

**NOTICE**

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2016 IL App (4th) 150900-U

NO. 4-15-0900

**FILED**

September 30, 2016  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
VALERIE F. SCHMID,	)	Circuit Court of
Petitioner-Appellee,	)	DeWitt County
and	)	No. 13D51
MARTIN L. SCHMID,	)	
Respondent-Appellant.	)	Honorable
	)	William Hugh Finson,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Justices Turner and Appleton concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* (1) The trial court committed no error in treating respondent's pension benefits, which accrued during the parties' marriage, as marital property to be distributed between the parties.
- (2) The trial court did not abuse its discretion in distributing the parties' marital property.
- (3) The trial court committed no error in ordering petitioner was entitled to her share of respondent's pension benefits as of the date the court entered its property distribution order.
- (4) The trial court's classification of a tract of land deeded to respondent during the marriage as marital property was against the manifest weight of the evidence.
- (5) The trial court committed no error in denying respondent's motion for a stay of judgment relating to the award to petitioner of a portion of respondent's pension benefits.
- ¶ 2 Petitioner, Valerie F. Schmid, brought an action to dissolve her marriage to re-

spondent, Martin L. Schmid, and, in July 2015, the trial court entered a judgment of dissolution of marriage. Martin appeals, arguing the court (1) erred in treating his pension benefits, which were in pay-out status, as property to be distributed between the parties rather than a "stream of income"; (2) inequitably distributed the parties' marital property; (3) improperly set the date upon which Valerie was entitled to receive her share of his pension benefits; (4) erroneously classified a tract of land deeded to Martin during the marriage by his mother's trust as marital property; and (5) improperly terminated an automatic stay of judgment pertaining to Martin's pension qualified domestic relation order (QDRO). We affirm in part, reverse in part, and remand with directions.

¶ 3

### I. BACKGROUND

¶ 4 The parties were married on April 29, 1989, and had one child. Martin also had a child from a previous relationship. On September 13, 2013, Valerie filed her petition for dissolution of marriage. The parties' children were both adults at the time of the divorce proceedings.

¶ 5 In November and December 2014, the trial court conducted hearings in the matter. Valerie, age 50, testified she owned a hair salon in Atlanta, Illinois, which she had operated since 1996. The land upon which her salon sat was conveyed to the parties by Valerie's father and Martin helped improve the property and turn it into a hair salon. Prior to the parties' separation in November 2012, Valerie worked four days a week at her salon. However, since that time, she worked five days a week "[t]o pay bills." Valerie testified she worked 9 to 10 hours per day and hoped to continue working for the next 5 years. She described her health as "[f]airly good" but stated she saw a chiropractor and experienced back pain due to being on her feet all day. Valerie stated her knee also bothered her, noting she previously had knee surgery. She further identified a social security statement showing she was entitled to social security benefits of \$657 per month at age 62. If she waited until age 70 to receive benefits, she would be entitled to \$1,199

per month.

¶ 6 Martin, age 59, testified he worked for Caterpillar for approximately 35 years, from August 1974 to April 2008. In 2008, he retired from Caterpillar at age 52. He received a pension from Caterpillar that, at the time of the hearing, paid him a gross amount of \$2,800 per month. However, Martin testified that, in November 2017, after he reached age 62, his benefit would be reduced to \$1,363.50 per month. He identified a social security earning statement showing he was eligible for social security benefits of \$1,538 per month once he turned 62 in September 2017. Martin testified he planned to "draw" social security benefits at age 62 due to the reduction of his monthly Caterpillar pension benefit.

¶ 7 Martin asserted that, during the marriage, he "worked all the overtime [he] could" to pay off debt or save for retirement. He agreed that Valerie also worked during the marriage and took care of the parties' children. Martin testified that, while working for Caterpillar, he was on his feet "basically all the time." He underwent back surgery prior to his retirement and had several steroid injections. Following surgery, he continued to experience back-related symptoms, including "a kink in [his] back." Martin testified his back condition continued to be physically limiting. Additionally, he stated that, at the time of his retirement, his legs hurt every day and his knees bothered him. He also underwent surgery on his left knee and had a lot of "dental issues." Further, Martin testified he had an accident at work that damaged his occipital nerve and caused headaches and affected his left eye. He stated he retired in 2008 because his "body was wearing out." Valerie testified it was Martin's plan to retire in 2008 at age 52, while she recommended he wait until 2012, when the parties' daughter would graduate from college.

¶ 8 Martin testified that, during the marriage, the parties kept their finances separate and both maintained his or her own checking and savings accounts. He stated he and Valerie

each paid his or her own bills and "split stuff at home." Martin denied that the parties ever combined their money and asserted they continued to keep separate finances following their separation. However, he acknowledged helping Valerie with real estate taxes for a period of time after the parties separated. Martin testified that if he were to lose part of his retirement income, he would be unable to continue the lifestyle he had lived during the parties' marriage and separation.

¶ 9 Both parties submitted financial affidavits. Valerie identified her affidavit, in which she reported a weekly gross income of \$500 from her hair salon and tips ranging from \$25 to \$35 per night from bartending at a tavern. She testified she worked at the tavern one day a week and most Saturdays. Evidence showed the tavern was owned by Aper Property Management, a limited partnership in which Valerie had a 20% interest. Valerie's father, Ronald Aper, testified he was a general partner in Aper Property Management and gifted a 20% interest in the partnership to each of his three daughters. Valerie denied making any monetary investments in Aper Property Management.

¶ 10 Ronald testified the tavern owned by Aper Property Management had been sold on contract to a buyer who defaulted. Both Ronald and Valerie testified it was their intention to operate the tavern until it could be sold. In 2014, the tavern was remodeled. Ronald stated his daughters, including Valerie, helped out with the tavern. He asserted Valerie donated her time and denied that she invested any money into the tavern. Valerie denied having a long-term plan to work at the tavern. Further, Ronald testified he invested \$75,000 of his own money for remodeling the tavern and for taxes, which he considered a loan and a debt owed by the tavern.

¶ 11 Valerie calculated her gross income in 2013 was \$28,606. After deductions for federal and state taxes and health insurance, she calculated an annual net income of \$14,341.64, or a monthly net income of \$1,195.14. In her financial affidavit, Valerie also reported monthly

living expenses of \$2,757.74; however, that amount included \$839.29 per month for health insurance (an amount she also deducted from her calculations of gross income to reach her net income). Valerie testified that health insurance figure represented an estimate from Caterpillar of the amount it would cost her to continue her health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) (29 U.S.C. § 1161 *et seq.* (2014)) once the parties were divorced. Valerie described her coverage through Caterpillar as an "80/20 plan," with a \$500 deductible that covered medical, dental, and vision. She testified she was happy with her current insurance and had contacted two other insurance companies that had deductibles that "started at a couple-thousand dollars."

¶ 12 Martin's financial affidavit stated his monthly gross income from all sources totaled \$3,278.17. That amount included his Caterpillar pension benefit of \$2,800 per month and "income from the Schmid Family Trust," which averaged \$478.17 per month. Martin described the Schmid Family Trust as "com[ing] from his dad" and stated the trust owned "the family farm," which consisted of 175 acres in DeWitt County. The beneficial owners of the trust were Martin and his eight siblings, each of whom owned different interests in the trust. Martin testified he received \$5,558 in trust income in 2012, and approximately \$3,800 in trust income in 2013. Evidence showed Martin's percentage share of the assets in the trust was 11.8%.

¶ 13 In his financial affidavit, Martin identified his net monthly income as \$2,625.39, after deductions from his gross income for federal taxes and medical insurance. Martin testified he paid \$539.70 per month for medical insurance for himself and Valerie. He believed the parties' daughter had also been covered by his insurance but agreed she was currently employed, with her own insurance coverage. Martin acknowledged that his health insurance payment would be less after the divorce but stated he did not know by how much. His affidavit further

reflected monthly expenses totaling \$1,468.48.

¶ 14 The evidence showed Martin had a 401(k) retirement account, which, in December 2014, was valued at \$330,600.73. That amount included \$10,600.55 worth of shares of Caterpillar stock that Martin obtained prior to the marriage. Martin testified he planned to start taking withdrawals from his 401(k) "probably when [he] turn[ed] 59 and a half" in March or April 2015. Valerie testified she had a PNC investment account into which she deposited \$150 per month. She identified a statement, which valued the account at \$31,266.44. Valerie testified she also had an individual retirement account (IRA) into which she deposited \$200 each month. Her IRA had a balance of \$25,315.14. Valerie testified she failed to include the \$200 she deposited each month into her IRA in the monthly expenses she identified in her financial affidavit.

¶ 15 The evidence further showed the parties owned two separate residences, one in Missouri, where Martin resided, and one in Waynesville, Illinois, where Valerie lived and which had been the marital residence. Martin testified the Missouri property consisted of 134 acres and a residence, as well as another 36 acres at a separate location. Valerie testified the parties purchased the Missouri property as a retirement home. She did not object to Martin retaining the Missouri property after the divorce. The parties agreed that the value of the Missouri property was \$240,000.

¶ 16 Valerie testified the Waynesville property consisted of a "ranch house" on 3.9 acres with a big yard and a hayfield. She stated hay had been planted on a portion of the 3.9 acres for approximately 10 years and Martin and his brother had a deal to plant the hay, divide it up, and sell it. Valerie estimated the hayfield took up approximately two acres. Martin testified that, in a good year, it was possible to get approximately 3,000 bales of hay from the property and earn between \$5 and \$6 a square bale.

¶ 17 Martin testified the Waynesville property was owned by his parents and conveyed to him in portions. According to Martin, separate conveyances were made because the initial property given to him before the marriage "was pie-shaped, and [his] dad didn't like the looks of it. So he was trying to square it up." Martin identified a quit-claim deed he signed in April 1997, which transferred the tract of land that included the marital residence and was described as "Lot 1 of Schmid Subdivision," to himself and Valerie as joint tenants. He identified a second quit-claim deed, dated November 1999, which transferred property identified as "[p]art of Lot Three (3) of 'Schmid Subdivision' " from Martin's mother to Martin and Valerie as joint tenants with rights of survivorship. Finally, he identified a "Trustee's Deed," dated April 2002, which conveyed property described as "[a] triangular strip of land consisting of 1.08 acres \*\*\* being a Part of Lot Three (3) of 'Schmid Subdivision' " to Martin in fee simple ownership. The deed further set forth the ownership interest conveyed as "Sole Ownership by [Martin] and Transferable on Death to Valerie \*\*\*, Wife of the Grantee." Martin testified he thought one of the "strips" given to him by his parents to "square [the property] up" was still his. The parties stipulated that the value of the Waynesville real estate in its entirety was \$165,000.

¶ 18 On March 23, 2015, the trial court entered an order setting forth its findings with respect to the distribution of the parties' property. The court awarded Valerie marital property, including the Waynesville real estate in its entirety; the property in Atlanta, Illinois, on which she operated her hair salon; two vehicles; various bank accounts; her investment account; her IRA; various items of personal property; half of the marital share of Martin's Caterpillar 401(k) account; and half of the marital share of Martin's Caterpillar pension. It awarded Martin marital property, including the Missouri real estate; nine vehicles; various bank accounts; various items of personal property, including his collection of firearms; half the marital share of his Caterpillar

401(k) account; and half of the marital share of his Caterpillar pension.

¶ 19 In reaching its decision, the trial court recognized that the allocation of Martin's Caterpillar pension was a major issue in the case. It noted Valerie argued the pension should be treated as property and the marital portion of the pension split between the parties, while Martin maintained his pension should be treated as a " 'stream of income' " and awarded to him in its entirety as the pension was in pay-out status and his primary means of supporting himself. After reviewing case law submitted by Martin, the court elected "to treat the pension as property." Taking into consideration the needs of the parties and the relevant statutory factors, the court determined an award of 50% of the marital share of the pension to each party was "a just and equitable distribution."

¶ 20 The trial court also noted the parties had no significant debt. Further, it stated that, excluding its award of a bank account that it ordered distributed equally between the parties and its allocation of Martin's Caterpillar pension, it awarded marital property totaling \$447,644.09 to Valerie and \$473,327.09 to Martin. The court found there was "a large enough disparity in the value of the property awarded" that an equalization payment was necessary and ordered Martin to pay Valerie \$12,841.50 within two years. Finally, the court ordered each party barred from seeking or receiving maintenance from the other.

¶ 21 On July 28, 2015, the court entered its judgment of dissolution of marriage, dissolving the parties' marriage and incorporating its March 23, 2015, property distribution order. It also entered QDROs with respect to Martin's Caterpillar pension plan and his 401(k) account.

¶ 22 On August 12, 2015, Martin filed a motion to reconsider. Relevant to this appeal, he argued the trial court erred in awarding Valerie the Waynesville property in its entirety, contending a parcel of land associated with that property had been transferred solely to him and con-

stituted his nonmarital property. Martin asked that the property be either awarded to him or that he be compensated for its value. He also argued the court's order failed to include the value of the land in Atlanta, Illinois, where Valerie operated her hair salon. Martin noted he submitted evidence showing that the tract of land at issue was gifted to both parties by Valerie's father. Further, he asserted that the parties stipulated prior to trial that the land was valued at \$8,000. Martin maintained that the failure by the court to include this \$8,000 within its calculations resulted in an improper equalization payment.

¶ 23           Additionally, Martin argued that the court erred in treating his Caterpillar pension as marital property. Rather, he maintained his pension should have been treated as income and awarded solely to him. Alternatively, Martin argued that he be awarded maintenance "in light of his lack of income."

¶ 24           On August 24, 2015, Valerie filed a motion to clarify. She asserted Martin had continued to receive the entirety of his pension payment throughout the course of the dissolution and noted the trial court's "order did not specify when the award of one-half of the marital interest in the [pension was] to be effective." Valerie argued it was appropriate that the order awarding her half of the marital share of the Caterpillar pension be effective retroactive to January 13, 2014, the date Martin filed his response to her petition for dissolution of marriage. Alternatively, she argued the court's order regarding the pension distribution should be effective March 23, 2015, the date its order allocating the parties' marital property was entered.

¶ 25           On October 1, 2015, the trial court conducted a hearing on the pending motions; however, a transcript of the hearing does not appear in the appellate record. That same day, the court entered an order addressing both Valerie's motion to clarify and Martin's motion to reconsider. It stated as follows:

"1. The Motion to Clarify is granted. [Valerie] is entitled to her share of the marital portion of the pension effective March 23, 2015.

2. The Motion to Reconsider is granted as to the value of the commercial real estate in Atlanta, [Illinois]. The [\$8,000] value of the land was omitted and is awarded to [Valerie]. This reduces the equalization payment to \$8,841.50.

3. The remainder of the Motion to Reconsider is denied."

¶ 26 Docket entries reflect that, during the October 1, 2015, hearing, Valerie's counsel made a motion for the posting of an appeal bond by Martin. On October 29, 2015, Martin filed a notice of appeal and a motion for an extension of time to file an appeal bond.

¶ 27 On November 16, 2015, a hearing was held by telephone regarding the issue of an appeal bond. Though no transcript of the hearing exists, the parties filed a bystander's report setting forth what occurred at the hearing. The report stated Martin moved for a stay of enforcement of his Caterpillar QDRO. Valerie objected to the motion and the trial court denied Martin's request for a stay. The report further stated as follows:

"5. Regarding the value of Judgment and pertaining to the Appeal Bond, the parties stipulated to the amount Caterpillar calculated for [Valerie's] monthly benefit amount, namely \$832.16 per month.

6. The Court further ordered that Appeal Bond be set at \$15,000.00 and to be served by irrevocable letter of credit over objection of [Valerie's attorney] to letter of credit."

On December 1, 2015, an appeal bond order was filed, stating Martin had secured an irrevocable letter of credit from DeWitt Savings Bank in the amount of \$15,000. The court accepted and approved the bond as security, finding it sufficient security to protect Valerie's interests.

¶ 28

## II. ANALYSIS

¶ 29

### A. Pension Benefits

¶ 30

On appeal, Martin challenges the trial court's distribution of property and, in particular, its distribution of his Caterpillar pension. Under section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d) (West 2014)), the trial court "shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors." Factors for consideration include:

"(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including (i) any such decrease attributable to a payment deemed to have been an advance from the parties' marital estate \*\*\* and (ii) the contribution of a spouse as a homemaker or to the family unit;

(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, including the

desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;

(6) any obligations and rights arising from a prior marriage of either party;

(7) any antenuptial agreement of the parties;

(8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;

(9) the custodial provisions for any children;

(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." *Id.*

¶ 31 Although "[a]n award of property in just proportions does not mean equal proportions" (*In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1042, 899 N.E.2d 1097, 1104 (2008)), this court has held that "[e]qual distribution of marital property is generally favored, unless application of the statutory factors demonstrates an equal division would be inequitable" (*In re Marriage of Minear*, 287 Ill. App. 3d 1073, 1083, 679 N.E.2d 856, 864 (1997)). Ultimately, "[t]he goal of apportionment of marital property is to attain an equitable distribution." *In re Marriage of Price*, 2013 IL App (4th) 120155, ¶ 44, 986 N.E.2d 236.

¶ 32 1. *Caterpillar Pension as Income or Marital Property*

¶ 33 Martin first argues the trial court improperly treated his Caterpillar pension as property. He contends that, because his Caterpillar pension had matured and was in pay-out status, the court should have considered it as income rather than marital property to be distributed at the time of dissolution. Further, Martin asserts the court improperly disregarded his pension's "income stream attribute," as well as the overall financial circumstances of the parties. He argues he should be awarded the "sole use of his pension benefits as his income."

¶ 34 Initially, we agree with Martin that this first issue, relating to the trial court's classification of his pension as marital property, presents a question of law. As a result, it is subject to *de novo* review. *In re Marriage of Abrell*, 236 Ill. 2d 249, 255, 923 N.E.2d 791, 794 (2010).

¶ 35 As stated, the Act requires that a trial court divide marital property "in just proportions." 750 ILCS 5/503(d) (West 2014). Marital property generally "means all property acquired by either spouse subsequent to the marriage." 750 ILCS 5/503(a) (West 2014). The Act "specifically provides that pension benefits tied to contributions made during the marriage are marital property." *In re Marriage of Mueller*, 2015 IL 117876, ¶ 18, 34 N.E.3d 538; see also 750 ILCS 5/503(b)(2) (West 2014) ("For purposes of distribution of property \*\*\* all pension benefits \*\*\* acquired by either spouse after the marriage and before a judgment of dissolution of marriage or declaration of invalidity of the marriage are presumed to be marital property."); *Smithberg v. Illinois Municipal Retirement Fund*, 192 Ill. 2d 291, 303, 735 N.E.2d 560, 567 (2000) (stating the proposition that retirement benefits are marital property to the extent that the beneficial interest was acquired during the marriage "has been so firmly established in this state over the years as to be beyond dispute").

¶ 36 Both the Act and relevant case authority clearly establish that pension benefits

acquired during a marriage constitute marital property. The fact that Martin's pension in the instant case had matured and was in pay-out status at the time of dissolution proceedings does not alter the fact that a large portion of the beneficial interest in his pension was acquired during the parties' marriage and as a result of marital contributions. To the extent Martin argues otherwise, we disagree. The trial court committed no error in classifying the Caterpillar pension benefits acquired during the parties' marriage as marital property.

¶ 37 We also disagree with Martin's contention that the trial court improperly ignored his pension's "income stream attribute," finding the record clearly refutes that contention. When attempting to reach an equitable distribution of marital property, a court must consider relevant factors, including the "amount and sources of income" for each party. 750 ILCS 5/503(d)(8) (West 2014). Here, in addressing Martin's Caterpillar pension, the trial court noted Valerie's income from her hair salon and the fact that Martin was retired and received a gross pension benefit of \$2,800 per month. In fact, the trial court found "no evidence that [Martin had] any other income" despite Martin's report in his financial affidavit of monthly income from the Schmid family trust. Moreover, in distributing the property, the court expressly stated it considered the respective needs of the parties and the statutory factors set forth in section 503(d), which necessarily includes consideration of income. Thus, contrary to Martin's assertions on appeal, the court's decision to treat "the pension as property" was not a refusal to consider the pension's income stream characteristics. Rather, it was a rejection of Martin's contention that the pension should be considered only as income and awarded to him in its entirety.

¶ 38 A pension benefit which accrues during a marriage may be both marital property and a source of income. However, its status as a source of income does not negate its status as a marital asset to be distributed in just proportions. Rather, when distributing a pension as marital

property, the court considers the income of the parties under section 503(d), which may include monthly benefits from a pension that has matured. In this instance, the trial court committed no error in finding Martin's Caterpillar pension was marital property to be distributed in just proportions and after consideration of all relevant factors, including the parties' income and economic circumstances.

¶ 39                    2. *Distribution of Pension Benefits in Just Proportions*

¶ 40                    Martin next argues that the trial court's apportionment of his pension benefits resulted in an inequitable distribution of marital assets. He contends the court's distribution reduces his income such that he will require an award of maintenance to maintain the standard of living to which he was accustomed during the marriage.

¶ 41                    A trial court "has broad discretion in the distribution of marital assets." *Walker*, 386 Ill. App. 3d at 1042, 899 N.E.2d at 1104. On review, the court's distribution of marital property will not be disturbed absent an abuse of discretion. *Price*, 2013 IL App (4th) 120155, ¶ 44, 986 N.E.2d 236. "An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court." *Id.* ¶ 30.

¶ 42                    Further, we note "[t]he issue of maintenance is \*\*\* 'integrally related' to the trial court's allocation of \*\*\* property," and the Act requires a trial court to consider whether an apportionment of property " 'is in lieu of or in addition to maintenance.' " *In re Marriage of Jensen*, 2013 IL App (4th) 120355, ¶ 39, 988 N.E.2d 1102 (quoting 750 ILCS 5/503(d)(10) (West 2010)). "Where the property available to [a] spouse is sufficient to satisfy that spouse's needs and entitlements, the use of maintenance should be limited," and an award of maintenance may be unnecessary if sufficient marital property is found. *In re Marriage of Aschwanden*, 82 Ill. 2d 31, 38, 411 N.E.2d 238, 242 (1980).

¶ 43 The evidence showed that Valerie asserted a gross annual income of \$28,606 in 2013. According to Valerie's calculations (taken from her testimony and financial affidavit), her net monthly income was \$2,034.43 after deductions for state and federal taxes. Valerie reported living expenses of \$1,918.45. However, the evidence also showed that Valerie was covered by Martin's health insurance during the marriage and, therefore, had no expense related to health insurance. She testified that, after the parties divorced, she could continue with the same insurance through COBRA at a cost of \$839.29 per month. When her net monthly income is reduced by her proposed health insurance cost, it totals \$1,195.14. Although Martin complains that Valerie did not investigate "more affordable insurance options," it is clear from the evidence presented that Valerie's expenses for health insurance will most assuredly increase following the parties' divorce. When Valerie's proposed health insurance costs are taken into consideration, her monthly expenses exceed her monthly net income.

¶ 44 The evidence with respect to Martin established that he was retired and received Caterpillar pension benefits of \$2,800 per month—an amount that will be reduced to \$1,363.50 per month after he reaches age 62 and becomes eligible for social security benefits. Martin reported a gross monthly income from all sources totaling \$3,278.17, which included his Caterpillar pension benefits (\$2,800) and income from his family's trust (averaging \$478.17 per month). He reported a net monthly income of \$2,625.39—after deductions for taxes and health insurance—and claimed monthly living expenses totaling \$1,468.48. Thus, Martin's monthly net income exceeded his monthly living expenses ( $\$2,625.39 - \$1,468.48 = \$1,156.91$  in income exceeding expenses). Further, Martin asserted he paid \$539.70 per month for medical insurance that included costs associated with Valerie. Although, on appeal, he asserts that his trial testimony showed that his health insurance "cost would not be substantially less once [Valerie] was re-

moved from the policy," the record actually shows Martin acknowledged that his payment would be less after the divorce, although he did not know by how much.

¶ 45 On appeal, Valerie asserts that "[p]er the [trial] court's allocation of the pension, Martin will receive about \$1,800 per month \*\*\* while Valerie will receive about \$1,000 per month." Martin does not dispute this calculation (although documents he submitted to the court after trial indicated Valerie's monthly share totaled \$832.16). Thus, under the court's order, Valerie's gross monthly income will increase from approximately \$2,383 per month to approximately \$3,383 per month, while Martin's gross monthly income will decrease from \$3,278.17 to approximately \$2,278.17. Given that Valerie's income will be insufficient to meet her monthly living expenses once insurance costs are considered, while Martin's income far exceeded his expenses and evidence indicated his insurance-related expenses will decrease, we find no inequity in the court's pension distribution.

¶ 46 Additionally, we reject Martin's contention that the remaining factors for consideration in section 503(d) warrant a different result. The parties had a lengthy marriage and were both in their fifties at the time of trial. Both worked during the marriage. Martin retired from Caterpillar at age 52 and Valerie operated a hair salon. Valerie expected to continue working for the next five years. Evidence also showed that, while Martin worked a significant amount of overtime during the marriage, Valerie spent a greater portion of her time caring for the parties' home and children. Both parties reported suffering from various health-related problems. The evidence further showed the parties had various marital assets and no significant debts.

¶ 47 In dividing the marital assets, the trial court made an equal distribution. In its March 2015, property distribution order, the trial court stated that, excluding a bank account and the Caterpillar pension, both of which it had apportioned equally between the parties, it had

awarded \$447,644.09 worth of marital property to Valerie and \$473,327.09 worth of marital property to Martin. It then found "a large enough disparity in the value of the property awarded to the respective parties that it [was] necessary to order an equalization payment." The court ordered Martin to pay Valerie the sum of \$12,841.50 within two years. Following Martin's motion to reconsider, the court agreed with Martin's contention it had omitted the value of the parties' commercial real estate in Atlanta, Illinois (\$8,000), when calculating the value of marital property awarded to Valerie and, thus, it reduced the equalization payment to \$8,841.50 to account for its error.

¶ 48 Ultimately, we recognize that the trial court has broad discretion when distributing property. Given the relevant factors for consideration, we cannot say the court abused its considerable discretion in dividing Martin's Caterpillar pension. Moreover, we reject Martin's contention that the court's division of his pension warrants an award of maintenance in his favor. The record reflects the court's distribution is sufficient such that Martin will be able to continue to meet his needs as identified at trial. Conversely, if the Caterpillar pension had been awarded solely to Martin, the court's property distribution would be insufficient to meet Valerie's needs. Under the circumstances presented, we find no abuse of discretion by the court.

¶ 49 B. Effective Date of Pension Distribution

¶ 50 On appeal, Martin next argues the trial court erred by granting Valerie's motion to clarify and setting March 23, 2015—the date of its property distribution order—as the effective date for the distribution of Martin's Caterpillar pension. He maintains the court erred in selecting a date prior to the entry of its July 28, 2015, dissolution judgment.

¶ 51 The record shows, on March 23, 2015, the trial court entered its memorandum order, setting forth its findings and orders with respect to property distribution. As discussed, the

court determined it was "a just and equitable disposition of the pension" to award Valerie "50% of the marital share." The court ordered Valerie's counsel "to prepare a QDRO order consistent" with its decision. On July 28, 2015, the judgment of dissolution of marriage was entered and incorporated the court's March 2015 order. The same date, a QDRO pertaining to the Caterpillar pension plan was filed. The QDRO provided, in part, as follows:

"8. Commencement of Alternative Payee's Benefit.

Payment of the Alternative Payee's Share of Plan Benefits shall commence as soon as is administratively feasible following the date this Order is accepted as a QDRO by the Plan Administrator."

¶ 52 On August 24, 2015, Valerie filed her motion to clarify, noting the QDRO was forwarded to Caterpillar on July 29, 2015, and Martin had continued to receive the entirety of his pension payment. She asserted the trial court failed to specify "when the award of one-half of the marital interest in the property [was] to be effective." Valerie asked the court to make its order effective on January 13, 2014, the date she filed her petition for dissolution of marriage, or March 23, 2015, the date of the court's memorandum order distributing property. Further, she asserted it was "appropriate that [the court] enter an order establishing payment by [Martin] to [Valerie] for her share of the marital payments made to him from the effective date of the award to the date Caterpillar effectuates the [QDRO]." On October 1, 2015, the court granted the motion to clarify, stating as follows: "The Motion to Clarify is granted. [Valerie] is entitled to her share of the marital portion of the pension effective March 23, 2015."

¶ 53 Citing section 1056(d)(3)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1056(d)(3)(D) (West 2014)), Martin argues the trial court's grant of Valerie's motion to clarify rendered the QDRO noncompliant with statutory requirements because it al-

tered "the substance of the QDRO that was entered and require[d] the pension plan administrator to pay [Valerie] a portion of benefits that it already paid." Here, however, Valerie's motion to clarify did not ask that the trial court change the substance of the QDRO. Rather, in her motion, Valerie requested the court specify the date on which she was entitled to begin receiving her share of Martin's pension benefits and enter an order requiring Martin to pay her that share from the effective date set by the court until "the date Caterpillar effectuate[d] the [QDRO]." Thus, the QDRO entered in July 2015 was not altered by the court's grant of Valerie's motion to clarify and the court's ruling did not violate statutory requirements.

¶ 54 Additionally, as stated, "pension benefits tied to contributions made during the marriage are marital property." *Mueller*, 2015 IL 117876, ¶ 18, 34 N.E.3d 538. The trial court's distribution of marital property will not be disturbed on review absent an abuse of discretion. *Price*, 2013 IL App (4th) 120155, ¶ 44, 986 N.E.2d 236.

¶ 55 Here, the record shows that throughout the underlying proceedings, the parties were living separate and apart and maintaining separate finances. Further, Martin's pension was in pay-out status and he was receiving monthly pension benefits in full. In March 2015, the trial court entered its property distribution order, stating Valerie was entitled to 50% of the marital share of the Caterpillar pension. Under these circumstances, the court's finding that Valerie was entitled to her share of the pension benefits as of the date it entered its property distribution order was not an abuse of discretion. Martin's arguments on appeal fail to persuade us otherwise.

¶ 56 C. Classification of Waynesville Real Estate

¶ 57 On appeal, Martin next argues the trial court improperly characterized a parcel of land comprising 1.08 acres of the Waynesville real estate as marital property. He maintains the 1.08 acres was his nonmarital property as it was acquired through inheritance and "conveyed di-

rectly to [him] by way of his mother's trust." Martin asserts the inheritance was neither gifted nor transferred to the marital estate.

¶ 58 Under the Act, "[t]here is a rebuttable presumption that all property acquired by either spouse after the date of marriage but before the entry of judgment of dissolution is marital property, regardless of how title is held." *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017, 909 N.E.2d 221, 228 (2009). "The party seeking to rebut the presumption has the burden of presenting evidence to show that the property was acquired by an excepted method enumerated in section 503(a)" of the Act. *In re Marriage of Walker*, 203 Ill. App. 3d 632, 634, 561 N.E.2d 390, 391 (1990). "The party claiming that the property is nonmarital has the burden of proof, and any doubts as to the nature of the property are resolved in favor of finding that the property is marital." *Schmitt*, 391 Ill. App. 3d at 1017, 909 N.E.2d at 228. Pursuant to section 503(a)(1) of the Act (750 ILCS 5/503(a)(1) (West 2014)), property may be deemed nonmarital if it is "acquired by gift, legacy or descent."

¶ 59 "A trial court's classification of an asset as marital or nonmarital property will not be overturned unless it is against the manifest weight of the evidence." *In re Marriage of Abrell*, 386 Ill. App. 3d 718, 724, 898 N.E.2d 1163, 1169 (2008). "A court's decision is contrary to the manifest weight of the evidence if the opposite conclusion is clearly evident or if its findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 60, 974 N.E.2d 417.

¶ 60 Here, the Waynesville property, on which the marital residence was located, was the subject of three separate conveyances during the parties' marriage. First, in April 1997, the section of the Waynesville property on which the marital residence sat was transferred from Martin to Martin and Valerie as joint tenants through a quit-claim deed. In November 1999, a se-

cond quit-claim deed transferred ownership of a separate portion of the Waynesville property from Martin's mother to Martin and Valerie as joint tenants with rights of survivorship. Finally, in April 2002, a trustee's deed conveyed the 1.08 acres at issue on appeal from Martin's mother's trust to Martin. The deed set forth the interest conveyed as fee simple ownership to Martin but also noted the ownership interest was "Sole Ownership by [Martin] and Transferable on Death to Valerie \*\*\*, Wife of the Grantee."

¶ 61 Martin does not dispute that the tracts of land which were the subject of the April 1997 and November 1999 conveyances were marital property; however, he does challenge the trial court's finding with respect to the 1.08 acres conveyed in April 2002. As stated, he argues it was conveyed to him in fee simple ownership and constituted his nonmarital property. We agree. Although a presumption exists that property obtained during the marriage is marital property, that presumption was rebutted in this instance by the April 2002 deed, which supported Martin's assertions that the property was conveyed solely to him. Despite language in the deed that the property was "Transferable on Death to Valerie," Valerie had no coownership interest in the 1.08 acres. See *In re Marriage of Nicks*, 177 Ill. App. 3d 76, 79, 531 N.E.2d 1069, 1071 (1988) ("The affirmative act of placing title to nonmarital property in joint tenancy or some other form of coownership with a spouse will support a presumption of [a] gift to the marital estate."). Thus, the trial court's classification of the 1.08 acres conveyed to Martin in April 2002 as marital property was against the manifest weight of the evidence.

¶ 62 On appeal, Martin asks that he be granted either title of the property as his nonmarital property or a reimbursement from Valerie for the value of the property. We accept this latter request and find that, while title of the property should remain with Valerie as ordered by the trial court, Martin is entitled to receive a reimbursement for the value of the property from

Valerie. However, because the record contains insufficient evidence from which to determine the value of the 1.08 acres separate and apart from the other two parcels of land, we remand the matter to the trial court for the limited purpose of hearing additional evidence and determining the property's value. The court should also modify its allocation of property in the dissolution judgment accordingly.

¶ 63

#### D. Stay of Judgment

¶ 64 Finally, on appeal, Martin argues the trial court "improperly terminated" an automatic stay of judgment pertaining to the Caterpillar pension QDRO. He contends Illinois Supreme Court Rule 305(a) (eff. July 1, 2004), concerning stays of the enforcement of money judgments, provided for an automatic stay under the circumstances presented, *i.e.*, where he timely filed a notice of appeal and an appeal bond was entered.

¶ 65

Illinois Supreme Court Rule 305 (eff. July 1, 2004) provides as follows:

**"(a) Stay of Enforcement of Money Judgments.** The enforcement of a judgment for money only, or any portion of a judgment which is for money, shall be stayed if a timely notice of appeal is filed and an appeal bond or other form of security, including \*\*\* letters of credit, \*\*\* is presented to, approved by, and filed with the court within the time for filing the notice of appeal or within any extension of time granted under paragraph (c) of this rule. \*\*\* The bond or other form of security ordinarily shall be in an amount sufficient to cover the amount of the judgment and costs plus interest reasonably anticipated to accrue during the pendency of the appeal. \*\*\*

**(b) Stays of Enforcements of Nonmoney Judgments and Other Appealable Orders.** \*\*\* [O]n notice and motion, and an opportunity for opposing parties to be heard, the court may also stay the enforcement of any judgment, other than a judgment, or portion of a judgment, for money, or the enforcement, force and effect of appealable interlocutory orders or any other appealable judicial or administrative order. \*\*\*

**(c) Extensions of Time.** On motion made within the time for filing the notice of appeal or within any extension granted pursuant to this paragraph, the time for the filing and approval of the bond or other form of security may be extended by the circuit court or by the reviewing court or a judge thereof, but the extensions of time granted by the circuit court may not aggregate more than 45 days unless the parties stipulate otherwise. \*\*\*

**(d) Stays by the Reviewing Court.** \*\*\* [A]pplication for a stay ordinarily must be made in the first instance to the circuit court. A motion for a stay may be made to the reviewing court, or to a judge thereof, but such a motion must show that application to the circuit court is not practical, or that the circuit court has denied an application or has failed to afford the relief that the applicant has requested, and must be accompanied by suggestions in support of the motion and a supporting record [citation], if the record on appeal has not been filed. If a stay is granted by the reviewing

court or a judge thereof, the clerk shall notify the parties and transmit to the clerk of the circuit court or administrative agency a certified copy of the order granting the stay."

"Rule 305(a) automatically grants a stay of enforcement of judgments for money if the procedures are followed, and Rule 305(b) allows a discretionary stay from enforcement of judgments for money." *Stacke v. Bates*, 138 Ill. 2d 295, 303, 562 N.E.2d 192, 195 (1990).

¶ 66 Here, the record shows the trial court denied a motion by Martin to stay enforcement of his Caterpillar pension QDRO on November 16, 2015, after he filed his notice of appeal but before an appeal bond was "presented to, approved by, and filed with the court" on December 1, 2015. Ill. S. Ct. R. 305(a) (eff. July 1, 2004). Thus, the court did not violate Rule 305(a) when denying Martin's motion for a stay because the rule's procedural requirements had not been met.

¶ 67 Additionally, we question whether the appeal bond at issue was timely filed. Under Rule 305(a), an appeal bond must be presented, approved, and filed "within the time for filing the notice of appeal or within any extension of time granted under paragraph (c) of [Rule 305]." *Id.* Subsection (c) provides that the time for filing an appeal bond may be extended when the party seeking an extension makes a motion which is granted by the trial court. Ill. S. Ct. R. 305(c) (eff. July 1, 2004). In this instance, the appeal bond, filed December 1, 2015, was not filed within the time frame for filing a timely notice of appeal. Further, although the record reflects Martin moved for an extension of time, the record fails to show that the court ever granted his motion.

¶ 68 Finally, we agree with Valerie's assertion on appeal that, even if the court committed error, the proper manner of addressing that error was for Martin to seek a stay with this

court on review. See Ill. S. Ct. R. 305(d) (eff. July 1, 2004); *Horvath v. Loesch*, 87 Ill. App. 3d 615, 620, 410 N.E.2d 154, 158 (1980) (stating the remedy for the improper denial of a request for a stay is "to renew immediately [the motion for a stay] in the appellate court rather than to attack belatedly the trial court's action [on] appeal"). The appellate record fails to reflect Martin requested a stay in this court. Given these facts, we find no support in the record for Martin's contention that the trial court improperly terminated an automatic stay under Rule 305(a).

¶ 69

### III. CONCLUSION

¶ 70 For the reasons stated, we reverse the trial court's finding that the 1.08 acres of property in Waynesville, Illinois, conveyed solely to Martin in April 2002, was marital property. We remand the matter to the trial court with directions for it to conduct a hearing to determine the value of that property, order reimbursement for the value of the property to Martin with Valerie receiving title, and modify its property allocation consistent with its findings. We otherwise affirm the court's judgment.

¶ 71 Affirmed in part and reversed in part; cause remanded with directions.