

No. 1-14-3042

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

IN RE THE MARRIAGE OF BROMBEREK,)	Appeal from the Circuit Court
)	of Cook County.
ELALEE BROMBEREK,)	
)	
Petitioner-Appellant,)	
)	No. 10 D 8265
and)	
)	
LAWRENCE BROMBEREK,)	
)	Honorable Renee Goldfarb
Respondent-Appellee,)	Judge Presiding
)	
and)	
)	
FIRST MIDWEST BANKCORP, INC.,)	
As trustee for First Midwest Trust No. 6136,)	
RONALD BROMBEREK, BEAU BROMBEREK,)	
NICOLE KONOW and)	
CASSANDRA BROMBEREK,)	
)	
Third Party Respondents-Appellees)	

JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in denying petitioner's request to invalidate a land trust created by respondent for the benefit of their children. The evidence did not establish that respondent intended to defraud petitioner's marital rights.

¶ 2 This is an appeal from an order denying a petition for declaratory judgment against third parties regarding the validity of a land trust. During the pendency of the dissolution of marriage proceedings, the petitioner-wife requested the court to invalidate the land trust created by respondent-husband for the benefit of their three children. The trial court denied the petition for declaratory judgment. We affirm.

¶ 3 **BACKGROUND**

¶ 4 Petitioner, Elalee Bomberek, married Respondent, Lawrence Bomberek, on July 1, 1973. Petitioner filed a petition for dissolution of marriage against respondent on August 19, 2010. Petitioner also filed a motion for declaratory judgment against respondent, their three children, First Midwest Bank, and Ronald Bomberek alleging that the land trust created by respondent naming their children as beneficiaries was illusory and colorable. The trial court conducted an evidentiary hearing to determine the validity of petitioner's allegations.

¶ 5 At the evidentiary hearing, both petitioner and respondent testified. In relevant part, petitioner testified that she met respondent when they were both in high school in 1969. When they began dating, she knew that respondent worked part-time mining and selling flagstone for his father's company, Bomberek Flagstone. They broke up and then resumed dating in 1972. Petitioner testified that she knew that respondent's father was also the owner of Shabbona Camp Ground. At that time, she did not know the status of respondent's ownership in the Bomberek Flagstone. Respondent's father died before their wedding. She testified that after their marriage, respondent began mining flagstone again.

¶ 6 Respondent ran Shabbona Camp Ground until 1976 when it was sold. According to petitioner, the parties did not have any joint bank accounts and the money that respondent received from selling the Camp Ground was never deposited into any joint account. Petitioner stated that Bromberek Flagstone Company had different owners over the years but respondent had always been an owner and that the only people that were ever involved in the ownership of this company were members of the Bromberek family. In 1983, respondent and his first cousin, Ronald Bromberek, purchased a parcel of property in Lockport and between 1983 and 1993 they mined flagstone off the same property. In 1993, Ronald merged his own company into respondent's company. In 1997, they incorporated that partnership and created Bromberek Flagstone Company Incorporated.

¶ 7 Petitioner testified that she never had any interest in the respondent's company or in the partnership and that she never received any stock in her own name. She also stated that she never held any title of any of the lands that the Bromberek Flagstone Company mined and, when the company acquired pieces of property, they were not discussed with her. At the time of her testimony, she was aware that from 1996 through 2001 several properties were purchased and put into a trust at First Midwest Bank but she was not aware when those properties were acquired. The money from the parcels emanated from respondent's partnership and corporation checks. During the course of their marriage, petitioner was not involved in the day-to-day operations of the company and respondent earned the money used to buy things for the marriage from his ownership of Bromberek Flagstone Company.

¶ 8 Petitioner testified that she was present in the condominium in Florida when two of her children, Cassandra and Beau Bromberek, signed their prenuptial agreements before their double wedding but she was not included in the signing. Each of the agreements stated that "1/3 of half

interest in Bomberek Flagstone Company and 1/3 of half interest in trust no. 6136" were granted to Cassandra and Beau who both got married the next day. Petitioner claimed that she was not aware of any transfers from respondent of 1/3 of one half interest in the Bromberek Flagstone Company to either of the children. The children did not tell her about the land trust either. She stated that she first learned about the land trust and the prenuptial agreements in her attorney's office after the dissolution of marriage proceedings started. Petitioner testified that respondent never discussed with her the creation of the land trust and did not show her any documents related to it.

¶ 9 Respondent testified that he works at Bomberek Flagstone Company and that he and Ronald Bromberek also own Bromberek Flagstone Incorporated. Respondent testified that he had been in business with Ronald since 1992 but they started to mine stone together in 1980. In 1993, they leased land in Joliet to mine flagstone. The lease with an option to buy was signed by both Ronald and respondent. Respondent and Ronald made all 40 monthly payments and purchased the property. Shortly after the last payment on December 6, 1996, the land trust was established and the property was placed in it. The beneficiaries of the land trust were Ronald with a 50% share, and the parties' children with a 50% share. Respondent testified that several other properties purchased by his company and partnership were subsequently placed in the trust. Respondent's company used part of the properties in the land trust for mining while paying real estate taxes for the properties, insurance and a loan on one of the properties.

¶ 10 Respondent testified that his father had a trust set up for his three children and he also wanted to establish a trust for his own children "in a similar manner, maybe not exactly, but I would like to have my kids be the owner of this land trust." Respondent further testified that he discussed the establishment of the land trust with petitioner around the time of the creation of the

trust. He testified that he told petitioner, "[I've] seen our attorney, I say, we're buying some property, I'd like the kids to be the owner of the property." According to respondent, petitioner did not disagree or raise any concerns. Respondent maintained that he never hid anything from her. The trust and the prenuptial agreements were signed at their family home in Florida, in the kitchen, on the countertop, by respondent and the children while petitioner was at home.

Respondent also testified that, prior to signing the documents, he, petitioner, the children and both fiancés had a family meeting and a discussion why the prenuptial agreements were necessary.

¶ 11 Following the evidentiary hearing, the trial court denied petitioner's motion for declaratory judgment. The trial court held that while the trust was marital property, petitioner failed to establish that the creation of the trust was not a valid and legal transfer of real property to the parties' children in 1996. The court concluded that respondent had no intent to defeat the marital interest of petitioner by transferring the land in the trust created to benefit their children. Petitioner filed a motion for a Rule 304(a) finding which the trial court granted. On appeal, petitioner contends that the trial court erred in failing to grant her petition for declaratory judgment against respondent and third parties regarding the land trust.

¶ 12 ANALYSIS

¶ 13 The standard of review for granting an order of declaratory relief depends on whether the issues are legal or factual. *In re Marriage of Rife*, 376 Ill. App. 3d 1050, 1059 (2007). We review a circuit court's determination of the classification of property or whether a transaction is a sham on a manifest weight of the evidence standard of review. See *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2009). A decision is against the manifest weight of the evidence if

the opposite conclusion is clearly apparent. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 100.

¶ 14 Petitioner contends that the land trust was void and without legal effect when the transfer of the properties into the trust was colorable, illusory and amounted to fraud on her marital rights. Petitioner maintains that the land trust was created without her knowledge and consent and that she did not have any knowledge that the properties purchased by respondent had been placed into the land trust. Petitioner argues that respondent lacked the required present donative intent to establish a valid trust because respondent maintained the power of direction over the trust and that the parties' children, as beneficiaries, had no ability to control the trust or land.

¶ 15 In Illinois, an owner has an absolute right to dispose of his property during his lifetime in any manner he sees fit, and he may do so even though the transfer is for the precise purpose of defeating his spouse's statutory marital interests in the property conveyed. *Johnson v. La Grange State Bank*, 73 Ill. 2d 342, 357 (1978). As such, a transfer is not vulnerable to attack by a spouse unless the transaction “is a sham and is ‘colorable’ or ‘illusory’ and is tantamount to a fraud.” *Id.* quoting *Holmes v. Mims*, 1 Ill. 2d 274, 275 (1953). An “illusory” transfer is one “which takes back all that it gives.” *Johnson*, 73 Ill. 2d at 359. A “colorable” transfer is one “which appears absolute on its face but due to some secret or tacit understanding between the transferor and the transferee the transfer is, in fact, not a transfer because the parties intended that ownership be retained by the transferor.” *Id.* In other words, although a spouse's marital rights can be defeated by an actual transfer, a purported transfer whereby the owner does not intend to convey a present interest, but intends to retain ownership, is evidence of an intent to defraud. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 103. When a parent places title in a child, there is a presumption that the transfer is a valid gift or advancement, and the burden is on the

one questioning the gift to overcome the presumption by clear and convincing evidence. *In re Estate of Defilippis*, 289 Ill. App. 3d 695, 701 (1997).

¶ 16 Here, the trial court found that petitioner did not establish by clear and convincing evidence that the creation of the land trust was not a valid and legal transfer of real property to the parties' children. The court noted that the properties in the trust were marital property since they were purchased with funds acquired by respondent during the marriage but concluded that respondent did not intend to defraud petitioner's marital assets. The trial court found petitioner's testimony, that the trust was created without her knowledge and that she did not know anything about the trust until the dissolution of marriage proceedings began, not credible.

¶ 17 The record indicates that petitioner admitted she was present when the trust and the prenuptial agreements were signed in December 1996, at their family condo in Albara, Florida. Petitioner also acknowledged that sometime after the prenuptial agreements were signed respondent told her that "he put the kids' names on the trust." Respondent testified that he, petitioner, their children and both fiancés were present when the trust and prenuptial agreements were signed in their home in Florida and that he discussed the establishment of the land trust with petitioner at around the time of the creation of the trust. The trial court found respondent's testimony that petitioner had knowledge about the establishment of the trust credible and consistent. It is long established that a court of review will not disturb a judgment where it is based upon an assessment of the credibility of the witnesses. *Economy Fire & Casualty Co. v. Warren*, 71 Ill. App. 3d 625, 627 (1979). Thus "[t]he credibility of the witnesses and the weight to be accorded to their testimony is a matter solely within the province of the trial court as trier of fact." *In re Marriage of Shehade*, 137 Ill. App. 3d 692, 700-02 (1985). Based upon all of the evidence produced and the circumstances surrounding the creation of the trust, we agree with the

trial court's conclusion that petitioner was in fact aware about the trust since its inception in 1996.

¶ 18 Next, the trial court's finding that the transfer of the properties in the land trust was a valid conveyance to his children was not against the manifest weight of the evidence. The intent of the transferor determines whether the creation of an *inter vivos* land trust is an effective present transfer or a testamentary disposition. *Payne v. River Forest State Bank & Trust Co.*, 81 Ill. App. 3d 1128, 1131 (1980). The evidence most relevant in determining donative intent is the donor's own testimony. *In re Marriage of Simmons*, 221 Ill. App. 3d 89, 92 (1991). It is the burden of the party challenging the gift to present evidence that the parent making the transfer lacked donative intent. *Id.* A trial court's discretion on such determinations will not be disturbed unless it is contrary to the manifest weight of the evidence. *Id.*

¶ 19 Here, respondent testified that he wanted to follow his father's steps in setting up a trust for his own children and for their well-being. Specifically, respondent stated that, "I wanted my children to have the ownership of the trust, for their well-being, when they grew up, it was theirs. It was always theirs." Respondent's testimony is also supported by the presumption that, when a parent places title in a child, the transfer is a valid gift or advancement. See *In re Estate of Defilippis*, 289 Ill. App. 3d at 701.

¶ 20 In addition, respondent's present donative intent is reflected by the fact that he never retained any beneficial interest in the land trust since its inception in 1996. The record reflects that respondent retained a power of direction of the trust with Ronald until 2005, but never used it. Although respondent's company used the properties in the land trust for mining without paying rent, respondent's company paid the real estate taxes, insurance and repaid a loan on the properties. Furthermore, there was no evidence whatsoever that the value of the property in the

trust was in any way diminished because of the mining done by respondent's company.

Moreover, if respondent wanted to maintain ownership in the land trust, he certainly could have done so, just like Ronald Bromberek, who maintained a 50% beneficial interest in the trust from its formation. To the contrary, the evidence indicates that respondent did not retain the ownership of the trust but created a valid *inter vivos* trust for his three children. See *Johnson*, 73 Ill. 2d at 359. Therefore, the trial court's judgment that the land trust created by respondent for the benefit of his children was not colorable, illusory, or tantamount to fraud was not against the manifest weight of the evidence.

¶ 21

CONCLUSION

¶ 22 Based on the foregoing, we affirm.

¶ 23 Affirmed.