

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) 130926-U

NO. 4-13-0926

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 5, 2014

Carla Bender

4th District Appellate

Court, IL

In re: MARRIAGE OF)	Appeal from
PATRICK LYNCH,)	Circuit Court of
Petitioner-Appellee,)	Ford County
and)	No. 12D48
KAREN LYNCH,)	
Respondent-Appellant.)	Honorable
)	Stephen R. Pacey,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.

Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* We reverse, as the trial court erred in (1) finding the marital estate was entitled to reimbursement for payments on loans encumbering the ex-wife's nonmarital residence; and (2) awarding the ex-husband the full marital portion of his pension because the court based this award on its finding regarding reimbursement.

¶ 2 Patrick and Karen Lynch were married in 1991 and had no children. In August 2012, Patrick filed a petition for dissolution of marriage. In the dissolution order, the trial court found the marital estate was not fully compensated for principal payments on the mortgage of Karen's nonmarital property and, as a result, awarded Patrick all the disputed marital property, or the full monthly benefit of his Sheet Metal Workers' Defined Benefit Plan (hereafter referred to as his pension) and the retirement annuity. Karen appeals, arguing the trial court erred in awarding Patrick the full marital pension and in finding the marital estate had not been fully compensated for principal payments made during the marriage. Patrick argues the court did not

abuse its discretion in making its property award. We vacate in part and remand with directions for the trial court to equitably divide the marital portion of Patrick's pension, considering only evidence previously before the trial court.

¶ 3

I. BACKGROUND

¶ 4 On May 13, 2013, the trial court held a hearing on the issues involved. The record on appeal does not include a transcript of the hearing or a bystander's report. Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005). The court's docket entry indicates the court heard limited testimony from Patrick regarding issues not relevant to the questions on appeal. The following facts are from a document of stipulated facts and various pleadings filed by the parties.

¶ 5

Patrick and Karen Lynch married on February 19, 1991, and had no children. When Patrick petitioned for dissolution on August 8, 2012, he was 60 years old and Karen was 58. Patrick is retired and has a gross monthly income of \$3,935, including \$2,029 from his pension, \$1,773.50 in Social Security disability benefits, and \$133 from a retirement annuity. Karen works at Easton-Bell Sports, earning a gross monthly income of \$2,833. After taxes and health-insurance deductions, Karen's take-home pay is \$1,961 per month. Karen has no independent retirement savings.

¶ 6

A. Karen's Nonmarital Residence

¶ 7

Karen purchased a residence in Gibson City before the marriage, and the parties agreed the residence is Karen's nonmarital property. The parties lived in the Gibson City residence during their 20-year marriage. The parties agree the residence is worth \$75,000. Karen has \$42,742 in equity invested in the residence, as the mortgage balance on the residence is \$32,258.

¶ 8 The parties also agree in 1992, one year after they married, Karen "refinanced" the residence for \$48,710. Although the parties term this a "refinance," the record demonstrates Karen actually took out a loan against the equity in the residence because the parties received loan proceeds from the transaction. Of the loan proceeds, the parties used \$9,000 to pay marital debt. Neither party presented any evidence demonstrating how they spent the remaining funds. In 2006, the parties paid the mortgage on the residence in full. In 2008, the parties took out another home equity loan, also called a "refinance," in both their names for \$48,930. The parties agree they spent \$21,041 of the loan proceeds on marital credit card debt. Again, neither party presented any evidence on how they spent the remaining loan proceeds. No evidence was presented demonstrating the amount of equity in Karen's residence in 1992, when the parties took out the first loan.

¶ 9 B. Marital Property

¶ 10 The parties agreed to the value and classification of much of their property. The parties agreed their marital property includes (1) an annuity worth \$59,070 when the parties separated and worth \$35,000 as of May 2013, as Patrick withdrew sums to pay marital debts and other expenses when the parties separated; (2) 54% of Patrick's pension; (3) a 2004 Jeep Cherokee, with no balance owed, in Karen's possession; and (4) a 2010 Ford F-150, with a balance owed of \$18,200 in May 2013, in Patrick's possession.

¶ 11 The parties had \$41,824 in marital credit card debt. The parties agreed to divide \$36,404 of the marital credit card debt to Patrick and \$5,420 to Karen. The parties also agreed each should be awarded the vehicle in their possession and agreed the equity in each vehicle was \$10,000. They also agreed Karen should be allocated the residence as her nonmarital property. The parties only disputed how to divide the marital portion of Patrick's pension and the annuity.

¶ 12 Patrick began participation in his employer's pension plan on July 1, 1974, before the parties married. Patrick retired on April 1, 2010, and receives gross payments of \$2,527 in pension benefits. The pension plan deducts \$394 per month for a Joint and Survivor Annuity (JSA), naming Karen as the beneficiary, and \$104 in taxes. After reductions for the JSA and taxes, Patrick receives \$2,029 per month in pension benefits. Neither party presented evidence on the full current value of Patrick's pension. The parties agree the value of the marital and nonmarital portions of Patrick's monthly pension benefits can be divided as follows:

Marital and Nonmarital Pension Benefits

Current Pretax benefit amount (including reduction for JSA): \$2,133

Date of Total Participation: Started: July 1, 1974 - Retired: April 1, 2010

Total Months of Participation: 429

Dates of Marital Participation: Started: February 29, 1991- Retired: April 1, 2010

Total Months of Marital Participation: 231

Percentage of Marital Participation: 54%

Marital Monthly Benefit: \$1,151.82

Nonmarital Monthly Benefit: \$982.

The parties agreed, if the trial court were to split the marital pension equally, Patrick would receive \$1,557.09 per month and Karen would receive \$575.91 in monthly benefits.

¶ 13 In Karen's written argument, she requested an award of half the marital portion of the pension benefits, pursuant to the formula outlined above, or \$575 per month. Karen requested each party pay his or her respective attorney fees and did not request a maintenance award. Karen also proposed the annuity be divided based on its value when the marriage ended (\$59,070), with Patrick receiving \$43,292 and Karen receiving \$15,778 so as to offset the higher portion of the debt Patrick agreed to receive. Karen also argued the marital estate had been

compensated for mortgage principal payments made during the marriage and "the marital estate has had the benefit of \$37,551.54 [in] equity during the marriage."

¶ 14 Patrick, in his written argument, requested the court award him the full value of his pension and his annuity, arguing his pension benefits are his primary source of income and he would be assuming a much higher portion of the marital debt. Patrick also argued Karen owns a residence with substantial equity, is employed, and assumed minimal debt. In his written closing argument, he stated awarding him his full pension was equitable because Karen's residence amounted to a substantial nonmarital property award and the marital estate made \$65,382 in mortgage principal payments on Karen's residence over the course of the marriage.

¶ 15 C. The Trial Court's Order

¶ 16 On June 4, 2013, the trial court issued a final order, finding the parties had proved grounds based on irreconcilable differences. The trial court divided the parties' vehicles and credit card debt as agreed by the parties and awarded Karen her residence as nonmarital property. The final judgment indicated Karen is independently liable for the \$32,258 balance owed on the home equity loan on the residence. The court found as follows:

"There is no evidence regarding the mortgage balance on [Karen's] [nonmarital] residence at the time of the first refinance, but \$9,000.00 of the proceeds paid marital debts, the almost \$49,000.00 mortgage was paid in full from marital funds, [Karen] refinanced a second time for nearly \$49,000.00 with \$21,000.00 of the proceeds paying off mar[it]al credit card debt and [Karen's present mortgage balance of] about \$32,000.00 results in

approximately \$65,000.00 [in] mortgage principal payments during the marriage."

To clarify, it appears the court arrived at the \$65,000 figure by adding \$48,000 (the approximate amount of the first loan) and \$17,000 (the approximate difference between the second loan and the present balance on Karen's mortgage).

¶ 17 The trial court also found case law provided by Karen "permits, but does not require" it to find the marital estate had been compensated because the parties used the residence as the marital residence. The trial court's final order stated as follows:

"Because there is no evidence regarding disposition [by either party] and the marital estate is not fully compensated for significant mortgage payments by the almost 20 years of occupying the residence, [Patrick] is awarded his annuity and [pension], subject to [Karen] being retained as the beneficiary of the 'JSA' under the defined benefit plan."

Thus, the court divided the parties' assets as follows.

	<u>Marital Property</u>	
	<u>Patrick</u>	<u>Karen</u>
Retirement annuity	\$35,138	\$0
Marital pension	\$1,151 (monthly)	\$0
Credit card debt	-\$36,404	-\$5,420
Balance of joint home equity loan	\$0	-\$32,258
Vehicles	2010 Ford F-150	2004 Jeep Cherokee
Equity in vehicle	\$10,000	\$10,000

(as stipulated)

(with balance owed of \$18,000)

(paid in full)

Nonmarital Property

Patrick

Karen

Nonmarital pension

\$982 (monthly)

\$0

Karen's residence

\$0

\$42,742 (in equity).

¶ 18 Karen filed a motion to reconsider. She argued the trial court erred by awarding Patrick the full value of the marital portion of his pension as the parties had insufficient assets to offset such a large award of the marital property and the court should have first determined the pension's full current value. Karen requested the court either award her half the marital pension benefits, approximately \$565 per month, or reopen the evidence so she could present evidence as to the present value of Patrick's pension. Karen also argued the court erred in finding the marital estate should be reimbursed \$65,000 for mortgage principal payments. The court denied the motion, concluding it "did not find that marital estate should be compensated for any sum certain, but found it had not been fully compensated by use of the [nonmarital] residence."

¶ 19 This appeal followed.

¶ 20

II. ANALYSIS

¶ 21 Karen argues the trial court erred in (1) awarding Patrick his entire pension without first hearing evidence on the present value of the pension and (2) finding the marital estate had not been fully compensated for principal payments on the mortgage of Karen's nonmarital property. Patrick argues the court heard evidence on his pension's value, as the parties' agreed facts stated he received \$2,133 in monthly benefits, and the parties agreed \$1,151 of those benefits were marital property. Patrick further argues the court determined, within its discretion and after considering other equitable factors, awarding Karen a portion of the marital

pension would be unjust because the marital estate paid about \$65,000 in principal on the home equity loans encumbering Karen's residence.

¶ 22 This case, however, does not turn on whether the trial court properly valued the pension or could have, within its discretion, concluded the equities required awarding Patrick the entire marital pension. The court specifically stated it awarded Patrick the entire marital pension because the marital estate had not been fully compensated for "significant" mortgage principal payments to Karen's residence. Consequently, the case turns on whether the court erred in making such a finding.

¶ 23 A. The Trial Court's Finding

¶ 24 The parties disagree as to whether the court found the marital estate was entitled to reimbursement from Karen's nonmarital estate. Patrick argues the trial court "did not make a reimbursement ruling or judge the merits of a contribution claim," but "simply considered \$65,000 in mortgage principal payments along with various other factors in determining the equitable distribution of the marital estate." We disagree, as Patrick's argument is both factually and legally unsound.

¶ 25 We disagree with Patrick's factual characterization of the trial court's order. The court found the marital estate was entitled to reimbursement from Karen's nonmarital estate, even though it did not use those terms. To find the marital estate had not been compensated for "significant mortgage payments" to Karen's nonmarital estate, the court had to first conclude the payments constituted contributions to Karen's nonmarital estate. By awarding Patrick almost all the marital property based on this finding, the court in fact reimbursed the marital estate for the payments. The court's lack of specificity as to the amount of reimbursement to which the marital

estate was entitled is immaterial because the court awarded Patrick specific and substantial sums of marital property based on this finding.

¶ 26 Legally, we disagree with Patrick's assertion the trial court could have considered the \$65,000 in payments in its equitable division of marital property without finding the marital estate was entitled to be reimbursed for those payments. The marital estate's right to reimbursement for contributions to the value of a nonmarital estate is governed by section 503(c) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act). 750 ILCS 5/503(c) (West 2012). Under section 503(c)(2), "the contributing estate shall be reimbursed from the estate receiving the contribution[s]" when (1) those contributions are "retraceable by clear and convincing evidence" and (2) the estate has not already been compensated for its contributions. 750 ILCS 5/503(c)(2) (West 2012). Section 503(d) requires the trial court to "divide the marital property *** in just proportions considering all relevant factors," including "the contribution of each party to the *** increase or decrease in value of the marital or [nonmarital] property." 750 ILCS 5/503(d)(1) (West 2012).

¶ 27 Both subsections of the statute use the word "contribution," and section 503(d) follows directly after section 503(c). 750 ILCS 5/503(c)(1), (d) (West 2012). A plain reading of the entire section indicates section 503(d)'s reference to "contribution" incorporates the language of section 503(c). See *People v. Santiago*, 236 Ill. 2d 417, 428, 925 N.E.2d 1122, 1128 (2010) ("One of the fundamental principles of statutory construction is viewing all the provisions of an enactment as a whole."). Further, Patrick's broad reading of section 503(d) would render section 503(c)'s clear-and-convincing-evidence requirement meaningless. See *Central Illinois Light Co. v. Department of Revenue*, 335 Ill. App. 3d 412, 416, 780 N.E.2d 1109, 1111 (2002) (courts avoid "interpretations that render any part of the statute meaningless or void"). Simply put, a

party cannot avoid the burden of proof required under section 503(c) by asking the court to consider contributions in its equitable distribution under section 503(d).

¶ 28 The trial court based its property award on its finding the marital estate was not fully compensated and effectively reimbursed the marital estate for the mortgage payments. Consequently, we apply section 503(c) in our review of the court's finding.

¶ 29 B. The Marital Estate's Right to Reimbursement

¶ 30 1. Standard of Review

¶ 31 The parties first disagree about the applicable standard of review. Karen argues the manifest-weight-of-the-evidence standard of review applies to the trial court's finding the marital estate was entitled to reimbursement from her nonmarital estate. As Patrick asserts the trial court made no finding regarding reimbursement, he argues we should apply the abuse-of-discretion standard of review to the entire judgment. We reject Patrick's argument, as we concluded the trial court made a finding the marital estate was entitled to be reimbursed.

¶ 32 Generally, a trial court's finding regarding contribution of marital funds to a nonmarital estate "will not be disturbed on review unless it is contrary to the manifest weight of the evidence." *In re Marriage of Werries*, 247 Ill. App. 3d 639, 641, 616 N.E.2d 1379, 1383 (1993). "However, where the facts are undisputed and the credibility of witnesses is not at issue," courts apply the *de novo* standard of review. *In re Marriage of Wendt*, 2013 IL App (1st) 123261, ¶ 15, 995 N.E.2d 439. See also *In re Marriage of Peters*, 326 Ill. App. 3d 364, 366, 760 N.E.2d 586, 588 (2001). In *Wendt*, the case required the reviewing court to "determine the legal effect of undisputed facts." *Wendt*, 2013 IL App (1st) 123261, ¶ 15, 995 N.E.2d 439.

¶ 33 Here, the trial court made no credibility determinations, as neither party testified before the trial court regarding marital contributions to Karen's nonmarital estate. The court

relied only on a two-page document of stipulated facts and each party's arguments. We apply *de novo* review.

¶ 34 *2. Reimbursement*

¶ 35 Section 503(c) of the Dissolution Act "provides a right to reimbursement for contributions made by one estate which have enhanced the value of an item of property classified as belonging to another estate." *In re Marriage of Albrecht*, 266 Ill. App. 3d 399, 400-01, 639 N.E.2d 953, 954 (1994). "The reimbursement is made to the contributing estate, not to the contributing spouse." *Id.* at 401, 639 N.E.2d at 954. "Contributions by a marital estate to a nonmarital residence may be reimbursed to the marital estate if proved by clear and convincing evidence, and the contributing estate has not already been compensated." *Id.* at 401, 639 N.E.2d 955.

¶ 36 The party requesting reimbursement has the burden to present "clear and convincing evidence [establishing] the right to reimbursement." *Werries*, 247 Ill. App. 3d at 644, 616 N.E.2d at 1385. In *Werries*, we concluded, even when there appeared to be reimbursable contributions not established by the evidence, "the absence of clear and convincing evidence of traceable contributions from the marital estate to the nonmarital partnership interest precludes any reasonable attempt to order reimbursement to the marital estate." *Id.* at 648, 616 N.E.2d at 1388.

¶ 37 Here, as Patrick claimed the marital estate was entitled to reimbursement for the mortgage payments, he had the burden to present evidence tracing contributions from the marital estate to Karen's nonmarital estate by clear and convincing evidence. Patrick simply asserted the marital estate paid \$66,599 in principal, using his employment income, on two home loans taken out during the marriage encumbering Karen's residence. Neither party presented any evidence

demonstrating how much equity Karen had invested in the home when the parties married. The parties agreed about \$30,000 of the loan proceeds were used to pay marital debt. Neither party presented any evidence demonstrating how the parties spent the remaining loan proceeds.

Without this information, the amount of principal paid on the two loans is not traceable to an increase in value of Karen's residence by clear and convincing evidence.

¶ 38 The lack of evidence demonstrating the equity in Karen's residence when the parties took out the first home equity loan in 1992 is problematic. As the parties received proceeds from both loans, each loan depleted the equity invested in Karen's residence to some degree. This initial decrease in equity distinguishes payment by a marital estate on a home equity loan from payment on an initial mortgage or a contract for sale on a nonmarital estate. See *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 657, 698 N.E.2d 1084, 1089 (1998) (payments from marital funds on the purchase contract or the mortgage on a nonmarital property demonstrate contribution to the nonmarital property by clear and convincing evidence). Without information on the amount of equity invested in Karen's home when the parties took out the first loan for almost \$49,000 a year after they married, it is impossible to determine how payment on the two home equity loans affected the overall equity in Karen's home. In other words, we cannot determine how much more or less equity Karen had invested in her residence when the parties married as compared to the time of the hearing.

¶ 39 The lack of evidence demonstrating how the parties spent the entirety of loan proceeds is also problematic because, without such evidence, the trial court could not determine if payment on the loans constituted payment of a marital obligation or an investment in Karen's residence. This court has differentiated between marital funds used to pay a marital obligation and marital funds which contribute to the value of a nonmarital estate. *In re Marriage of Crook*,

334 Ill. App. 3d 377, 388-89, 778 N.E.2d 309, 318-19 (2002), *rev'd on other grounds*, 211 Ill. 2d 437, 813 N.E.2d 198 (2004). In *Crook*, the parties used \$40,000 in marital funds to repay part of a loan used to build a shed, used in the parties' farming operation, on the ex-wife's nonmarital property. *Crook*, 334 Ill. App. 3d at 387-88, 778 N.E.2d at 318. We reasoned, "even though the shed is located on respondent's nonmarital property, the debt incurred by the parties for its construction was, and continues to be, a *marital obligation* arising from the farming operation of the parties." (Emphasis in original.) *Id.* at 388-89, 778 N.E.2d at 318-19. Thus, payment on the loan applied "marital funds toward what in fact was a *marital debt*." (Emphasis in original.) *Id.* at 389, 778 N.E.2d at 319.

¶ 40 In this case, at least some of the proceeds from each loan were used for marital purposes. To the extent the parties used the remaining loan proceeds for marital purposes, payments on the loans simply applied marital funds toward a marital obligation. The parties agree about \$30,000 of the loan proceeds were used to pay marital credit card debt. Thus, as Karen argues, the marital estate is not entitled reimbursement for this \$30,000 of the loan payments, as the payments were made to a marital obligation. The parties presented no evidence demonstrating how they spent the remaining loan proceeds. We cannot determine if payment on the loans constituted marital funds applied to a marital obligation, essentially replacing equity depleted from Karen's residence.

¶ 41 Patrick had the burden to present evidence tracing funds contributed from the marital estate to the nonmarital estate by clear and convincing evidence. The mere fact the estate paid about \$65,000 in principal on two home equity loans is insufficient to trace marital contributions to Karen's nonmarital estate by clear and convincing evidence. The trial court's order does not demonstrate the court properly applied this burden of proof.

¶ 42 The trial court's reluctance to find the specific amount of contribution further supports our conclusion. The court found the marital estate paid "approximately \$65,000" in "mortgage principal payments" and noted the parties used about \$30,000 of the loan proceeds from these mortgages to pay marital debts. The court never determined the amount the marital estate contributed. Rather, the court referred vaguely to "significant mortgage payments" and noted "it did not find the marital estate should be compensated for any sum certain." We fail to see how the trial court could have traced the marital contributions by clear and convincing evidence, as required under section 503(c), without also determining the amount the estate contributed. The trial court's conclusion the marital estate contributed "significant mortgage payments" is inconsistent with the Dissolution Act's language limiting reimbursement to those contributions traceable by clear and convincing evidence.

¶ 43 On appeal, Karen argues \$36,000 constitutes the marital contribution to her nonmarital estate, but the marital estate has been fully compensated for these contributions because it served as the parties' home for about 20 years. Karen does not point to any evidence tracing \$36,000 in contributions from the marital estate to the value of her nonmarital residence. The \$36,000 figure represents \$66,000 (Karen's estimate rounds up to \$66,000, while the court rounded down to \$65,000) in principal paid on the two loans minus the \$30,000 in loan proceeds known to have been used to pay marital debt. As we have noted, without information on how the parties spent the rest of the loan proceeds or how much equity Karen had in the home when the parties married, there is no evidence tracing \$36,000 in contribution from the marital estate to the value of her nonmarital residence.

¶ 44 As we cannot pinpoint the amount the marital estate contributed, we cannot meaningfully address Karen's argument the marital estate was fully compensated for its

contribution because the parties used the nonmarital residence as the marital home for 20 years. Any attempt to consider whether the estate has been compensated for an indefinite amount of contribution would be speculation.

¶ 45 Patrick presented insufficient evidence to trace marital contributions to an increase in the value of Karen's nonmarital estate by clear and convincing evidence. Consequently, we vacate the trial court's determination the marital estate was not fully compensated for the "significant mortgage payments." Because the court awarded the marital pension to Patrick based on this finding, we vacate the court's award as to the marital pension. We leave the rest of the order intact.

¶ 46 We decline to address whether the trial court could have, within its broad discretion, concluded the equities required awarding Patrick the full marital pension. On remand, the trial court should equitably divide the marital portion of Patrick's pension pursuant to section 503(d) based on evidence already presented to the court, as "parties should not be allowed to benefit on review from failure to introduce evidence at trial." *Albrecht*, 266 Ill. App. 3d at 403, 639 N.E.2d at 956.

¶ 47 III. CONCLUSION

¶ 48 For the foregoing reasons, we affirm in part, vacate in part, and remand with directions to equitably divide the marital portion of Patrick's pension, considering only evidence previously before the trial court.

¶ 49 Affirmed in part and vacated in part; cause remanded with directions.