2015 IL App (4th) 140620-U

NO. 4-14-0620

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 25, 2015
Carla Bender
4th District Appellate
Court, IL

In re: the Estate of NANCY E. McGRATH, Deceased, KEVIN McGRATH, as Executor of the Estate and as Successor Judgment Creditor, Petitioner-Appellee, v. JOHN ROLAND McGRATH, Respondent-Appellant.	))))))))	Appeal from Circuit Court of Sangamon County No. 96D550 Honorable Steven H. Nardulli, Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding that the trial court properly (1) denied the respondent's motion for substitution of judge, (2) revived a November 2001 judgment against respondent, and (3) awarded attorney fees to the petitioner.

¶ 2 In August 1998, the trial court entered a judgment (1) dissolving the marriage between John Roland McGrath and Nancy E. McGrath, and (2) dividing the marital property in accordance with a marital settlement agreement. In the years that followed, John and Nancy failed to fully abide by the financial terms of the court's August 1998 dissolution judgment. In November 2001, following extensive postdissolution litigation, the court ordered John to pay Nancy $70,010.

¶ 3 Nancy died in November 2011. In February 2013, Nancy's estate filed a petition to revive the November 2001 judgment pursuant to section 2-1602 of the Code of Civil Procedure (735 ILCS 5/2-1602 (West 2012)), alleging that John had paid nothing toward the judgment

since December 2001. In March 2014, following a hearing, the trial court revived the judgment and ordered John to pay the estate the remaining balance, which the court determined was $12,850.

¶ 4 John appeals, arguing that the trial court erred by (1) denying his December 2013 motion for substitution of judge as of right (735 ILCS 5/2-1001(a)(2) (West 2012)); (2) granting the estate's petition to revive the November 2001 judgment; and (3) awarding attorney fees to the estate. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 The following facts were gleaned from the parties' pleadings, evidence presented at the various hearings, and the trial court's orders.

¶ 7 A. Dissolution Proceedings

¶ 8 John and Nancy were married in June 1967. In June and July 1996, they cross-petitioned to dissolve their marriage. At a November 1997 hearing, the trial court approved John and Nancy's marital settlement agreement and continued the matter for the parties to submit a written order. The marital settlement agreement, incorporated into the court's August 1998 dissolution judgment, divided the couple's farm, as follows:

> "9. With respect to [the farm real estate], all of same shall be deeded into a Trust at the Williamsville State Bank and not subject to sale and that [John] shall have a right to live in the house and utilize the buildings as he desires and [Nancy] shall have no access to the house and buildings[.]
>
> * * *
>
> 10. That in said Trust [Nancy] will own 154.48 acres and

[John] will own 90.57 acres. [Nancy] will have a life estate in 154.48 acres and [John] will have a life estate in 90.57 acres, which includes the house with the buildings and 5 acres."

The marital settlement agreement also set forth an arrangement for rental of the farmland, as follows:

"12. [John] shall be required for the 1998 farming year to cash rent the farmland described in this Order applicable to [Nancy], being her 154.48 acres undivided, at the rate of $225 per acre[.]

***

14. Providing [Nancy] is paid timely[,] *** [John] will be able to farm the ground from year to year.

* * *

18. That from time to time if the cash rentals for comparable ground in the area rise, then in order for [John] to continue farming the ground he shall be required to meet those cash rentals being paid[,] and if from time to time the cash rentals for comparable ground in the area fall, [John] has a right to pay the lesser amount.

The cash rental price for purposes of determining an increase shall be determined by obtaining bids prior to January 1 of the farming year. Said bids shall be on the total tillable acres of the land in the Trust. Either party has until December 15 preced-

ing the January 1st to give notice to the other party in writing that they want to solicit for bids and the bids could go up or down. In the event that the bids are for an amount in excess of $225 per acre, then [John] will have an opportunity to match those bids for a period of 15 days[,] and if he does not sign and tender to [Nancy,] through her attorney, a document acknowledging that the rents to be paid for that crop year are equal to those bids, all rights to farm the ground shall terminate and the highest bid shall farm the land. That when the land is placed up for bid, it includes all the tillable ground that is in the Trust. That the same terms and conditions as described above shall apply for [John] in the event that he believes that the rental rates go down."

Last, the marital settlement agreement set forth the parties' responsibilities for payment of real-estate taxes and permanent improvements to the land, as follows:

"29. That with respect to the real estate taxes thereafter, [Nancy] shall pay her proportionate share of the taxes for the tillable ground based upon her acres. [John] shall pay real estate taxes for all improvements and his proportionate part of the tillable acres.

30. In the event that permanent improvements such as tile have to be made to the land, then each party shall be obligated to pay for the tile work that is hired out or given to a third party in the same proportion as the real estate taxes."

¶ 9 In August 1998, before the trial court formally entered the judgment of dissolution incorporating the marital settlement agreement, John filed (1) a motion to set the cause for trial and (2) a petition for substitution of judge for cause. John alleged, among other things, that (1) the settlement agreement was unconscionable because the farm property was nonmarital property; and (2) the presiding judge, Thomas Appleton, had pressured John at the November 1997 hearing to agree to the settlement agreement. Later in August 1998, the court entered a written dissolution judgment, which incorporated the settlement agreement that the court had approved at the November 1997 hearing.

¶ 10 In April 1999, a different judge, Steven H. Nardulli, conducted a hearing on John's petition for substitution of Judge Appleton for cause. According to John's testimony at that hearing, Judge Appleton told John that if he did not go along with the proposed settlement agreement, Judge Appleton would conduct a trial and divide the parties' property evenly, regardless of the evidence the parties presented. In May 1999, Judge Nardulli entered an order denying John's petition for substitution of Judge Appleton for cause. John later appealed rulings on a motion to vacate the dissolution judgment and order on the sale of grain, which this court affirmed. *In re Marriage of McGrath*, No. 4-99-0759 (May 22, 2000) (unpublished order under Supreme Court Rule 23).

¶ 11 In the years that followed, the parties failed to abide by the terms of the marital settlement agreement, which had been incorporated into the dissolution judgment. Among other things, (1) John and Nancy failed to place the farmland into a trust at the bank and (2) John did not pay any rent to Nancy for his farming of the land. In November 2001, following extensive postdissolution proceedings, the trial court (Judge Appleton, presiding) entered an order intended to rectify the financial disarray that resulted from John's and Nancy's noncompliance with the

agreement. Specifically, the court found that John owed Nancy $70,010 and ordered him to pay her that amount. However, following the November 2001 order, John and Nancy continued to operate their finances in disregard for the marital settlement agreement until Nancy's death in November 2011.

¶ 12 B. Proceedings on the Petition To Revive Judgment

¶ 13 In February 2013, Nancy's estate filed a petition to revive the November 2001 judgment pursuant to section 2-1602 of the Code. In its petition, the estate conceded that John was entitled to credit against the original $70,010 judgment for (1) a $41,327 payment he made in December 2001 pursuant to court order and (2) $15,783 in real-estate taxes he paid toward Nancy's share of the farmland between 2002 and 2007. At the time the estate filed its petition, Judge Appleton was no longer serving as a trial judge in Sangamon County, and the estate's petition was docketed before Judge Nardulli.

¶ 14 In September 2013, the estate filed a "motion for entry of judgment of revival *instanter*" (what we will refer to as a motion for judgment on the pleadings), which contended that because John failed to come forward with any defense to the estate's petition to revive the judgment, the trial court should revive the judgment without holding a hearing.

¶ 15 Four days later, John filed an affirmative defense to the estate's petition to revive, claiming that the sum of the credits to which he was entitled satisfied the judgment.

¶ 16 In November 2013, the trial court held a final pretrial conference. Although the record contains no transcript of that pretrial conference, and the corresponding docket entry does not include an explicit ruling on the estate's motion for judgment on the pleadings, the docket entry does show that the court set aside a half day for a hearing "on all pending issues" for December 18, 2013.

¶ 17 On December 9, 2013, John filed (1) an "emergency" motion for substitution of judge as of right pursuant to section 2-1001(a)(2) of the Code and (2) a notice of hearing on that motion for December 11, 2013. Although neither the trial court's docket nor the record so indicate, the parties both agree that the court cancelled the December 11, 2013, hearing and denied John's motion for substitution of judge without a hearing.

¶ 18 1. *The Trial on the Petition To Revive Judgment*

¶ 19 At the beginning of the December 18, 2013, trial, the following exchange took place between John's counsel and the trial court:

> "[COUNSEL]: There are a few procedural issues we would like to take up. Would you prefer I do them now or after the evidentiary hearing?
>
> THE COURT: I can't do them after the evidentiary hearing if I don't know what they are.
>
> [COUNSEL]: The first one is we had filed a motion [for substitution of judge] as a matter of right which was denied and the hearing cancelled prior to us being able to have that based on, well, *** your Honor believed he had made substantive decisions in this case.
>
> THE COURT: When I denied [the estate's] motion for judgment on the pleadings and announced this case was going to go ahead on an evidentiary basis, that in my mind was a substantive ruling which removed your right to exercise substitution as a matter of right.

> [COUNSEL]: Yes, your Honor. It was my understanding, and I again just wanted to make a record that that motion was to be heard today along with all other motions and then the evidentiary hearing, and that was the purpose of me filing that. So as long as I made a record on that I can proceed with the second issue ***."

Nothing more was said regarding John's motion for substitution of judge and the trial proceeded to the evidentiary stage to determine the unpaid balance of the November 2001 judgment and the credits to which John might be entitled.

¶ 20 Before reviewing the evidence presented, we should briefly address the nature of John's and Nancy's interests in the land so as to place the witnesses' testimony into context. Under the marital settlement agreement, John and Nancy were to place the farmland into a trust at a bank. Because they never did so, their interests in the land were governed solely by the terms of the marital settlement agreement (as incorporated into the dissolution judgment), which did not specify which actual, physical acres belonged to either party. Therefore, under the marital settlement agreement, John and Nancy essentially held undivided interests in the total farmland, and the price per acre was to be the same for all the "total tillable acres of the land in the Trust." Accordingly, although the marital settlement agreement described John's and Nancy's interests in terms of acres—John having 90.57 and Nancy having 154.48—John and Nancy essentially held percentage interests in the total income generated by the 245.05 total acres of land. Nancy had a 63% interest and John had a 37% interest. In other words, John and Nancy did not own separate *physical* acres of the land. Instead, their "acres" were merely symbolic of their percentage interests in the total acres of land.

¶ 21 Darrel Thoma, manager of Dowson Farms (Dowson), testified that in March

2002, he and John negotiated a rental lease to allow Dowson to farm John's and Nancy's farmland at $207 per acre. The lease provided that Dowson was to make separate cash rent payments to John and Nancy based upon John's and Nancy's proportionate shares of the total acreage. Each year thereafter until 2011, John and Nancy signed agreements with Dowson to extend the lease into the next year. During the years that Dowson rented from John and Nancy, representatives of Dowson negotiated exclusively with John and met with Nancy only to obtain her signature on the leasing documents.

¶ 22 In the 2004 farming year, the negotiated rental price increased to $215 per acre. For the 2008 farming year, John negotiated with Dowson for $375 per acre for his share of the land and only $300 per acre for Nancy's share. (Although, in years past, Dowson had prepared a single leasing document for both John and Nancy to sign, by 2008 Dowson had begun placing John's and Nancy's lease extensions into separate documents.) For the 2009 farming year, John negotiated for $400 per acre in rent for his share and $300 per acre for Nancy's share. Thoma explained that "part of [John's] reasoning for being paid more would be because he had indicated that he was going to pay for real estate taxes, and he was doing the management of the negotiating." The lease terms for both John's and Nancy's shares of land remained the same from 2009 until 2012, the final year Dowson rented from John or Nancy.

¶ 23 John, testifying on his own behalf, stated that he never negotiated with Thoma and he never negotiated with anyone from Dowson regarding the rental price per acre of Nancy's share of the farmland. Instead, John claimed that he negotiated exclusively with John Dowson, the owner of the company, regarding only his share of the farmland. (We note that John Dowson's signature appears on only the 2004 and 2005 lease agreements, whereas Thoma's signature appears on all the others.) John stated that he received all of the lease agreements through the

mail, which he would sign and mail back to Dowson. John asserted that he never knew how much Dowson paid Nancy in rent, but he assumed it was the same amount he received.

¶ 24 The remainder of John's testimony focused on improvements he made around the farm since the November 2001 judgment. John argued that he should receive credit against the judgment for Nancy's proportionate share of the following expenses: (1) replacement of a grain-bin fan; (2) painting of grain bins; (3) tree trimming and removal; (4) a "dirt box"; (5) roof tiles; (6) repair and replacement of various doors on the machine shed; (7) a new shop toilet; (8) repair of the porch on the farmhouse; and (9) field tile. John claimed that he spent a total of $18,430 on these projects. Following the presentation of evidence, the trial court ordered the parties to submit written arguments.

¶ 25 In its written argument, the estate conceded that John had paid Nancy's portion of the real-estate taxes since 2002. However, the estate argued that John should receive credit against the judgment only for the real-estate taxes he paid between 2002 and 2007 because from 2008 onward, John began receiving extra rental income from Dowson to compensate for the real-estate taxes he was paying toward Nancy's share of the farmland. The estate further claimed that John was solely responsible for the cost of repairs and improvements he chose to make to the property.

¶ 26 John contended in his written argument that (1) Nancy could have negotiated her own rent with whomever she wanted and John had no obligation to negotiate with Dowson on her behalf; (2) Thoma's trial testimony was unreliable; and (3) the estate was obligated to pay a proportionate share of the expenses John incurred to improve the property.

¶ 27 2. *The Trial Court's Findings and Judgment*

¶ 28 In March 2014, the trial court entered a written order granting the estate's petition

to revive the November 2001 judgment. The court made the following findings regarding John's negotiations with Dowson over the rental price of the farmland:

> "The court finds that John McGrath is not credible in his testimony that he did not negotiate with Darrel Thoma and that [he] merely negotiated a higher rental for himself. The court believes the testimony of Darrel Thoma that John McGrath represented that he needed a higher rent than that which would be paid to Nancy McGrath because he was paying the real-estate taxes and negotiating the rent for the property.
>
> The court specifically rejects the claim made by John McGrath that he negotiated with John Dowson. His testimony is self-serving and is inherently suspect. It lacks corroboration. Darrel Thoma, not John Dowson, signed each of the annual rental agreements.
>
> Paragraph 18 of the judgment of dissolution of marriage specifically provides that '[t]he cash rental price for purposes of determining an increase shall be determined by obtaining bids prior to January 1 of the farming year. Said bids shall be on the total tillable acres of the land in Trust.'
>
> Nothing in the judgment provides that either party may receive a higher rental that the other for their portion of the farm. Indeed, the specific language of the judgment provides that bids for rent are to be on the total tillable acres of the land in the Trust."

The court found that the original $70,010 judgment should be reduced by (1) $41,327, which John paid in December 2001; (2) $15,783, which represented Nancy's share of the real-estate taxes that John paid between 2002 and 2007; and (3) $50 for field tile that John purchased. Accordingly, the court ordered John to pay $12,850, the remaining balance of the November 2001 judgment.

¶ 29 C. Attorney Fees

¶ 30 Later in March 2014, the estate filed a petition for attorney fees pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/508(b) (West 2012)), which provides that the trial court shall order the payment of attorney fees to the prevailing party "[i]n every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification." In June 2014, the court granted the estate's petition for attorney fees, finding that John's failure to comply with the November 2001 judgment was without compelling cause or justification. The court awarded the estate $7,500 in attorney fees.

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 On appeal, John argues that the trial court erred by (1) denying his December 2013 motion for substitution of judge as of right; (2) granting the estate's petition to revive the November 2001 judgment; and (3) awarding attorney fees to the estate. We address these contentions in turn.

¶ 34 A. John's Motion for Substitution of Judge

¶ 35 Civil litigants in Illinois are entitled to one substitution of judge without cause as a matter of right. 735 ILCS 5/2-1001(a)(2)(i) (West 2012). The trial court must grant a party's

motion for substitution of judge as of right if the motion "is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case." 735 ILCS 5/2-1001(a)(2)(ii) (West 2012). This court and other courts of appeal have held that a substantial issue is one directly relating to the merits of the case. *Schnepf v. Schnepf*, 2013 IL App (4th) 121142, ¶ 26, 996 N.E.2d 1131; *Rodisch v. Commacho-Esparza*, 309 Ill. App. 3d 346, 350-51, 722 N.E.2d 326, 330 (1999); *Bonnie Owen Realty, Inc. v. Cincinnati Insurance Co.*, 283 Ill. App. 3d 812, 821, 670 N.E.2d 1182, 1188 (1996). Whether the trial court has ruled upon a substantial issue is a question of law, which we review *de novo*. *Illinois Licensed Beverage Ass'n. v. Advanta Leasing Services*, 333 Ill. App. 3d 927, 932, 776 N.E.2d 255, 260 (2002).

¶ 36 The estate argues that Judge Nardulli made two separate rulings on substantial issues before John filed his December 2013 motion for substitution of judge. Specifically, the estate contends Judge Nardulli ruled on a substantial issue when he denied (1) John's petition for substitution of Judge Appleton for cause in April 1999 and (2) the estate's motion for judgment on the pleadings in November 2013. Because we agree with the estate that Judge Nardulli denied the estate's motion for judgment on the pleadings—which was a ruling on a substantial issue—before John filed his December 2013 motion for substitution of judge as a matter of right, we need not address whether Judge Nardulli's 1999 denial of John's petition for substitution of Judge Appleton for cause was a ruling on a substantial issue in this case.

¶ 37 John correctly notes that the record does not reveal an *explicit* ruling on the estate's September 2013 motion for judgment on the pleadings. He argues that because the docket entry corresponding to the November 2013 pretrial conference shows that Judge Nardulli scheduled the December 2013 evidentiary hearing to address "all pending issues," we should interpret this to mean that Judge Nardulli also deferred ruling on the estate's motion for judgment on the

pleadings until the December 2013 hearing. We reject this claim for two reasons.

¶ 38 First, because the estate's motion for judgment on the pleadings asked the trial court to rule on the merits of the petition to revive the judgment *without holding an evidentiary hearing*, Judge Nardulli's November 2013 decision to schedule a full evidentiary hearing was, for all intents and purposes, the same as a denial of the estate's motion for judgment on the pleadings.

¶ 39 Second, at the December 2013 evidentiary hearing, Judge Nardulli confirmed what the record already implied by explaining to John's counsel that the motion for substitution of judge was barred because Judge Nardulli had already "denied [the estate's] motion for judgment on the pleadings and announced this case was going to go ahead on an evidentiary basis." At oral argument in this appeal, John's counsel asserted that Judge Nardulli was simply incorrect in his recollection of what took place at the November 2013 pretrial conference. However, in the absence of a transcript showing otherwise, we will defer to Judge Nardulli's recollection that he denied the estate's motion for judgment on the pleadings at the November 2013 pretrial conference. This is consistent with the well-settled rule that, in the absence of a complete record, we will presume that the court's judgment was in conformity with the law and had a sufficient factual basis (*Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958, 959 (1984)), and "[a]ny doubts arising from the incompleteness of the record will be construed against the appellant and in favor of the judgment rendered in the lower court." *People v. Henderson*, 2011 IL App (1st) 090923, ¶ 45, 961 N.E.2d 407. Judge Nardulli's statements at the December 2013 evidentiary hearing simply reinforced the only logical conclusion to be drawn from the record—namely, that scheduling a full evidentiary hearing meant also denying the estate's motion for judgment on the pleadings.

¶ 40 Because Judge Nardulli's November 2013 denial of the estate's motion for judgment on the pleadings constituted a ruling on a substantial issue in the case (John does not dispute that the estate's motion was directly related to the merits of the case), we conclude that the trial court properly denied John's December 2013 motion for substitution of judge.

¶ 41 B. The Estate's Petition To Revive the Judgment

¶ 42 Section 2-1601 of the Code (735 ILCS 5/2-1601 (West 2012)) abolished *scire facias*, the common-law method for reviving a judgment, and provided that the same relief obtainable under the common-law doctrine could be obtained under the procedure set forth in section 2-1602 of the Code. *Burman v. Snyder*, 2014 IL App (1st) 130772, ¶ 11, 10 N.E.3d 283; *Revolution Portfolio, LLC v. Beale*, 332 Ill. App. 3d 595, 604, 774 N.E.2d 14, 22 (2002). The common-law writ of *scire facias* and the procedure to revive a judgment under section 2-1602 of the Code are "concurrent and identical remedies." *Smith v. Carlson*, 8 Ill. 2d 74, 77, 132 N.E.2d 513, 515 (1956). Accordingly, as was true under the doctrine of *scire facias*, the only defenses to a petition to revive a judgment under section 2-1602 of the Code are (1) denial of the existence of the judgment or (2) proof of subsequent satisfaction or discharge of the judgment. *Bank of Edwardsville v. Raffaelle*, 381 Ill. 486, 489, 45 N.E.2d 651, 653 (1942); *J. D. Court, Inc. v. Investors Unlimited, Inc.*, 81 Ill. App. 3d 131, 133, 400 N.E.2d 1083, 1085 (1980); *Department of Public Aid ex rel. McGinnis v. McGinnis*, 268 Ill. App. 3d 123, 131, 643 N.E.2d 281, 285 (1994).

¶ 43 In this case, John argues that the trial court erred by granting the estate's petition to revive the November 2001 judgment because the judgment had been satisfied. Specifically, John contends that he satisfied the judgment by (1) paying Nancy's share of real-estate taxes from 2008 through 2013 and (2) making improvements to the farmland. John asserts that either of these expenses, if credited against the judgment, would cover the total remaining balance of

the judgment.

¶ 44 1. *Real-Estate Taxes*

¶ 45 In this case, the trial court found that John was not entitled to credit against the judgment for his payment of Nancy's share of real-estate taxes from 2008 through 2013. The court based this determination, in part, on Thoma's testimony that John negotiated for himself a higher rent from Dowson to compensate for his payment of Nancy's share of the real-estate taxes. Although John testified that he neither negotiated with Thoma nor was he aware of the terms of Nancy's rent, the court found Thoma's testimony credible and John's testimony incredible. "A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *Best v. Best*, 223 Ill. 2d 342, 350-51, 860 N.E.2d 240, 245 (2006).

¶ 46 Accepting as true that John negotiated for himself a higher rental price than Nancy to compensate for his payment of Nancy's share of the real-estate taxes, we now consider whether the trial court properly concluded, based upon the terms of the marital settlement agreement, that John was not entitled to credit for his payment of the real-estate taxes during the years in which he was receiving a higher rent from Dowson (2008 to 2013).

¶ 47 "The interpretation of a marital settlement agreement is reviewed *de novo* as a question of law." *Blum v. Koster*, 235 Ill. 2d 21, 33, 919 N.E.2d 333, 340 (2009). In reaching its conclusion that John was not entitled to credit against the judgment for his payment of Nancy's share of real-estate taxes from 2008 to 2013, the court found that the marital settlement agreement did not permit John or Nancy to unilaterally negotiate for a higher rental price than the other. In fact, the marital settlement agreement explicitly provided that (1) "[t]he cash rental price for purposes of determining an increase shall be determined by obtaining bids" and (2) "[s]aid

bids shall be on the total tillable acres of the land in the Trust." Based upon these unambiguous provisions, we agree with the court's conclusion that John was not authorized to negotiate for himself a higher rental price than Nancy.

¶ 48 Instead, under the express terms of the marital settlement agreement, the total farmland was to be rented at a uniform price per acre, and the rental income generated by the farmland *as a whole* was to be distributed to John and Nancy proportionate to their interests in the land. Simply put, Nancy was entitled to her proportionate share of the extra rental income John received between 2008 and 2013. Thoma's testimony, which the court found credible, revealed that John essentially diverted Nancy's extra share of the rental income to pay Nancy's share of the real-estate taxes. It is undisputed that the extra money John received from his higher rental income between 2008 and 2013—that is, the difference between the actual rental income he received and the rental income he would have received if he rented at the same price per acre as Nancy—exceeded the amount of money he paid toward Nancy's share of the real-estate taxes during that same time period. Accordingly, we agree with the court's conclusion that John should not receive credit against the judgment for his payment of Nancy's share of the real-estate taxes between 2008 and 2013.

¶ 49 2. *Improvements to the Farmland*

¶ 50 The marital settlement agreement provided, in pertinent part, as follows:

> "In the event that permanent improvements such as tile have to be made to the land, then each party shall be obligated to pay for the tile work that is hired out or given to a third party in the same proportion as the real estate taxes."

Based upon this provision, John argues that he was entitled to credit against the judgment for the

cost of improvements he made to the farm, including improvements to the house and buildings to which John enjoyed exclusive possession. We agree with the trial court's finding that John was entitled to credit only for the $50 field tile that he purchased.

¶ 51 Because Nancy's interest in the farm was limited to the tillable land—not the house or outbuildings—we interpret the marital settlement agreement as requiring the parties to share the expense of improvements only as it relates to the tillable land. This makes sense because Nancy received no benefit during her lifetime from the house or outbuildings. The record fully supports the trial court's finding that John's purchase of field tile was the only permanent improvement made to the land for which Nancy was obligated to pay her proportionate share of the cost.

¶ 52 Because John had not satisfied the November 2001 judgment through the payment of real-estate taxes or improvements, the trial court properly revived the judgment, finding a remaining balance of $12,850 after crediting John for his (1) $41,327 payment made in December 2001, (2) $15,783 in real-estate-tax payments, and (3) $50 payment for field tile.

¶ 53 C. Attorney Fees

¶ 54 Last, John argues that the trial court erred by granting the estate's petition for attorney fees. Specifically, John claims his position that the November 2001 judgment had been satisfied was not without compelling cause or justification. We disagree.

¶ 55 Initially, we note that John asserts in his brief on appeal—without elaboration—that the trial court's award of attorney fees in this case pursuant to section 508(b) of the Marriage Act presents a question of "statutory construction" that we should review *de novo*. John seems to contend that a question involving the *application* of a statute necessarily involves "statutory construction," requiring *de novo* review. This position is entirely baseless. Even the most cursory

case-law search will reveal scores of opinions—including dozens from recent years—stating that the award of attorney fees in dissolution proceedings is reviewed under a deferential standard. See, *e.g.*, *In re Marriage of Schneider*, 214 Ill. 2d 152, 174, 824 N.E.2d 177, 190 (2005); *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 36, 17 N.E.3d 678; *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 44, 15 N.E.3d 512; *In re Custody of C.C.*, 2013 IL App (3d) 120342, ¶ 40, 1 N.E.3d 1238; *In re Marriage of Patel*, 2013 IL App (1st) 122882, ¶ 42, 998 N.E.2d 579; *In re Marriage of Price*, 2013 IL App (4th) 120155, ¶ 39, 986 N.E.2d 236; *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 67, 993 N.E.2d 1062; *In re Marriage of Bradley*, 2013 IL App (5th) 100217, ¶ 41, 993 N.E.2d 25; *In re Marriage of Sobieski*, 2013 IL App (2d) 111146, ¶ 37, 984 N.E.2d 163; *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶ 55, 980 N.E.2d 1151; *In re Marriage of Bolte*, 2012 IL App (3d) 110791, ¶ 33, 975 N.E.2d 1257; *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 9, 957 N.E.2d 469; *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶ 36, 955 N.E.2d 497; *In re Marriage of Bradley*, 2011 IL App (4th) 110392, ¶ 32, 961 N.E.2d 980; *In re Marriage of Schinelli*, 406 Ill. App. 3d 991, 995, 942 N.E.2d 682, 686 (2011).

¶ 56 It should be plainly obvious to John that deferential review—not *de novo* review—applies to the trial court's award of attorney fees in dissolution proceedings. However, we note that many appellate courts have conflated the deferential standards of review by stating that the court's award of attorney fees under section 508(b) of the Marriage Act should reviewed for an *abuse of discretion*. Instead, because a court's award of attorney fees under section 508(b) of the Marriage Act is based upon a *finding of fact*—namely, whether the failure to comply with the order or judgment was without compelling cause or justification—the manifest-weight-of-the-evidence standard should apply. Under section 508(b), if the court makes this finding, it has

no discretion to deny attorney fees. *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 37, 985 N.E.2d 602; *In re Marriage of Michaelson*, 359 Ill. App. 3d 706, 715, 834 N.E.2d 539, 547 (2005); *In re Marriage of Goldberg*, 282 Ill. App. 3d 997, 1003, 668 N.E.2d 1104, 1108 (1996); *In re Marriage of Sanda*, 245 Ill. App. 3d 314, 319, 612 N.E.2d 1346, 1349 (1993); *In re Marriage of Garelick*, 168 Ill. App. 3d 321, 328, 522 N.E.2d 738, 743 (1988).

¶ 57 In *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 204-05, 825 N.E.2d 345, 350-51 (2005), the Second District addressed a similar improper conflation of standards of review in the context of trial court findings regarding dissipation of marital assets and distribution of marital property. The Second District noted that the majority of appellate courts purported to review a trial court's dissipation findings under the abuse-of-discretion standard, whereas a minority properly applied the manifest-weight-of-the-evidence standard. *Id*. at 204, 825 N.E.2d at 350. The court explained the difference between the two standards, as follows:

> "Abuse of discretion is the most deferential standard of review—next to no review at all—and is therefore traditionally reserved for decisions made by a trial judge in overseeing his or her courtroom or in maintaining the progress of a trial. [Citation.] Manifest weight review, on the other hand, is generally reserved for factual or evidentiary determinations. [Citation.]
>
> Several cases discussing the review of a dissipation finding confuse the two standards and invoke an abuse of discretion standard of review for a dissipation on the basis that they are reviewing an issue of fact. [Citations.] However, because the determination of whether dissipation occurred in a given case is a factual one [ci-

tation], appellate courts must review it using the manifest weight of the evidence standard of review." *Id*.

¶ 58 A similar distinction applies to the trial court's award of attorney fees under section 508(b) of the Marriage Act. In the context of dissipation of marital assets and property distribution, discussed in *Vancura*, "[a] reviewing court applies the manifest weight of the evidence standard to the factual findings for each factor on which a trial court may base its property disposition, but it applies the abuse of discretion standard in reviewing the trial court's final property disposition (and how the trial court considers those factors)." *Id*. at 205, 825 N.E.2d at 351. In the context of attorney fees under section 508(b) of the Marriage Act, a reviewing court applies the manifest-weight-of-the-evidence standard to the factual finding that "failure to comply with the order or judgment was without compelling cause or justification" (750 ILCS 5/508(b) (West 2012)), but it applies the abuse-of-discretion standard in reviewing the trial court's final award of attorney fees (*i.e.*, the amount awarded).

¶ 59 This distinction—which, admittedly, has more to do with the appropriate terminology than the amount of deference we lend to the trial court's judgment—recognizes that a court has discretion to decide what it chooses to do, but it has no discretion to decide historical facts. Instead, the trial court *makes findings* of fact based upon the evidence presented, and we defer to those findings because the trial court is in the best position to make them. *City of Chicago v. Pooh Bah Enterprises, Inc.*, 224 Ill. 2d 390, 460, 865 N.E.2d 133, 175-76 (2006) ("As a general matter, it is not for this court, as a court of review, to substitute its judgment for that of the trial court on issues of fact, as the trial court judge is in the best position to observe the conduct and demeanor of the parties and the witnesses."). Under the manifest-weight-of-the-evidence standard of review, we will reverse a trial court's finding of fact "only if the opposite

conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best,* 223 Ill. 2d at 350, 860 N.E.2d at 245.

¶ 60 In this case, the trial court's finding under section 508(b) of the Marriage Act—specifically, that John's failure to comply with the November 2001 judgment was without compelling cause or justification—was not against the manifest weight of the evidence. After John divorced Nancy in August 1998, he essentially chose to disregard the provisions of the marital settlement agreement to which he and Nancy assented. The court's November 2001 order was intended to resolve the financial mess created by John's noncompliance with the terms of the marital settlement agreement. But even after the court entered that order, John continued to disregard the express terms of the marital settlement agreement. Accordingly, it should be no surprise that further legal proceedings would be necessary to sort out the financial disarray created by John's failure to comply with the terms of the marital settlement agreement and the November 2001 judgment.

¶ 61 John argues that he had a good-faith reason for not paying the judgment because he thought that his payment of Nancy's real-estate taxes and the costs of improvements were sufficient to satisfy the judgment. However, the trial court (1) did not believe John's testimony and (2) found that John's failure to comply with the judgment was without compelling cause or justification. (We note that in 1997, the General Assembly added the word "compelling" to section 508(b) of the Marriage Act, thereby further heightening the proof required to justify a denial of attorney fees. Pub. Act 89-712, (eff. June 1, 1997).) We defer to the trial court's finding regarding John's credibility and conclude that the court properly found John's failure to comply with the judgment was without compelling cause or justification. Accordingly, the court did not err by awarding the estate $7,500 in attorney fees pursuant to section 508(b) of the Marriage Act.

¶ 62 III. CONCLUSION

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

¶ 64 Affirmed.