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2015 IL App (3d) 140944-U

Order filed August 4, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
VICKEY J. MAJOR,	)	Tazewell County, Illinois,
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-14-0944
and	)	Circuit No. 13-D-180
	)	
DENNIS K. MAJOR,	)	Honorable
	)	Jerelyn D. Maher,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Presiding Justice McDade and Justice Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Respondent's IRA funded with money respondent acquired by gift during the marriage maintained status as nonmarital property even though the money was funneled through a conduit joint account to respondent's IRA.

¶ 2 In dissolution of marriage proceedings, petitioner, Vickey J. Major, and respondent, Dennis K. Major, contested whether respondent's individual retirement account (IRA) constituted marital property. The circuit court classified respondent's IRA as marital property and divided the asset among the parties. Respondent appeals, contending the money used to

invest in his IRA was nonmarital property acquired by gift and the property never transmuted into marital property. We reverse and remand for further proceedings.

¶ 3

### FACTS

¶ 4

Petitioner and respondent were married in 1993. During dissolution of marriage proceedings, the parties disputed whether an IRA in respondent's name was a marital asset. Respondent contended the IRA was a nonmarital asset funded with money acquired as a gift from his father.

¶ 5

Petitioner conceded the funds were initially a nonmarital gift but argued the funds transmuted into marital property when the funds were passed through the parties' joint account before being invested in respondent's IRA.

¶ 6

Gary Gilles, a financial advisor to respondent's father testified that early in the parties' marriage, respondent's father approached Gilles about making a gift to his son in the form of an IRA investment. Gilles explained that in order to gift the funds to be invested in an IRA for respondent, respondent was required to open an Edwards Jones investment account. According to Gilles, the account was necessary because the funds had to "run \*\*\* through an Edward Jones account, to get to the end choice which was the IRA." Gilles explained the funds were "funneled through the joint account on its way to the IRA, because that's the only way we [could] facilitate that."

¶ 7

Gilles informed respondent that he had a choice between opening an Edward Jones investment account individually or jointly with petitioner. Respondent chose to open a joint account and named petitioner as the beneficiary of the IRA. In addition, Gilles testified that throughout the marriage, respondent's father made regular gifts to respondent intended to be

invested in respondent's IRA. Each time respondent's father gifted money to respondent, Gilles funneled the funds through the parties' joint account and invested the funds in respondent's IRA.

¶ 8 Respondent testified that he was given a choice between opening an individual or joint Edward Jones account to have the funds received from his father invested into respondent's IRA. After hearing Gilles' advice, respondent chose to open a joint account with petitioner. Respondent did this because he considered possibly opening an additional IRA in petitioner's name. However, an IRA in petitioner's name was never opened. Respondent named petitioner as the beneficiary of his IRA so that she would have been the recipient of the funds in the IRA should anything happen to him. In addition, respondent asserted neither he nor petitioner ever deposited or withdrew any funds from the joint account except the funds gifted from his father.

¶ 9 Petitioner did not testify at the hearing.

¶ 10 After the parties finished presenting evidence and arguments, the circuit court found the IRA constituted marital property. In classifying the IRA as marital property, the circuit court found the gifted nonmarital property transmuted to marital property when the funds passed through the parties' joint Edward Jones account. Consequently, in the judgment of dissolution, the circuit court assigned 55% of the IRA to respondent and assigned the remainder to petitioner.

¶ 11 ANALYSIS

¶ 12 On appeal, respondent contends the circuit court's classification of the IRA is against the manifest weight of the evidence. Respondent argues the funds used to invest in his IRA did not transmute to marital property when funneled through the parties' joint Edward Jones account. Because the evidence fails to show the funds used to invest in respondent's IRA were commingled with other marital assets or lost their identity, we find the IRA maintained its status as respondent's nonmarital property.

¶ 13 When determining the distribution of the marital estate, the court must first determine what property constitutes marital property and what constitutes nonmarital property. *In re Marriage of Henke*, 313 Ill. App. 3d 159, 166 (2000); 750 ILCS 5/503 (West 2014). A circuit court's classification of property as marital or nonmarital will not be disturbed on appeal unless it is contrary to the manifest weight of the evidence. *In re Marriage of Foster*, 2014 IL App (1st) 123078.

¶ 14 Property acquired by either spouse during marriage is presumed to be marital property. *In re Marriage of Davis*, 215 Ill. App. 3d 763 (1991). However, this presumption may be overcome by clear and convincing evidence demonstrating the property falls within one of the statutory exceptions. *Id.* One exception is property acquired by gift. 750 ILCS 5/503 (a)(1) (West 2014). Petitioner concedes the funds originally qualified under the statute as nonmarital property acquired by gift. However, petitioner contends the funds transmuted into marital property when deposited into the parties' joint Edward Jones account.

¶ 15 In order for the funds received from respondent's father to transmute into marital property, the funds must be: (1) commingled with marital property; (2) resulting in a loss of identity of the contributed funds. 750 ILCS 5/503(c)(1) (West 2012); *Foster*, 2014 IL App (1st) 123078, ¶ 76. "The rationale for this rule is that the spouse's 'failure to properly segregate nonmarital property, by commingling it with marital property, evinces an intent to treat the former as part of the marital estate.' " *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 672–73 (2008) (quoting *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 154 (2005)). We find the evidence fails to establish either prong.

¶ 16 In the instant case, the funds passing through the joint account were segregated from the parties' other marital property. Both Gilles and respondent testified the only funds passing

through the joint account were funds gifted from respondent's father to be invested in respondent's IRA. Stated another way, there were no other funds in the joint account other than the gifted funds. Thus, the evidence fails to establish the funds transmuted to marital property.

¶ 17 Even though the funds were funneled through a joint account before passing into respondent's IRA, commingling did not occur. "Although the placement of nonmarital funds into a joint checking account may transmute the nonmarital funds into marital property [citations], nonmarital funds that are placed into a joint account merely as a conduit to transfer money will not be deemed to be transmuted into marital property [citations]." *Heroy*, 385 Ill. App. 3d at 673. The record shows respondent opened the joint account with the intent to facilitate the transfer of the gift from his father to respondent's IRA. Petitioner concedes that the joint account acted as a depository for the gifted funds before they were invested in respondent's IRA. Thus, the funds invested in respondent's IRA maintained their status as nonmarital property when they were funneled through an account intended to act as a conduit to facilitate the transfer of the gift.

¶ 18 We note that, the funds never lost their identity as respondent's nonmarital property. Even nonmarital property deposited into a marital account may still maintain its identity as nonmarital property if the party offers clear and convincing evidence tracing the funds to their source. *In re Marriage of Steel*, 2011 IL App (2d) 080974, ¶ 80. The evidence makes clear that the only funds flowing through the parties' joint account were those funds gifted to respondent.

¶ 19 The funds invested in respondent's IRA constitute respondent's nonmarital property. Therefore, respondent's IRA is to be assigned in its entirety to respondent.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Tazewell County is reversed and remanded with directions.

Reversed and remanded with directions.