

**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).

2015 IL App (4th) 140274-U

NO. 4-14-0274

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

February 20, 2015  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: MARRIAGE OF	)	Appeal from
NANETTE GODAR,	)	Circuit Court of
Petitioner-Appellant,	)	Macoupin County
and	)	No. 12D109
MARK GODAR,	)	
Respondent-Appellee.	)	Honorable
	)	Patrick J. Londrigan,
	)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.  
Justices Knecht and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in dividing the parties' marital assets.

¶ 2 In January 2014, the trial court entered an order dissolving the marriage of petitioner, Nanette Godar, and respondent, Mark Godar, and allocating the parties' marital assets and debt. Nanette appeals, arguing the court abused its discretion by disproportionately allocating the parties' marital assets. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Because the parties are familiar with the facts in this case, we recite them only as necessary to resolve the issues raised on appeal.

¶ 5 On July 25, 2012, Nanette filed a petition for dissolution of marriage, citing irreconcilable differences. The parties were married on October 23, 1982. While Mark and

Nanette reached an agreement to divide most of the marital and nonmarital property, the parties were unable to agree on the division of certain marital assets and debt. The parties disagreed on the division of the following marital assets: (1) the parties' residence, located on Mark's nonmarital farm; (2) Nanette's retirement pension; (3) a 1999 Ford F-250; (4) a 2006 Ford F-250; (5) a 2008 Toyota Matrix; (6) a 2003 John Deere tractor; (7) a 2005 Honda motorcycle; and (8) a 2006 Kubota tractor. The parties also disagreed on the division of the following marital debt: (1) the parties' credit cards, (2) unpaid bills, (3) a \$5,610 debt owed to Mark's sister, (4) a \$5,050 debt owed to the Bank of Kampsville (Bank), and (5) another \$102,317.03 debt owed to the Bank.

¶ 6 At the time of the proceedings, Nanette was 48 years old. She has been employed by the state of Illinois since October 1999. The employee earnings statement she submitted shows Nanette made just over \$40,000 in 2012. Nanette testified she has a retirement pension with the state, which she conceded was marital property. After her separation from Mark, Nanette was living in an apartment and paying \$400 per month in rent. Mark remained in the parties' home. As of September 2012, Nanette moved in with her mother "to help her." While she does not pay any rent, she helps pay the utilities. Nanette testified during the marriage she took out a \$102,317.03 loan from the Bank in her name. Nanette explained it was a consolidation loan to pay for, among other things, previous amounts owed on vehicles as well as improvements to the residence. Mark testified he did not know about the loan.

¶ 7 In her posttrial position statement, Nanette argued, *inter alia*, the parties' residence and improvements, which they both agree is worth \$104,000, as well as the \$102,317.03 loan, should be divided equally. While Nanette did not place a value on her pension, she argued it

should be awarded to her in its entirety. It was her position Mark should get the John Deere tractor and she should get the Kubota tractor in the event the trial court agreed with her recommendations regarding the residence, the pension, and the loan.

¶ 8 Mark, who was 56 years old at the time of the hearing, worked during the marriage as a heavy equipment operator and farmer. According to the record, Mark weighed between 650 and 700 pounds and was suffering from, *inter alia*, congestive heart failure. As a result, Mark had been unable to work for a number of years and had a claim pending for social security disability benefits. (We note Nanette concedes Mark's social security benefits cannot be used to offset the division of assets. See *In re Marriage of Crook*, 211 Ill. 2d 437, 449, 813 N.E.2d 198, 204 (2004) ("Social Security benefits may not be divided directly or used as a basis for an offset during state dissolution proceedings"). After the separation, Mark remained in the parties' marital home, which was purchased for them by Mark's father and uncle. A \$13,000 loan, taken out in May or June of 1982, just before the purchase of the house, was paid off with marital funds.

¶ 9 According to Mark's testimony, he lacks a regular and consistent income with which to support himself from month to month. Mark's only source of income comes from his nonmarital farmland, which he rents for farming and hunting. Mark testified the farm generated gross revenues (before expenses) of \$33,342 in 2009, \$13,510 in 2010, \$25,819 in 2011, and \$40,880 in 2012. The farm had \$21,786 in expenses in 2009, \$11,795 in 2010, and \$19,073 in 2011. Mark noted the 2012 farm income included the sale of some land. Mark shares 30% of the farm rental income with his sister, Rose Godar, who owns the farm with him. Mark also makes between \$3,000 and \$8,000 a year renting the land for hunting, which he does not share

with his sister. Mark testified he entered into a loan agreement to borrow \$5,610 from his sister to help pay for general living expenses and a lift chair. At the time of the hearing, that loan had not yet been repaid.

¶ 10 In his posttrial position statement, Mark argued, *inter alia*, the trial court should award Nanette's pension, which he valued in his financial affidavit at \$143,332, to her. Mark attached to his position statement a detailed calculation of his valuation for Nanette's pension. Mark also argued the court should assign Nanette the entire \$102,317.03 debt to the Bank.

¶ 11 In its January 7, 2014, written order, the trial court awarded Mark the following assets: (1) the parties' residence (valued by both parties at \$104,000), (2) the 1999 Ford F-250 (valued by Mark at \$5,375 and \$4,300 by Nanette), and (3) the 2003 John Deere tractor (valued at \$45,000 by the parties).

¶ 12 The trial court awarded the following assets to Nanette: (1) the 2006 Ford F-250 (valued by Mark at \$14,025 and \$13,000 by Nanette), (2) the 2008 Toyota Matrix (valued by Mark at \$10,500 and \$7,100 by Nanette), (3) the 2005 Honda motorcycle (valued at \$5,000 by Mark and \$3,000 by Nanette), (4) the 2006 Kubota tractor (valued by the parties at \$12,000), and (5) her retirement pension (valued by Mark at \$143,332).

¶ 13 The trial court also divided the marital debt and assigned the following to Mark: (1) the credit cards in his name; (2) medical bills in his name; (3) the \$5,610 debt owed to Mark's sister; (4) the \$5,050 debt owed to the Bank; and (5) half of the \$102,317.03 debt owed to the Bank, *i.e.*, \$51,158.52. The trial court assigned Nanette's portion of the marital debt as follows: (1) the credit cards in her name; and (2) half of the \$102,317.03 debt, *i.e.*, \$51,158.52.

¶ 14 On February 3, 2014, Nanette filed a motion to reconsider the trial court's judgment. In it, she argued, *inter alia*, "[t]he decision of the Court allocates and divides the marital assets between the parties in a disproportionately greater amount to [Mark]." Specifically, Nanette contended she should be awarded \$52,000 for her interest in the parties' residence.

¶ 15 During the February 19, 2014, hearing on the motion to reconsider, Nanette argued Mark received too large an award in receiving the residence. Nanette argued she should receive 50% of the value of the house. Mark objected, arguing he received none of Nanette's pension, which he valued at \$143,332. Mark maintained if the court were to grant her motion and award her \$52,000 for the residence, it should award him another asset to achieve an equitable distribution. Following the hearing, the court denied Nanette's motion.

¶ 16 This appeal followed.

## ¶ 17 II. ANALYSIS

¶ 18 On appeal, Nanette argues the trial court abused its discretion by disproportionately allocating the parties' marital assets. Specifically, Nanette contends the court's award, which she characterizes as 81.5% in Mark's favor, was inequitable.

### ¶ 19 A. Standard of Review

¶ 20 "When a party challenges a trial court's *findings of fact*, the appellate court will affirm unless the court's *findings* were against the manifest weight of the evidence." (Emphases in original.) *People ex rel. Sussen v. Keller*, 382 Ill. App. 3d 872, 877, 892 N.E.2d 11, 16 (2008). However, we review the trial court's final disposition under an abuse-of-discretion standard. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700, 843 N.E.2d 478, 482-83

(2006) (a review of the trial court's determination on the division of marital property should be conducted under an abuse-of-discretion standard). "[A] reviewing court will not substitute its judgment for the trial court's disposition in marital property matters." *In re Marriage of Hart*, 194 Ill. App. 3d 839, 847, 551 N.E.2d 737, 741 (1990). The valuation and distribution of marital property are matters within the trial court's discretion. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1113, 806 N.E.2d 701, 706 (2004). We will not disturb the trial court's valuation or distribution decisions unless the court abused its discretion, which occurs when no reasonable person would adopt the view taken by the court. *Sawicki*, 346 Ill. App. 3d at 1113, 806 N.E.2d at 706.

¶ 21 B. Record on Appeal

¶ 22 While we have transcripts of the February 19, 2013, and March 26, 2013, proceedings, the record does not contain a transcript of the proceedings for April 16, 2013, the final day of hearings. It is well-established the appellant has a duty to present the reviewing court with a proper record on appeal so it has an adequate basis for reviewing the decision. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984). If there is a gap in the record which could have a material impact on the case, the reviewing court will presume the missing evidence supported the judgment of the trial court and resolve any doubts against the appellant. *Foutch*, 99 Ill. 2d at 392, 459 N.E.2d at 959.

¶ 23 Here, the docket entry for March 27, 2013, shows the matter was continued to April 16, 2013. The April 16 docket entry shows, *inter alia*, the cause was called for a continued hearing, witnesses were sworn, and evidence was heard. It is entirely possible the trial court heard relevant testimony beyond what is available to us in the incomplete record on appeal. We

must presume this gap in the record supported the court's judgment and resolve all doubts against Nanette as the appellant.

¶ 24 C. Trial Court's Allocation of the Marital Property

¶ 25 Following our review of the record and the trial court's order in this case, we are not persuaded the court abused its discretion in its distribution of the parties' marital property.

¶ 26 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); *In re Marriage of Aschwanden*, 82 Ill. 2d 31, 37, 411 N.E.2d 238, 241 (1980)); 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." *Hart*, 194 Ill. App. 3d at 847, 551 N.E.2d at 741. However, "[a] division of marital property need not be equal to be equitable." *Hart*, 194 Ill. App. 3d at 847, 551 N.E.2d at 741.

¶ 27 Section 503(d) of the Dissolution Act provides the following relevant factors:

"(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property \*\*\*;

(2) the dissipation by each party of the marital or non-marital property \*\*\*;

\* \* \*

(3) the value of the property assigned to each spouse;

(4) the duration of the marriage;

(5) the relevant economic circumstances of each spouse

when the division of property is to become effective \*\*\*;

\* \* \*

(8) the age, health, station, occupation, amount and sources

of income, vocational skills, employability, estate, liabilities, and

needs of each of the parties;

\* \* \*

(11) the reasonable opportunity of each spouse for future

acquisition of capital assets and income[.]" 750 ILCS 5/503(d) (West

2012).

¶ 28 Nanette contends the trial court's failure to specifically address each element set forth in section 503(d) of the Dissolution Act shows it did not consider them. See 750 ILCS 5/503(d) (West 2012). However, it is well-established a trial court need not make express findings regarding those factors. *In re Marriage of Swanson*, 275 Ill. App. 3d 519, 528, 656 N.E.2d 215, 222 (1995); *In re Marriage of Davis*, 215 Ill. App. 3d 763, 774, 576 N.E.2d 44, 51 (1991). Nanette also cites *In re Marriage of Micheli*, 2014 Ill App (2d) 121245, 15 N.E.3d 512, and *In re Marriage of Winne*, 239 Ill. App. 3d 273, 606 N.E.2d 777 (1992), as examples of cases where the trial court's division of assets was found to be disproportionate. However, as stated, apportionment determinations are based on the specific facts of each individual case. See *Hart*, 194 Ill. App. 3d at 847, 551 N.E.2d at 741.

¶ 29 In this case, Nanette argues the trial court erred in disproportionately allocating 81.5% of the marital property to Mark and just 18.5% to her. However, Nanette's argument ignores the award of her pension, which was valued by Mark at \$143,332. We note Nanette does not argue her pension was a nonmarital asset. Instead, Nanette maintains no valuation was presented for her pension. However, Mark's financial affidavit, which was admitted into evidence without objection, values Nanette's pension at \$143,332, as did his pretrial position statement. See *In re Marriage of Kocher*, 282 Ill. App. 3d 655, 658, 668 N.E.2d 651, 654 (1996) ("when a trial court receives financial affidavits, it can consider them as if their contents had been presented as direct testimony during a hearing"). Moreover, the content of Mark's affidavit was addressed during his direct testimony and was subject to cross-examination. Mark also attached to his posttrial position statement a detailed calculation of the \$143,332 value for Nanette's pension.

¶ 30 Nanette, on the other hand, failed to present *any* evidence of the value of her pension. Instead of offering a value for her pension in her financial affidavit, Nanette chose to simply list it as "with [the] State." A value was also not addressed during any of her testimony before the trial court. "It is the obligation of the parties to provide sufficient information to the trial court in marital property valuation matters." *In re Marriage of Benz*, 165 Ill. App. 3d 273, 285, 518 N.E.2d 1316, 1323 (1988); *In re Marriage of Steel*, 2011 IL App (2d) 080974, ¶ 102, 977 N.E.2d 761 (appellate court refused to entertain the petitioner's complaint regarding the quality of evidence on valuation where she herself did not attempt to introduce any better evidence); *In re Marriage of Landwehr*, 225 Ill. App. 3d 149, 153, 587 N.E.2d 529, 532 (1992) ("the appellate court has criticized the practice of parties in dissolution proceedings to challenge

the trial judge's determination of the value of property where the parties, themselves, have failed to provide evidence upon which a purportedly more fair valuation might be made"); *In re Marriage of Smith*, 114 Ill. App. 3d 47, 54, 448 N.E.2d 545, 550 (1983) (the trial court's lack of adequate information to be used in valuing the respondent's pension rights was not attributable to the court because it was the parties' responsibility to present the requisite data).

¶ 31 Here, the trial court was entitled to consider the valuation contained in Mark's financial affidavit. While the court did not assign a value to Nanette's pension, the Dissolution Act does not require the trial court to place a specific value on each item of property. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 61, 961 N.E.2d 1247 (citing *In re Marriage of Hagshenas*, 234 Ill. App. 3d 178, 200, 600 N.E.2d 437, 453 (1992)). In ruling on Nanette's motion to reconsider, the court specifically stated it considered her retirement plan in finding it had made an equitable distribution of the marital assets. Mark's \$143,332 figure was referenced during that hearing. Considering no evidence was presented by Nanette regarding her pension, it is reasonable to assume the court, in making its determination, assigned Mark's \$143,332 value to her pension. Under these circumstances, the adoption of Mark's valuation for Nanette's pension cannot be considered error.

¶ 32 Factoring in Nanette's pension and using her figures for the vehicles with disputed values results in an award to her in the amount of \$178,432 (broken down as follows: \$143,332 (pension) + \$13,000 (2006 Ford F-250) + \$3,000 (Honda motorcycle) + \$12,000 (2006 Kubota tractor) + \$7,100 (2008 Toyota Matrix)). Using Nanette's values again for the vehicles shows Mark was awarded \$153,300 (broken down as follows: \$104,000 (the residence) + \$4,300 (1999 Ford F-250) + \$45,000 (2003 John Deere tractor)). Thus, the trial court awarded Nanette

approximately 54% and Mark approximately 46% of the marital assets. (\$178,432 and \$153,300 are approximately 54% and 46% of \$331,732, *i.e.*, \$178,432 + \$153,300). Accordingly, the court's division of the marital property in this case was neither disproportionate nor an abuse of its discretion.

¶ 33

### III. CONCLUSION

¶ 34

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

¶ 35

Affirmed.