years, depending on "who's driving the truck." He said "[s]ome of them would clean them out every year, but I like to keep them in there for three or four years." David believed Sara and her attorneys never made requests for these logbooks and he admitted he never produced any. Sara maintains she made several requests for such logbooks. David testified he did not now have any of the logbooks from 1998 to 2003 and was "very doubtful" that he had the logbooks when this cause was remanded in 2005.

¶ 11 Such records described by David and Worrell would have provided the court with the "competent evidence" it needed to assign a proper valuation to the marital farming operation. However, David continuously relied on tax returns as evidence of farming profits. The court repeatedly informed David that it would not accept David's tax returns as "credible" evidence of the value of the marital farming operation. The court also made clear that David was responsible for the lack of evidence, which would have made a valuation in this case easier. In its final ruling, the court said that "[u]nquestionably, Mr. Armstrong by his actions created the situation faced by the [c]ourt in this case." At the hearing on David's motion to reconsider, the court stated the following:

"You know, a lot of the evidence that I could have had then I didn't because of the actions of Mr. Armstrong. That is a fact. It's in the record. There is no question about it. We wouldn't be here but for that. And that is just the way it was. That has brought us to this point. So now we have to reconstruct ten years later what the heck happened. What would have been."

¶ 12 The trial court said it did the "[b]est [it] could do with the mess that the parties gave [it]." The court also noted that if it had to "pick one side," Sara's evidence "was a little better[,] \*\*\* probably a little more accurate." Part of Sara's evidence included a model created by one of Sara's expert witnesses, Brigitte Franzen. Franzen reviewed and evaluated approximately 3,600 pages of FSA records to create a model that would represent the amount of acreage farmed by David from 1998 to 2003. Franzen then utilized various statistics from the National Agriculture Statistical Service and Farm Business Farm Management, a record-keeping and tax preparation service by the University of Illinois. Franzen took these statistics, representing the averages of crop yields for farmland located in Morgan County (where the parties owned farmland), and applied those statistics to the acreage David reported farming to the FSA, to come up with a valuation of the marital farming operation. David stipulated to these statistics and also utilized these statistics himself during the trial. Specific details of this model will be discussed as necessary to our analysis. We now turn to David's specific arguments.

¶ 13 David argues it was against the manifest weight of the evidence for the trial court to find that the marital farming operation from 1998 to 2003 consisted of 3,200 acres. We disagree. In the trial court's final order, the court found that 1997 was the "last year life was good with the parties," and at that time the parties were farming 3,200 acres. The court further found David "substantially depleted or dissipated the marital estate" and "unilaterally decreased the marital farming operation from approximately 3,200 acres to around 1,500 acres." See *In re Marriage of Lee*, 246 Ill. App. 3d 628, 635, 615 N.E.2d 1314, 1321 (1993) (finding dissipation where spouse unilaterally transferred marital property to children and was the primary beneficiary of the transfer). Thus, the court found it fair and reasonable to use the acreage farmed prior to

separation in its valuation, as it was "extremely difficult for a trier of fact to determine with any specificity what the actual estate was or would have been." We conclude the court's findings are supported by the evidence.

¶ 14 On cross-examination, David initially testified he was farming "roughly 3,200 acres" in 1997. He testified to farming 2,700 acres in 1998; 2,700 acres in 1999; 1,500 acres in 2000; 1,500 acres in 2001; 1,500 acres in 2002; and 1,500 acres in 2003. However, David later testified, while still on cross-examination, consistent with his exhibit No. 4-A, that in 1997 he farmed 2,600 acres and his daughters farmed 900 acres, and he farmed 2,348 acres in 1998; 1,859 acres in 1999; 1,394 acres in 2000; 1,394 acres in 2001; 1,400 acres in 2002; and 1,500 acres in 2003. An additional exhibit admitted by David, exhibit No. 116, which contained farm numbers and names and the number of acres farmed by David each year, showed that David was farming roughly 3,200 acres in 1997. Thus, although David's testimony and exhibits were inconsistent, they supported a finding that the marital farming operation consisted of 3,200 acres.

¶ 15 The trial court properly warned David that any farmland transferred to his daughters, and their partnership known as Armstrong Sisters, during the parties' separation would be included in the marital estate. See *Lee*, 246 Ill. App. 3d at 635, 615 N.E.2d at 1321 (holding that courts may consider a spouse's dissipation of marital property when dividing the marital estate). David admitted in his brief to this court that he transferred a total of 1,848.6 acres to the parties' daughters by 2000. David's testimony that he farmed 1,500 acres from 2000 to 2003, added to the 1,848.6 acres he transferred to his daughters by 2000, also supports a finding that the marital farming operation consisted of 3,200 acres.

¶ 16 In addition to his admission in his brief, David also testified to transferring

farmland. David testified that prior to the parties' separation, he received governments payments from the Reeve Farm. David transferred Reeve Farm to Katie Mailey, the parties' daughter in 2000. In 1998 and 1999, David cash rented and was the producer on Birdsell's Farm. He transferred this farm to Katie in 2000. David testified he farmed Caroline's farm "up through" 1997 but that his nephew, Todd Bartz, took over farming Caroline's farm sometime in 1998. David still received cash rent of \$2,000 per year from Caroline's Farm after he stopped farming it in 1998. David farmed New Covenant Farm with Sara prior to the parties' separation and "g[a]ve that up" in 2000. In 1998 and 1999 David leased Van Bebber Farm on a crop-share basis and transferred that lease to Katie in 2000. David received the government payments from Grandma's Farm in 1998 and 1999 and transferred that land to Millie Braxton, the parties' daughter, in 2000. David received the government payments from Grandpa's Farm in 1998 and 1999. David made Millie the producer on that land in 2000, and she began receiving government payments from the land. Todd farmed the Reed Farm, but David received crops off the land in 1998 and 1999. David transferred his interest in these crops to Millie in 2000.

¶ 17 Other evidence supporting a finding of 3,200 acres is insurance records. The insurance records show David insured approximately 4,108 acres of farmland from 1998 to 2003. Ken Keithley, David's insurance underwriter, testified that a person has to have an insurable interest in land before an insurance policy can be issued. Keithley testified the daughters did not have their own insurance policies on the land they owned or farmed, and only David insured the land.

¶ 18 Moreover, to receive payments from the government programs created by the USDA, David had to certify to the FSA the amount of farmland he was farming. Sara requested,

through discovery, that David produce copies of FSA producer's records in which David certified the acreage he was farming to the FSA. FSA privacy laws prevented Sara from accessing these documents without David's authorization. David refused to produce these documents and also refused to sign a release authorizing the FSA to release these documents to Sara. After Sara filed rules to show cause and motions to compel compliance with discovery requests, the court ordered David to either produce the documents or sign a privacy release so Sara could produce the FSA records. David signed the release and Sally obtained the FSA records. The records show David certified to the FSA that he was farming over 3,200 acres per year from 1998 to 2003.

¶ 19 Sara's evidence, based on FSA records, showed that David farmed 3,139.5 acres in 1998; 3,134.7 acres in 1999; 3,775.5 acres in 2000; 4,575.1 acres in 2001; 3,499.6 acres in 2002; and 3,499.6 acres in 2003. Sara's evidence shows a total acreage of 20,061.08 from 1998 to 2003. In its final ruling, the trial court arrived at final total acreage of 17,780, or 3,200 acres per year for 5, years plus 1,880 acres (or 59% of 3,200 acres), prorated for 2003. Considering David and Sara's evidence together, the trial court's determination that the marital farming operation consisted of 3,200 acres each year from 1998 to 2003 was not against the manifest weight of the evidence.

¶ 20 David next argues the trial court's finding that the net farming income was \$274,709 in 1997 was against the manifest weight of the evidence because this number represents the "adjusted gross income" of the parties on their 1997 joint income tax return. David argues that Schedule F on the 1997 tax return reflects "farm income" of \$225,758, and that is the number the court should have used in determining the marital farming operation profits. David contends using the adjusted gross income of the parties is improper because it includes

income from other sources besides the farming operation.

¶ 21 We conclude whether the trial court used the parties' "farm income" of \$225,758, or their "adjusted gross income" of \$274,709 in summarizing farming profits for 1997 is of little significance, because the figure was nothing more than a starting point from which the court began its analysis. The years at issue in this case are 1998 to 2003. For those years, the court ultimately settled on a "fair figure" of \$100 per net acre or \$320,000 a year as its valuation of farming profits. Thus, we focus our review on whether \$100 per net acre is against the manifest weight of the evidence.

¶ 22 In its ruling, the trial court found the "calculations of Mr. Armstrong and his proposal as to what Ms. Plunkett's fair share should be [were] laughable." At the hearing on the motion to reconsider, the court stated it found Sara's evidence was "better" or "a little more accurate." It also noted that it "could have gone [\$]150 an acre" or "[\$]40" an acre based on the figures presented by the parties. After a careful review of the record, we conclude the court's finding was not against the manifest weight of the evidence.

¶ 23 Sara presented evidence that the marital farming operation profits between 1998 and 2003 were \$3,695,409.43. She also presented evidence that the total acreage farmed was 20,061.08 acres. However, the trial court found the total acres farmed was 17,780, or 3,200 acres per year. If the court used Sara's evidence of farming profits of \$3,695,409.43, and its figure of 3,200 acres per year, it would have come up with a net per-acre profit of \$207.84. Thus, Sara's evidence suggested the farming profits were more than double the court's final determination of net profits at \$100 per acre. Her evidence, however, is consistent with the court's statement that it "could have gone [\$]150 an acre."

¶ 24 David's evidence for farming profits consisted of income tax returns. David suggests that the "farm income" as listed on Schedule F of income tax returns should have been used by the trial court. The tax records submitted to the court show farm income of \$111,388 in 1998; \$29,434 in 1999; \$165,483 in 2000; \$8,192 in 2001; \$33,303 in 2002; and \$114,886 in 2003. Based on the 3,200-acre total the court arrived at and David's tax returns, David's evidence suggests the net per acre each year was \$34.80 in 1998; \$9.19 in 1999; \$51.71 in 2000; \$2.56 in 2001; \$10.41 in 2002; and \$35.90 in 2003. The average net per acre over the six-year period would thus be \$24.10. These numbers, however, do not accurately reflect farming profits from the 3,200 acres as they do not include the income produced by the farmland transferred to the Armstrong Sisters. The court made clear that David purposefully dissipated the marital estate and any land transferred to the Armstrong Sisters would be included in the court's valuation. Because the Armstrong Sisters owned land besides that transferred to them by David, it would have been difficult to determine what portion of their partnership tax returns were attributable to the 3200 acres. Thus, David's tax returns alone did not adequately reflect the marital farming operation profits from 1998 to 2003. Ultimately, the court selected a value somewhere in the middle of that proposed by David and that proposed by Sara, and that valuation was not against the manifest weight of the evidence.

¶ 25 David also argues that it was against the manifest weight of the evidence for the trial court to assume that the years following 1997 "were equal or better crop years." David argues the following evidence supports his position that the 1998 to 2003 crop years were not "equal or better crop years": (1) Worrell's testimony that limits on payments for government assistance programs rose in 1999 and 2000 due to low commodity prices during those years; (2)

the testimony of Ken Zumbahlen, the parties' accountant, that government program payments "have become a major \*\*\* source of revenue for farmers"; (3) his tax returns and the Armstrong Sisters partnership tax returns; and (4) his contention that Sara did not present evidence to the contrary.

¶ 26 Testimony relating to the valuation of assets is a matter to be resolved by the trier of fact (*In re Marriage of Grunsten*, 304 Ill. App. 3d 12, 17, 709 N.E.2d 597, 601 (1999)), as well as "all issues regarding the credibility of the parties and their witnesses or the weight to give the evidence" (*In re Marriage of Werries*, 247 Ill. App. 3d 639, 642, 616 N.E.2d 1379, 1384 (1993)). Such determinations made by the trier of fact are given great deference. *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641, 686 N.E.2d 670, 675 (1997).

¶ 27 Although Sorrell testified government payments went up, he did not specifically testify as to what the commodity prices were between 1998 and 2003. As for Zumbahlen, when he was asked if limits on government payments rose between 1997 and 2003, he said he "d[id]n't know without looking, but [he]'d be very surprised if doesn't [*sic*]." Zumbahlen also did not testify to commodity prices. It was within the trial court's discretion to decide what weight it would afford the witnesses' testimony.

¶ 28 During the hearing on the motion to reconsider, in reference to Zumbahlen, the trial court said he did not "really care what the accountant said" about farming profits because "[i]t wasn't credible evidence." In regard to the tax returns, the court repeatedly informed David that it would not accept tax returns as "credible" evidence of the value of the marital farming operation profits. The court made credibility assessments and weighed the evidence, and we defer to those determinations.

¶ 29 Finally, David's suggestion that Sara did not "present evidence to the contrary" that 1998 to 2003 were "equal or better crop years" is unsupported by the record. In addition to Sara's evidence that has already been discussed in this case, Sara presented evidence of average corn and bean yields for Morgan County from 1998 to 2003. Sara also presented average prices per bushel for corn and beans from 1998 to 2003. The numbers show both the yields and prices per bushel remained the same or rose between 1998 and 2003, and thus support the finding that the years 1998 to 2003 were "equal or better crop years" than 1997.

¶ 30 David also argues it was against the manifest weight of the evidence for the trial court to include the years 1998 to 2000 in its division of marital farming operation profits. David argues the inclusion of these profits in the division results in a double counting. David contends that this court warned the trial court not to double count on remand and to make sure it gave credit for the crop in storage. We did warn against a double counting. In this court's order, we instructed the trial court to determine "the marital farming operation's profits from the time of the parties' separation until the July 22, 2003, dissolution judgment." *Armstrong*, No. 4-03-0976, slip order at 20. We further instructed the trial court to "keep in mind it has already included as marital property 10,000 bushel of beans in storage valued at \$47,500 and 128,000 bushel of corn in storage valued at \$256,000." *Armstrong*, No. 4-03-0976, slip order at 20. However, we disagree with David's assertions that the years 1998 to 2003 should not have been included in the division of farming profits or that a double counting resulted in this case.

¶ 31 We first note any argument by David that the trial court should not have included the years 1998 to 2000 in its division of the marital farming profits is in direct contradiction to this court's order on remand. We specifically instructed the court to calculate the farming profits

from the time of separation until dissolution. The parties separated in April 1998 and dissolved their marriage in July 2003. Thus, no argument can possibly be made that the trial court erred in including these years in its calculation.

¶ 32 Further, a double counting did not take place. In our order, we directed the trial court to "keep in mind" it had already included \$303,500 (\$47,500 of beans and \$256,000 of corn) worth of crop in storage in its July 2003 award of marital property. *Armstrong*, No. 4-03-0976, slip order at 20. The July 2003 dissolution judgment provided that Sara be awarded 40% of the marital property, that is \$121,400, of the crop in storage. In the trial court's September 2011 ruling, the court subtracted \$121,400 from Sara's award of farming profits. Thus, the court properly considered its past award and avoided a double counting when it made this subtraction.

¶ 33 David's second issue on appeal is whether the trial court abused its discretion in failing to consider the tax consequences of its distribution of the farming profits. Section 503(d)(12) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(d)(12) (2010)) requires the court to consider "the tax consequences of the property division upon the respective economic circumstances of the parties." Whether the court considered the tax consequences of its distribution is reviewed for an abuse of discretion. *In re Marriage of Lakin*, 278 Ill. App. 3d 135, 140, 622 N.E.2d 617, 620 (1996).

¶ 34 David argues the trial court failed to consider the tax consequences of the distribution of the farming profits because of the court's statement in its final ruling that the "farming operations netted \$274,709.00, or approximately \$86.00 net per acre" in 1997. David argues the court failed to consider tax consequences because this number represents the parties' "adjusted gross income" for 1997 and not the parties' "actual farm income." David suggests the

court should have used the parties' "farm income" of \$225,758 in its ruling, which only equates for 82.18% of the parties' adjusted gross income. David contends this 82.18% should have then been applied to the \$90,620 in federal taxes and \$8,086 in state taxes the parties paid in 1997. This results in \$74,471.52 of federal taxes and \$6,645.08 of state taxes being attributable to the farm income. David argues if the court would have adjusted the farm profit per acre based upon a consideration of the tax consequences of the gross farm income, the "net farm income" would actually be \$144,641.40, or \$42.50 net per acre after payment of income taxes ( $\$225,758 - [\$74,471.52 + \$6,645.08] = \$144,641.40$ ).

¶ 35 As discussed earlier, the \$274,709 figure is of no significance to our analysis. The court ultimately settled on a value of \$320,000 per year or \$100 per net acre for the farming profits from 1998 to 2003, the years at issue on remand. Thus, the question is whether the trial court considered the tax consequences of its distribution of net farming profits valued at \$1,777,973, or \$320,000 per year. We conclude it did.

¶ 36 We recognize that the trial court did not "show it's work," so to speak, in its final ruling by providing mathematical calculations to assure the parties that the court considered the tax consequences of the distribution. The court was not, however, required to do so. The court is presumed to know the law and follow it, and we will not assume it failed to do so unless the record affirmatively shows otherwise. *People v. Thorne*, 352 Ill. App. 3d 1062, 1078, 817 N.E.2d 1163, 1177 (2004). During the hearing on David's motion to reconsider, the court stated "it appears to me with everything, including taxes and everything netted out, it appears to me they should have netted \*\*\* around a hundred bucks or so an acre." The court's statement reflects its understanding that it was to consider the tax consequences of the distribution and that

it did so.

¶ 37 Moreover, as already mentioned, the court found Sara's evidence "was better" or "a little more accurate." Thus, based upon Sara's evidence, the court could have valued the farming profits at \$207.84 net per acre but found \$100 net per acre to be a "fair figure" after considering "taxes and everything netted out." This \$107.84 difference adequately accounts for any tax consequences associated with the distribution of the farming profits.

¶ 38 Finally, David argues that the trial court abused its discretion in awarding Sara 5% prejudgment interest on her share of the farming profits. Sara argues the trial court properly awarded prejudgment interest. However, Sara cross-appeals, arguing the trial court abused its discretion when it *sua sponte* lowered the prejudgment interest awarded from 9% to 5%.

¶ 39 An award of prejudgment interest is appropriate where it is "authorized by statute, agreement of the parties[,] or when warranted by equitable considerations." *Tully v. McLean*, 409 Ill. App. 3d 659, 684-85, 948 N.E.2d 714, 741 (2011). David argues an award of prejudgment interest was not proper under the circumstances of this case because it was not authorized by statute, the parties did not agree to such an award, and equity does not justify an award. Sara agrees that neither statute or agreement of the parties authorized an award of prejudgment interest, but she argues it was warranted under equitable principles. In awarding prejudgment interest, the trial court stated it "believe[d] fairness requires simple interest to be paid." Because the trial court awarded prejudgment on the basis of equitable principles, we need not address whether such action was authorized by statute or agreement of the parties.

¶ 40 "The determination of whether equitable circumstances support an award of [prejudgment] interest lies within the discretion of the trial court." *Tully*, 409 Ill. App. 3d at 685,

948 N.E.2d at 741. Such a decision will be reviewed for an abuse of discretion. *Tully*, 409 Ill. App. 3d at 685, 948 N.E.2d at 741. We will only reverse the court's ruling if it is " 'arbitrary, unreasonable, or where no person would take the view adopted by the trial court.' " *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 23, 957 N.E.2d 413 (quoting *People v. Caffey*, 205 Ill. 2d 52, 89, 792 N.E.2d 1163, 1188 (2001)).

¶ 41 David argues the trial court abused its discretion in awarding prejudgment interest because it did not specifically state it was awarding interest under equitable principles. We disagree. In its ruling on September 14, 2011, the court found that "fairness requires simple interest be paid" to Sara. This finding reflects an award of interest under equitable principles. Moreover, the court clarified that the award was based in equity during the October 12, 2011, hearing on the motion to reconsider. The court stated as follows:

"You know, if anyone was sitting in this courtroom and if there was one thing that was evident, is that [David] had a bunch of lawyers and we had a bunch of motions to compel and there were several discovery issues that for whatever reason we just weren't going to comply. There was [*sic*] objections to discovery at depositions, blah, blah, blah, and the list goes on and on and on and on.

If equity does not allow a court in a divorce type proceeding, which is nothing more than a glorified equitable proceeding, to allow interest, *then if this case doesn't allow it, then I can't think of a case that would ever, because it deserved it.*"

(Emphasis added.)

¶ 42 David also argues the trial court abused its discretion in awarding prejudgment interest because the award was a sanction and the result of the court's displeasure with David. We disagree. The court specifically stated in its final ruling that it was not rewarding or punishing either party and that Sara was "entitled to a fair share of the marital estate, not an exorbitant or exaggerated amount." The court found, in its discretion, that equity required Sara be awarded interest. Based on the record, we conclude the court did not abuse its discretion in making such a finding.

¶ 43 David further alleges that equity does not substantiate an award of interest because the trial court's decision was based on its improper finding that David delayed litigation. He provides a host of reasons why the delay was attributable to Sara or somehow out of his control. We decline to address David's assertions individually. After presiding over this cause on remand for six years, the trial court found that David "delayed the proceedings by his obstinateness and general noncompliance with the discovery process." The court also found that David's "actions clearly evidence[d] his intent that [Sara] be deprived of her fair share of the marital estate," and that his conduct, which led to "inequitable results," would not be "tolerated." We have reviewed the entire record, including the transcripts from the five-day hearing and the numerous motions to compel discovery and rules to show cause. We conclude the court's finding that David delayed litigation, thus necessitating an award of interest in equity, was not an abuse of discretion and is supported by the record.

¶ 44 Finally, Sara cross-appeals, arguing that the trial court abused its discretion when it *sua sponte* lowered the interest award from 9% to 5%. On September 14, 2011, when the court

issued its final ruling, it awarded Sara interest at a rate of 9%, for a total of \$414,498 accruing at a rate of \$189.26 per day thereafter. On September 15, 2011, the court issued a corrected decision stating, "In calculating interest, the [c]ourt believes it erred by using the judgment rate of 9 percent. Instead, the general rate of 5 percent should have been used." The court amended the interest due to \$230,276 with an accrual rate of \$105.15 per day thereafter.

¶ 45 Sara raised this issue in a motion to reconsider, and the court denied her motion. At the hearing on the motion to reconsider, the court said it "went with the general interest amount as opposed to judgment interest amount, which is five percent, which you know I've already changed my mind once. I'm not going to do it again."

¶ 46 Sara puts forth two possibilities as to why the court amended the awarded interest rate: (1) the court was operating under a misapprehension that it did not have the authority to impose a rate greater than the "general rate of 5%" or (2) the court determined that 5% was an equitable amount under the circumstances. In regard to the first possibility, Sara argues there is no requirement that the court award only the general rate of 5%, for "in equity the amount of interest allowed need not fall within any precise terms." *In re Estate of Wernick*, 127 Ill. 2d 61, 87, 535 N.E.2d 876, 888 (1989). However, Sara agrees that if the court believed 5% was the appropriate equitable rate under the circumstances, then that decision was within the trial court's sound discretion.

¶ 47 When the Illinois interest rate statute is inapplicable, it is within the trial court's discretion to determine the applicable interest rate. *Stanton v. Republic Bank of South Chicago*, 144 Ill. 2d 472, 481, 581 N.E.2d 678, 682 (1991). Here, the court initially awarded interest at a rate of 9% but then reduced it to 5% because it believed it had made in error in applying a rate of

9%. The record does not establish why the court thought an award of 9% was in error or why 5% was a more appropriate award, and we will not infer facts that are not in the record. Given the circumstances of this case, we conclude the court did not abuse its discretion in awarding interest at a rate of 5%.

¶ 48 For the reasons stated, we affirm the trial court's judgment.

¶ 49 Affirmed.