

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).

2014 IL App (4th) 130677-U

NO. 4-13-0677

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 11, 2014
Carla Bender
4th District Appellate
Court, IL

In re: MARRIAGE OF)	Appeal from
KATHLEEN SUE DONZE,)	Circuit Court of
Petitioner-Appellee,)	Livingston County
and)	No. 12D12
JAMES SCOTT DONZE,)	
Respondent-Appellant.)	Honorable
)	Stephen R. Pacey,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Appleton and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by (1) dividing the parties' two adjacent tracts of land between the parties and (2) awarding the ex-wife permanent maintenance of \$2,000 per month.

¶ 2 In November 2012, the trial court entered an order dissolving the marriage of petitioner, Kathleen Donze (hereafter, Kathy), and respondent, James Scott Donze (hereafter, Scott). Scott appeals, arguing the trial court erred in (1) dividing the two adjacent tracts of land owned by the parties between them, awarding Kathy the homestead; and (2) awarding Kathy permanent maintenance of \$2,000 per month. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Scott and Kathy married on February 2, 1986. Two children were born during the marriage; both are now adults. The parties jointly owned a farm in Livingston County,

consisting of two 80-acre tracts of land. The parties acquired the 80 acres in tract one in 1998. It consists of 43 acres of pasture area used in Scott's father's cattle operation and 37 tillable acres. Tract one is worth \$387,000. Tract two, acquired in 1996, consists of 7 1/2 acres of homestead, 47 tillable acres, and 25 1/2 acres of pasture and wooded areas. Tract two is worth \$580,000, including the marital residence.

¶ 5 In January 2012, Kathy filed a petition for dissolution of marriage, stating irreconcilable differences had arisen between the parties. Kathy also filed a petition for temporary possession of the marital residence and a petition for temporary relief. Following a hearing on May 17, 2012, the court awarded Kathy exclusive possession of the marital residence and ordered Scott to pay temporary maintenance of \$1,500 per month, \$3,000 toward Kathy's legal fees, and various other marital financial obligations.

¶ 6 Each party submitted a proposed resolution of the issues. In relevant part, Scott requested each party be awarded 50% equity in the farmland held as marital property and the court allow him to purchase Kathy's share. Kathy requested the court divide tracts one and two between the parties, awarding her tract two and the homestead. She proposed the court divide the parties' Individual Retirement Accounts (IRA) in order to compensate Scott for being awarded the less valuable tract one. Kathy also requested permanent maintenance of \$2,400 per month and requested Scott pay \$2,500 toward her total attorney fees.

¶ 7 No court reporter was present at the final hearing on August 28, 2012. Kathy filed a bystander's report summarizing the hearing. Kathy testified she did not work outside the home but worked taking care of the children, the home, and the farm. Kathy owns a half interest in 45 acres of farmland, a gift from her father, and receives \$11,622 in income from this land yearly. Kathy testified she was emotionally attached to the homestead and wanted to be buried

on the property. Kathy showed the court photographs of improvements she made to the property, such as landscaping and fencing. Farming would be Kathy's only source of income after the divorce. She has no work experience other than farming and only has a high school education. Kathy performed most farm-related tasks and was fully capable of running the farm operation.

¶ 8 Kathy also testified the parties allowed Scott's father's (James Donze, Sr.'s) cattle to pasture on their land. The parties had no written lease with Scott's father and did not own any part of the cattle operation. Kathy testified the parties purchased tracts one and two separately and tract one can be reached without entering tract two. Kathy demonstrated how Scott's father's cattle operation could still operate on tract one, referencing a gate and driveway on the property before the tracts were combined. Kathy also demonstrated James Sr. had other land in the surrounding area where he could pasture his cattle if tract one was insufficient. Kathy did not know of any drainage issues on either tract and believed separating tracts one and two would not impact their economic value.

¶ 9 Billie Jo Henson, the parties' daughter, testified she observed her mother actively engaged in farming. Billie observed her mother perform farm tasks such as driving trucks, mowing, and removing and installing fenceposts.

¶ 10 Scott testified Kathy was active in the farming operation. His father's cattle pastured on both tracts one and two and both tracts, farmed as a unit, were necessary for the cattle operation.

¶ 11 James Sr. testified the tracts were farmed as a unit and stated he would need to access tract two if there were drainage problems on tract one in the future. James Sr. owned other farmland in the area and outbuildings. He was contemplating ending his cattle operation

because of his age and the price of cattle. There was no written lease between him and the parties.

¶ 12 At the hearing, the parties agreed Scott owned two 401(k) plans worth \$43,500 and \$1,800, an IRA worth \$181,900, a Roth IRA worth \$10,800, a pension from his employer, and an insurance policy worth \$20,800. They agreed Kathy had an IRA worth \$19,500 and a Roth IRA worth \$4,700. The parties agreed these accounts were marital property. The parties also agreed tract one had a mortgage balance of \$67,300 and tract two had a mortgage balance of \$42,500. The parties agreed on the division of various motor vehicles and marital tools. The parties also agreed to divide 2012 marital farm income equally, after crop insurance payments and payment of their operating loan.

¶ 13 On November 2, 2012, the trial court granted the dissolution of marriage. At the time of the dissolution, Kathy was 51 years old and Scott was 50, and the parties had been married 26 years. The trial court found, in relevant part, Kathy earns about \$8,000 in annual income from her half interest in farmland and had a separate account containing \$5,000. Scott's gross income from his employment at Glen-Gery Brick is \$73,000. Scott has two bank accounts totaling \$20,000, including \$11,000 of marital funds transferred at the time of separation. The court also found the parties average \$18,300 in profits farming tracts one and two. Kathy was not employed outside the home by agreement of the parties, had a strong attachment to tract two, and had made substantial improvements to the marital homestead. The court found "[Kathy's] proposals for division of marital assets, although having more potential for future disagreements, are more equitable under the evidence concerning the dissolution of this 25[-]year marriage."

¶ 14 The trial court ordered Scott to pay Kathy \$2,000 per month in permanent maintenance. The court ordered each party to pay his or her own attorney fees and costs. The

court awarded Kathy tract two with the marital home, subject to its mortgage indebtedness, and awarded Scott tract one, subject to its mortgage indebtedness. Scott's pension was divided equally, subject to a qualified-domestic-relations order. Each party was awarded his or her separate bank accounts. The court divided the parties' savings to compensate Scott for being awarded the less valuable tract one, awarding Kathy her IRA and Roth IRA (a total of approximately \$24,000) and Scott his 401(k)s, IRA, Roth IRA, and his insurance policy (a total of approximately \$258,800). The parties agreed to the division of other marital property, such as vehicles and tools.

¶ 15 On February 28, 2013, Scott filed a motion to vacate judgment and for rehearing, arguing the court erred in awarding Kathy permanent maintenance and erred by adopting Kathy's proposal for the division of marital assets. Scott argued the court's order was an "endless invitation" for future disagreements and selling the land could have allowed all the land to go to the party who was willing to pay for it. Scott also argued his proposal to sell the land would have awarded Kathy a large cash settlement, eliminating the need for an ongoing maintenance award.

¶ 16 On July 16, 2013, the trial court denied Scott's motion to vacate. The trial court found it "considered [the section 504] factors [(750 ILCS 5/504 (West 2012))]" in awarding maintenance" and case law "directly contrary" to Scott's argument payment from the sale of marital farmland could eliminate the need for an ongoing maintenance award. The court found Scott's proposal to buy out Kathy's interest in the land would have left Kathy "with approximately \$430,000 in cash and \$130,000 in retirement accounts, sums insufficient for [Kathy] to maintain the parties' lifestyle without expending principal." This appeal followed.

¶ 17

II. ANALYSIS

¶ 18

A. Division of Assets

¶ 19 Scott argues the trial court erred by awarding the parties adjacent tracts of land because the judgment invites future conflicts and a large cash payment would be more appropriate, given Kathy's financial situation. Kathy argues, based on the evidence presented, the court's judgment was not an abuse of discretion. We agree with Kathy.

¶ 20 Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) "provides marital property shall be divided in 'just proportions' considering all relevant factors as well as others deemed relevant to the case." *In re Marriage of Cheger*, 213 Ill. App. 3d 371, 381, 571 N.E.2d 1135, 1142 (1991) (citing *In re Marriage of Riech*, 208 Ill. App. 3d 301, 308, 566 N.E.2d 826, 830 (1991)); 750 ILCS 5/503(d) (West 2012). Based on the specific facts of each case, "[t]he touchstone of a proper apportionment is whether it is equitable in nature." *In re Marriage of Hart*, 194 Ill. App. 3d 839, 847, 551 N.E.2d 737, 741 (1990). An equitable division of marital property need not be equal. *Id.*

¶ 21 The trial court, having observed the witnesses in this case, is "in a better position than this court to determine the equities." *In re Marriage of Sales*, 106 Ill. App. 3d 378, 381, 436 N.E.2d 23, 26 (1982). "[A] reviewing court will not substitute its judgment for the trial court's disposition in marital property matters." *Hart*, 194 Ill. App. 3d at 847, 551 N.E.2d at 741. The "court's allocation of property is subject to an abuse of discretion standard of review." *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 46, 974 N.E.2d 417.

¶ 22 Scott argues the trial court erred because its judgment creates the potential for future conflicts between the parties. Scott cites *Sales*, 106 Ill. App. 3d at 381, 436 N.E.2d at 25, for the proposition "courts should seek to minimize further business dealings between the parties." In *Sales*, the First District modified a trial court's judgment awarding an ex-wife a 20%

interest in her ex-husband's partnership. *Id.* We conclude *Sales* is distinguishable from this case. Here, the judgment does not require the parties to be in business together. They simply own adjacent tracts of farmland.

¶ 23 Further, *Sales* does not stand for the proposition a trial court's division of property must avoid all potential future conflicts between the parties. See *Id.* Rather, *Sales* held trial courts should not divide an interest in a small business when there is sufficient other property to equitably divide between the parties, as one purpose of the Dissolution Act is to cut off entitlement and allow the parties to "go their separate ways." *Id.* Another purpose of the Dissolution Act is to "mitigate the potential harm to the spouses *** by the process of legal dissolution of marriage." 750 ILCS 5/102(4) (West 2012). Trial courts must balance these considerations in order to "divide the marital property *** in just proportions." 750 ILCS 5/503(d) (West 2012).

¶ 24 Here, the trial court's order demonstrates it balanced these conflicting interests. Although the trial court found Kathy's proposal had "more potential for future disagreements," Kathy demonstrated the potential for disagreements was fairly minimal because the tracts could be farmed separately, could be accessed separately, and were valued separately. Scott's proposal would have required Kathy to sell her interest in the farm. Kathy did not want to leave the marital home, where she had lived for over 26 years. Kathy did most of the farmwork throughout the marriage, had a significant emotional attachment to the farm, and was willing and able to continue farming it as a source of income. Under the circumstances, the court was within its discretion to conclude dividing the tracts was a more equitable solution, despite its potential for disagreements.

¶ 25 Scott also argues, as Kathy is unemployed, a large cash payment from the sale of the land would have been "more just." First, the trial court considered and rejected this argument in finding dividing the tracts presented a more equitable outcome. Second, Kathy's attachment to the home and surrounding acreage equates to a significant value to her. While this value is difficult to quantify, she accepted a reduced share of the marital savings in exchange for tract two and the marital homestead. The trial court properly considered this value in its evaluation of the equities. Applying the abuse of discretion standard of review, we do not second-guess the trial court's evaluation of the equities. See *Hart*, 194 Ill. App. 3d at 847, 551 N.E.2d at 741. We conclude the trial court did not abuse its discretion in dividing the property between the parties.

¶ 26 B. Maintenance

¶ 27 Scott argues the amount and duration of the maintenance were excessive. Kathy argues the trial court did not abuse its discretion in awarding her \$2,000 per month in permanent maintenance. We agree.

¶ 28 In determining the duration and amount of a maintenance award, the trial court must consider the following statutory factors outlined in section 504(a) of the Dissolution Act: (1) each party's income and property, including apportioned marital property; (2) each party's need; (3) each party's earning capacity; (4) impairments of earning capacity due to time devoted to domestic responsibilities during the marriage; (5) the time the party seeking maintenance needs to begin supporting himself or herself through appropriate employment; (6) the standard of living shared during the marriage; (7) the marriage's duration; (8) each party's age and his or her physical and emotional condition; (9) tax consequences of property division; (10) the party seeking maintenance's contributions to the education, license, training, or career potential of the other spouse; (11) a valid agreement by the parties; and (12) other factors the court expressly

finds are just and equitable. 750 ILCS 5/504(a) (West 2012). "No single statutory factor is determinative and the trial court is not limited to a review of the section 504(a) factors when setting a maintenance award." *In re Marriage of Price*, 2013 IL App (4th) 120155, ¶ 29, 986 N.E.2d 236.

¶ 29 "An award of permanent maintenance may be appropriate where one spouse is not employable or is only employable at a lower income as compared to the parties' standard of living during the marriage." *Id.* ¶ 30, 986 N.E.2d 236. Following a lengthy marriage where one spouse raised and supported the family, permanent maintenance may also be appropriate. *Id.* On review, this court presumes the trial court's maintenance award is correct and will not reverse a maintenance award absent an abuse of discretion. "An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court." *Id.*

¶ 30 In this case, permanent maintenance was appropriate. The parties had a lengthy marriage of 26 years and Kathy was not employed outside the home during the marriage. Kathy has limited income potential as she only has a high school education and little job experience. Her potential income is considerably less than Scott's, who makes \$73,000 in gross income each year. Based on these facts, the trial court did not abuse its discretion by awarding Kathy permanent maintenance.

¶ 31 The amount of maintenance awarded by the trial court is also not an abuse of discretion. The trial court awarded Kathy \$2,000 per month in maintenance, or one-third of Scott's salary. Scott argues the court failed to consider Kathy's earning potential, as she was awarded 80 acres of farmland, owns 45 acres with her brother, and is a skilled farmer. We disagree. The trial court found Kathy makes \$8,000 each year from her half interest in the 45-acre farm and the parties' net farm income from tracts one and two was \$18,300. Presumably,

the court incorporated these findings into its maintenance award and understood, by only farming tract two, Kathy would be able to earn about half the amount she and Scott earned farming tracts one and two, or about \$9,000 dollars a year. These amounts total about \$17,000 per year, a sum significantly less than the \$73,000 Scott makes and insufficient to maintain the standard of living she enjoyed during the marriage.

¶ 32 Scott also argues \$2,000 per month in maintenance should not have been awarded because his income is modest. The court specifically found maintenance would only be one-third of Scott's salary. Further, the court, which may consider the assignment of assets and liabilities to the parties, may have also considered its award to Scott of over \$250,000 in capital assets and 80 acres of farmland. We conclude the trial court considered the needs of the parties, the assets and liabilities of the parties, the length of the marriage, and other relevant statutory factors in setting maintenance at \$2,000 per month.

¶ 33 Scott also argues his proposal to divide the property would have eliminated the need for any maintenance award. We disagree. This court has held an ex-spouse "is not required to sell or impair capital assets to provide for her support where respondent has sufficient income to meet his needs as well as hers." *Cheger*, 213 Ill. App. 3d at 379-80, 571 N.E.2d at 1141. This court recently reiterated this rule in *Price*, 2013 IL App (4th) 120155, ¶ 36, 986 N.E.2d 236, explaining an ex-wife "should not be required to sell or impair the assets awarded to her in the divorce to continue the lifestyle she established during the parties' long marriage."

¶ 34 The trial court found the assets Scott's proposal would have awarded Kathy were insufficient to maintain the parties' previous standard of living without expending principal. In other words, Scott's proposal would have required Kathy to liquidate her interest in the main marital asset, 160 acres of farmland and the marital home, to continue the lifestyle she enjoyed

during the marriage. As the trial court recognized, such an outcome would directly conflict with precedent from this court, such as *Cheger* and *Price*.

¶ 35 Scott also argues a large award of marital assets can eliminate the need for maintenance, citing this court's holding in *In re Marriage of Bratcher*, 383 Ill. App. 3d 388, 389, 890 N.E.2d 1232, 1233 (2008) (reversing, in a divided decision, the trial court's award of permanent maintenance to an ex-wife who was awarded approximately \$1,634,000 in marital assets, including a home, a rental property, and a lump-sum payment of \$876,759). Here, the court found Scott's proposal would have awarded Kathy approximately \$430,000 in cash and \$130,000 in retirement savings, nowhere near the amount awarded in *Bratcher*. We conclude *Bratcher* has no applicability here. The trial court did not abuse its discretion in awarding Kathy \$2,000 per month in permanent maintenance.

¶ 36 III. CONCLUSION

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

¶ 38 Affirmed.