

NOTICE

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2012 IL App (5th) 100418-U  
NO. 5-10-0418  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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<i>In re</i> MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
DIANE CAROLE MORROW,	)	Monroe County.
	)	
Petitioner and Counterrespondent-Appellant,	)	
	)	
and	)	No. 08-D-67
	)	
SAMUEL L. WHITENER,	)	Honorable
	)	Dennis B. Doyle,
Respondent and Counterpetitioner-Appellee.	)	Judge, presiding.

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JUSTICE WEXSTTEN delivered the judgment of the court.  
Justices Goldenhersh and Chapman concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The circuit court properly valued and divided the parties' marital property, but the circuit court erred in reserving the issue of maintenance without an agreement by the parties and without entering appropriate findings.
- ¶ 2 The circuit court of Monroe County entered a judgment of dissolution of marriage, from which the petitioner, Diane Carole Morrow, appeals. Diane argues on appeal that the circuit court erred in awarding the respondent, Samuel L. Whitener, any interest in the value of the marital home, in awarding \$84,000 of Diane's retirement funds to Samuel as payment for his interest in the residence, in awarding and allocating the parties' personal property, and in reserving the issue of maintenance. We affirm in part and reverse in part.

¶ 3 **FACTS**

¶ 4 The parties were married on August 7, 1998, and no children were born or adopted by the parties as a result of their marriage. On July 25, 2008, Diane petitioned for

dissolution of marriage, and on October 16, 2008, she moved from the marital residence. On May 1, 2009, Samuel filed a counterpetition for dissolution of marriage requesting, *inter alia*, that Diane be ordered to pay him reasonable support.

¶ 5 On May 1, 2009, July 14, 2009, October 27, 2009, and January 5, 2010, the following evidence was presented.

¶ 6 In January 1995, Diane purchased a home in Oklahoma. Samuel's name did not appear on the deed or the mortgage to the home. In May 1998, Diane sold the home in Oklahoma and used the proceeds of the sale to purchase a home in Texas. In August 1998, Diane married Samuel. Two years later, in May 2000, the parties purchased as joint tenants a home on 13 acres in Red Bud, Illinois. Diane testified that the down payment for the Red Bud residence came from sale proceeds of the Texas home. Both parties indicated, however, that some of the down payment originated from moving expenses paid by Diane's employer. Both Diane and Samuel testified that the parties paid the mortgage payments, taxes, and insurance from Diane's salary. Samuel testified that he paid the electric bill, phone bill, tractor bill, and truck payments. Diane valued the home and property at \$285,000.

¶ 7 In 2001, Samuel transferred his interest in the property to Diane via a quitclaim deed. Diane thereafter refinanced the mortgage in her name only and acquired lower interest rates than what she could have acquired with Samuel, due to his poor credit history. During the subsequent and numerous refinancing transactions, Samuel signed "Waiver of Homestead Rights" forms, stating that he relinquished "all present and future interest, right[,] and title \*\*\* in the property." Carolyn Henry, a loan officer and vice president at the First National Bank in Waterloo, testified that such a waiver is routinely submitted to customers using their home as collateral. Henry explained that if the bank had to foreclose, additional persons who had been living on the property but who had signed the waiver could not continue to live on the property.

¶ 8 Samuel testified that he intended the property to remain his and Diane's and that he executed the quitclaim deed only to allow Diane to acquire a more favorable interest rate. Samuel testified that he remodeled a garage on the Red Bud property, installed shutters, installed wood flooring and tiling, poured concrete, installed wiring for a hot tub, completed landscaping, remodeled a barn, and removed a second barn. Diane acknowledged that Samuel maintained and improved the Red Bud property by building fences, remodeling the home and barn, caring for the animals, and maintaining the home. Samuel testified that he spent \$66,784.86 improving the marital home but acknowledged that \$11,559 of the amount was withdrawn from Diane's bank account.

¶ 9 Diane testified that, as an analyst for the Internal Revenue Service, she earned an annual salary of \$120,351. Diane testified that she was entitled to receive retirement benefits from two sources: the Thrift Savings Plan and the Civil Service Retirement System (CSRS) pension. Diane testified that Samuel would be unable to collect the CSRS pension until she retired. At the time of the hearing, Samuel was 64 and Diane was 48. Diane testified that during the parties' marriage, she had contributed \$84,000 to the CSRS pension. Diane testified that as of December 31, 2007, her Thrift Savings Plan account balance was \$110,194.43.

¶ 10 Samuel testified that in 2005 or 2006, he was laid off from Elco Chevrolet, where he performed autobody work, which involved heavy lifting and 55-hour workweeks. Samuel acknowledged that he was fired but was awarded unemployment. Samuel testified that Diane suggested that he retire and stay home to work on the property. Samuel testified that he cut grass, mowed hay, and performed general maintenance around the farm, working with, *inter alia*, tractors and horse trailers.

¶ 11 Samuel testified that he was first treated for hypertension when he was 42 years old. Samuel testified that he had had a heart attack in December 1999. Diane acknowledged that

Samuel had had three heart attacks in 13 days, which had required the insertion of three stents into his arteries. Samuel testified that he was unable to work for an entire day due to fatigue. Samuel testified that he could not reenter the autobody workforce because it was too physically demanding, because he would have to reinvest in tools costing in excess of \$20,000, and because he would require additional education regarding the automobile changes that had occurred during the prior four years in the industry. Samuel testified that his welding, framing, mechanic, and plastic technician skills had fallen below industry standards.

¶ 12 Samuel testified that he began to receive his early retirement proceeds in October 2006. Samuel testified that in 2008, he earned a gross income of \$24,339, of which \$7,615 were pension benefits.<sup>1</sup> Samuel testified that his monthly medication expenses for his heart condition, cholesterol, and arthritis equaled \$184.71. Samuel testified that he had incurred outstanding medical bills of \$1,157.21, including a \$741.90 invoice for dentures that he could not receive until he paid the amount due. Noting that Diane had been paying the mortgage on the home, Samuel testified that if required to pay rent, he could not support himself financially.

¶ 13 Samuel testified that he and Diane had gifted a horse to the grandchildren, and the horse is now located with them in Texas. Samuel testified that he sold colts that Diane had valued at \$100 and \$150. Samuel testified that he used the funds to purchase feed for the horses at the house. Samuel testified that he paid \$130 per month feeding the horses and dogs on the property.

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<sup>1</sup>Pursuant to our supreme court's holding that social security benefits may not be divided directly or used as a basis for an offset during state dissolution proceedings (*In re Marriage of Crook*, 211 Ill. 2d 437, 449 (2004)), Samuel's social security benefits are not considered as a factor in the equitable distribution of marital assets.

¶ 14 Sherry Matus, a family friend, testified that she had known Samuel and Diane since 1995. Sherry testified that in the summer of 2006, Diane had said she did not want Samuel to work because his job involved too much physical stress. Diane had indicated at that time that his income was not necessary to sustain their lifestyle.

¶ 15 Manuel Whitener, Samuel's brother, also testified regarding Diane's statements that she wanted Samuel to retire for health purposes and to work on the property. Manuel testified that Samuel worked to maintain and remodel the property through painting, installing new flooring and doors, and building outbuildings.

¶ 16 During the hearing, the circuit court required the parties to submit a property list for valuation and allocation. Samuel's attorney clarified that the Kabota Tractor, listed on the property list as both a 2003 model and again as a 2005 model, was one tractor. Diane's attorney indicated that Diane did not agree with the property list submitted by the parties and had "declined to testify otherwise." Diane requested that all personal property be auctioned, as opposed to allocated.

¶ 17 On August 4, 2010, the court entered its judgment of dissolution of marriage. In its judgment, the circuit court concluded that the Red Bud property was marital property and valued it at \$287,000. The circuit court awarded the property to Diane and assigned her the correlating debt, awarding her a net equity of \$144,000. The circuit court ordered Samuel to execute a quitclaim deed conveying his interest in the property to Diane, which it ordered to be held in trust until Samuel received \$84,000 from Diane's individual retirement account.

¶ 18 The circuit court divided the personal property as set forth in an attached joint exhibit, resulting in a value disparity of \$31,986 in Samuel's favor. The circuit court awarded Samuel half of the marital portion of Diane's pension. The circuit court ordered that the parties pay their respective attorney fees. The circuit court reserved the issue of maintenance.

¶ 19 On August 31, 2010, Diane filed a timely notice of appeal.

¶ 20

## ANALYSIS

¶ 21

### Property Distribution

¶ 22 Diane argues that the circuit court erred in awarding Samuel an interest in the value of the marital home, in awarding \$84,000 of Diane's retirement funds to Samuel as payment for his interest in the residence, and in awarding and allocating the personal property.

¶ 23 Our review of a circuit court's valuation of marital property, which is generally a factual determination, should be conducted under a manifest-weight-of-the-evidence standard of review. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700 (2006). The circuit court's decision is considered to be against the manifest weight of the evidence if the opposite conclusion is clearly evident or if the court's findings are unreasonable, arbitrary, and not based on any of the evidence. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 663 (2008). "[T]he review of the circuit court's determination on the ultimate division of marital property should be conducted under an abuse-of-discretion standard of review." *In re Marriage of Hubbs*, 363 Ill. App. 3d at 699-700. "[T]he circuit court's decision on the ultimate division of marital property depends upon a circuit court's view of the facts in conjunction with prevailing relevant statutory factors, \*\*\* so the circuit court is accorded more discretion when making this determination, resulting in an abuse-of-discretion standard of review being more appropriate." *In re Marriage of Hubbs*, 363 Ill. App. 3d at 700.

¶ 24

### Marital Residence

¶ 25 Diane argues that the Red Bud residence is her separate, nonmarital property and that the circuit court erred in treating it as marital property.

¶ 26 "All the property of the parties to a marriage belongs to one of three estates, namely, the estate of the husband, the estate of the wife, or the marital estate." *In re Marriage of Johns*, 311 Ill. App. 3d 699, 702 (2000). "In order to distribute property upon dissolution

of marriage, a trial court must first classify that property as either marital or nonmarital." *In re Marriage of Johns*, 311 Ill. App. 3d at 702. "A trial court's property classification will not be disturbed unless it is contrary to the manifest weight of the evidence." *In re Marriage of Henke*, 313 Ill. App. 3d 159, 166 (2000). "Any doubts as to the nature of the property are resolved in favor of finding that the property is marital." *In re Marriage of Didier*, 318 Ill. App. 3d 253, 258 (2000); 750 ILCS 5/503(a) (West 2008).

¶ 27 The determination of whether property is to be classified as marital or nonmarital is governed by section 503 of the Illinois Marriage and Dissolution of Marriage Act (the Act). 750 ILCS 5/503 (West 2008). Section 503(b)(1) of the Act provides that, for purposes of distribution of property, all property acquired during the marriage, including nonmarital property transferred into some form of co-ownership between the spouses, is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership. 750 ILCS 5/503(b)(1) (West 2008). A party may overcome this presumption by showing by clear and convincing evidence that the property falls into one of the categories listed in section 503(a) of the Act. 750 ILCS 5/503(a) (West 2008). Section 503(a)(2) of the Act provides that "property acquired in exchange for property acquired before the marriage" is considered nonmarital property. 750 ILCS 5/503(a)(2) (West 2008). Section 503(a)(4) of the Act provides that "property excluded by valid agreement of the parties" is considered nonmarital property. 750 ILCS 5/503(a)(4) (West 2008).

¶ 28 Section 503(d) of the Act (750 ILCS 5/503(d) (West 2008)) requires the trial court to divide marital property in "just proportions" while taking into consideration the following relevant factors:

"(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." 750 ILCS 5/503(d) (West 2008).

¶ 29 We find that the circuit court correctly determined that the Red Bud residence was marital property. The parties purchased the Red Bud property during the marriage, and it is therefore presumed to be marital property. See 750 ILCS 5/503(b)(1) (West 2006). Although a party may overcome this presumption by showing by clear and convincing evidence that the property falls into one of the categories listed in section 503(a) of the Act (750 ILCS 5/503(a) (West 2008)), Diane has failed to do so.

¶ 30 Diane asserts that by executing the quitclaim deed and the "Waiver of Homestead"

forms, Samuel entered into a valid agreement to exclude the property as marital property, pursuant to section 503(a)(4) of the Act (750 ILCS 5/503(a)(4) (West 2008)). However, Samuel testified that he executed the quitclaim deed to acquire a more favorable interest rate, not to exclude the property as marital. See *In re Marriage of Davis*, 215 Ill. App. 3d 763, 773 (1991) (presumption of marital property was not rebutted where husband and attorney established that the conveyance was part of an estate tax planning scheme); *In re Marriage of Parr*, 103 Ill. App. 3d 199, 207 (1981) (presumption of marital property was not rebutted where the husband quitclaim deeded his interest in a condominium to the wife primarily for business and tax purposes); *In re Marriage of Wittenauer*, 103 Ill. App. 3d 53, 55 (1981) (presumption of marital property not rebutted where real property was placed in the wife's name as an estate planning device and husband never relinquished control of the parcel but treated it as his property). Further, despite Diane's assertion that Samuel relinquished his ownership in the property pursuant to the "Waiver of Homestead" forms, Henry's testimony demonstrated that the waiver was routinely submitted for purposes of potential bank foreclosure, not for dissolution of marriage purposes. Accordingly, the record lacked evidence that Samuel executed the quitclaim deed or the "Waiver of Homestead" forms as an agreement to exclude the residence from being characterized as marital property. See 750 ILCS 5/503(a)(4) (West 2008).

¶ 31 Diane alternatively argues that the Red Bud property was acquired in exchange for her nonmarital sale proceeds from her previous homes and is therefore property acquired in exchange for property acquired before the marriage, pursuant to section 503(a)(2) of the Act (750 ILCS 5/503(a)(2) (West 2008)). Assuming, *arguendo*, that Diane used nonmarital proceeds as a down payment for the Red Bud residence, pursuant to section 503(a)(2) of the Act (750 ILCS 5/503(a)(2) (West 2008)), the record reveals that any of Diane's nonmarital proceeds from her previous homes was presumptively transmuted to marital property and

that she intended to make a gift of the property to the marital estate. See *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 652 (2009).

¶ 32 With regard to the commingling of marital and nonmarital property, section 503(c)(1) states:

"(c) Commingled marital and non[]marital property shall be treated in the following manner, unless otherwise agreed by the spouses:

(1) 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, subject to the provisions of paragraph (2) of this subsection; 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, subject to the provisions of paragraph (2) of this subsection." 750 ILCS 5/503(c)(1) (West 2008).

See *In re Marriage of Heroy*, 385 Ill. App. 3d at 672-73 ("The rationale for this rule is that the spouse's 'failure to properly segregate nonmarital property, by commingling it with marital property, evinces an intent to treat the former as part of the marital estate.'" (quoting *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 154 (2005))).

¶ 33 Paragraph 2 of section 503(c) provides, in part:

"(2) When one estate of property makes a contribution to another estate of property, or when a spouse contributes personal effort to non[]marital property, the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation; provided, that no such reimbursement shall be made with respect to a contribution which is not retraceable by clear and convincing

evidence, or was a gift, or, in the case of a contribution of personal effort of a spouse to non[]marital property, unless the effort is significant and results in substantial appreciation of the non[]marital property. Personal effort of a spouse shall be deemed a contribution by the marital estate." 750 ILCS 5/503(c)(2) (West 2008).

¶ 34 Accordingly, nonmarital property may be presumptively transmuted to marital property if the owner of the nonmarital property intended to make a gift of the property to the marital estate. See *In re Marriage of Sanfratello*, 393 Ill. App. 3d at 652. A gift is a voluntary gratuitous transfer of property from the donor to the donee where the donor manifests an intent to execute such gift and absolutely and irrevocably delivers the property to the donee. *In re Marriage of Didier*, 318 Ill. App. 3d at 259. "Section 503(c)(2) does not mandate reimbursement for property which was gifted to the marital estate." *In re Marriage of Flemming*, 143 Ill. App. 3d 592, 597 (1986).

¶ 35 "The placing of the title to nonmarital property in joint tenancy with a spouse raises a presumption that a gift was made to the marital estate and that the property has become marital property." *In re Marriage of Johns*, 311 Ill. App. 3d at 703. "A marital residence owned by both spouses, even if one spouse has furnished all the consideration for it out of nonmarital funds, will be presumed to be marital property absent clear and convincing rebutting evidence." *In re Marriage of Johns*, 311 Ill. App. 3d at 703. "The factors used to determine whether the presumption of a gift to the marital estate has been overcome include the making of improvements, the payment of taxes and mortgages, the occupancy of the premises as a home or business, and the extent of control and management of the property." See *In re Marriage of Johns*, 311 Ill. App. 3d at 703. See also *In re Marriage of Gattone*, 317 Ill. App. 3d 346, 352 (2000) (significant factors in determining whether party successfully rebutted presumption of gift include (1) size of gift relative to entire estate; (2) who paid purchase price, made improvements, paid taxes, and exercised control and

management over property; (3) when asset was purchased; and (4) how parties handled prior financial dealings with each other).

¶ 36 In the present case, Diane and Samuel purchased the home after they were married, with the intention that they would live in the marital home together. See *In re Marriage of Sanfratello*, 393 Ill. App. 3d at 652 (trial court's finding of transmutation amply supported by record evidence that husband and wife shared the home as a family until the marriage deteriorated, that marital funds paid for home's upkeep, and that loans on the equity in the home were taken out jointly by husband and wife); *In re Marriage of Marriott*, 264 Ill. App. 3d 23, 40 (1994) (use of real property as marital home supports trial court's finding that husband intended a gift to the marital estate). The parties also purchased the home in joint tenancy. *In re Marriage of Gattone*, 317 Ill. App. 3d at 353 (placing property in joint tenancy is affirmative act demonstrating intent to make a gift of the property to the marital estate). Both parties maintained and improved the home, and both parties exercised control and management over the property. See *In re Marriage of Gattone*, 317 Ill. App. 3d at 352; *In re Marriage of Johns*, 311 Ill. App. 3d at 703. After Diane moved from the residence in October 2008, Samuel continued to reside at the property. Although Diane argues that she paid the monthly mortgage payments from her employment income, such income is property acquired by Diane during the marriage and is presumed to be marital property, and therefore, such monthly mortgage payments were attributable to both parties. 750 ILCS 5/503(a) (West 2008); *In re Marriage of Abrell*, 236 Ill. 2d 249, 267 (2010) (employment payments received by a spouse during the marriage are subject to distribution in the marital estate). Accordingly, the circuit court properly characterized the home as marital property subject to equitable distribution between the parties and thereby properly awarded Samuel \$84,000 as his interest in the property.

¶ 37

### Allocation of Personal Property

¶ 38 Diane also argues that the circuit court erred in valuing and allocating the parties' personal property. Diane requests that we remand the cause to the circuit court to re-allocate the personal property "consistent with the competent and legally relevant evidence in the record."

¶ 39 "In a marriage dissolution action, it is the burden of both parties to provide the trial court with sufficient evidence to evaluate and distribute marital property." See *In re Marriage of Heroy*, 385 Ill. App. 3d at 663. "It is the responsibility of the trial court to resolve conflicting testimony concerning the valuation of marital assets." *In re Marriage of Heroy*, 385 Ill. App. 3d at 663.

¶ 40 Diane argues that Samuel improperly valued as marital property artwork that Diane gifted to herself or purchased before the marriage. Diane argues that various pieces, including "Painted Memories," "Looking for Strays," "Checkmate," "The Horse Dance Stick," "Apples for the Yellow Mare," "Thrill of the Race," and "Back in the Saddle" were all gifts to herself. See 750 ILCS 5/503(a)(1) (West 2006) (property acquired by one spouse as a gift is considered nonmarital property). Diane also argues that Samuel improperly listed as marital property artwork, including "Rodeo Rider," a G. Armani-Running Horse, and a G. Armani-Wolves, that she had purchased before she married him. See 750 ILCS 5/503(a)(6) (property acquired before marriage is considered nonmarital property).

¶ 41 The circuit court awarded the parties' personal property pursuant to joint exhibit one and awarded to Samuel property valued at \$78,730 and Diane property valued at \$46,744. The circuit court ruled that "Painted Memories," "He's Mine," "Between Rides," "Looking for Strays," "Checkmate," "Apples for the Yellow Mare," "Back in the Saddle," "Rodeo Rider," "Welcome Home," and the G. Armani-Running Horse were marital property and awarded them to Diane. Although Diane argues that some of this and additional artwork was

nonmarital because she purchased it prior to the marriage or as presents to herself during the marriage, the circuit court resolved any conflicts in testimony, and we cannot say that the circuit court's classification of property was improper. See *In re Marriage of Heroy*, 385 Ill. App. 3d at 669.

¶ 42 Diane also argues that Samuel improperly listed one tractor twice in his proposed property valuation, improperly valued much of the property based on receipts that were 10 or more years old, and improperly valued property that he admitted did not exist.

¶ 43 We find as misleading Diane's suggestion that the parties' tractor was considered twice in the circuit court's property award. The record clearly reveals that the circuit court valued one Kabota Tractor with attachments at \$19,000, determined it to be marital, and awarded it to Samuel.

¶ 44 We further reject Diane's argument that the cause should be remanded because Samuel's property valuations were incorrect and not based on current values. Diane declined to submit many valuations in protest to the circuit court's refusal to auction all of the property. As noted in *In re Marriage of Leff*, 148 Ill. App. 3d 792, 803-04 (1986) (quoting *In re Marriage of Smith*, 114 Ill. App. 3d 47, 54-55 (1983)):

" [I]t is the parties' obligation to present the court with sufficient evidence of the value of the property. Reviewing courts cannot continue to reverse and remand dissolution cases where the parties have had an adequate opportunity to introduce evidence but have failed to do so. Parties should not be allowed to benefit on review from their failure to introduce evidence at trial. [Citations.] Remanding cases such as the one before us would only protract the litigation and clog the trial courts with issues which should have been disposed of at the initial hearing.' "

¶ 45 Citing *In re Marriage of Cleveland*, 99 Ill. App. 3d 293, 299 (1981), Diane argues that she should be awarded the cash value of various missing property. In *In re Marriage*

of *Cleveland*, 99 Ill. App. 3d at 299, the respondent was awarded cash in lieu of missing personal property, which consisted of silver, crystal, china, and family heirlooms and was admittedly purchased by the respondent prior to the marriage. The petitioner claimed that the items had been taken in a burglary, and he estimated their value at \$15,000. However, some items were later found consigned to a storage company, with the petitioner's name appearing on the receipt. In the memorandum opinion, the trial court found that it was more probably true that the petitioner took the personalty, and the trial court used the petitioner's values to calculate compensation of \$13,200 for the missing personalty. The appellate court held that the trial court's determination was not an abuse of discretion. *In re Marriage of Cleveland*, 99 Ill. App. 3d at 299.

¶ 46 Diane testified she was unaware of the whereabouts of two colts worth \$100 each, along with a horse named Blondie worth \$1800, a metal horse, a Van Brickle pot, a lead horsehair with tassel, and United States Forest Service spurs. We note initially that the circuit court awarded the U.S. Forest Service spurs and the lead horsehair with tassel to Samuel. Nonetheless, with regard to the colts and horse, the evidence revealed that Samuel had sold some of the property to maintain the parties' remaining marital property and that he had delivered a horse that had been gifted to grandchildren. Unlike *In re Marriage of Cleveland*, there was a dearth of evidence in the present case indicating that Samuel took the property for his own use. Thus, we cannot conclude that the circuit court erred in failing to award Diane the cash value of missing property. Accordingly, we affirm the circuit court's determination valuing and awarding the parties' personal property.

¶ 47 Reservation of Maintenance

¶ 48 Diane argues that the trial court erred in reserving the issue of maintenance. Diane argues that the circuit court improperly failed to make findings that appropriate circumstances existed for an award of maintenance and improperly reserved maintenance

without a time limit or date for review. We agree.

¶ 49 Section 504 of the Act provides:

"(a) In a proceeding for dissolution of marriage \*\*\*, the court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, in gross or for fixed or indefinite periods of time, and the maintenance may be paid from the income or property of the other spouse after consideration of all relevant factors, including:

(1) the income and property of each party, including marital property apportioned and nonmarital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a) (West 2008).

¶ 50 Section 401 of the Act provides:

"(b) Judgment shall not be entered unless, to the extent it has jurisdiction to do so, the court has considered, approved, reserved or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse[,] and the disposition of property. The court may enter a judgment for dissolution that reserves any of these issues either upon (i) agreement of the parties, or (ii) motion of either party and a finding by the court that appropriate circumstances exist." 750 ILCS 5/401(b) (West 2008).

¶ 51 In *In re Marriage of Britton*, 141 Ill. App. 3d 588, 591 (1986), this court held that the trial court improperly reserved the issue of pension benefits because the provisions of section 401(b) of the Act had not been met. This court noted that the policy underlying section 401(b) is to encourage the court to decide all matters in the dissolution action in a single judgment, to the extent it is feasible to do so. *In re Marriage of Britton*, 141 Ill. App. 3d at 591.

¶ 52 In the present case, Diane was 48 years old, and her 2008 income of approximately \$120,000 greatly exceeded Samuel's yearly income of approximately \$24,000. Samuel was 64 years old and testified that he could not afford rent and would be living in the horse trailer he was awarded. Samuel testified as to his heart condition and precarious health, in addition

to his fatigue and inability to work full workdays. The testimony revealed that Samuel retired early to care for the home while Diane worked. Diane was awarded a majority of the property, including the improved Red Bud property that she valued at \$285,000. Samuel was awarded \$84,000 of Diane's retirement account and \$78,730 in personal property. While the evidence at trial seemed to support an award of maintenance for Samuel, the circuit court made no findings that appropriate circumstances existed to reserve the issue of maintenance.

¶ 53 Accordingly, we follow our precedent in *In re Marriage of Britton* and conclude that the circuit court improperly reserved maintenance because it failed to act pursuant to the plain language of section 401(b) of the Act. 750 ILCS 5/401(b) (West 2008). The court reserved the issue of maintenance with no agreement by the parties and with no findings that appropriate circumstances existed to do so. 750 ILCS 5/401(b) (West 2008). The circuit court also improperly reserved the issue of maintenance indefinitely, as opposed to setting a reasonable and certain time for review of the maintenance issue. See *In re Marriage of Bothe*, 309 Ill. App. 3d 352, 357-58 (1999) (trial court's failure to set a reasonable and certain time for review of the maintenance issue that had been reserved amounts to an abuse of discretion).

¶ 54 We note that the circuit court is not precluded from issuing a reservation of maintenance on remand. Similar to *In re Marriage of Fahy*, 208 Ill. App. 3d 677, 693 (1991), the facts of this case may establish appropriate circumstances for reserving the issue of maintenance. Samuel had insufficient income to care for himself, he was not working at the time judgment was entered, his health condition was precarious, and it was unclear whether his health would allow him to return to full-time employment. See *In re Marriage of Lord*, 125 Ill. App. 3d 1, 4 (1984) (reservation of maintenance appropriate due to wife's precarious health condition that may worsen and make the distribution of property

inadequate to protect her). The circuit court must, however, follow the plain language of the Act's provisions in reserving the issue of maintenance by, *inter alia*, entering the appropriate findings. Accordingly, we reverse the circuit court's reservation of maintenance and remand the cause to the circuit court to comply with the Act's requirements to reserve the issue of maintenance or to enter judgment with regard to maintenance.

¶ 55

#### CONCLUSION

¶ 56 For the foregoing reasons, we affirm in part and reverse and remand in part the judgment of the circuit court of Monroe County.

¶ 57 Affirmed in part and reversed and remanded in part.