

**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).

2013 IL App (4th) 121062-U

NO. 4-12-1062

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
June 26, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: MARRIAGE OF	)	Appeal from
WALTER JEAN,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
and.	)	No. 09D305
MARIE M. DALZON,	)	
Respondent-Appellant.	)	Honorable
	)	David W. Butler,
	)	Judge Presiding.

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JUSTICE TURNER delivered the judgment of the court.  
Justices Pope and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where respondent failed to present evidence that petitioner acquired property in Haiti during the marriage, the trial court did not err in denying her motion to divide the real estate.

¶ 2 In January 2011, the trial court entered the judgment for dissolution of marriage between petitioner, Walter Jean, and respondent, Marie M. Dalzon. In March 2011, Marie filed a motion to reopen and divide real estate pertaining to property in Haiti that Walter allegedly purchased during the marriage. In October 2012, the court denied the motion to divide the real estate.

¶ 3 On appeal, Marie argues the trial court erred in denying her motion to divide. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Walter and Marie were married in January 2001. Two children were born during the marriage: Cassidy, born in August 2001, and Joel, born in October 2008.

¶ 6 In June 2009, Walter filed a petition for dissolution of marriage. In July 2009, Marie filed a verified response and a petition for dissolution. In December 2010, the trial court entered a written opinion on issues such as visitation, child support, financial accounts, maintenance, and property. The court awarded Marie the marital residence in Bloomington and Walter a home in Florida. Marie assigned a value of \$100,000 to property she asserted Walter owned in Haiti. However, the court found insufficient evidence to support her claim that he had an ownership interest in real estate in Haiti. In January 2011, the court entered the judgment for dissolution of marriage.

¶ 7 In March 2011, Marie filed a motion to reopen and divide, stating evidence of a deed showing Walter's ownership interest in Haitian property became available to her. Marie sought to reopen the proofs, stating the additional evidence was of the utmost importance because the Haitian residence constituted a significant marital asset that needed to be divided equitably between the parties.

¶ 8 In July 2011, the trial court entered an order on the motion to reopen. The court noted Walter did not produce any documents related to the ownership of real estate in Haiti. Further, he denied owning a house in Haiti at the hearing on the financial issues. He testified his mother owned a house and he contributed some money as a gift to her. If the house were sold, Walter indicated he expected to receive some of the proceeds. The court found proofs on the issue of the existence of marital property in the country of Haiti should be reopened to give Marie a reasonable amount of additional time to investigate the issue and to present additional

evidence.

¶ 9 In August 2012, the trial court conducted a hearing on the motion to reopen and divide. Walter appeared *pro se*. Marie's counsel called Fatima Beboujemmaa, a teacher of English and French literature at Illinois State University. She testified to respondent's exhibit No. 1, a deed written in French, and exhibit No. 2, the deed translated into English, relating to property in Haiti. She stated the property identified in the deed was located at "Santo 22 #2, within the town of Croix-des-Bouquets." The specifications of the home included two dining rooms, two living "comforts," two bathrooms, and a separate kitchen. The deed indicates the sale amount of the property was \$300,000. The names of Jean Yves Avril and Walter Jean are listed as owners and states they both appeared.

¶ 10 On cross-examination, Beboujemmaa testified exhibit No. 2 also contained a deed written in French with different numbers at the top of the page and a seal stamp in a different location than exhibit No. 1. She stated they looked like two different documents. Marie's counsel stipulated the placement of the seals were different and stated it was because a new deed had to be issued. Beboujemmaa then testified the two deeds contained different content.

¶ 11 Paul Bender testified he had worked for over 30 years with Chicago Title and was familiar with the title system in the United States and Illinois. He also stated he was familiar with the Haitian conveyance system and the verification of title or ownership of property in Haiti. He stated Haiti does not have a system where a deed could be certified by a recorder of deeds. Instead, one must go through a bureaucratic system and authenticate the deed after it goes through appropriate channels. Bender noted it was not uncommon for property documents in Haiti to not be direct duplicates because they do not have imaging systems and "there's a lot of

manual transmission of making the copies of the documents." If someone wanted a copy, a person would have to type another one and there could be a difference depending on who prepared it.

¶ 12 Bender believed exhibit No. 1 was an authenticated deed in regard to property at Santo 22 in Port-au-Prince, Haiti. Based on his review of the document, he believed it identified ownership of the property in Walter Jean and that Walter appeared in Port-au-Prince on December 20, 2003. Bender stated anyone could go through the process to determine ownership of the property in Haiti.

¶ 13 Walter testified as an adverse witness. He stated he had visited the Santo 22 property "probably three times." He later admitted to being in Haiti in December 2003. He executed a \$7,000 wire transfer during the same month but stated it concerned his mother's medical issues. He stated he did not have any interest in property in Haiti. He checked on the property in June 2012 and stated a guardian was there. Walter also has a cousin who checks on the property and spends the night on occasion to help protect the property against squatters. Walter stated his father and late mother were looking to procure property in Haiti. Land was purchased and a family home was being constructed. The family includes a brother, cousins, and aunts. Later in his testimony, Walter stated his parents never finalized the purchase of Santo 22 but some money may have changed hands. Walter denied sending money for the purpose of renovating a home in Haiti. Instead, he stated money contributed toward a house was a gift to his late mother. Walter did not have a deed showing Santo 22 was registered in the name of his late mother. Walter stated Santo 22 is "a family house," meaning his extended family, and there has been no deed finalized to establish ownership. He also stated construction is still ongoing at

Santo 22.

¶ 14 On examination by the trial court, Walter testified no deed has ever been issued that clearly establishes who owns Santo 22. Walter has never sold any interest in Santo 22 or granted a deed to the property.

¶ 15 Marie testified the first deed was provided to the trial court in conjunction with the motion to reopen. After requesting the document back from the court to have it authenticated, a second page was missing. She sent the deed to an attorney in Haiti, who stated the verification process had to be started all over again because of the missing second page. On cross-examination, Marie testified Walter's father told her he loaned Walter money to purchase a \$300,000 house in Haiti.

¶ 16 In October 2012, the trial court issued its written order. In denying the motion to divide real estate, the court found Marie failed to prove Walter acquired the house in Haiti during the marriage. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, Marie argues the trial court's order denying the motion to divide real estate was an abuse of discretion, claiming she presented sufficient evidence of marital property in Haiti and the value thereof. We disagree.

¶ 19 To distribute property upon dissolution of marriage, a trial court must first classify the property as either marital or nonmarital. *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017, 909 N.E.2d 221, 228 (2009). Section 503(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(a) (West 2008)) presumes that all property obtained by a spouse subsequent to the marriage is marital property. In a dissolution proceeding, both parties have

"the burden of presenting the court with sufficient evidence to fairly evaluate and divide the marital property." *In re Marriage of Blackstone*, 288 Ill. App. 3d 905, 910, 681 N.E.2d 72, 76 (1997). The valuation of assets in a dissolution action is a question of fact for the trial court, and conflicts in witness testimony are matters to be resolved by the factfinder. *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 975, 605 N.E.2d 670, 677-78 (1992).

¶ 20 This court applies "a manifest weight of the evidence standard to the trial court's findings on the existence of marital and nonmarital property." *In re Marriage of Demar*, 385 Ill. App. 3d 837, 850, 897 N.E.2d 322, 333 (2008). That same standard is utilized in the valuation of marital property. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700, 843 N.E.2d 478, 482-83 (2006). "A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or when the court's findings appear to be unreasonable, arbitrary, or not based upon the evidence." *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 44, 968 N.E.2d 115.

¶ 21 In the case *sub judice*, two deeds (exhibit Nos. 1 and 2), both written in French, were presented to the trial court. According to Marie, the first deed (exhibit No. 2) was procured by her Haitian attorney and given to the court along with a translation in conjunction with the motion to reopen. To get the document authenticated, she requested return of the deed from the court. However, the second page went missing, and its absence prevented the deed from being authenticated. Thus, the process had to be restarted and a second deed (exhibit No. 1) was procured. The black-and-white copy included in the record has three official-looking ink stamps from "Tribunal Civil Port-a-Prince, Haiti," "Ministere [unreadable] Rep. D'Haiti," and the "Consulat General De La Republique D'Haiti Chicago, IL" along with several signatures.

¶ 22 Called to testify to the English translation of the French documents, Fatima Beboujemmaa stated the property described in exhibit No. 2 was listed as Santo 22 #2 within the town of Croix-des-Bouquets in Haiti. She stated the translation of exhibit No. 2 and exhibit No. 1 noted the property was sold for \$300,000.

¶ 23 On cross-examination, Beboujemmaa stated the numbers stamped on the first pages of the two deeds were different. She also stated the content from exhibit No. 2 was different from that in exhibit No. 1. When asked to compare the two deeds, she stated they looked like two different documents.

¶ 24 Paul Bender, an attorney who has specialized in real estate and title work, testified to his knowledge of the Haitian conveyance system. He believed exhibit No. 1 was an authenticated deed to the Santo 22 property and listed Walter Jean as owner. However, on cross-examination, Bender stated he had never seen any Haitian deeds prior to seeing the documents in question and he had never been to Haiti. Further, he had never dealt with the Haitian Consulate and he did not know what documents those in the consulate might need, if any, to authenticate a document. Recognizing the presence of fraud and litigation in Haiti, Bender stated he would not write a title insurance policy there given the lack of a public registration system. In terms of establishing ownership, he stated one does not have the "same sort of assurances" in Haiti as in the United States.

¶ 25 Marie said Walter's father loaned him the money and Walter gave it back to him while they were married. She claimed Walter's father told her Walter was buying a house in Haiti worth \$300,000. She and Walter did not make \$300,000 between January 2001 and December 2003.

¶ 26 Walter stated he had no interest in property in Haiti. He stated his father did not loan him any money and he did not earn enough money to purchase a \$300,000 home. He gave money to his mother as a gift for the construction of the home. He considered the residence "a family home," meaning extended family, but stated there had been no deed finalized to establish ownership.

¶ 27 After nearly three days of testimony on these deeds and Haitian land deals, the trial court stated this was the "most confusing case" with which it had ever been involved. We can sympathize with the court's statement. A haruspex might have had a better chance of divining the ownership of Santo 22 than one sifting through the multivolume case between Walter and Marie. One thing is clear in this case—the property registration system in Haiti is nonexistent. It appears they do not even have copiers but must manually type the deed upon request. It is little wonder why Bender would steer clear of issuing title insurance in Haiti. The differing deeds, to say nothing of the French language therein, make this a difficult case to adjudicate.

¶ 28 That said, we are confronted with Marie's claims that she presented sufficient evidence to show Walter owns Santo 22 in Haiti and it constitutes marital property. Marie makes much of the authenticated nature of exhibit No. 1, but it was within the discretion of the trial court to decide how much weight to give it considering the circumstances. Beboujemmaa testified the two deeds were different and the translation went with the nonauthenticated deed. Bender's testimony that Walter owned Santo 22 was based on the translated deed. Moreover, Bender stated there is a tax collection process that occurs at the time of the transaction. Although Bender believed no indexing by name takes place, "somebody with enough patience might be

able to go through tax records and find who was taxed on the transaction." Bender had never seen any tax records in conjunction with the property in question. No evidence indicated who paid real estate taxes on Santo 22 during the period at issue. Other than the authenticated deed, Marie's testimony offered little support to show Walter owned Santo 22. Her claim that her father-in-law told her Walter bought a \$300,000 house is questionable given that Walter's salary would hardly allow for such a purchase.

¶ 29 Walter's testimony was at times confusing and in other instances downright unclear. It was hard to determine whether he was being obstinate, evasive, untruthful, or all of the above. However, he was adamant he did not own Santo 22 and has never sold any interest or granted a deed to the property.

¶ 30 A review of the record makes clear that the trial court was in the best position to judge the credibility of the witnesses in this case and determine the appropriate weight to give to the evidence. The court had before it the two deeds, considered the strengths and weaknesses of the experts' testimony, and questioned all of the witnesses to fully understand this case. The court had plenty of opportunity to consider Walter's veracity and character, both of which Marie claims are lacking, as Walter not only testified but also acted *pro se* and questioned the other witnesses at length. Given the testimony, the two different deeds (one authenticated, one not; one translated, the other not), and the obvious inadequacies of the Haitian recording system, serious questions remain as to the ownership of Santo 22. We find the court's conclusion that Marie failed to prove Walter acquired Santo 22 during the marriage was not against the manifest weight of the evidence.

¶ 31

### III. CONCLUSION

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

¶ 33 Affirmed.