



We affirm on all issues.

¶ 3

### FACTS

¶ 4 Christopher and Megan began their relationship in October 2010, married in September 2011, separated in March 2013, and divorced in September 2013. Both parties maintained jobs. Christopher was an electrician, while Megan was a schoolteacher. Christopher and Megan had no children. During the time they dated, they built a house in Red Bud that became the marital home. Construction began in May 2011. Christopher claims that he used some of his own money, as well as construction loan proceeds, and personal labor. Additionally, his grandmother gave Christopher \$15,000 a few days before the wedding. Christopher claims that his grandmother intended the money as a loan to him rather than as a wedding gift. An appraisal of the house dated September 19, 2011, listed the value of the house at \$245,000. The mortgage for this house is in the name of both Christopher and Megan, while only Christopher is obligated on the bank note. Christopher and Megan signed these documents after the marriage.

¶ 5 During the marriage, Christopher bought a vehicle with cash from his personal checking account and a trade-in allowance on a premarital vehicle he owned. He acknowledges that he bought the vehicle during the marriage, but contends that the vehicle remains nonmarital property.

¶ 6 Christopher had a savings account at North County Savings Bank in his own name. One month prior to the wedding, the account balance was \$5,164.72. After the parties separated, the account balance was \$13,203.04. Christopher contended that the

court should award him the initial balance and one-half of the difference between the two figures—\$9,183.88.

¶ 7 The parties' most significant asset was the marital home in Red Bud. The court noted that the deed listed ownership in both names, and that the parties agreed that the house was marital property. Christopher and Megan agreed that the court should award Christopher the property, subject to Megan's claim of equity interest. At issue was whether there was any equity in the house and whether the equity was marital or nonmarital. Christopher alleged that he used his individual checking account for funding some of the costs of construction, and that he spent at least 500 hours working on the construction of the house. Christopher entered checking and credit card account statements into evidence to establish that he used nonmarital funds for construction costs. Christopher also alleged that he used nonmarital funds from the sale of his previous house in the construction of the new house. Christopher finally claimed that his grandmother loaned him \$15,000, which he needed to repay.

¶ 8 The court found that the \$15,000 was a gift, and not a loan. The trial court also found that Christopher's premarital house and his individual checking account were nonmarital assets. Even though the checking account was a nonmarital asset, the court found that Christopher did not establish that he used specific funds from his checking account for construction costs. The court noted that there was no evidence of the total house cost, and it could not consequently determine the accounting basis for the house. However, the court found that Christopher spent a great amount of time working on the home during construction, and that "this contribution is worthy of consideration given the

short duration of the marriage." The court made a finding that there was at least \$20,000 in equity in the house. The court divided the equity awarding \$15,000 to Christopher and \$5,000 to Megan.

¶ 9 The Chevrolet S-10 pickup truck purchased during the marriage was in Christopher's name. The court found the truck to be a marital asset, and awarded Megan \$2,000 for her share.

¶ 10 The trial court awarded Megan \$6,600 in cash as her share of the funds held in the North County Savings Bank account, representing one-half of the account balance when the parties separated. The trial court considered the savings account statements entered into evidence. Despite Christopher's argument that the account only contained \$13,203.04 at separation, the court found that the account contained \$17,000 when the parties separated in March 2013, and \$13,203.04 as of July 21, 2013. On July 16, 2013, Christopher withdrew \$4,000 from the savings account. Megan did not raise the issue of a possible dissipation of marital assets.

¶ 11 The trial court awarded Megan \$1,400 in attorney fees in the judgment.

¶ 12 Christopher filed a *pro se* motion to reconsider the judgment. He argued that the money expended in building the house exceeded the appraisal value. He claimed that he was the sole source of all funding for the house—that the nonmarital investment in the house was \$312,250. Based upon this disparity of values, Christopher contends that there was no equity for the court to divide. He also argued that the trial court erred in every aspect of its judgment. The trial court denied the motion on November 27, 2013.

¶ 13 Christopher appeals from the judgment and the order denying his motion to

reconsider.

¶ 14

#### LAW AND ANALYSIS

¶ 15 On appeal, Christopher claims that the trial court abused its discretion, and raises several property distribution issues, as well as the court's award of attorney fees.

¶ 16 On appeal of the trial court's property division, we will not reverse the court's judgment unless we conclude the court abused its discretion. *In re Marriage of Siddens*, 225 Ill. App. 3d 496, 500, 588 N.E.2d 321, 324 (1992). The court of review does not need to agree with the trial court's asset division, but we must decide if the trial court acted arbitrarily without employing conscientious judgment, or if in view of all circumstances of the case, the trial court exceeded the bounds of reason so that no reasonable person would follow the trial court's position. *Marriage of Siddens*, 225 Ill. App. 3d at 500, 588 N.E.2d at 324.

¶ 17 Pursuant to section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act), the trial court must proportionally divide marital property. 750 ILCS 5/503(d) (West 2012). Proportional asset division does not mandate equal division. *In re Marriage of Doty*, 255 Ill. App. 3d 1087, 1097-98, 629 N.E.2d 679, 686 (1994). The trial court may award an unequal distribution of property if it properly applied the section 503(d) guidelines. 750 ILCS 5/503(d) (West 2012); *Marriage of Doty*, 255 Ill. App. 3d at 1097-98, 629 N.E.2d at 686. The court must consider the following guidelines in dividing marital property:

1. the contribution of a spouse to the marriage;
2. the dissipation of marital or nonmarital property;

3. the value of the property set aside for each spouse;
4. the duration of the marriage;
5. the relevant economic circumstances of each spouse upon division of assets;
6. any obligations and rights related to a previous marriage;
7. any antenuptial agreement of the parties;
8. the age, occupation, vocational skills, employability, and needs of each spouse;
9. the custodial provision for the children;
10. whether the apportionment is in lieu of or in addition to maintenance;
11. the reasonable opportunity for each spouse's future acquisition of assets and income; and
12. the tax consequences of the property division. 750 ILCS 5/503(d)(1)-(12) (West 2012).

¶ 18 Classification of the Residential Property as Marital

¶ 19 Christopher argues on appeal that the trial court erred in its classification of the property as marital because he purchased the land prior to the marriage and financed the construction with nonmarital funds. This argument differs from the position Christopher took at trial. We find that the record supports the trial court's finding that the house was a marital asset. Christopher and Megan acquired this property in anticipation of marriage, and Christopher and Megan jointly held the property before marriage. After the parties married and the house was completed, the mortgage was prepared with both names listed

on the mortgage. Any funds used in completion of the house or in payment of debts associated with the house after the marriage would have been marital funds.

¶ 20 Christopher cites to *In re Marriage of Preston*, 81 Ill. App. 3d 672, 675, 402 N.E.2d 332, 335 (1980), in support of his argument that regardless of the joint title, assets purchased with separate funds remain separate assets. The language of section 503 of the Act (750 ILCS 5/503 (West 2012)) supports the theory that property acquired exclusively with nonmarital assets should retain a nonmarital classification if certain exceptions included in the statute are applicable. *Id.* In *Marriage of Preston*, the wife argued that the trial court was wrong in concluding that \$22,000 of funds inherited by her husband retained its nonmarital status after he used the funds to purchase a boat and real estate. *Id.* at 674, 402 N.E.2d at 334. The appellate court agreed with the trial court's decision finding that the husband did not have donative intent with respect to the inheritance money. *Id.* at 675-76, 402 N.E.2d at 335-36. The court found that the manner in which the husband received the \$22,000 was in keeping with the exception to the presumption which states that, " 'property acquired \*\*\* in exchange for property acquired by gift, bequest, devise or descent' " is not presumed to be marital property. *Id.* at 676, 402 N.E.2d at 336 (quoting Ill. Rev. Stat. 1977, ch. 40, ¶ 503(a)(2)).

¶ 21 Christopher's argument, that we should follow *Marriage of Preston* and conclude that the funds used in the construction of this house are nonmarital, fails. Christopher did not inherit funds, and given the evidentiary problems, the trial court could not get to the issue of donative intent. While Christopher argued that he used funds acquired before he and Megan married, the trial court could not trace the funds to the construction costs.



¶ 24 In dividing the equity in the house, the court took into account the fact that the marriage was short-lived, and that Christopher established that he had performed a substantial amount of his own work on the construction of the house. The parties stipulated that the house was worth \$245,000 at trial. With no way to trace the monies Christopher alleged went into the house, the court looked to the appraisal and the \$231,000 loan on the property. The court made a determination that the house had \$20,000 in equity. While Christopher argued specific numbers in the motion to reconsider hearing, the trial court indicated that the evidence presented at trial was not so definitive, stating, "There just isn't an accurate accounting."

¶ 25 We find no abuse of discretion in the court's analysis of equity. We note that the court gave credit to Christopher for his personal contribution to the construction, as well as the short-term duration of the marriage. The court's order dividing the equity by awarding Christopher \$15,000 and Megan \$5,000 was not an abuse of discretion.

¶ 26 Chevrolet S-10

¶ 27 Christopher next argues that the trial court erred in awarding Megan \$2,000 as her share of the Chevrolet S-10 purchased during the marriage. He claims that because he traded in a nonmarital vehicle towards the purchase price of the Chevrolet S-10, Megan was not entitled to receive a share of the value of the vehicle. The parties stipulated to the value of the vehicle. Christopher purchased the vehicle during the marriage. Therefore, the vehicle meets the definition of a marital asset in section 503(a) of the Act (750 ILCS 5/503(a) (West 2012)). Christopher claims that the vehicle cost \$5,000 and

that the value of his trade-in was \$1,000. Because he paid the \$4,000 balance in cash from his nonmarital account, Christopher claims that the vehicle was nonmarital.

¶ 28 The bank account at issue may have been set up before he and Megan were married, but throughout the marriage any funds put into the account were marital. 750 ILCS 5/503(a) (West 2012). At the hearing on Christopher's motion to reconsider, the court explained that it did not matter that the account was solely in his name because after marriage, any funds deposited into the account became marital funds. Consequently, \$4,000 of marital funds went into the purchase of the vehicle, and as Christopher was awarded that vehicle, the court awarded Megan one-half of the vehicle's value. The court did not abuse its discretion in this award.

¶ 29 Savings Account

¶ 30 The final property division issue raised by Christopher on appeal involves his savings account. As with the other issues, Christopher claims that a portion of the funds in the account was nonmarital, and that therefore the court should not have awarded Megan \$6,600 as her share. He does not dispute that Megan is entitled to some of this money, but contends that she should only receive one-half of what accumulated during the marriage. Based on his calculations, the court should have only awarded Megan \$4,020.

¶ 31 The trial court found that the savings account had \$17,000 in it at the time of the separation. Just prior to separation, Christopher deposited \$12,000 into the account, which were marital funds. After separation, Christopher withdrew \$4,000 from the account. The court presumed that Christopher used the \$4,000 for a marital purpose. On

July 21, 2013, the account contained \$13,203.04. Essentially, the court took the pre-separation amount of \$17,000, less the \$4,000 withdrawal, and divided the amount in two. We find no fault in the court's analysis of the marital nature of these funds, and conclude that its award of \$6,600 to Megan was not an abuse of discretion.

¶ 32 Attorney Fees Award

¶ 33 Section 508 of the Act states:

"The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees." 750 ILCS 5/508(a) (West 2012).

If the award occurs at the end of the case, then the court is required to comply with section 503(j) of the Act, which states: "Any award of contribution to one party from the other party shall be based on the criteria for division of marital property under this Section 503 \*\*\*." 750 ILCS 5/503(j)(2) (West 2012).

¶ 34 A trial court's attorney fees award will not be modified or reversed unless the court abused its discretion. *In re Marriage of Uehlein*, 265 Ill. App. 3d 1080, 1090, 638 N.E.2d 706, 715 (1994). There is a presumption that each party will pay his or her own attorney fees. *In re Marriage of Sanborn*, 78 Ill. App. 3d 146, 152, 396 N.E.2d 1192, 1197 (1979). The party asking the court to award attorney fees is required to establish (1) his or her own inability to pay his or her own fees, and (2) the ability of the opposing party to pay the fees requested. *In re Marriage of Westcott*, 163 Ill. App. 3d 168, 179, 516 N.E.2d 566, 572 (1987). The spouse seeking attorney fees does not have to sell

capital assets or deplete his or her means of support in order to pay the attorney fees, as that would undermine economic stability. *In re Marriage of Marthens*, 215 Ill. App. 3d 590, 599, 575 N.E.2d 3, 9 (1991).

¶ 35 From our review of the record on appeal, we find that the trial court considered all section 503(d) factors for the division of property, and therefore considered the abilities of the parties to afford attorney fees. 750 ILCS 5/503(d) (West 2012). We conclude that the trial court did not abuse its discretion in awarding Megan \$1,400 in attorney fees.

¶ 36 **CONCLUSION**

¶ 37 For the reasons stated in this order, we affirm the judgment of the circuit court of Randolph County.

¶ 38 Affirmed.