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2014 IL App (3d) 130789-U

Order filed December 19, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
RENE ISOM-ALLEN,)	Will County, Illinois.
)	
Petitioner-Appellee,)	
)	Appeal No. 3-13-0789
v.)	Circuit No. 12-D-130
)	
LIONEL R. ALLEN,)	
)	The Honorable
Respondent-Appellant.)	Robert P. Brumund,
)	Judge, presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in allocating 55% of the marital assets to the wife and 45% to the husband where the court denied the wife's request for maintenance and determined that the husband had the ability to earn greater income.
- ¶ 2 Following a 10-year marriage, Rene Isom-Allen, filed a petition for dissolution of marriage from respondent, Lionel Allen. The trial court distributed the marital assets 55% to

Rene and 45% to Lionel and determined that the marital vehicles and timeshares should be sold and the proceeds allocated in the same proportions. Lionel appeals, arguing that the trial court's distribution of marital assets was an abuse of discretion. We affirm.

¶ 3

FACTS

¶ 4

Rene and Lionel married in September of 2001 in Las Vegas, Nevada. They resided in Illinois and had no children. On January 19, 2012, Rene filed a petition for dissolution of marriage. Lionel filed a counter petition, requesting that the parties' marital property and debt be divided equitably and asking that Rene be barred from receiving maintenance.

¶ 5

At trial, Rene testified that she is 52 years old. She is employed as a respiratory therapist at Kindred Hospital in Illinois and Garfield Medical Center in California and is certified in both Illinois and California. She has worked full-time at Kindred as a respiratory therapist for eight years. Her gross income for 2012 from Kindred was \$70,815. Her final 2012 paystub from Kindred indicated monthly contributions to a 401(k) and deductions for health insurance premiums. She testified that her gross income from Kindred was \$71,654 in 2011 and anticipated grossing \$73,600 in 2013. She made \$9,000 at her California job in 2011. She stated that her total annual income, including her supplemental income from Garfield Medical Center, is around \$85,000.

¶ 6

At the time of trial, Rene was attempting to transfer her employment to California full-time. She admitted that if she obtained employment in California, her salary would be approximately \$7 more per hour. She owned a home in California that she purchased in 1986, prior to her marriage to Lionel. Rene made monthly payments of \$1,709.32 on the mortgage for the California home and received \$1,500 in rent. In her pretrial memorandum, she estimated the value of the California property at \$339,000 and reported that she owed \$185,608.45 on the

mortgage. She testified that if she found a job in California and moved, she would live in the rental house. She owns a 1986 Volkswagen Cabriolet that she keeps in California and a 1987 Cabriolet that she keeps in Illinois. Rene valued those vehicles at less than \$1,000 each.

¶ 7 The parties stipulated to the accuracy of the expenses listed on Rene's financial affidavit. Rene testified that the \$650 per month vacation expense including the expense of owning a Tahitian Village (Las Vegas) timeshare as well as travel expenses associated with the use of that timeshare. The timeshare had a balance of \$15,681 at the time of trial, with monthly expenses of \$417, plus maintenance. Rene's pretrial memorandum, dated August 12, 2010, lists the balance on the Las Vegas timeshare as \$10,958.11.

¶ 8 Her total monthly expenses, including credit card expenses, totaled \$6,112.32. She testified that her total net income was \$4,678.65 per month. The \$4,678.65 figure included the \$1,500 in rental income from the California property. To make up the shortfall, Rene relied on numerous credit cards, which had a combined balance of \$31,612 and monthly payments of \$1,350.

¶ 9 During the marriage the parties filed separate tax returns. In 2011, Rene received a \$6,000 tax refund that she applied to her credit card debt and auto repairs. She never claimed the marital home at 2413 Ventura Drive in Joliet. The home was purchased during the marriage, but Rene was not listed on the mortgage as a responsible party. She testified that she helped make the down payment and that during the marriage she contributed monetarily toward the monthly mortgage payment, helped maintain the property and helped furnish the home. During the marriage, Lionel also purchased another property in Joliet located at 908 Barthelme Avenue. Rene's name was not listed as a mortgagee for the Barthelme property.

¶ 10 Rene testified that an internet appraisal service estimated the Ventura property value as \$217,547. The mortgage on the Ventura property as of January 2013 totaled \$235,000. A similar internet search on the Barthelme property valued that home at \$93,549. Rene estimated the equity in that home at \$32,500. On cross-examination, she acknowledged that no one was renting the Barthelme home because Lionel was currently working on it. Lionel's August 2012 pretrial memorandum listed a mortgage balance for the Ventura property of \$237,640.48 and provided a balance for the Barthelme house of "approximately \$63,000."

¶ 11 Rene testified that Lionel owned 14 vehicles and that he began purchasing the automobiles after the couple married in 2001. She testified that he owned the following: (1) a 2006 Hummer for which she did not know the value; (2) a 2005 Chevrolet Trailblazer worth \$9,058; (3) a 1998 Chevrolet Corvette Coupe worth \$15,500; (4) a 2003 Cadillac CTS worth \$10,000; (5) a 1993 Chevrolet Blazer worth \$2,700; (6) a 1965 Cadillac Coupe worth \$7,500; (7) a 1981 Cadillac Eldorado worth \$4,525, (8) a 1976 Cadillac Seville worth \$10,000; (9) a 1991 Cadillac Deville worth \$1,000; (10) a 1993 Lexus worth \$4,400 (not listed in Rene's pretrial memorandum but listed in Lionel's); and (11) a 1993 Chevrolet Suburban worth \$2,380 (not listed in either party's pretrial memorandum). Rene stated that she obtained all the above values from Kelly Blue Book. In addition, Lionel owes (1) a 1923 Ford T-bucket, estimated to be worth \$10,000, (2) a 1979 Cadillac Seville worth \$10,000, and (3) a 1964 Cadillac Deville worth \$10,650. Rene was unable to find a Kelly Blue Book value for these vehicles. Her testimony regarding the values of the 1923 Ford and the 1979 Cadillac were based on online searches of similar car sales. The estimated value of the 1964 Cadillac was derived from a loan application Lionel completed in February of 2012. Rene testified that the total value of all 14 vehicles was \$99,604.

¶ 12 Rene noted that the parties jointly own two additional timeshares in Las Vegas and a timeshare in Maui. In addition, Rene testified that each party owns an Aruba timeshare in their individual names with no balance. All of the timeshares were purchased during the marriage.

¶ 13 Lionel testified that he resides in the marital home on Ventura Drive. He is employed by the City of Joliet as a police officer and has been a Joliet officer for 24 years. His gross income for 2012 was \$165,546.03. His base pay was \$99,904. The excess income came from working extra assignment jobs, including security work for private vendors. He testified that in 2012 he worked approximately 30 hours of overtime per week.

¶ 14 Five years after the couple married, Lionel and Rene agreed that Rene would pay Lionel \$800 per month for the mortgage and other expenses on the marital residence. Lionel confirmed that the balance on the first mortgage for the Ventura home was \$236,776. He estimated the property's value at \$200,000 to \$210,000 using foreclosure prices in the area. The Ventura property also had a second mortgage with a balance of \$30,000. The second mortgage was a line of credit Lionel used to improve the Ventura property, pay bills and fund vacations. Lionel testified that the Barthelme house was uninhabitable and needed more work before it could be rented. He put approximately \$20,000 into remodeling the house. He disagreed that the home's value was \$93,000 in its current condition. Finally, he agreed that the California property was nonmarital property. He testified that Rene refinanced the California home in 2001 or 2002 and used that money as a down payment for the Ventura home.

¶ 15 Lionel testified that there were six timeshares and that all of them were acquired during the marriage. He maintained that only two were paid for in full. The Diamond Resort timeshare in Las Vegas had a balance of \$10,958, and the couple owed \$10,000 on the jointly owed timeshare at Tahitian Village, also in Las Vegas.

¶ 16 Lionel stated that he currently owes \$17,000 to the Internal Revenue Service (IRS). Two exhibits, respondent's exhibit 5 and 6, confirmed this debt. Exhibit 5 was a payment statement from the IRS showing \$10,038 owed as of May 25, 2012. Exhibit 6 was another statement from the IRS showing an additional \$7,229.11. Lionel testified that he had not filed his tax returns for 2010 or 2011, but estimated owing additional money to the IRS for those years.

¶ 17 Lionel testified that he owned numerous vehicles because he uses them as collateral for loans to help the household. He works on them as a project. He testified to a lien held on the 1981 Cadillac, the 1998 Corvette, the 1993 Blazer, the 1979 Cadillac, the 1965 Cadillac, the 2005 Trailblazer, the 2003 Cadillac, the 2006 Hummer, the 1923 Ford and the 1964 Cadillac. Lionel stated that all of the vehicles had liens on them, and he disputed Rene's valuation of the vehicles because the vehicles were not in good condition.

¶ 18 On cross-examination, Lionel confirmed the valuation of the 1964 Cadillac at \$10,650 and the 1981 Cadillac Eldorado at \$4,250 according to a loan application he completed. He stated that there was no lien on the 1993 Blazer or the 1976 Cadillac Seville. In his pretrial memorandum, Lionel listed 13 vehicles. The list provides that there is no equity in 10 of the vehicles but that the 1976 Cadillac Seville, the 1991 Cadillac Deville and the 1993 Lexus ES have no debt. Lionel testified that he owed credit card debt totaling \$27,600. He also estimated that approximately \$85,000 was paid into his pension account during the course of his marriage.

¶ 19 The trial court noted that it would have to order the timeshares and the vehicles to be sold because it was not given any information on the amount owed on them. The court also noted that the values testified to by Rene as to Lionel's vehicles would stand because no contrary evidence was presented by respondent. When the court noted this, Lionel responded, "That's fine, Judge."

¶ 20 The court awarded the marital residence and its mortgage to Lionel, and declared the California property nonmarital. It ordered that if the parties could not agree on how to divide the timeshares, that the timeshares be listed and sold, with proceeds of 55% to Rene and 45% to Lionel. The court also ordered the Barthelme property listed and all proceeds divided 55% to Rene and 45% to Lionel. Finally, the court directed that the martial vehicles should be listed for sale and the proceeds allocated 55% to Rene and 45% to Lionel. Each party was awarded a 50% interest in the marital portion of all retirement accounts. Rene was awarded a 55% share in the combined value of the life insurance policies and Lionel was awarded a 45% share. The trial court declined to award Rene maintenance.

¶ 21 ANALYSIS

¶ 22 I

¶ 23 Lionel contends that the trial court's allocation of marital property and debt between the parties was an abuse of discretion. In support of his claim that the division was inequitable, Lionel highlights that the court awarded Rene a greater proportion of the martial estate while leaving him with nearly all of the martial debt. Lionel also claims that the trial court erred in awarding the marital residence and its mortgage to him and in ordering him to pay the marital IRS debt.

¶ 24 When a trial court is tasked with the distribution of marital property, section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d) (West 2012)) provides that the court shall divide the marital property in just proportions after considering all relevant factors, which include: (1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or nonmarital property; (2) the dissipation by each party of the marital or nonmarital 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; (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) whether the apportionment is in lieu of or in addition to maintenance; (10) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and (11) the tax consequences of the property division on each party.

¶ 25 The test of proper apportionment is whether it is equitable, and each case rests on its own facts. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 121. An equitable division does not necessarily mean an equal division, and a spouse may be awarded a larger share of the assets if the relevant factors warrant such a result. *In re Marriage of Henke*, 313 Ill. App. 3d 159, 175 (2000). When one party is substantially responsible for the creation of the debt and has a substantially greater capacity to earn money, it is not an abuse of discretion to award the overwhelming majority of debt to that party. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 649-50 (1993). The valuation and distribution of marital property are matters within the trial court's discretion. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1113 (2004). We will not disturb the court's valuation or distribution decisions unless the court abused its discretion, that is, when no reasonable person would adopt the view taken by the court. *Id.*

¶ 26 In this case, both parties are employed full-time and earn salaries that provide for their daily needs. Lionel earns approximately \$165,000 per year based on overtime, with a base pay of \$99,904. Rene earns approximately \$80,000 a year. While her income is substantial, it is still significantly less than Lionel's and less than the standard to which she was accustomed during the marriage. Rene requested maintenance, but the trial court denied her request. The trial court

properly considered these factors, along with the duration of the marriage and the parties' allocation of debt in dividing the marital assets 55/45. An equitable distribution does not required mathematical equality, and the court's distribution in this case was equitable. In consideration of the factors in section 503(d) of the Act, we cannot say it was an abuse of discretion.

¶ 27 As for the allocation of debt, both Lionel and Rene were held responsible for a large amount of credit card debt they incurred individually as well as other marital debt. The balance of the mortgage on the marital home was allocated to Lionel. Rene was not named on the mortgage, and she did not claim any of the interest as a deduction from her income taxes. In addition, Lionel testified that he took out a second mortgage on the Ventura property and used it to make improvements to the home and to purchase vehicles. Thus, the trial court did not err in holding him responsible for all of the Ventura mortgage debt. See *Werries*, 247 Ill. App. 3d at 649.

¶ 28 Moreover, the trial court properly allocated all of the IRS debt to Lionel. Lionel did not file income tax returns for the years 2010 and 2011 and did not pay taxes for those years. He recently filed returns for 2008 and 2009 and is paying his tax debt for those years under a payment plan. Rene filed her tax returns individually and paid any balance due in a timely manner. The trial court did not abuse its discretion in holding Lionel responsible for the tax debt arising from his earnings.

¶ 29

II

¶ 30 Lionel also argues that the trial court abused its discretion by dividing the automobiles and timeshares without evidence of each item's reasonable value. Lionel claims that not

knowing the value of these items made it impossible for the trial court to comply with the "just proportion" requirement of section 503(d) of the Act.

¶ 31 Where a party does not offer evidence of an asset's value, the party cannot complain as to the disposition of that asset by the court. *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 30. A party must introduce sufficient evidence of the value of property; where a party has sufficient opportunity to introduce evidence but offers none, that party should not benefit on review from its omission. *Id.* at ¶ 29. A reviewing court will not remand the case where the parties had adequate opportunity to present evidence below but failed to do so. *In re Marriage of Schinelli*, 406 Ill. App. 3d 991, 1004 (2011).

¶ 32 Here, Lionel could have submitted evidence of the value of the vehicles and vacation properties but elected not to do so. Moreover, a precise assessment of the motor vehicles and the timeshares is not crucial information given that the court ordered the assets sold and any deficiency or amount realized allocated to the parties. The trial court acted within its discretion in awarding Rene 55% of any profit in those marital assets.

¶ 33 CONCLUSION

¶ 34 The judgment of the circuit court of Will County is affirmed.

¶ 35 Affirmed.