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2015 IL App (3d) 140232-U

Order filed January 9, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
CRYSTAL S. HALL,)	Knox County, Illinois,
)	
Petitioner-Appellee,)	
)	Appeal No. 3-14-0232
v.)	Circuit No. 12-D-95
)	
RICHARD L. HALL,)	Honorable
)	Paul L. Mangieri,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erroneously determined that section 503(c)(2) of the Illinois Marriage and Dissolution of Marriage Act required husband to offer proof that the value of wife's nonmarital house increased in value due to contributions from the marital estate before husband could receive credit for his share of the value of the contributions made to wife's nonmarital property.

¶ 2 Respondent, Richard Hall, appeals from the judgment dissolving his four-year marriage to petitioner, Crystal Hall. Richard argues the trial court abused its discretion when it

determined the marital estate did not include the value of improvements to Crystal's nonmarital property. We reverse and remand.

¶ 3

BACKGROUND

¶ 4

Crystal and Richard were married on June 7, 2008. On May 4, 2012, after almost four years of marriage, Crystal filed a petition for dissolution of marriage. On July 24, 2012, Richard filed a counter-petition for dissolution of marriage asserting he "expended his non-marital funds in making substantial improvements to such non-marital real estate and is entitled to reimbursement" pursuant to section 503(c) of the Illinois Marriage and Dissolution of Marriage Act (the Act).

¶ 5

At the time of trial, Crystal was 61 years of age and Richard was 74 years of age. When the parties married in June 2008, Richard owned a home in Galesburg and another home in Lake Warren and Crystal owned a residence located in Altona, Illinois. Around the time of the parties' marriage, Richard moved into Crystal's home in Altona. While the couple lived together at this Altona residence, Richard paid \$5,527.03 for the installation of central air conditioning and new windows in the couple's Altona home. In December 2010, Crystal filed for Chapter 13 bankruptcy, which required her to pay \$784.62 per month toward her unsecured creditors, until January 2016.

¶ 6

In 2011, the parties began a kitchen remodel and expansion in the Altona residence. The \$25,576.42 remodeling project added a kitchen foundation, new cabinets, tiles, appliances, and electrical and plumbing work. Crystal testified that Richard knew Crystal did not have any money to contribute toward the remodel due to her bankruptcy. Crystal agreed she did not contribute funds for this project, and explained that during the marriage Richard moved money from his separate account, where his social security and retirement checks were deposited.

Crystal would then write checks to pay the kitchen remodeling expenses from the parties' joint bank account.

¶ 7 On December 9, 2013, the trial court found the installation of the windows and central air conditioning were not gifts to Crystal. Instead, the court ruled they constituted improvements Richard sought to make to Crystal's nonmarital home in anticipation of the marriage. Citing to section 503(c)(2) of the Act, the court found:

“by clear and convincing evidence, a tracing of Richard's non-marital funds to finance the improvements to [Crystal's nonmarital property] has been established. Both improvements: the windows and central air, as well as the kitchen remodeling, were primarily financed by Richard's contributing non-marital funds from either his social security payments or accounts maintained to fund his retirement into the parties' joint checking account.”

¶ 8 However, the court found transmutation occurred when Richard transferred his nonmarital funds into the parties' joint checking account. With regard to the kitchen remodel, the court found the evidence established that “the decision to embark upon the remodeling of the kitchen was made almost unilaterally by Richard ***. The remodeling of the kitchen was also undertaken at a time when Richard knew that Crystal had no financial ability to contribute towards the project.”

¶ 9 Having found Richard transmuted his nonmarital funds into marital property by transferring the money into the parties' joint checking account, the court noted that the marital estate “would be entitled to an equitable share of the increased value of the asset or home.” However, the court further found that, “there [was] no evidence of record that establishes an increase of value in the non-marital asset of Crystal.” Accordingly, the court determined Richard

was not entitled to reimbursement for his nonmarital contribution to Crystal's nonmarital property and the marital estate was not entitled to reimbursement equal to the increase in the value of Crystal's nonmarital property.

¶ 10 On December 31, 2013, Richard filed a motion to reconsider arguing the trial court improperly determined section 503(c)(2) of the Act required an increase in value before reimbursement from the nonmarital estate can occur. On January 23, 2014, the trial court entered a judgment of dissolution of marriage incorporating its December 9, 2013, findings. On February 25, 2014, the trial court heard arguments and denied Richard's motion to reconsider. Richard timely appeals.

¶ 11 ANALYSIS

¶ 12 On appeal, Richard argues the court erred when it denied his request for reimbursement. Richard contends section 503(c)(2) of the Act does not require proof of an increase in the value of the nonmarital estate before reimbursement can occur. Crystal responds the court's finding was proper and equitable because Crystal does not have the financial ability to reimburse the marital estate from her nonmarital property.

¶ 13 A trial court's decision not to reimburse the marital estate from nonmarital assets will not be disturbed on appeal unless such a ruling constitutes an abuse of discretion. *In re Marriage of Steinberg*, 299 Ill. App. 3d 603, 610 (1998). Section 503(c)(2) of the Act provides, in part:

“When one estate of property makes a contribution to another estate of property, or when a spouse contributes personal effort to non-marital property, the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation; provided, that no such reimbursement shall be made with respect to a contribution which is not retraceable by clear and

convincing evidence, or was a gift, or, in the case of a contribution of personal effort of a spouse to non-marital property, unless the effort is significant and results in substantial appreciation of the non-marital property. *** The court may provide for reimbursement out of the marital property to be divided or by imposing a lien on the nonmarital property which received the contribution.” 750 ILCS 5/503(c)(2) (West 2012).

¶ 14 Richard relies heavily on *In re Marriage of Albrecht*, 266 Ill. App. 3d 399 (1994), for the proposition that evidence of appreciation in value to a nonmarital residence is not necessary where the marriage was of a short duration and clear and convincing evidence of contributions of marital funds exists. In *Albrecht*, the wife argued the trial court erred when it failed to reimburse the marital estate for marital funds contributed to the husband’s nonmarital residence for improvements made during the course of the marriage. The Fourth District noted that the improvements may have some value even if they do not cause the nonmarital residence to increase in value. *Id.* at 401. The appellate court stated, “it is not equitable to permit the former spouse who owns the nonmarital residence to enjoy the improvements made by marital funds without some reimbursement or credit to the marital estate.” *Id.* In *Albrecht*, the marriage between the parties lasted only six years and the wife presented evidence in the form of receipts for the improvements made. Therefore, the appellate court held that the “amounts proved as contributed to [husband’s] house and uncompensated should be credited to the marital estate and divided according to the provisions of section 503 of the Act.” *Id.*

¶ 15 Crystal responds that the facts of the present case are distinguishable from *Albrecht* because the improvements made to the nonmarital residence in *Albrecht* were a joint decision between the parties. Crystal relies on the dissent in *Albrecht*, which states,

“If improvements do not in fact improve the property, if they do not increase its value, then they should not give rise to any right to reimbursement. If [husband] here had spent his nonmarital funds on improvements which added nothing to the value of his house, and then sold it, he would have wasted his money. The result should be no different if [wife] and [husband] together spent marital funds on improvements which added nothing to the value of the home. Parties sometimes make mistakes, or bad investments, with marital funds, and there is usually no way for one party to recover those funds from the other when the marriage is dissolved.” *Id.* at 405.

¶ 16 The parties do not dispute that the marital estate contributed \$31,103.95 toward the improvements of Crystal’s nonmarital property, including Richard’s payment of \$5,527.03 to install central air conditioning and new windows into the home due to the impending marriage. Moreover, the trial court specifically found by clear and convincing evidence that “a tracing of Richard’s non-marital funds to finance the improvements to [Crystal’s nonmarital property]” existed.

¶ 17 However, a careful reading of section 503(c)(2) reveals that appreciation of the nonmarital property is not a condition precedent to reimbursement under these circumstances. 750 ILCS 5/503(c)(2) (West 2012); *In re Marriage of Adams*, 183 Ill. App. 3d 296 (1989) (section 503(c)(2) limits required evidence of appreciation of nonmarital property to contributions of personal effort). Further, the case law provides that when the marriage is of short duration, the cost of the improvements can be the proper measure for reimbursement sought pursuant to section 503(c)(2). Consequently, we remand the matter for further

proceedings and direct the trial court to credit the marital estate in the amount of \$31,103.95, and divide that amount according to the provisions of section 503 of the Act.

¶ 18

CONCLUSION

¶ 19

For the foregoing reasons, the judgment of the circuit court of Knox County is reversed and remanded with directions.

¶ 20

Reversed and remanded with directions.