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2012 IL App (3d) 120101-U

Order filed August 8, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

IN RE MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
EMMA J. BURRELL,	)	Kankakee County, Illinois,
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-12-0101
v.	)	Circuit No. 07-D-489
	)	
LOUIS D. BURRELL,	)	Honorable
	)	Michael D. Kramer,
Respondent-Appellant.	)	Judge, Presiding

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Wright and Justice Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Trial court's classification and allocation of property in dissolution proceeding resulted in an equitable distribution.

¶ 2 Petitioner Emma Burrell filed a petition for dissolution of her 38-year marriage to respondent Louis Burrell. Following numerous hearings and a trial, the trial court distributed the parties' assets based on its classification of various rental properties as marital property and taking into account Louis's dissipation of marital assets. Louis appealed the distribution. We affirm.

¶ 3

## FACTS

¶ 4 Petitioner Emma Burrell and respondent Louis Burrell were married in 1973. The couple had two children, both of whom are now adults. Louis holds two master's degrees and is retired after 39 years with the Chicago Public Schools, earning a pension of approximately \$5,000 per month. Emma has a high school diploma and worked as a bursting clerk for a steel company prior to the marriage. At the time the couple married, Louis owned and operated a real estate business that he had started in 1968, and owned seven rental properties in Kankakee. Three of the properties were subsequently sold and the four remaining properties included 1017 North Schuyler, 964 North Indiana, 620 North Harrison, and 515-25 East Birch. The North Schuyler property was used in the 1970's, 1980's, and in 2005 to secure mortgages, which were used to rehabilitate and pay property taxes on other properties the couple jointly owned. A release of a 1983 mortgage on the property to a Trust No. 2205 indicated the mortgage was in both Louis and Emma's names. The parties lived at 964 North Indiana during the first year of their marriage. At least one unit at 964 North Indiana was part of a subsidized housing program in which the parties participated. The North Harrison property also participated in a rent subsidy program. It was used as the business office and included a model rental unit. There is some evidence the North Harrison property was purchased by Emma with marital funds at a tax sale in 1997. The East Birch property was part of a housing voucher program with Kankakee County. The leases and eviction notices used there named both Emma and Louis as landlords.

¶ 5 The parties acquired other property during the marriage, including vacant lots and the Austin Apartments, which were built in 1978. Louis took the year off from his teaching position to build the apartments, which he claimed were financed entirely with his nonmarital rental proceeds and

other nonmarital financing, including postponing payment to contractors. According to Louis, Emma had no role in the construction of Austin Apartments and her sole role after they were built was the preparation of paperwork for the Department of Housing and Urban Development (HUD) Housing Assistance Program (HAP)-subsidized rental program at the Austin Apartments. Emma was responsible for the HAP paperwork beginning in 1980 and undertook a three-day training course and continuing education courses in order to do so. Emma did not receive a salary for her services but her car payment, health and car insurance, and other personal expenses were paid out of the business checking account at Main Source Bank. The HAP contract subsidizing the Austin Apartments was valued at \$22,000 per month. The business began participating in the program in the 1970's and the HAP contract was renewed in January 2011 for a 20-year term. The original HAP contract with HUD was executed with Trust No. 2205, with Louis and Emma as “joint tenants and not as tenants-in-common, as Beneficiaries (‘owners’).” Both Louis and Emma signed the contract. The parties also participated in rent subsidy programs through the Kankakee County Housing Authority (KCHA). The KCHA contract was also executed by both Emma and Louis. The HUD and KCHA monies were directly deposited each month in the parties’ joint checking account at Main Source Bank until Louis had the direct deposit transferred to his account at Standard Bank in October 2007.

¶ 6 Also in October 2007, Emma sought and was granted an order of protection against Louis, who was required to move out of the marital home and to avoid contact with Emma. In November 2007, Emma filed a petition for dissolution of the marriage. In December 2007, the trial court issued a temporary restraining order (TRO) permitting Louis exclusive management of the rental properties, subject to monthly accountings to the trial court, and prohibiting Louis from spending business

money on expenses unrelated to the business. The trial court also ordered Louis to pay \$100 per week in maintenance to Emma. In addition, the trial court ordered Emma to turn over all the business records she took from the business office at 620 North Harrison. Although Emma initially refused to turn over the records, she ultimately turned over 25 boxes of business records. In April 2008, Emma filed a motion for an emergency motion for a TRO and for a temporary award of marital assets to prevent dissipation, asserting that Louis was using marital funds to gamble and to pay his girlfriend's mortgage. Emma submitted copies of bank statements establishing the mortgage payments and withdrawals. At a hearing on Emma's motion, Louis stated he used his pension money to gamble two or three nights a week, spending \$300 to \$500 per night. He paid the mortgage of his friend, Debra Ford, as repayment of a loan and as wages he owed her. He used the Main Source checking account for the HAP deposit and also for withdrawals at the automated teller machine (ATM) at Harrah's casino in Joliet. The trial court denied Emma's request for a temporary restraining order (TRO) concerning Louis's operation of the business, finding that Louis should continue to run the business that pre-existed the marriage.

¶ 7 In August 2009, Louis moved for the return of the furnishings Emma took from the business office at 620 North Harrison, and a hearing took place. Louis testified that he maintained checking accounts at Fifth Third Bank and Standard Bank. The Fifth Third account was used for the deposit of his pension check and the subsidized housing checks from the KCHA. The Standard account was used for the HAP deposits. Non-subsidized rent checks were deposited into both accounts. He used the ATM at Harrah's as a source of cash to pay his maintenance staff, purchase materials for the rentals, and provide loans for his friends. The trial court stated that Louis could live at 620 North Harrison but that it would not decide the personal property issues piecemeal. The trial court

increased the amount of weekly maintenance paid to Emma to \$300 per week. In October 2009, Emma filed a motion to reconsider the denial of her request to operate the business and a petition for the appointment of a receiver to oversee the business. In response, Louis offered the testimony of various employees and other individuals who testified that Emma was not involved in the construction of the Austin Apartments; they never saw her on the job site or at the building after it was constructed; and Louis ordered and paid for all the repairs at the apartment building. The trial court denied Emma's petition and motion.

¶ 8 In January 2010, Louis filed a counterclaim for dissolution of marriage and a petition for citation to recover dissipated marital assets. In his petition to recover, Louis claimed that Emma dissipated insurance checks, bank rent checks, and mortgage funds for the marital property. Louis filed a Supreme Court Rule 216 request to admit on March 12, 2010, seeking an admission regarding five checks issued by State Farm Insurance Company in 2005 that he alleged Emma converted the proceeds to her own use "when irreconcilable differences had caused an irretrievable breakdown of the marriage." Emma filed a response on April 9, 2010, but failed to mail it to Louis until April 19, 2010. Louis moved to have the facts deemed admitted, but the trial court denied his motion. The trial court found that Emma had timely filed her response with the circuit clerk but inadvertently neglected to send a copy to Louis. Louis sought reconsideration, and at a hearing on his motion, the trial court acknowledged it failed to expressly state that there was good cause to allow Emma's response. The trial court noted it attempted to imply good cause and clarified that it found "good cause to allow the answer to stand." The trial court reiterated that the response was timely filed and Emma's failure to send the response to Louis was inadvertent.

¶ 9 A trial began in November 2010. Emma testified that she was active in the business

beginning in 1973 after the parties married. Her role increased when the Austin Apartments were constructed. She participated in the construction of the Austin Apartments, secured the financing for them and processed the HAP contract, which began in 1979. She and Louis also had a contract with the KCHA, which issued checks in both their names. Their participation in the KCHA program began in the late 1970's or early 1980's. The property at 1017 North Schuyler was refinanced to improve other properties. The mortgage was issued in both their names and was repaid from the business's general rental proceeds. She also managed the non-subsidized properties the couple owned. Trust No. 2205, which was created prior to her marriage to Louis, was defunct. She had been its executrix and a beneficiary.

¶ 10 Louis testified that he currently lived with a roommate in Chicago, paying \$500 to \$1,000 per month, and also paid \$2,486 per month for Debra Ford's mortgage in exchange for the use of her home office. He did not live with Ford. Louis D. Burrell Builders was owned by a land trust, Trust No. 2205, which he created in 1967 and to which he was the sole beneficiary. He was unaware whether the trust was still in existence. He also entered into a prenuptial agreement with Emma but he could not provide records of either the agreement or the trust because the records were in Emma's possession. The trust owned the Austin Apartments, as well as the real estate at 1017 North Schuyler, 964 North Indiana, and the marital home at 2330 West Grace. He built the apartment building at 1017 North Schuyler in 1968. The 2005 mortgage on the property was used to pay property taxes on various properties and was in his name alone. He bought the property at 964 North Indiana in 1968 and it was titled in his name alone. The property was never mortgaged during the marriage. The property at 620 North Harrison was initially mortgaged in Louis's name alone. Both 1017 North Schuyler and 620 North Harrison were included in the parties' joint bankruptcy

filed in 1989. The contract with KCHA did not include Emma, although he entered the subsidized housing program during the marriage.

¶ 11 Louis also called as a witness a tenant at the Austin Apartments who testified that Emma improperly charged her rent and kept utility reimbursements meant for the tenant. The project manager who replaced Emma at the Austin Apartments testified to several alleged thefts of company funds committed by Emma, to improper collection of rents and withholding of utility reimbursements, and to missing paperwork for the HAP apartments. She did not have personal knowledge of the contents of the records prior to her employment in June 2008.

¶ 12 Bank records submitted at trial indicated that Louis withdrew \$153,201 from the ATM at Harrah's casino, paid \$50,935 for Ford's mortgage, and made other unexplained withdrawals using official checks in the amount of \$52,391. During the trial, in March 2011, the trial court determined that Emma had not turned over all the business records as directed in its June 2008 order, and ordered that Louis, with police escort, be allowed to visit the marital home, including the garage, to collect the remaining business records. After the pickup took place, Louis offered the testimony of his employee who collected and sorted through the additional records provided by Emma and described that the records consisted of old newspapers, books and receipts.

¶ 13 Following the trial, the trial court found that the four rental properties owned by Louis prior to the marriage were transmuted into marital property by the commingling of the income from the properties with the parties' other rental properties; both parties contributed to the acquisition and preservation of the marital estate; neither party had significant nonmarital property; no antenuptial agreement existed; and both parties had capital assets sufficient to generate income. The trial court found Louis had dissipated the marital estate in the amount of \$256,547; Louis was not a credible

witness as to the dissipation issue or any issue; and there was no evidence that Emma dissipated the marital estate as claimed by Louis. The trial court accepted the parties' stipulated values of the real property and mortgage balances and directed that each party maintain the personal items in his or her possession, noting that the court was taking "as an admission" that the assets were equal. Emma was awarded one-half of Louis's pension earned during the marriage, the marital residence and its furnishings, several investment properties, and the HUD contract for the Austin Apartments. Louis was awarded the other half of his pension earned during the marriage, several investment properties, and his personal property, including bank accounts and vehicles. Neither party was awarded maintenance. In sum, Emma was awarded marital assets of \$666,408 and Louis was awarded assets valued at \$632,329, less the \$256,547 he dissipated. Louis filed a motion to reconsider, which the trial court heard and denied. Louis appealed.

¶ 14

#### ANALYSIS

¶ 15 On appeal, the issue is whether the trial court erred in its property distribution. Louis sets forth a number of ways he maintains the trial court erred in allocating the parties' property. He contends that Emma's share is disproportionate and that her negative conduct should serve to lessen the contribution, if any, she made to the marital estate. Louis further argues that the trial court erred in finding that his nonmarital properties were transmuted into marital property, he dissipated marital assets, and he was not a credible witness.

¶ 16 Section 503 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/503 (West 2006)) governs the distribution of property in a dissolution proceeding. Under section 503, property acquired during the marriage is presumed marital, regardless of how the property is titled. 750 ILCS 5/503(b)(1) (West 2006). The presumption is overcome with a showing



the property is nonmarital. 750 ILCS 5/503(b)(1) (West 2006). Nonmarital property includes property acquired by gift, legacy or descent; or in exchange for such property; property acquired before the marriage; or income from nonmarital property if it is not attributed to a spouse's personal efforts. 750 ILCS 503(a)(1), (2), (6), (8) (West 2006). When marital and nonmarital assets are commingled into newly acquired property, resulting in a loss of identities of the separate estates, the commingled property is transmuted to marital property. 750 ILCS 5/503(c)(1) (West 2006).

¶ 17 Section 503 of the Marriage Act also provides that the trial court “shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors, including: (1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, \*\*\*; (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 \*\*\*; \*\*\*; (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; \*\*\*; (10) whether the apportionment is in lieu of or in addition to maintenance; [and] (11) the reasonable opportunity of each spouse for future acquisition of capital assets and income.” 750 ILCS 5/503(d) (West 2006). The touchstone of property division is whether it is equitable. *In re Marriage of Demar*, 385 Ill. App. 3d 837, 852 (2008). The Marriage Act does not require an equal distribution of property. *Demar*, 385 Ill. App. 3d at 852. The objective is to “recognize and compensate each party for his or her contributions to marriage and to place each party in a position to begin anew.” *In re Marriage of Polsky*, 387 Ill. App. 3d 126, 136 (2008). This court reviews a trial court's distribution of marital property for an abuse of discretion.

*Polsky*, 387 Ill. App. 3d at 135.

¶ 18 Louis asserts that the trial court awarded Emma \$866,408 in marital property, including \$666,408 in marital assets and \$200,000 in marital personal property, and that he was only awarded marital assets valued at \$375,782. Contrary to Louis's assertion, the trial court reached a near equal distribution, awarding \$666,408 in assets to Emma and \$632,329 in assets to Louis. The trial court subtracted from Louis's award the \$256,547 it found he dissipated, for a final award to Louis of \$375,782. The trial court distributed the parties' property in just proportions after considering the applicable factors in section 504(d). It set forth the factors in its opinion, including its findings on the classification of property as marital or nonmarital and dissipation as discussed below.

¶ 19 Initially, we reject Louis's suggestion that Emma's share of the property distribution should be lessened because of marital "misconduct." The statutory factors guide the distribution of marital conduct and misconduct is not a consideration. Similarly, we reject Louis's argument that Emma disproportionately received \$200,000 in marital furnishings. The trial court expressly noted that it took as an admission of the parties that the personal property in each party's possession was equal. He offered no evidence of the value of personal property in his possession or Emma's. The trial court's distribution was supported by application of the factors under section 503(d) of the Marriage Act. It found that both Emma and Louis contributed to the operation and expansion of the rental business throughout the marriage. Emma presented credible evidence that Louis dissipated the parties' marital assets while Louis did not establish Emma dissipated the marital estate. Louis was on notice of Emma's dissipation claim long before the trial began. She argued dissipation as early as November 2007, particularly as concerned Louis's use of marital funds to finance his gambling. In April 2008, Emma filed a motion regarding her claims of dissipation. Additionally, as noted in

Louis's brief, his gambling was a consistent issue throughout the proceedings. The trial court assigned property of equal value to Emma and Louis, using the values of the real estate to which they stipulated. The 38-year marriage was of significant duration. Following the division of property, the parties economic circumstances would be equal, with both parties awarded income-producing property in addition to their proportionate share of Louis's pension. The trial court found no evidence of a antenuptial agreement, and although Louis maintained the parties had entered one which supposedly protected his nonmarital property, he did not present any evidence the agreement existed, other than his unsupported testimony. The trial court took into account Emma's and Louis's circumstances and needs, giving each sufficient assets to maintain a comfortable lifestyle. The award of Austin Apartments to Emma, with the corresponding 20-year HAP contract, provides her with a consistent monthly income and is an appropriate substitute for maintenance, an obligation the record establishes Louis refused to meet throughout the proceedings. The property allocation allows both Emma and Louis the opportunity to acquire additional capital assets in the future. The trial court properly considered the applicable factors and we find the trial court did not abuse its discretion in its distribution of property.

¶ 20 Louis maintains the trial court erred in determining that the four rental properties he owned prior to the marriage were transmuted into marital property. He argues that the properties were titled in his name only and never lost their identity as nonmarital after the marriage. He further maintains that the vacant lots which were assigned to him in the distribution do not constitute marital property. Louis asserts that because any marital property obtained with nonmarital property remains nonmarital, the deposit of rental income from his nonmarital properties into the parties joint account does not transmute the properties' ownership into marital. He argues that the trial court erred in

interpreting the provision to reach the opposite conclusion.

¶ 21 Before a trial court distributes property in a dissolution, it must classify it as marital or nonmarital. *In re Marriage of Gattone*, 317 Ill. App. 3d 346, 351 (2000). There is a rebuttable presumption that all property acquired during the marriage is marital, including nonmarital property transferred into some form of co-ownership. *Gattone*, 317 Ill. App. 3d at 352. When marital and nonmarital funds are commingled and lose their identities in acquiring a newly created asset during the marriage, the asset is considered a marital asset. *In re Marriage of Eddy*, 210 Ill. App. 3d 450, 457 (1991). In such circumstances, the commingled property is transmuted to marital property. *In re Marriage of Mouschovias*, 359 Ill. App. 3d 348, 355 (2005). When property is acquired during the marriage in exchange for nonmarital property, a party must prove by clear and convincing evidence that the new property was acquired in exchange for nonmarital property. *Eddy*, 210 Ill. App. 3d at 456. We will not disturb a trial court's classification unless it is against the manifest weight of the evidence. *Gattone*, 317 Ill. App. 3d at 351.

¶ 22 The trial court found that the four properties owned by Louis prior to the marriage, including 1017 North Schuyler, 964 North Indiana, 620 North Harrison and 515-25 East Birch, were treated like the marital properties and were transmuted into marital property. All the rental income, including the subsidy checks, from the nonmarital properties was deposited into the parties' joint checking account. Emma and Louis used that account to pay expenses for all the rental properties and for their personal expenses. Marital funds were used for the purchase, upkeep, maintenance and taxes on marital and nonmarital properties, including the properties participating in subsidized housing programs. The contracts for the subsidized programs were executed with both Emma and Louis. The property at 1017 North Schuyler was mortgaged during the marriage in both Emma and

Louis's names and used to finance tax payments and improvements at the parties' other properties. The 1983 mortgage release was issued to Trust No. 2205, naming both Louis and Emma as beneficiaries. At least one unit at 964 North Indiana was part of the subsidized housing programs in which Louis and Emma participated. The property at 620 North Harrison also included subsidized units and served as the business office and featured a model apartment. The property was redeemed by Emma at a tax sale during the marriage. Both 1017 North Schuyler and 620 North Harrison were included in the parties' 1989 joint bankruptcy. The East Birch property participated in the subsidized housing program and the lease and eviction notices used there identified both Louis and Emma as landlords. Although Louis offered evidence the properties were titled solely in his name, we agree with the trial court that by all other actions, Louis treated the four nonmarital properties the same way he treated the other properties acquired by the parties during the marriage and commingled the assets with marital assets. We find that the trial court's determination that the four properties were transmuted to marital property was not against the manifest weight of the evidence.

¶ 23 Louis also challenges the trial court's classification of the Austin Apartments as marital property, arguing that title was solely in his name and that the property was acquired in exchange for his nonmarital assets. Aside from his unsubstantiated testimony, Louis failed to provide clear and convincing evidence that the Austin Apartments were funded with nonmarital assets. The HAP contracted was executed in 1979 by both Emma and Louis and renewed in 2011. The monthly HAP subsidy check was deposited into the parties' joint personal and business account until Louis transferred it to his individual account after Emma filed her petition for dissolution of the marriage. Even if he could produce the evidence, it would not negate that the Austin Apartment income was commingled with the income from the couple's other rental properties and covered by a HAP

contract to which both Emma and Louis were parties. The trial court found the Austin Apartments to be a marital asset. Its finding was not against the manifest weight of the evidence. We find it also correctly determined that the vacant lots acquired during the marriage were marital assets, despite Louis's unsupported claim that he inherited them and maintained them as nonmarital. Louis did not substantiate that he either obtained or maintained the vacant lots as nonmarital. Although he testified that several lots were gifted to him and others were acquired with nonmarital assets, the parties' practice of commingling assets and expenses for both the nonmarital and marital real estate and the lack of clear and convincing evidence that the lots were nonmarital property belies his claim.

¶ 24 Next, Louis challenges the trial court's dissipation findings. He asserts that the trial court improperly allowed Emma to file untimely answers to his request to admit, in which he asserted that Emma converted to her own use proceeds from four insurance checks that were marital property. He also argues that the trial court's conclusion that he dissipated marital assets, maintaining that Emma failed to give him adequate notice of the dissipation claim and did not submit sufficient evidence to support the claim.

¶ 25 A party has 28 days to serve its response to a request to admit on the party seeking the admission. Ill. S. Ct. R. 216(c)(eff. May 30, 2008). A failure to timely respond results in admission of the matters of fact in the request to admit. Ill. S. Ct. R. 216(c) (eff. May 30, 2008). A trial court may allow a party to file a late response to a request to admit for good cause shown. Ill. S. Ct. R. 183 (eff. Jan. 1, 1967). Attorney inadvertence may constitute good cause for an extension of time to respond. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 353 (2007). This court will not reverse a trial court's good faith determination absent an abuse of discretion. *Vision Point*, 226 Ill. 2d at 354.

¶ 26 The requests to admit at issue are dated March 10, 2010, although the record does not include a file-stamped copy. Emma filed her response with the circuit clerk on April 9, 2010, but did not mail it to Louis until April 19, 2010. Louis relies on *Bright v. Dicke*, 166 Ill. 2d 204 (1995) as support for his claim that Emma's responses were untimely and his requests to admit should be deemed admitted and establish her dissipation. As determined by the trial court, *Bright* is distinguished in that the party there did not offer any reason for its untimely and unsworn response. *Bright*, 166 Ill. 2d at 206. In addition, the response was not timely filed with the circuit clerk. *Bright*, 166 Ill. 2d at 206. In the case at bar, Emma timely filed her response with the clerk but admittedly did not serve within the required 28-day period. Emma submitted that attorney inadvertence caused the untimely service of her response to Louis's request to admit. The trial court expressly found that the reason Emma offered for late service constituted good cause. Its finding was not an abuse of discretion. Because the facts regarding the State Farm checks were not deemed admitted, Louis cannot rely on them as support for a claim of dissipation against Emma without further evidence, which he did not provide. We find there was no error in the trial court's denial of Louis's charge of dissipation against Emma.

¶ 27 A party claiming dissipation must give notice 60 days before trial or 30 days after the close of discovery, whichever is later; the notice must include a date or period when the marriage began breaking down, identify the property dissipated; provide a date the dissipation took place; be filed and served; and is limited to 5 years before the petition for dissolution was filed or three years after the party claiming dissipation knew about the dissipation. 750 ILCS 5/503(d)(2)(I)-(iv) (West 2006). Dissipation is the use of marital property by one spouse for his or her own benefit for a purpose unrelated to the marriage at a time when the marriage is breaking down. *In re Marriage of Thomas*,

239 Ill. App. 3d 992, 994 (1993). A spouse may dissipate assets even where he or she derives no benefit from it. *Thomas*, 239 Ill. App. 3d at 994. The party charged with dissipation must prove by clear and convincing evidence how he or she spent the marital funds. *In re Marriage of Severson*, 228 Ill. App. 3d 820, 824 (1992). Vague and unsubstantiated statements that marital funds were used for living expenses are insufficient to counter a dissipation claim. *Severson*, 228 Ill. App. 3d at 825. We will not reverse a dissipation finding absent an abuse of discretion. *Thomas*, 239 Ill. App. 3d at 995.

¶ 28 The trial court determined that Louis dissipated \$256,547: \$153,001 of ATM withdrawals at the casino; \$50,955 in mortgage payments for his friend; and \$52,391 in unexplained official checks. Emma presented evidence that Louis spent these funds from marital assets and that these funds were spent at a time when the marriage was breaking down. Louis offered a variety of explanations for the expenditures, including that he paid Ford's mortgage as repayment for a loan, as rent for using her home office, and as his share of living expenses. He explained that he used the casino ATMs to withdraw cash to pay his employees, to buy materials, and to provide loans to his friends. He offered no evidence at trial regarding the unaccounted for official checks, except unsupported assertions that he used them to pay his employees and for other business expenses. Louis did not present any evidence in support of his claims and the trial court rejected his explanations for the expenditures. It accepted Emma's evidence, which established dissipation. We find that the trial court's finding was not an abuse of discretion.

¶ 29 The trial court also found Louis was not a credible witness, a finding Louis challenges. Louis points to what he calls examples of Emma's lack of credibility and argues that the trial court's credibility finding is not supported by the evidence. The assessment of witness credibility is the



responsibility of the trial court and its determination should not be reversed unless it is against the manifest weight of the evidence. *In re Marriage of Marx*, 281 Ill. App. 3d 897, 901 (1996). The trial court expressly stated that while it found Louis less than credible on all the issues presented at trial, Louis was least credible regarding the dissipation charges. Having thoroughly reviewed the record, we agree. For example, Louis testified that he paid Ford's mortgage for different reasons, including as his contribution toward living expenses. He also testified that he paid rent to a roommate in Chicago and did not live with Ford. Similarly, he testified that he spent \$300 to \$500 a night, two or three times a week at Harrah's casino, that he only gambled on occasion when at the casino for social activities, and that he no longer gambled at all. The inconsistent testimony and lack of evidence support the trial court's determination that Louis's claim that the ATM withdrawals was not credible. Accordingly, the trial court's finding that Louis dissipated the marital estate in the amount of \$256,547 was not an abuse of discretion.

¶ 30 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 31 Affirmed.