

NOTICE
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2013 IL App (4th) 120723-U
NO. 4-12-0723
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
June 27, 2013
Carla Bender
4th District Appellate
Court, IL

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|------------------------|---|----------------------|
| In re: the Marriage of |) | Appeal from |
| JUDITH A. SAXER, |) | Circuit Court of |
| Petitioner-Appellee, |) | Morgan County |
| and |) | No. 06D48 |
| HAROLD W. SAXER, |) | |
| Respondent-Appellant. |) | Honorable |
| |) | Jeffery E. Tobin, |
| |) | Charles J. Gramlich, |
| |) | Judges Presiding. |

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Pope and Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the trial court's judgment in part and vacated in part, concluding the trial court (1) erred by awarding the ex-wife 50% of the ex-husband's entire pension, (2) did not err by characterizing a one-half interest in 115 acres of property as marital property, (3) did not err by characterizing a bank account as marital property, and (4) did not abuse its discretion by characterizing each parties' attorney fees as an advance from that party's respective share of the marital estate.
- ¶ 2 In April 2006, Judith Saxer filed a petition for dissolution of marriage. In May 2006, Harold W. (Bill) Saxer filed a counterpetition for dissolution of marriage.
- ¶ 3 In September 2008, the trial court ordered Bill to pay Judith's attorney \$7,000 in fees. Later that month, the court ordered the parties to each pay \$20,000 in attorney fees from a bank account held in Bill's name. The order noted that, if the court ultimately found the bank account to be Bill's nonmarital property, the court would require the marital estate to reimburse

Bill's nonmarital estate.

¶ 4 Following a December 2011 trial, Judge Charles Gramlich issued a memorandum opinion, classifying as marital property (1) a one-half interest in 115 acres of property, which Bill purchased from his brother in 2003, and (2) a Warren Boynton Super Now account. The opinion ordered the parties' pension assets to be divided using "appropriate qualified orders." The opinion also found the approximately \$27,000 Judith spent in attorney fees and the \$153,000 Bill spent in attorney fees were advances from the parties' marital estate. Judge Gramlich deducted the total of the parties' attorney fees, \$180,000, from the marital estate and then divided the estate equally. Subsequently, Judge Gramlich entered a judgment of dissolution of marriage incorporating the findings set forth in his memorandum opinion.

¶ 5 In January 2012, Bill and Judith filed posttrial motions. Judith's motion posited, among other things, that the trial court erred by allocating equal responsibility to each party for the combined \$180,000 in attorney fees. Bill's motion asserted the trial court (1) failed to value and distribute the various pension interests of Bill and Judith, (2) incorrectly classified the one-half interest in 115 acres of land as marital property, and (3) improperly characterized five financial accounts, including the Warren Boynton Super Now account, as marital property.

¶ 6 Following Judge Gramlich's retirement, in March 2012, Judge Jeffery E. Tobin heard arguments on the parties' posttrial motions. In July 2012, Judge Tobin entered an order awarding Bill 50% of Judith's monthly benefit upon her retirement. The judge instructed Bill's attorney to prepare an appropriate qualified Illinois domestic relations order (QILDRO) regarding Judith's retirement account. Likewise, the judge awarded Judith 50% of Bill's monthly retirement benefit along with the surviving spouse benefit. Judge Tobin ordered Judith's attorney to prepare

a qualified domestic relations order (QDRO) regarding Bill's retirement account. Bill's request to reduce his payment to Judith by the amount of the surviving spouse benefit or, in the alternative, to add that amount to Judith's marital property, was denied. Judge Tobin also modified Judge Gramlich's distribution of the parties' attorney fees, granting Judith's request to deduct each parties' attorney fees from his or her respective share of the marital estate.

¶ 7 Bill appeals, arguing the trial court (1) abused its discretion in its valuation and division of the parties' pensions, (2) erred by characterizing the one-half interest in 115 acres of farmland as marital property, (3) erred by characterizing Bill's Warren Boynton Super Now account as marital property, and (4) abused its discretion in its division of the parties' attorney fees.

¶ 8 We affirm in part, vacate in part, and remand with directions.

¶ 9 I. BACKGROUND

¶ 10 Judith and Bill married in 1972. The couple had two children during their marriage: Shastin, born in 1981, and Ginzelle, born in 1985.

¶ 11 In April 2006, Judith filed a petition for dissolution of marriage, and the following month, Bill filed a counterpetition for dissolution of marriage.

¶ 12 On September 5, 2008, the trial court ordered Bill to pay Judith's attorney \$7,000. Later that month, the court entered an order requiring each party to pay an additional \$20,000 in interim attorney fees. The court specified the \$40,000 was to come from the Carrollton Bank Gold Money Market Fund held in Bill's name. The court indicated if the Carrollton Bank Gold Money Market Fund was ultimately found to be Bill's nonmarital property, the marital estate would reimburse Bill.

¶ 13

A. The Trial

¶ 14 In December 2011, the parties appeared before Judge Charles J. Gramlich and presented the following evidence.

¶ 15

1. *Judith's Evidence*

¶ 16 Judith Saxer testified when she and Bill married in 1972, she was employed as a teacher at Unity High School. After the couple's marriage, Judith obtained a teaching job in Orion, Illinois, where she worked until 1976. In 1976, Judith and Bill moved to Cantrall, Illinois. Judith resumed teaching at Unity for two years until the end of the 1978 school year. When Judith stopped teaching, she received a refund of retirement contributions totaling approximately \$8,000. Judith gave the refund to Bill, who "used it to make a farm payment."

¶ 17 From 1978 until 1998, Judith held various part-time and temporary positions. She was also primarily responsible for caring for the couple's children and performing general homemaking activities.

¶ 18 When Judith and Bill married, Bill's parents owned farmland in Morgan County. On the weekends, Bill worked on his parents' farm, tilling the land and doing field work, preparing the ground for crop planting, and assisting in harvest work. During Bill and Judith's marriage, Bill's parents also acquired an interest in farmland in Pike County. In 1979, Bill and Judith leased the Pike County property from Bill's parents and farmed it independently. Bill ultimately turned over the farm operation to Roger Hardy.

¶ 19 Sometime in 1978 or 1979, Bill asked Judith to stop teaching to take care of the farming operations in Morgan County and Pike County. Thereafter, Judith assisted Bill's family with most of the farm activities "on a very regular basis" until 1995 or 1996. Bill also made

financial contributions toward improvements on his parents' Pike and Morgan County properties, including purchasing a furnace, new roof, brush cutter, and planter. Bill told Judith he believed, in return for Bill and Judith's care of the farmland, Bill's parents would eventually pass some of the property to Bill and Judith.

¶ 20 In 1998, Judith resumed full-time work for the State of Illinois. At the time of trial, she worked as a revenue tax specialist at the Illinois Department of Revenue. Judith also receives a social security benefit. Bill worked for the Illinois Agriculture Association at the time of the parties' marriage in 1972 until his retirement in 2005.

¶ 21 Throughout Bill and Judith's marriage, the couple acquired, among other assets, the following pieces of real property: (1) a 17-acre tract of farmland, given to them by Bill's parents in 1972; (2) an 80-acre tract of land, acquired in 1974 when Bill entered into a contract for deed of the property; (3) a 40-acre plot of land, acquired in 1978 from various parties; (4) a home on Cloverleaf, which the couple purchased in 1979 and stipulated held a current value of \$101,000; and (5) 123 acres of land (divided into 60- and 63-acre parcels), which Bill's parents originally owned. Judith also inherited from her parents a one-half interest in 110 acres of farmland, which she subsequently sold.

¶ 22 With respect to the 123 acres of land, Judith testified Bill's mother included the land in her life estate, and following her death, Bill's brother, John, initiated a partition suit. Thereafter, the circuit court entered a judgment for partition, ordering the land to be sold at a public auction. At the auction, Bill purchased the 123 acres of land for \$388,800, less a \$174,389 credit for his one-half interest in the land. At the time of sale, Bill made a \$38,880 down payment. Bill financed his purchase of the land using a loan acquired through Farm Credit

Services. According to Judith, Bill also pledged as security the 80 acres of property the couple owned. Judith believed the debt at Farm Credit Services had been satisfied in full.

¶ 23 Bill did not tell Judith about purchasing the land until after he had done so, and when Judith asked if Bill intended to put her name on the property deed, he did not reply. Bill ultimately sold 8 acres of the property; thus, at the time of trial, 115 total acres remained, a 52-acre plot and a 63-acre plot.

¶ 24 The joint income tax returns filed by the parties from the time of their marriage until 2007 were admitted into evidence. Until 2003, Judith and Bill transacted financial affairs through joint accounts. Sometime in 2003, Bill opened separate bank accounts.

¶ 25 Judith hired Thomas Langford of Langford and Associates to evaluate Bill and Judith's pensions. In June 2011, Langford issued a report. The parties stipulated to the values set forth in Langford's report. Langford opined the expected present cash value of Bill's retirement annuity was approximately \$369,000, and the expected present cash value of Bill's surviving spouse's annuity was approximately \$108,000. To calculate the surviving spouse's annuity, Langford "assumed" the surviving spouse benefits were at the rate of two-thirds of Bill's benefit. Bill accrued approximately 60 of his total 445 months of service prior to the marriage; thus, approximately 86% of Bill's retirement benefits were marital. The expected cash value of the marital portion of Bill's retirement benefits totaled around \$414,000.

¶ 26 As to Judith's retirement benefits, Langford's report concluded the expected present cash value of Judith's benefits totaled approximately \$230,000 and the present cash value of her surviving spouse benefit was around \$17,500. Langford noted Judith had previously accrued 11.483 years of service under the Teachers' Retirement System of Illinois, but she had

withdrawn those contributions. According to Langford, Judith could pay \$50,400 to buy into the retirement system to obtain additional credited service, but Judith testified purchasing the credited time would be too costly.

¶ 27

2. Bill's Evidence

¶ 28 Bill testified he and his brother received 123 acres of land from their mother. Bill purchased his brother's interest in the land at the partition auction, later selling eight of the acres and placing the proceeds from that sale in a separate account at Warren Boynton Bank. To purchase the 123 acres, Bill secured a loan, which he subsequently paid using proceeds from his father's life estate in Pike County. He testified he did not use any other proceeds to pay off the 123 acres. When asked on cross-examination whether he had marked as an exhibit any document to support his testimony that he used money from his father's estate or his family's estate to pay the loan, Bill responded "I don't know."

¶ 29

Bill paid approximately \$20,000 to an attorney to represent him in the partition case. According to Bill, that money came from his personal account that he maintained for family expenses and farm operations. Bill also paid approximately \$155,000 in attorney fees for the dissolution proceedings. According to Bill, he paid the attorney fees with checks drawn on his Warren Boynton account.

¶ 30

Over the course of owning the 63- and 52-acre properties, Bill always believed the properties were nonmarital. Bill deposited any farm income he acquired from those properties into an account in his name. Bill paid property taxes on those properties from that account and, when he and Judith began filing separate tax returns, he included information about the 63- and 52-acre properties on those returns.

¶ 31 Bill said he purchased the couple's Cloverleaf residence for \$64,000 with cash he received from his aunt's estate. When questioned on cross-examination whether he had marked any exhibits to support his claim he purchased the Cloverleaf home with proceeds from his aunt's estate, Bill responded, "I don't know."

¶ 32 According to Bill, he and Judith obtained the 17-acre plot of land from his parents as a wedding gift. He purchased the 40-acre plot of land with a "one hundred percent loan from Farm Credit Services," paying the loan with funds from the farm operation, his income, and a bequest from his mother which came from his aunt's estate. When asked whether he had marked any exhibits to support his contention he paid the debt on the 40-acre plot with money from his aunt's estate, Bill responded "I don't know."

¶ 33 Bill acquired the 80-acre plot of land by way of a contract for deed. To pay for the 80 acres, he made four payments of \$20,000 at an interest rate of 7%, using money from the farming operation, money he acquired before he married, and money from selling cattle sometime between 1974 and 1977. Bill testified his tax returns supported his claim he acquired the 80-acre plot of land with funds from the sale of premarital cattle. Bill said he made a down payment in 1974 and made three additional payments in the three subsequent years.

¶ 34 In 2003, at around the time he sold 8 of the 123 acres of land he had acquired, Bill started opening accounts separate from Judith. The income and expenses of the couple's 80-, 40-, and 17-acre properties were deposited into and paid out of the couple's joint accounts.

¶ 35 At the time of trial, Roger Hardy paid rent to Bill for 47 acres of the 63-acre land plot. Roger Hardy also rented 70 acres of the 80-acre plot of land, which Bill receives. Judith receives all of the cash rent from Roger Hardy for the 40-acre property because the property is

titled in Judith's name. She also receives rent payments from a bin located on the 63-acre plot. In addition, Bill and Judith split the rent from the 17-acre plot.

¶ 36 Bill testified he paid the farmland insurance premiums out of different accounts. Specifically, he paid the insurance on the 40-acre property, the Cloverleaf property and "all of those things that [Bill] perceive[d] as marital" out of accounts he "perceived as marital." Bill believed the following accounts were marital: (1) the National City Account, which at the time of trial was called PNC, and (2) "a certain numbered account within the Illinois Ag Credit Union" that Bill described as "either accounts 1 and 3 or 1 and 4. Not 13."

¶ 37 B. The Trial Court's Memorandum Opinion and Judgment of Dissolution of Marriage

¶ 38 Following the trial, the parties submitted written position statements as requested by Judge Gramlich. On December 22, 2011, Judge Gramlich issued a memorandum opinion, which was filed December 23, 2011. With respect to the parties' real property, the trial court found the evidence did not support Bill's claim he purchased his brother's share of the 123-acre parcel of land with nonmarital funds. Thus, the court found that one-half of the remaining 115 acres was marital property. The court also found the Cloverleaf home and the 17-acre, 40-acre, and 80-acre tracts of land were marital property.

¶ 39 Turning to the parties' pensions, the trial court noted it had "always been suspect of pension valuations because of the unpredictability of the life expectancies involved." Thus, the court concluded the pensions could be divided using qualified orders, thereby obviating "the necessity for separate consideration being given to each surviving spouse award."

¶ 40 The trial court further found all of the couple's bank accounts, including the Warren Boynton Super Now account, valued at \$24,715, to be marital property. The court noted

the parties had not introduced any "hard evidence" to show the source of the deposits in these accounts, and, while Bill's testimony was "largely uncontroverted," that was likely due to Judith not knowing the sources of the deposits. The court reasoned "the history of the origin of the deposits" should have been readily available to Bill, and without such, the court was required to deem the accounts marital property.

¶ 41 With respect to attorney fees, the trial court characterized the approximately \$180,000 the parties spent in combined attorney fees as advances from the parties' marital estate. Although Bill testified he paid the fees from his nonmarital funds, the judge noted Bill had not presented any other evidence to support his testimony. Judge Gramlich's opinion stated as follows: "The estate is worth \$180,870.00 less than it was before those expenditures. Since the Court has elected to divide the estate equally the net effect is to make the parties share equally in those expenditures."

¶ 42 On December 29, 2011, the trial court entered a judgment of dissolution of marriage incorporating the findings contained in its memorandum opinion.

¶ 43 C. Posttrial Motions and Judge Tobin's Order

¶ 44 In January 2012, Judith filed a posttrial motion, contending, among other things, the trial court should have held each party responsible for his or her own attorney fees. Later that month, Bill also filed a posttrial motion containing the following claims: the trial court (1) failed to value and distribute the various pension interests of Bill and Judith, (2) incorrectly classified the one-half interest in the 115-acre land tract as marital property, and (3) improperly characterized five financial accounts, including the Warren Boynton Super Now account, as marital property.

¶ 45 On March 20, 2012, Judge Tobin heard arguments on the parties' posttrial motions. Following the hearing, the parties filed memorandums of law as requested by Judge Tobin.

¶ 46 On July 11, 2012, Judge Tobin entered an order regarding the parties' posttrial motions. The order rejected Bill's request to accept Langford's evaluation and distribute the parties' benefits without corresponding QDROs. Judge Tobin ordered Bill's attorney to prepare a qualified QILDRO regarding the Illinois Retirement System account in Judith's name, awarding Bill 50% of Judith's monthly benefit upon her retirement. The judge also ordered Judith's attorney to prepare an appropriate QDRO regarding Bill's " ' IAA' " account, providing Judith be awarded 50% of Bill's monthly " 'IAA' " benefit along with the surviving spouse benefit. Judge Tobin further denied Bill's request to reduce his payment to Judith by the amount of the survivor benefit or to add that amount to Judith's marital property.

¶ 47 Noting Bill carried the burden of overcoming the presumption of marital property, Judge Tobin refused to alter Judge Gramlich's findings regarding the parties' marital and nonmarital property. Specifically, Judge Tobin noted Bill presented "a lack of documentation" to support much of his nonmarital claim, thereby failing to meet his burden of proof.

¶ 48 Judge Tobin modified Judge Gramlich's distribution of the parties' attorney fees, granting Judith's request to charge each party only for his or her own attorney fees as an advance against his or her respective share of the marital estate. Judge Tobin noted that by simply deducting the total amount of attorney fees from the marital estate, Judge Gramlich assigned responsibility for half of the total fees to each party, which was "inequitable."

¶ 49 This appeal followed.

¶ 50

II. ANALYSIS

¶ 51 On appeal, Bill contends the trial court (1) abused its discretion in its valuation and division of the parties' pensions, (2) erred by characterizing the 1/2 interest in 115 acres of farmland as marital property, (3) erred by characterizing Bill's Warren Boynton Super Now account as marital property, and (4) abused its discretion in its division of the parties' attorney fees. We address Bill's contentions in turn.

¶ 52 A. The Trial Court's Valuation and Division of Bill and Judith's Pensions

¶ 53 Bill first argues the trial court abused its discretion in its valuation and division of Bill and Judith's pensions. Specifically, Bill claims the court (1) ignored Judith's surviving spouse benefit, (2) failed to award Bill the nonmarital portion of his pension, and (3) failed to consider that Bill's pension was in payment status while Judith's was not.

¶ 54 Pursuant to the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/503(d) (West 2010)), a trial court shall divide marital property in "just proportions." Marital property includes "all pension benefits *** acquired by either spouse after the marriage and before a judgment of dissolution of marriage." 750 ILCS 5/503(b)(2) (West 2010). A survivor's benefit is a distinct property interest that is properly considered a marital asset. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1117, 806 N.E.2d 701, 709 (2004).

¶ 55 We review a trial court's allocation of marital property under an abuse-of-discretion standard. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 46, 974 N.E.2d 417. In determining whether the trial court abused its discretion, we will not substitute our judgment for that of the trial court unless no reasonable person would adopt the trial court's position. *In re Marriage of Oden*, 394 Ill. App. 3d 392, 397, 917 N.E.2d 13, 17-18 (2009).

¶ 56 Bill first posits the trial court ignored Judith's survivor benefit in allocating the parties' property. In support of his claim, Bill cites *Sawicki*, 346 Ill. App. 3d at 1117, 806 N.E.2d at 709. In *Sawicki*, the Third District concluded that "[a] division of the marital property without reference to [the wife's] interest in the survivor annuity [was] not a division 'in just proportions.' " *Sawicki*, 346 Ill. App. 3d at 1117, 806 N.E.2d at 709 (quoting 750 ILCS 5/503(d) (West 2010)).

¶ 57 *Sawicki* is distinguishable, however, because here, both Judge Gramlich and Judge Tobin referenced and considered the survivor spouse benefit. Judge Gramlich's order stated as follows:

"This Court has always been suspect of pension valuations because of the unpredictability of the life expectancies involved. In order to meet the evaluation, the recipient would have to live as long as the expectancy tables suggest. In this case, the pensions can be divided by the use of appropriate qualified orders. That order will also obviate the necessity for separate consideration being given to each surviving spouse award."

¶ 58 Bill contends Judge Gramlich's statement that using qualified orders would "obviate the necessity for separate consideration being given to each surviving spouse award" means the court, in fact, ignored the award. However, we interpret Judge Gramlich's language to mean using a qualified order would eradicate the need to rely on Langford's pension valuation—which the court disfavored due to the "unpredictability of the life expectancies involved"—to determine the precise value of the surviving spouse award. The court's refusal to assign a specific amount to the surviving spouse award was consistent with the court's decision to

allocate the couple's pensions via qualified orders rather than using Langford's valuation.

¶ 59 Moreover, following a hearing on the parties' posttrial motions, Judge Tobin specifically rejected Bill's request to reduce his payment to Judith by the amount of the survivor benefit or to add that amount to Judith's marital property. Thus, the record indicates Judge Tobin considered the surviving spouse benefit and nonetheless concluded Judge Gramlich's division of the parties' assets was equitable.

¶ 60 The trial court's allocation of the parties' retirement assets was not an abuse of discretion. As Judith points out, the surviving spouse benefit is available only to Judith, and Bill did not present evidence indicating how much, if any, Bill's election of the surviving spouse benefit reduced Bill's monthly retirement benefit. Moreover, the court could reasonably have determined, even assuming the surviving spouse benefit reduced Bill's monthly benefit, that an equitable division of the parties' assets was one in which Judith nonetheless received approximately 50% of the other marital assets. "An award of property in just proportions does not mean equal proportions, and a trial court does not abuse its discretion in awarding a larger share of the marital property to one party." *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1042, 899 N.E.2d 1097, 1104 (2008).

¶ 61 We also reject Bill's claim that the trial court's allocation of the parties' pensions was an abuse of discretion because Bill is unable to currently receive benefits from Judith's pension, as she has not yet retired, whereas Judith is already receiving benefits from Bill's pension. The trial court's 50-50 allocation of the parties' pensions was reasonable.

¶ 62 Bill also contends the trial court abused its discretion by failing to allocate the nonmarital portion of Bill's pension to him. Bill notes Langford's report determined

approximately 86.8% of Bill's pension was marital. Judith concedes the trial court failed to allocate the marital and nonmarital shares of Bill's pension and proposes that this court modify the trial court's award to allocate to each party 50% of the "86.8132%" of Bill's pension that was accrued during the marriage. Judith arrives at her conclusion that 86.8132% of Bill's pension accrued during the marriage by using Langford's calculations that Bill worked 60 out of 445 of the creditable months before the couple's marriage.

¶ 63 Although Judge Gramlich expressed his suspicion of "pension valuations," he did not explicitly express disagreement with Langford's determinations as to the marital portions of the parties' pensions. Nonetheless, the record does not indicate that either Judge Gramlich or Judge Tobin made a specific finding as to the amount of Bill's pension that accrued during the marriage. Therefore, we conclude the portion of the order awarding Judith 50% of Bill's pension cannot stand. Thus, we vacate in part and remand with directions to the trial court to (1) conduct a hearing, if necessary, to determine the marital portion of Bill's pension and (2) enter a modified judgment ordering Judith's attorney to prepare a QDRO specifying the marital portion of Bill's pension and awarding 50% of that portion of Bill's pension to Judith.

¶ 64 B. The Characterization of the One-Half Interest in 115 Acres of Property

¶ 65 Bill next contends the trial court erred by classifying the one-half interest in 115 acres of land as marital property. Specifically, Bill asserts the evidence at trial established he purchased his brother's one-half interest in the land using a loan he obtained through Farm Credit Services, which he later paid with proceeds from his father's life estate.

¶ 66 Section 503(b)(1) of the Dissolution of Act (750 ILCS 5/503(b)(1) (West 2010)) provides that all property acquired by either spouse during the marriage is presumed to be marital

property. A party may overcome this presumption only by a showing of clear and convincing evidence. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 642, 616 N.E.2d 1379, 1383 (1993). Pursuant to section 503(a)(1) of the Dissolution Act, "property acquired by gift, legacy or descent" is nonmarital property. 750 ILCS 5/503(a)(1) (West 2010).

¶ 67 We will not disturb a trial court's property classification unless that classification is contrary to the manifest weight of the evidence. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 60, 974 N.E.2d 417. "A court's decision is contrary to the manifest weight of the evidence if the opposite conclusion is clearly evident or if its findings are unreasonable, arbitrary, and not based upon any of the evidence." *Id.* Determining whether an asset is marital involves weighing the witnesses' credibility. *In re Marriage of Abrell*, 386 Ill. App. 3d 718, 724, 898 N.E.2d 1163, 1169 (2008).

¶ 68 In this case, Judge Gramlich found the evidence did not support Bill's claim that he paid for his brother's interest in the 123-acre property using nonmarital funds. In particular, Judge Gramlich's December 23, 2011, memorandum opinion noted Bill had not offered "bank statements, checks, deposit or withdrawal slips to confirm his testimony."

¶ 69 The trial court's decision is not contrary to the manifest weight of the evidence. Although Bill testified he paid for the land using money he inherited from his father's life estate, when Judith's attorney asked Bill on cross-examination whether he had any documentary exhibits to support his claim, Bill responded "I don't know." In light of the lack of corroborating documentary evidence, Judge Gramlich's findings were reasonable.

¶ 70 Bill asserts our decision in *Berberet* supports a finding that the property was nonmarital. We disagree. In *Berberet*, the wife claimed the trial court erred by determining a

series of certificates of deposit (CDs) were nonmarital property. *Berberet*, 2012 IL App (4th) 110749, ¶ 2, 974 N.E.2d 417. In classifying the CDs as nonmarital, the trial court noted the husband purchased the CDs with money he received from his grandfather and, although the husband placed the money into the couple's joint account before buying the CDs, he did not intend the money to be a gift to the marital estate. *Berberet*, 2012 IL App (4th) 110749, ¶ 61, 974 N.E.2d 417. On appeal, this court concluded the trial court's determination was not against the manifest weight of the evidence. *Berberet*, 2012 IL App (4th) 110749, ¶ 62, 974 N.E.2d 417. We noted, in particular, (1) the fact the money for the CDs flowed through the parties' joint account did not make the CDs a marital asset, and (2) the trial court, which was in the best position to assess the credibility of the parties, found the husband's testimony as to his intent to be credible. *Berberet*, 2012 IL App (4th) 110749, ¶ 62, 974 N.E.2d 417.

¶ 71 Unlike the trial judge in *Berberet*, here, Judge Gramlich implicitly found Bill's testimony lacked credibility, as Judge Gramlich noted Bill had not offered any corroborating evidence to support his contention he purchased the property with nonmarital funds. As we stated in *Berberet*, "[t]he trial court was in the best position to assess the credibility of the parties." *Berberet*, 2012 IL App (4th) 110749, ¶ 62, 974 N.E.2d at 417. Judge Gramlich observed Bill testify and, even if Judith did not present contrary evidence, Judge Gramlich was free to conclude Bill's testimony lacked credibility. See *In re Marriage of Didier*, 318 Ill. App. 3d 253, 262, 742 N.E.2d 808, 815 (2000) ("[T]he bare assertion of a nonmarital *source* of a particular sum of money, without supporting documentary evidence such as account records, deposit slips, canceled checks, *etc.*, cannot be deemed clear and convincing.") (Emphasis in original.). Accordingly, we conclude the trial court's determination the one-half interest in 115

acres of land was marital property was supported by the evidence.

¶ 72 C. The Characterization of the Warren Boynton Super Now Account

¶ 73 Bill also argues the trial court erred by classifying his Warren Boynton Super Now account as marital property. Specifically, Bill points to his testimony at trial that he (1) established the Warren Boynton account at the time he purchased his brother's share of the 123-acre property, (2) created the account solely in his name, using money from the sale of his mother's house and his parents' farm, and (3) retained the account in his name throughout the duration of the marriage.

¶ 74 We will not disturb a trial court's property classification unless that classification is contrary to the manifest weight of the evidence. *Berberet*, 2012 IL App (4th) 110749, ¶ 60, 974 N.E.2d at 417. A court's decision is contrary to the manifest weight of the evidence if the opposite conclusion is clearly evident or the court's findings are unreasonable, arbitrary, and not based on the evidence. *Id.*

¶ 75 Here, Judge Gramlich found the Warren Boynton account to be marital. Like his finding with respect to Bill's testimony about the 123-acre property, the judge implicitly found Bill's testimony as to the Warren Boynton account lacked credibility, noting Bill had not provided any documentary evidence to support his claim the account was nonmarital. Indeed, the court noted that the "history of the origin of the deposits over the 5 plus years this matter has been pending should have been readily available to Bill." Again, we reiterate the trial court is in the best position to assess the credibility of the parties. *Berberet*, 2012 IL App (4th) 110749, ¶ 62, 974 N.E.2d at 417. In light of the foregoing, we conclude the court's decision was not against the manifest weight of the evidence.

¶ 76 D. The Trial Court's Redistribution of Attorney Fees

¶ 77 Finally, Bill contends the trial court abused its discretion in its allocation of the couple's attorney fees. We disagree.

¶ 78 Attorney fees are generally the responsibility of the party who incurred them. *In re Marriage of Hasabnis*, 322 Ill. App. 3d 582, 598, 749 N.E.2d 448, 461 (2001). Pursuant to section 508 of the Dissolution Act, however, the trial court may award attorney fees under certain circumstances. 750 ILCS 5/508 (West 2010). In addition, a trial court may award interim attorney fees and costs while a case is pending. 750 ILCS 5/501(c-1), 508(a) (West 2010). "Unless otherwise ordered by the court," interim awards "shall be deemed to have been advances from the parties' marital estate." 750 ILCS 5/501(c-1)(2) (West 2010). The standard of review on an award or denial of attorney fees is abuse of discretion or whether the trial court's findings of fact are against the manifest weight of the evidence. *In re Marriage of Charles*, 284 Ill. App. 3d 339, 342, 672 N.E.2d 57, 60 (1996).

¶ 79 In his memorandum opinion, Judge Gramlich deemed the couple's attorney fee payments to have been advances from the parties' marital estate. Judge Gramlich's opinion continued as follows: "The estate is worth \$180,870.00 less than it was before those expenditures. Since the Court has elected to divide the estate equally the net effect is to make the parties share equally in those expenditures." Although Bill testified he paid the fees from his nonmarital funds, the judge noted Bill had not presented any other evidence to support his testimony.

¶ 80 Judge Tobin's July 2012 order noted that Judge Gramlich had treated the attorney fees as advances from the parties' marital estate but found that, by deducting the total amount of

attorney fees from the marital estate and then dividing the estate, Judge Gramlich assigned responsibility for half of the fees to each party, which was "inequitable" and "contrary to the purposes" of section 501(c-1)(2) of the Dissolution Act (750 ILCS 5/501(c-1)(2) (West 2010)). Thus, Judge Tobin reallocated the division of the parties' attorney fees, finding each party should only be charged for his or her respective attorney fees as an advance against his or her respective share of the estate.

¶ 81 Judge Tobin did not abuse his discretion by modifying Judge Gramlich's order. Judge Gramlich deemed the attorney fees to have been advances from the parties' marital estate but, in calculating the fees as he did, Judge Gramlich effectively made Judith responsible for a portion of Bill's attorney fees, which greatly exceeded Judith's attorney fees. Judge Tobin appropriately corrected Judge Gramlich's order. See *In re Marriage of DeLarco*, 313 Ill. App. 3d 107, 112, 728 N.E.2d 1278, 1284 (2000) (remanding the case to the trial court to redetermine the amount of fees the ex-husband paid his attorney and stating that amount "shall be considered an advance to [the ex-husband] against *his* share of the marital estate." (Emphasis added.)).

¶ 82 Bill contends that before redistributing the attorney fees, Judge Tobin was required to hold a hearing pursuant to section 5/501(c-1)(2) of the Dissolution Act (750 ILCS 5/501(c-1)(2) (West 2010)). Our reading of the statute does not support Bill's contention. Section 501(c-1)(2) provides a party *may* present a claim or right with respect to interim attorney fees "at a hearing on contribution under subsection (j) of Section 503 or a hearing on counsel's fees under subsection (c) of Section 508." 750 ILCS 5/501(c-1)(2) (West 2010). The record does not indicate Bill presented a claim for contribution of attorney fees or sought such a hearing. Bill also claims that Judge Tobin failed to take into account any of the statutory factors that the

trial court must consider when awarding attorney fees. We note, however, that Judge Tobin did not "award" attorney fees; rather, he held each party responsible for his or her own fees.

¶ 83 Finally, we reject Bill's assertion that the evidence established he paid the attorney fees from his Warren Boynton account, which was nonmarital property. We have already determined the trial court's finding that the Warren Boynton account was marital property is supported by the evidence.

¶ 84 Based on the foregoing, we conclude the trial court did not abuse its discretion in its allocation of the couple's attorney fees.

¶ 85 III. CONCLUSION

¶ 86 For the reasons stated, we affirm the trial court's judgment in part and vacate in part, remanding with directions to the trial court to (1) conduct a hearing, if necessary, to determine the marital portion of Bill's pension and (2) enter a modified judgment ordering Judith's attorney to prepare a QDRO specifying the marital portion of Bill's pension and awarding 50% of that portion of Bill's pension to Judith.

¶ 87 Affirmed in part, vacated in part, and remanded with directions.