

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) 140500-U

NO. 4-14-0500

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 23, 2015

Carla Bender

4th District Appellate

Court, IL

In re: MARRIAGE OF)	Appeal from
NANETTE F. BUCK,)	Circuit Court of
Petitioner-Appellee,)	Macoupin County
and)	No. 10D210
DAVID A. BUCK,)	
Respondent-Appellant.)	Honorable
)	Patrick J. Londrigan,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed as modified, concluding the trial court did not abuse its discretion in (1) awarding petitioner the marital residence or (2) requiring respondent to pay his son's junior- and senior-year college expenses. The appellate court further modified the trial court's award of college expenses to reflect an amount supported by the record.

¶ 2 In March 2011, the trial court entered a written judgment dissolving the marriage of petitioner, Nanette F. Buck, and respondent, David A. Buck. In April 2014, the court entered a supplemental judgment resolving all remaining issues, including the division of marital property, maintenance, and attorney fees. David appeals, arguing the trial court abused its discretion by (1) awarding Nanette 100% of the marital residence and (2) requiring him to pay \$50,000 toward his son's junior- and senior-year college expenses. We affirm the trial court's supplemental judgment as modified herein.

¶ 3 I. BACKGROUND

¶ 4 The parties were married on December 30, 1991, and had one child, Daniel, on September 9, 1992. In March 2011, the trial court entered a judgment of dissolution of marriage, finding grounds shown to dissolve the parties' marriage. The court continued the matter for later consideration of all remaining issues. In October 2013 and November 2013, the trial court conducted two hearings to address issues related to property distribution and maintenance. The following evidence was adduced at the hearings.

¶ 5 A. Assets and Property Distribution

¶ 6 In 1996, the parties moved to Illinois and purchased a residence located at 14695 Spillway Road, Girard, Illinois (Spillway residence). Both parties invested time and money into improving the Spillway residence, and in July 2011, the Spillway residence was appraised for \$135,000.

¶ 7 1. *Nanette's Assets*

¶ 8 At the time of the dissolution proceedings, Nanette was 57 years old. During the marriage, Nanette worked full-time while also being primarily responsible for raising Daniel. Nanette has been employed by the State of Illinois since February 2010, working in the Department of Aeronautics. Nanette's gross income from this employment is approximately \$3,500 per month.

¶ 9 At the time of the March 2011 dissolution, Nanette's assets included a individual retirement account (IRA) (\$63,264—approximately \$31,500 of which was marital property); a 2006 Jeep (valued at \$7,000); her personal checking account, with an account balance of \$10,932; and two certificates of deposit she had inherited from her parents (\$60,000). Nanette testified she thereafter used all of her inherited funds to purchase a new Jeep when the

transmission "went out" in the 2006 Jeep, to pay the real estate taxes on the Spillway residence, and to pay for Daniel's college expenses.

¶ 10 *2. David's Assets*

¶ 11 David was 62 years old at the time of the dissolution proceedings. Prior to the parties' marriage, David worked for Northrup Corporation in California, where he contributed a portion of his salary to a pension account. During the marriage, David was employed as a neon wholesale manufacturer. David elected to take early retirement at the age of 62 and received \$1,300 per month in Social Security benefits and \$403 per month from his Northrup Corporation pension.

¶ 12 In April 2010, David received a significant inheritance (approximately \$1 million) as a result of his mother Phyllis Buck's death. In September 2010, David purchased a residence for himself at R.R. 4, Girard, with \$154,735 of his inherited funds and moved from the Spillway residence. Thereafter, David made no contributions to either the expenses at the Spillway residence or the support of Daniel, who was a senior in high school and remained living with Nanette at the Spillway residence.

¶ 13 At the time of the March 2011 dissolution, David had the following nonmarital assets: an account with First National Bank of Girard in the name of David A. Buck and Daniel D. Buck, with an account balance of \$526,616; the residence located at R.R. 4, Girard, Illinois; two promissory notes securing loans he made as trustee of the Phyllis N. Buck Inter-Vivos Trust to RJD Farm, totaling \$100,000; two trucks (valued at \$22,000 and \$13,000 respectively); coins (valued at \$20,000); a Wells Fargo account, in the name of "Phyllis N. Buck, Trustee, David A. Buck, Co-Trustee, Inter-Vivos Trust of Phyllis N. Buck," with an account balance of \$82,262; and his pension with Northrup Corporation.

¶ 14 David's marital assets (aside from his joint ownership of the Spillway residence) included his personal checking account at First National Bank of Girard, with an account balance of \$106,000, and neon sign equipment from his occasional self-employment during the marriage (appraised at \$10,260). (We note David argues this checking account is nonmarital and testified he had transferred \$118,000 into it from a credit union account he inherited from his mother. However, the classification of this account as marital or nonmarital does not alter the outcome of the issues on appeal.)

¶ 15 David thereafter sold the residence at R.R. 4 for \$185,000. He serves as the mortgagor for \$180,000 of the purchase, receiving \$1,246 per month. David has also since purchased a residence in Tennessee for \$238,000, two motorcycles, and a new truck (valued at \$24,000). At the time of the November 2013 hearing, David estimated he had approximately \$316,000 in liquid funds. He further testified he had monthly living expenses of \$1,360, which paid for a garage rental fee to store his neon sign equipment, a race car, a Model T Ford, and his motorcycles.

¶ 16 **B. Daniel's College Expenses**

¶ 17 At the time of the hearing on supplemental issues, Daniel was in his junior year of college at Illinois College in Jacksonville. Daniel testified David had purchased a truck for him during his senior year of high school but had later "repossessed" it during the first week of his freshman year of college. Nanette thereafter purchased Daniel a newer truck, using \$17,000 of her inherited funds.

¶ 18 The total out-of-pocket cost for Daniel's freshman and sophomore years of college (excluding the truck) was \$36,469. Of that \$36,469, Nanette paid \$14,019, David paid \$12,000, and Daniel paid the remaining \$10,450 out of \$19,000 he inherited from his paternal

grandmother. (We note petitioner's exhibit No. 20 was entered into evidence as a demonstrative exhibit and shows the total cost for Daniel's first two years of college was \$120,936. However, nothing in the substantive portion of the record supports this calculation.)

¶ 19 For the 2013-14 school year (Daniel's junior year), tuition, room, board, fees, and costs at Illinois College were \$36,760. Daniel was able to offset his direct costs with scholarships and grants in the amount of \$22,226, making his total amount due to Illinois College for his junior year \$14,534. To cover this amount, Nanette paid \$3,555 toward Daniel's first semester costs and testified she would need the same amount for the second semester. In addition, Nanette testified she took out a student loan in the amount of \$7,420 to cover the remainder of Daniel's junior-year expenses (petitioner's exhibit No. 19 shows student loans totaling \$3,712 for the fall semester). Nanette also testified she pays \$143 per month for Daniel's medical insurance, and Daniel spends approximately \$2,700 per semester on personal expenses.

¶ 20 Nanette testified she did not know the precise cost for Daniel's senior year of college, but tuition, room, board, fees, costs, and Daniel's scholarships and grants generally increase at a rate of 8% per year.

¶ 21 C. The Parties' Position Statements

¶ 22 In her posttrial position statement, Nanette argued she should receive the Spillway residence and David should be ordered to meet the costs of Daniel's junior and senior years of college not covered by scholarships, grants, and work study, including the amount Nanette had already paid and an additional \$143 per month for Daniel's medical insurance. If the trial court agreed with her proposed distribution, Nanette asserted she would not require maintenance to meet her living expenses.

¶ 23 In his posttrial position statement, David argued the Spillway residence should be sold and the proceeds should be distributed equally among the parties. He further argued Daniel's college expenses should be divided in a "three-way split" between himself, Nanette, and Daniel.

¶ 24 D. The Trial Court's Supplemental Judgment

¶ 25 In February 2014, the trial court issued an opinion letter disposing of the remaining issues. Nanette's attorney prepared a judgment in accordance with the opinion, which was signed by all parties. In the judgment, the trial court awarded the following assets to Nanette: (1) the furnishings, personal property, clothing, and personal items currently in her possession, with the exception of items specifically assigned to David; (2) the motor vehicle titled in her name; (3) the Spillway residence; (4) her retirement account; and (5) her marital bank account.

¶ 26 The trial court awarded the following assets to David: (1) the furnishings, personal property, clothing and personal items currently in his possession, along with miscellaneous personal items located at the Spillway residence; (2) the motor vehicle titled in his name; (3) any real estate titled in his name alone; (4) his retirement pension; (5) his marital bank account; and (6) the neon shop equipment currently in his possession.

¶ 27 The trial court also ordered David to pay Daniel a sum of \$25,000 within 10 days for his contribution to Daniel's junior year of college, and another \$25,000 by August 1, 2014, for his contribution to Daniel's senior year of college. The order specified Daniel may reimburse Nanette from those monies for educational and living costs she has advanced.

¶ 28 Because the trial court awarded the marital residence to Nanette and ordered David to contribute to Daniel's college expenses, the court determined Nanette would not receive maintenance. Each party was made responsible for his or her own attorney fees.

¶ 29 In April 2014, David filed a motion to reconsider the trial court's judgment. In the motion, David argued the court's award of 100% of the marital residence to Nanette was against the manifest weight of the evidence because, other than personal property, no marital asset was divided in any portion. He further argued it was manifestly unfair to require him to "basically" pay all of Daniel's college expenses. Later that month, Nanette filed a motion to reconsider the trial court's judgment with respect to the payment of attorney fees. Following a May 2014, hearing, the court denied both motions.

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 David raises two issues on appeal. He first contends the trial court abused its discretion by awarding Nanette 100% of the Spillway residence. He next argues the court abused its discretion by requiring him to pay \$50,000 toward Daniel's junior- and senior-year college expenses. Nanette disagrees, but she contends, if we find an abuse of discretion on either issue, the case must be remanded for the court to redetermine the matters of maintenance and attorney fees.

¶ 33 A. The Trial Court's Allocation of Property

¶ 34 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." *In re Marriage of Hart*, 194 Ill. App. 3d 839, 847, 551 N.E.2d 737, 741 (1990). However, "[a] division of marital property need not be equal to be equitable." *Id.* 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. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1113, 806 N.E.2d 701, 706 (2004).

¶ 35 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;

(10) whether the apportionment is in lieu of or in addition to maintenance;

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(12) the tax consequences of the property division upon the respective economic circumstances of the parties." 750 ILCS 5/503(d) (West 2010).

¶ 36 Looking to the relevant factors, we conclude the trial court's division of the marital property in this case was not an abuse of discretion. "It is well settled that a trial court is justified in awarding almost all of the marital property to one spouse if the other spouse has substantial nonmarital assets." *In re Marriage of Gattone*, 317 Ill. App. 3d 346, 355, 739 N.E.2d 998, 1005 (2000). At the time of the parties' March 2011 divorce, David had over \$700,000 in nonmarital assets. Nanette, in comparison, had only \$91,500 in nonmarital assets, \$31,500 of which were tied up in an IRA. Since the dissolution, David has purchased a residence in Tennessee and testified he still has over \$300,000 in liquid assets. Nanette, on the other hand, has since depleted her inheritance through the payment of real estate taxes on the Spillway residence, attorney fees in the current cause, and Daniel's college expenses.

¶ 37 Although David points out he is now "unemployed" while Nanette continues to work, we find his election to take early retirement merely accentuates the different position the parties are in financially. The trial court expressly stated its refusal to award Nanette maintenance was due, at least in part, to it having awarded her the Spillway residence. Given

these facts, we find no abuse of discretion in the court's allocation of the marital property in this case.

¶ 38 B. Payment of Daniel's College Expenses

¶ 39 Section 513(a)(2) of the Dissolution Act allows a trial court to "award sums of money out of the property and income of either or both parties *** as equity may require" to pay the college expenses for a child. 750 ILCS 5/513(a)(2) (West 2010). "The educational expenses may include, but shall not be limited to, room, board, dues, tuition, transportation, books, fees, registration and application costs, medical expenses including medical insurance, dental expenses, and living expenses during the school year and periods of recess ***." 750 ILCS 5/513(a)(2) (West 2010). When making the decision, the court is to consider all relevant factors, including the financial resources of the parents, the standard of living the child would have enjoyed had the marriage not dissolved, the child's financial resources, and the child's academic performance. 750 ILCS 5/513(b) (West 2010).

¶ 40 "The petitioner bears the burden of proving that the respondent should contribute toward the college expenses of their child and the burden of showing how much the respondent should contribute." *People ex rel. Sussen v. Keller*, 382 Ill. App. 3d 872, 879, 892 N.E.2d 11, 17 (2008). After the petitioner presents the necessary evidence, "the respondent has the burden of going forward with evidence that would 'equally balance' the petitioner's evidence." *Id.* (quoting *In re Marriage of Taylor*, 89 Ill. App. 3d 278, 283, 411 N.E.2d 950, 954 (1980)).

¶ 41 A trial court's decision to order the parties to contribute to a child's educational expenses will not be reversed absent an abuse of discretion. *In re Marriage of Thurmond*, 306 Ill. App. 3d 828, 834, 715 N.E.2d 814, 818 (1999). "A clear abuse of discretion occurs when 'the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take

the view adopted by the trial court.' " *Blum v. Koster*, 235 Ill. 2d 21, 36, 919 N.E.2d 333, 342 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)).

¶ 42 In the case *sub judice*, David argues the trial court's award of college expenses is without a coherent rationale, is inequitable, and amounts to an abuse of the court's discretion. Specifically, he argues the court provided no rationale for why he should pay "basically" all of Daniel's junior- and senior-year college expenses, nor why he should be required to reimburse Nanette or Daniel for their respective portions of Daniel's college expenses. We disagree.

¶ 43 As mentioned earlier, David's financial resources substantially outweigh Nanette's. Nanette's nonmarital assets at the time of the parties' divorce consisted primarily of her \$60,000 inheritance, which she testified was fully depleted at the time of the hearings on supplemental issues as a result of her paying, *inter alia*, Daniel's college expenses. See *In re Marriage of Petersen*, 2011 IL 110984, ¶ 25, 955 N.E.2d 1131 (remanding with directions for the trial court to consider the fact that the wife's financial resources may have been depleted by the cost of the child's college expenses). In addition, Daniel depleted his own inheritance by paying a portion of his freshman- and sophomore-year expenses.

¶ 44 By Daniel's junior year of college, both Nanette and Daniel were out of money and had to take out student loans, despite the fact David had significant resources and was fully able to cover any out-of-pocket costs. David contends the \$17,000 Nanette spent to purchase a truck for Daniel was an unreasonable expense, as "other less costly modes of travel between Girard and Jacksonville are obviously available." However, we need not consider this argument as the trial court's judgment did not reflect consideration of Nanette's truck purchase. Rather, the court explicitly stated the award was to be David's contribution toward Daniel's junior- and senior-year college expenses.

¶ 45 Given the evidence before us, we conclude the trial court acted within its discretion when it ordered David to pay for Daniel's final two years of college, including reimbursing Nanette and Daniel for amounts they had already paid toward Daniel's first semester of his junior year. However, we also conclude nothing in the record supports an award of \$50,000. As mentioned earlier, the total out-of-pocket cost for Daniel's junior year of college before expenses was only \$14,534. Therefore, consistent with our powers under Illinois Supreme Court Rule 366(a)(1) (eff. Feb. 1, 1994), we reduce the judgment against David to \$21,650 for Daniel's junior year of college and \$22,812.72 for Daniel's senior year of college. This amount accounts for out-of-pocket payments to Illinois College and student loans (increased by 8% for Daniel's senior year), health insurance at \$143 per month, and \$2,700 per semester for personal and transportation expenses.

¶ 46

III. CONCLUSION

¶ 47 For the reasons stated, we (1) affirm the trial court's judgment with respect to its award of the Spillway residence to Nanette, and (2) modify the trial court's judgment with respect to David's payment of Daniel's college expenses to reflect an amount supported by the record.

¶ 48 Affirmed as modified.