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2015 IL App (4th) 141064-U

NO. 4-14-1064

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 15, 2015
Carla Bender
4th District Appellate
Court, IL

IN RE: MARRIAGE OF)	Appeal from
CHRISTINA BENECKE,)	Circuit Court of
Petitioner-Appellee,)	McLean County
and)	No. 12D63
MICHAEL BENECKE,)	
Respondent-Appellant.)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Pope and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed concluding the trial court's (1) maintenance order was not an abuse of discretion, (2) finding of contempt was not an abuse of discretion, and (3) determination that the condominium was marital property valued at \$35,000 was not against the manifest weight of the evidence.

¶ 2 In January 2012, petitioner, Christina Benecke, filed a petition for dissolution of marriage from respondent, Michael Benecke. Following the entry of a June 2012 bifurcated judgment of dissolution, the trial court, in June 2014, entered a supplemental judgment disposing of all remaining issues, including maintenance and property distribution. As part of its order, the court ordered Michael to pay Christina \$2,000 per month in maintenance and determined a condominium purchased by Michael's father constituted marital property valued at \$35,000. In June 2014, Michael filed a motion to reconsider. The following month, Christina filed a petition for adjudication of indirect civil contempt after Michael failed to pay the court-ordered

maintenance. In November 2014, the court denied Michael's motion to reconsider. Additionally, the court found Michael in contempt of court for failing to pay maintenance, ordered him to pay the accrued maintenance along with attorney fees, and scheduled the case for a hearing on sanctions.

¶ 3 Michael appeals, asserting the trial court erred by (1) awarding maintenance to Christina, (2) finding him in contempt for failing to pay maintenance, and (3) finding the condominium constituted marital property valued at \$35,000. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In January 1991, the Beneckes married. In January 2012, Christina filed a petition for dissolution of marriage. In June 2012, the trial court entered a bifurcated judgment granting the dissolution of marriage but reserving issues of property distribution and maintenance. In March 2014, the court held a hearing on all remaining issues. No transcript memorializes this hearing; however, the court certified a bystander's report created by the parties.

¶ 6 A. March 2014 Hearing

¶ 7 According to the bystander's report, Christina testified she was 46 years old and resided in a rental apartment in Bloomington, Illinois. During the course of the marriage, she was a stay-at-home mother and homemaker for 16 years. The parties' children are now adults. After 16 years as a homemaker, Christina began working part-time. Since April 2013, she maintained full-time employment as a marketing specialist, earning a salary of approximately \$37,000. Her benefits included health insurance, which covered herself and one adult son, who was a full-time college student. She also paid the car-insurance premiums for both of their children.

¶ 8 In reviewing her financial affidavit, Christina testified her current salary was higher than the gross \$2,879.60 monthly income reflected on her affidavit. Her net income was also slightly higher. Though her affidavit reflected monthly expenses exceeding \$8,000 per month, she testified she no longer spent \$745 on clothing for herself, her car payment had been reduced, and she no longer paid real-estate taxes or other maintenance on a home. She also continued to fund her 401(k). Christina testified her standard of living while married to Michael was very high, as the parties resided in a "nice" home and vacationed as often as six times per year. She also indicated her mother paid for travel during the marriage.

¶ 9 As to the condominium the parties shared in Lake of the Ozarks, Christina testified it was owned by Michael, Michael's brother, and her. She believed it had been given to all of them as a gift. The last time she visited the condominium, she was told Michael owed money toward it. According to Christina, the parties spent substantial marital funds furnishing, renovating, and improving the condominium. She placed a value of \$25,000 on the parties' share of the condominium.

¶ 10 Michael testified he was 47 years old and lived in St. Louis, Missouri. He moved to the area to be closer to family and to reduce his living expenses. He was terminated from Olympus in June 2012, but he was actively looking for work. His father, Edward Benecke, was presently paying his living expenses, including real-estate taxes, utilities, a lease on a boat slip, rehabilitation, and the condominium, resulting in Michael owing his father \$43,000. Until 2011, Michael was the regional sales director for medical equipment at Olympus, but the tsunami that hit Japan in 2011 destroyed the facility and inventory. His annual salary was \$225,000. He then switched from a salaried position to a commission-based position within the company.

¶ 11 By April 2012, while the divorce was pending, Michael was drinking heavily. This resulted in his termination from Olympus in June 2012. He received unemployment benefits until January 2014. Following his termination, Michael was diagnosed with depression and alcoholism. He had attended an alcohol-rehabilitation program three times between the summer of 2012 and the March 2014 hearing date.

¶ 12 Edward testified he paid for the condominium, and Michael and his brother agreed to repay him. Although Michael's brother paid for his share—\$35,000—Michael had not paid his half, nor did his father expect him to be able to repay him. Edward stated Christina was never on the deed, nor did he intend to gift the condominium to her.

¶ 13 B. The Trial Court's May 2014 Order

¶ 14 Following the March 2014 hearing, in May 2014, the trial court entered a written order disposing of the remaining maintenance and property issues. The items relevant to this appeal are as follows.

¶ 15 1. *Maintenance*

¶ 16 In order to divide the marital estate substantially equally, the trial court ordered Michael to pay Christina rehabilitative maintenance in the amount of \$2,000 per month. In doing so, the court weighed the factors set forth in section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/504(a) (West 2012)). The court noted the current disparity of income between the parties: Christina earned between \$30,000 and \$35,000, while Michael remained unemployed. However, the court found Michael's future earning capacity to be substantially greater than Christina's, as prior to his termination from Olympus, he was earning an average of \$225,000 annually. Christina, on the other hand, had

been a homemaker for 16 years, which impaired her future earning capacity and permitted Michael an opportunity to further his career and increase his income.

¶ 17 The trial court found unconvincing Michael's statement that his alcoholism and depression resulted from the stress of his new position at Olympus, particularly where his termination coincided with the court's order granting the dissolution of marriage. The court reasoned, "Whether it was a consequence of willful effort on his part to defeat [Christina's] interests in the divorce proceedings or simply a self-destructive impulse on [Michael's] part, his loss of employment is a poster child for 'bad faith' on his part." The court found incredible his testimony regarding his inability to undertake financial responsibility and determined his "anemic" efforts to find employment demonstrated his bad faith and avoidance of financial responsibility. Michael testified to being in recovery, so he would have the ability to find new employment.

¶ 18 Based on Michael's testimony that he was in recovery for his alcoholism, and was therefore capable of earning \$50,000 to \$100,000 annually, the trial court imputed Michael had the potential to earn \$100,000 per year. The court also determined Christina's reasonable need for spousal support was \$2,000 per month. Because Michael had the imputed ability to pay maintenance, the court ordered him to pay Christina \$2,000 in maintenance per month for a period of 72 months, at which time the court would review the order.

¶ 19 *2. Condominium*

¶ 20 As to the condominium, the court found the witnesses' testimony anomalous. The court's recollection of Christina's testimony was that Edward gifted the condominium to Michael, which would constitute a gift and, therefore, nonmarital property. However, at the same time, Christina asserted the condominium was marital property. Michael argued the condominium

was a gift from Edward, yet he also maintained he acquired his property interest for consideration—a loan from Edward that remained unpaid. The court found Edward's testimony supported a finding that the condominium was not a gift, but a purchase, the loan for which he was no longer expected to pay.

¶ 21 The trial court found persuasive Edward's testimony that he never expected Michael to repay the loan, and therefore found the arrangement between Michael and Edward constituted a form of loan forgiveness. Accordingly, the court determined, "it appears most appropriate to characterize the property as marital property, valued at \$35,000, and to assign the property to [Michael] due to the co-ownership with his brother, subject to no debt being owed." Because the court awarded physical possession of the property to Michael, it ordered Michael to pay \$17,500 to Christina for equalization of the property.

¶ 22 C. Michael's Motion To Reconsider

¶ 23 In June 2014, Michael filed a motion to reconsider the trial court's order regarding the award of maintenance and the classification of the condominium as marital property. Specifically, Michael asserted the court erred in granting Christina maintenance, as his monthly income was only \$2,500. Additionally, Michael argued the court erred in finding the condominium was marital property and, moreover, Michael intended to repay the debt to Edward after they sold the condominium for \$60,000. At that time, Michael testified he would owe Edward \$5,000 for the remainder of the debt.

¶ 24 D. Christina's Petition for Adjudication of Indirect Civil Contempt

¶ 25 In July 2014, Christina filed a petition for adjudication of indirect civil contempt, alleging Michael willfully failed to comply with the trial court's order for maintenance, as he had paid nothing toward his obligation.

¶ 26

E. November 2014 Proceedings

¶ 27

1. *Ruling on the Motion To Reconsider*

¶ 28

In November 2014, the trial court entered an order denying Michael's motion to reconsider. As to the issue of maintenance, the court acknowledged Michael suffered from serious illnesses that "contributed to the unfortunate squandering" of his earning capacity. However, the court was not persuaded that Michael remained in a profound state of helplessness for which he was not responsible. Rather, the court believed Michael's continued unemployment was the result of his bad faith and attempts to avoid responsibility.

¶ 29

As to the condominium, the trial court reiterated its earlier finding that Michael's property interest in the condominium resulted from Edward selling Michael the condominium, and establishing a \$35,000 loan from Edward to Michael. The court found Michael most likely misrepresented that transaction to Christina, making her believe it was a gift. Because the parties had a real-property interest free of encumbrances, the court reaffirmed its order that Michael "buy out" Christina's share of the property.

¶ 30

2. *Michael's Offer of Proof*

¶ 31

Later that month, the trial court denied Michael's oral motion to reopen the proofs to include new evidence regarding his changed circumstances. However, the court permitted Michael to make an offer of proof for the record. Michael testified the condominium was in the process of being sold for \$60,000, with a prospective closing date in February 2015. Michael did not expect to receive any of the proceeds; rather, the proceeds would go to Edward to satisfy the loan. Michael's balance on the loan would then be \$5,000.

¶ 32 After considering the offer of proof, the trial court ordered Michael's portion of the proceeds to be held in trust, despite Michael's obligation to pay Edward, until the court could determine how to distribute the proceeds.

¶ 33 *3. Christina's Petition for Adjudication of Contempt*

¶ 34 The trial court then proceeded to hear Christina's petition for an adjudication of indirect civil contempt. Christina testified she had received no maintenance from Michael, in contravention of the court's May 2014 order that he pay \$2,000 per month. She also introduced a fee statement from her attorney in the amount of \$787.50 as costs of bringing the contempt petition.

¶ 35 Michael testified he did not have the financial capacity to pay \$2,000 per month to Christina. In a separate part of the proceedings, he testified he earned \$2,500 monthly as a property manager on the family farm. As part of his employment, he lived on the property rent-free, and most of his utilities were covered as part of his employment. He did, however, pay \$45 for Internet access.

¶ 36 In Michael's financial affidavit, he allocated \$172 per month for entertainment but stated he spent \$500 the previous month. He also stated he spent \$682 to visit his son, who had returned from deployment. Additionally, Michael allocated \$84 per month for vacations, which he stated was for him to visit his sons. His financial affidavit also designated \$167 per month toward gifts. However, he stated he spent more than \$900 on airfare and other gifts for his sons, including assisting one son in repayment of a debt.

¶ 37 After considering the evidence, the trial court found it did not "need to go beyond [Michael's testimony] to find that [Michael] has chosen to pay things which might be very, very important to pay but none of them are court ordered." The court determined its own orders took

precedence over Michael's decision to visit his sons or repay his son's debt. By doing so, the court found, Michael "place[d] himself above the court in deciding to order himself by choice to pay things other than the court has ordered." The court stated, "regardless of whether or not he has the ability to pay that amount that the court ordered still doesn't give him the option of disregarding it in its entirety." Accordingly, the trial court held Michael in contempt and ordered him to pay \$16,000 plus \$787 in attorney fees within 45 days, at which time the court would hold a hearing as to sanctions. When Michael reiterated his inability to pay, the court stated, "It may not be your fault that you became addicted. It may not be your fault that you had experienced severe problems, but the fact [is] that you've neglected to solve these problems for large periods of time with a total absence of evidence to show that there has been a diligent effort to recover[.]" The court added, "It proves you're feeling sorry for yourself in lieu of living up to your responsibilities."

¶ 38 When his attorney stated Michael would be unable to meet the obligation within 45 days, the court stated, "Well, let's just see what he can do, then[,] *** [a]nd we'll see how he does [i]n the next 45 days." At the next hearing, scheduled for January 2015, the court would consider sanctions, such as jail time.

¶ 39 This appeal followed.

¶ 40 II. ANALYSIS

¶ 41 On appeal, Michael argues the trial court erred by (1) awarding maintenance to Christina, (2) finding him in contempt for failing to pay maintenance, and (3) finding the condominium was marital property valued at \$35,000. We address these arguments in turn.

¶ 42 A. Maintenance

¶ 43 Michael first asserts the trial court erred by awarding maintenance to Christina. Specifically, Michael argues the court erred in awarding maintenance because (1) Christina's income exceeded his own, (2) the court improperly imputed income to him, and (3) the court improperly considered marital misconduct in awarding maintenance.

¶ 44 The trial court awarded Christina \$2,000 in rehabilitative maintenance. "The purpose of rehabilitative, or time-limited, maintenance is to provide an incentive for the spouse receiving support to use diligence in procuring training or skills necessary to attain self-sufficiency." *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 615, 814 N.E.2d 152, 157 (2004). "This goal, however, must be balanced against the realistic appraisal of the likelihood the spouse will be able to support herself in a reasonable approximation of the standard of living established during the marriage." *Id.* at 615, 814 N.E.2d at 158. The court should measure the reasonable needs of the dependant spouse by the standard of living to which the party seeking maintenance became accustomed during the marriage. *Id.* at 618-19, 814 N.E.2d at 160.

¶ 45 The trial court's decision to award maintenance is reviewed for an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005). "An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court." *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292, 932 N.E.2d 543, 548 (2010). The party seeking reversal of the trial court's maintenance order has the burden of showing the court abused its discretion. *Schneider*, 214 Ill. 2d at 173, 824 N.E.2d at 189.

¶ 46 Here, Michael correctly asserts Christina's annual income exceeded his wages at the time of the March 2014 hearing, as he had no income once his unemployment benefits expired in January 2014. However, the trial court was not required to examine the parties'

finances in a vacuum. Rather, the court was guided by the provisions set forth in section 504(a) of the Marriage Act (750 ILCS 5/504(a) (West 2012)). The factors include:

"(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable." *Id.*

¶ 47 In its detailed written order, the trial court addressed each of these factors. In particular, the court highlighted the parties had been married for 21 years and, for 16 of those years, Christina was a homemaker while Michael advanced his career. Due to the length of time Christina remained out of the workplace, the court determined her future earning capacity was far lower than Michael's. Despite Michael's termination from his previous employment, he possessed the requisite experience and skills to find future employment. In fact, Michael testified he could earn an estimated \$50,000 to \$100,000 per year, almost immediately, which would take into account his lost earning capacity—down from \$225,000 annually—due to his previous termination for alcohol abuse.

¶ 48 Michael asserts Christina had not demonstrated a reasonable need for maintenance, particularly for \$2,000 per month, because she (1) had not asked for temporary support, (2) continued to contribute to a 401(k), and (3) managed to pay off a \$1,800 credit card debt. By ordering him to pay \$2,000 per month, he notes, Christina would have 91% of their combined income.

¶ 49 Given the parties' standard of living during the marriage was based on Michael's gross monthly income alone of approximately \$18,750, we conclude maintenance in the amount of \$2,000 per month is reasonable. Christina has taken steps to mitigate her loss of standard of living by taking a full-time job making \$37,000 annually, which is approximately one-sixth of the gross income of the parties during the marriage. Christina's approximate monthly gross income of \$3,083, plus the maintenance of \$2,000, is still significantly less than the \$18,750 to which she had access during the marriage. Moreover, Christina maintained insurance on the vehicles of their sons and health insurance for their college-age son, thus rendering her request more reasonable.

¶ 50 Although Michael correctly asserts Christina paid a credit card debt, made payments toward her 401(k), and did not ask for temporary support, those facts are not dispositive. The trial court examined not only Michael's income as of the day of the hearing, but, also, his history of employment and his future earning capacity. The court may consider the parties' prospective incomes in addition to their current incomes in setting the level of maintenance. *In re Marriage of Lichtenauer*, 408 Ill. App. 3d 1075, 1088, 945 N.E.2d 119, 130 (2011). In doing so, the court relied on Michael's representation that he could earn \$50,000 to \$100,000 and imputed an income of \$100,000 to him. However, Michael asserts the court's approach of imputing income to him was an abuse of discretion.

¶ 51 In determining whether the trial court erred in imputing income to Michael, one of the following three factors must apply: "(1) the payor is voluntarily unemployed ***; (2) the payor is attempting to evade a support obligation ***; or (3) the payor has unreasonably failed to take advantage of an employment opportunity." *Id.* at 1089, 945 N.E.2d at 131 (quoting *In re*

Marriage of Gosney, 394 Ill. App. 3d 1073, 1077, 916 N.E.2d 614, 618 (2009)). Michael asserts no evidence in the record supports any of these three factors. We disagree.

¶ 52 During the hearing on the motion to reconsider and based on the limited information contained within the bystander's report from the March 2014 hearing, Michael's self-supporting statements that he sought employment through various means were unsupported by any documentation or concrete means by which the trial court could gauge Michael's efforts. Moreover, the court was entitled to find credible Christina's testimony regarding Michael's threat to remain unemployed to avoid paying maintenance. Following the hearing on the motion to reconsider, the court found Michael's continued unemployment based on his alleged "helplessness" unbelievable, and it determined his lack of employment was in bad faith. The court also specifically found Michael was attempting to evade his obligations. These factual findings support two factors necessary to impute income to Michael—he remained voluntarily unemployed and was attempting to evade his support obligation. See *id.* Thus, the court did not err in imputing to Michael an annual salary of \$100,000 based on Michael's own testimony of his earning capacity.

¶ 53 Michael next asserts the trial court improperly considered marital misconduct in ordering maintenance. See 750 ILCS 5/504(a) (West 2012) (the court's decision to award maintenance must be without regard to marital misconduct). An award of maintenance "is not meant to serve as a potential tool for punishing a party who would be entitled to maintenance but for some arguably objectionable conduct." *In re Marriage of O'Brien*, 393 Ill. App. 3d 364, 384, 912 N.E.2d 729, 747 (2009) *aff'd*, 2011 IL 109039, 958 N.E.2d 647. We find Michael's argument unpersuasive.

¶ 54 Nothing in the record suggests the trial court awarded maintenance as punitive damages for his job loss, which occurred after the court granted the dissolution of marriage. The court's detailed order demonstrates it took into consideration the relevant statutory factors and imputed Michael's income on Michael's own testimony that his earning capacity was between \$50,000 and \$100,000. Given that neither party was likely to achieve the same lifestyle enjoyed during the marriage, the court appropriately attempted to preserve a reasonable approximation of Christina's former standard of living.

¶ 55 Accordingly, we conclude the trial court's decision to grant Christina maintenance in the amount of \$2,000 per month was not an abuse of discretion.

¶ 56 B. Contempt

¶ 57 Michael next asserts the trial court erred by finding him in indirect civil contempt for failing to pay the court-ordered maintenance obligation. We disagree.

¶ 58 The failure to make payments toward a court-ordered maintenance obligation constitutes *prima facie* evidence of indirect civil contempt. *In re Marriage of Elies*, 248 Ill. App. 3d 1052, 1058, 618 N.E.2d 934, 939 (1993). Once the petitioner has met his or her burden of presenting *prima facie* evidence of contempt, the respondent has the burden of showing his or her failure to comply was not willful or contumacious. *Id.* The inability to pay is a defense to the charge of contempt. *In re Marriage of Betts*, 155 Ill. App. 3d 85, 100, 507 N.E.2d 912, 922 (1987).

¶ 59 The trial court's finding of contempt and the imposition of sanctions are factual matters. *In re Estate of Hayden*, 361 Ill. App. 3d 1021, 1030, 838 N.E.2d 93, 101 (2005). "A finding of contempt is a question of fact that will not be reversed on appeal absent an abuse of discretion or unless it is against the manifest weight of the evidence." *Id.*

¶ 60 The parties do not dispute Michael failed to make payments toward his court-ordered maintenance obligation, which constitutes *prima facie* evidence of contempt. See *Elies*, 248 Ill. App. 3d at 1058, 618 N.E.2d at 939. However, Michael asserts the trial court erred in finding him in contempt because his failure to pay toward his maintenance obligation was not willful, as he lacked the financial ability to pay.

¶ 61 As noted above, the trial court ordered Michael to pay \$2,000 per month in maintenance based on Michael's own testimony that he could find employment earning \$50,000 to \$100,000 annually. Though Michael was apparently unable to find employment at that salary range, he did obtain a job working on his family's property, where he made approximately \$2,500 per month. As Michael testified, he lived on the property rent-free with few bills. That provided him with sufficient income to spend (1) \$500 on entertainment, (2) \$682 to visit one of his sons, and (3) \$900 on airfare, despite the court's order that he pay monthly maintenance. He also testified he was helping his son repay a debt and provided gifts to his children. Despite having the money to pay for these discretionary expenses, Michael chose not to pay one penny toward his court-ordered maintenance obligation. As the court noted, Michael "place[d] himself above the court in deciding to order himself by choice to pay things other than the court has ordered." We therefore find unpersuasive Michael's argument that he lacked the ability to make any payments toward his maintenance obligation.

¶ 62 Accordingly, we conclude the trial court did not err in finding Michael in indirect civil contempt.

¶ 63 C. Condominium

¶ 64 Michael next asserts the trial court erred by classifying the condominium as marital property valued at \$35,000.

¶ 65 In dissolution proceedings, prior to distributing property, the trial court must classify the property as marital or nonmarital. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 44, 968 N.E.2d 115. The court's classification of property as marital or nonmarital will not be disturbed unless it is against the manifest weight of the evidence. *Id.* "A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or when the court's findings appear to be unreasonable, arbitrary, or not based upon the evidence." *Id.*

¶ 66 Under the Marriage Act, "there is a rebuttable presumption that all property acquired by either spouse after the marriage and before a judgment of dissolution of marriage is marital property regardless of how title to the property is held." *Id.* ¶ 45, 968 N.E.2d 115; see also 750 ILCS 5/503(b)(1) (West 2012). A party may rebut this presumption by presenting clear and convincing evidence that the property is subject to one of the exemptions set forth in section 503(a) of the Marriage Act. *Romano*, 2012 IL App (2d) 091339, ¶ 45, 968 N.E.2d 115. Pertinent to this case, property conveyed to one of the parties as a gift constitutes nonmarital property. 750 ILCS 5/503(a)(1) (West 2012).

¶ 67 Michael first relies on Christina's statement that she thought the condominium had been a gift to support his argument that the condominium constitutes nonmarital property. See *id.* This position misstates the summary of her testimony contained in the bystander's report and the law pertaining to gifts. According to the bystander's report, Christina testified she thought the condominium was a gift to both Michael and her. A gift to the couple constitutes marital property. See *In re Marriage of Weinstein*, 128 Ill. App. 3d 234, 248, 470 N.E.2d 551, 561 (1984). Thus, because Christina asserted the condominium was a gift to both parties, her position would support a finding of marital property.

¶ 68 Regardless, Michael asserts, Edward testified the condominium was intended as a gift to Michael, not to Christina. See *In re Marriage of Didier*, 318 Ill. App. 3d 253, 263, 742 N.E.2d 808, 816 (2000) (the donor's testimony is best evidence of an intent to provide a gift). Accordingly, it would be classified as a nonmarital gift. 750 ILCS 5/503(a)(1) (West 2012). However, although the donor's testimony is the most relevant evidence of donative intent, it is not necessarily the only relevant evidence of donative intent. *Didier*, 318 Ill. App. 3d at 263, 742 N.E.2d at 816-17.

¶ 69 The trial court expressly rejected Michael's position that the condominium was a gift, noting Edward testified he purchased the condominium with the intention that his sons would pay him back. In fact, Michael's brother had already paid his \$35,000 share. In Michael's current position, Edward testified he did not "expect" repayment. Thus, the court determined Edward's arrangement with Michael constituted a form of loan forgiveness rather than a gift. We are also unpersuaded by Michael's argument that Christina had no ownership interest because her name did not appear on the deed. See *Romano*, 2012 IL App (2d) 091339, ¶ 45, 968 N.E.2d 115 (the absence of a spouse's name on a deed is not dispositive of property interest).

¶ 70 Michael had the burden of demonstrating the condominium constituted nonmarital property. *Id.* In this situation, the court received conflicting testimony regarding whether the condominium was a gift or marital property conveyed through a loan. The court found Edward's testimony most credible, and this finding was not against the manifest weight of the evidence.

¶ 71 After the trial court classified the condominium as marital property, the court awarded Christina half of the value of Michael's property interest. This does not, as Michael argues, create a windfall for Christina. Rather, to allow Michael to keep his full share of the

unencumbered condominium, which the parties used for many years throughout their marriage, without compensating Christina for her marital portion would constitute a windfall for *Michael*. Thus, we conclude the trial court's decision to award Christina the value of half of Michael's share in the condominium was not against the manifest weight of the evidence.

¶ 72 Michael also contends the trial court erred in assessing a value of \$35,000 to his share of the condominium, arguing the only evidence in the record was Christina's estimate that Michael's half was valued at \$25,000. Michael's argument contradicts the record and his own admissions before the trial court.

¶ 73 Christina placed a value of \$25,000 on the marital share of the condominium. However, Edward testified, when he purchased the condominium, his two sons were to each reimburse him half. Michael's brother paid Edward the \$35,000 owed for his half. Logically, the other half owed by Michael would be \$35,000. Additionally, in his motion to reconsider, Michael asserted his family intended to sell the condominium for \$60,000. He stated his \$30,000 portion would go to Edward for repayment on the loan, and Michael would then have a \$5,000 balance owed. Thus, in his motion to reconsider, Michael conceded the value of his portion of the condominium was \$35,000. Thus, Michael's argument that the figure of \$35,000 is unsupported by the record is disingenuous. The court clearly placed more weight on the amount of money actually paid toward the condominium than on Christina's uneducated estimation of the value. *In re Marriage of Sturm*, 2012 IL App (4th) 110559, ¶ 6, 970 N.E.2d 117 (the trier of fact determines the credibility of witnesses). Accordingly, we conclude the court's decision to value Michael's share of the condominium at \$35,000 was not against the manifest weight of the evidence.

¶ 74

III. CONCLUSION

¶ 75 For the foregoing reasons, we affirm the trial court's judgment.

¶ 76 Affirmed.