

NOTICE

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2016 IL App (4th) 150928-U

NO. 4-15-0928

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 28, 2016

Carla Bender

4th District Appellate Court, IL

In re: MARRIAGE OF)	Appeal from
DIXIE L. WERTS,)	Circuit Court of
Petitioner-Appellee,)	DeWitt County
and)	No. 15D5
HOWARD P. WERTS,)	
Respondent-Appellant.)	Honorable
)	Karle E. Koritz,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment for dissolution of marriage was affirmed where respondent failed to present sufficient evidence to (1) overcome the presumption that his contributions to petitioner's nonmarital property were gifts; (2) demonstrate petitioner's savings account was marital property; and (3) challenge the trial court's award of the checking account to petitioner as part of the equitable distribution of marital property.

¶ 2 Petitioner, Dixie L. Werts, and respondent, Howard P. "Paul" Werts, were married in February 1983. Dixie filed a petition for dissolution of marriage in February 2015. After a bench trial, the trial court classified the parties' residence and a savings account as Dixie's nonmarital property. The court also awarded a marital checking account to Dixie. Paul appeals, claiming the trial court erred by (1) failing to award him an amount of contribution or reimbursement for improvements he made to the residence, (2) classifying the savings account as nonmarital property, and (3) awarding the marital checking account to Dixie. Because we are

unable to say the division of marital property was an abuse of discretion or that the factual findings underlying the division were against the manifest weight of the evidence, we affirm the trial court's judgment. See *In re Marriage of McBride*, 2013 IL App (1st) 112255, ¶ 24; *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700 (2006).

¶ 3

I. BACKGROUND

¶ 4 In February 2015, Dixie filed a petition for dissolution of marriage, citing mental cruelty and irreconcilable differences. Paul filed a counterpetition, alleging the same. Paul sought temporary relief in the form of maintenance.

¶ 5 Paul filed a motion requesting the trial court order an appraisal of the real property, which he labeled as "marital property," at 803 North Jackson Street in Clinton. In her response, Dixie denied the real property was marital property. She had acquired the residence prior to her marriage to Paul through inheritance after the death of her first husband.

¶ 6 The trial court entered a temporary order, ordering Dixie to pay Paul a lump sum payment of \$2,750 as temporary maintenance. The court found neither party was employable due to their advanced ages (Dixie was 77 and Paul was 85) and their poor physical health. The court found the \$5,000 in Dixie's savings account was sufficient to pay Paul the lump sum. Dixie filed a motion to reconsider, claiming the award was against the manifest weight of the evidence. The trial court denied Dixie's motion.

¶ 7 The trial court conducted a bench trial on August 7, 2015. Dixie testified she resided at 803 North Jackson Street in Clinton. She said she received retirement income from three sources: (1) the Illinois Municipal Retirement Fund (IMRF) in the amount of \$1,492.68 per month; (2) social security income in the amount of \$967.00 per month; and (3) deferred compensation in the amount of \$185.92.

¶ 8 In 1972, Dixie and her first husband, Donald Rockhold, purchased the home at 803 North Jackson Street. She said the house was in "very bad" condition. She and Don remodeled the house until his death in May 1973.

¶ 9 Dixie testified she worked throughout her marriage to Paul as the assessor for the City of Clinton. She said she made the more significant contributions to the living expenses during their marriage. She said Paul filed for bankruptcy sometime in the "90's." In 2004, Dixie loaned Paul approximately \$30,000. She cashed in a certificate of deposit (CD) that she had purchased from her inheritance from Donald, her parents, and her uncle in 1973, 1999, and 1996, respectively. Between 2000 and 2004, she had loaned Paul a total of \$39,000.

¶ 10 Dixie also testified that, in 1995, Paul said he wanted to build an addition onto the residence. She said Paul contributed \$20,000 toward that addition from an inheritance from his parents. Dixie contributed \$10,000 and purchased the furniture. She believed the residence was worth between \$85,000 and \$100,000.

¶ 11 Dixie also testified regarding two bank accounts she held at DeWitt Savings Bank: (1) a checking account, the number ending in 124; and (2) a savings account, the number ending in 1429, with a balance of \$7,713.78 as of the date of trial. The savings account was opened on November 12, 2010. She was unsure where she got the \$15,000 to open the savings account, but she thought it probably came from a CD. She opened the savings account in her name, as well as her children's names. Dixie said her retirement income was deposited into the checking account. She said Paul had no involvement in either account.

¶ 12 Paul called Kay Werts, his daughter-in-law, as a witness. Kay has helped Paul financially since October 4, 2014, when he left the North Jackson Street home. She said Paul

does not have sufficient income to cover his monthly expenses. He currently rents a home from Eric Ziegler, his stepson, for \$400 per month.

¶ 13 Paul also called John Werts, his son, as a witness. John said he began farming full-time with Paul in 1985 until Paul retired in 2002. John acknowledged that Dixie owned the home on Jackson Street before she and Paul married. John said the home had "several maintenance issues." In 1985, he, Paul, and two other men replaced the roof. In 1995, after Paul received an inheritance from his parents, he "put an addition onto the house. He had a dining room and a two-car garage and a bathroom" added. A concrete driveway leading to the new garage was also added. John said he and Donny Dubson helped with the addition. John saw Paul pay Dubson in cash. John questioned Paul as to why he would put money into a house when "his name wasn't gonna be on the house." But John said he understood "it was his home and his wife and his family and that's what he wanted to do, so [he] accepted it."

¶ 14 John said he was friends with Dixie's son, Richard, "long before she knew" Paul, and he had been in the house before 1983. John said the house was substantially different, given the addition, the new roof, new central air conditioning, a new furnace, new appliances, and "new everything in that house."

¶ 15 Paul testified on his own behalf. He said he paid Dubson approximately \$28,000 to build the addition and \$14,000 for the driveway. Paul admitted he paid Dubson from his farm account, where he had deposited both income from his farming operation and the money he had inherited. The following exchange occurred on cross-examination:

"Q. And do you agree with John's testimony that he testified to earlier that he tried to talk you out of building the addition but you wanted to do that for your wife and family?"

A. I was in love. I had a new marriage. And I thought I was, I was getting older and nearing retirement and I wanted a place to live the rest of my life in spite of my stepdaughter saying she didn't need another father."

¶ 16 On redirect examination, Paul's counsel addressed whether Paul expected reimbursement for the addition with the following questions:

"Q. Mr. Werts, did you build that addition on the home as a gift to your wife with no expectation of reimbursement?

A. I thought, as I just said, that I—this is why John and I did have this discussion is he, as he testified—and I said son, I want a place to live out my years and I love this woman."

¶ 17 Dixie then testified for Paul as an adverse witness. She said she began receiving income upon her retirement in 2003 from three different sources: (1) her IMRF retirement account; (2) social security; and (3) her TRS retirement account. Each amount was deposited into her DeWitt Savings Bank checking account. She said respondent never claimed or insinuated either of her DeWitt bank accounts were marital property until the day of trial.

¶ 18 After closing arguments, the trial court took the matter under advisement. On October 14, 2015, the court entered a written judgment of dissolution, awarding the (1) residence to Dixie as her nonmarital property, (2) DeWitt Savings Bank checking account to Dixie as marital property, and (3) DeWitt Saving Bank savings account to Dixie as nonmarital property. The court's other awards are not contested in this appeal. With regard to the contribution of funds toward the improvements made to the residence, the court found Paul had contributed \$20,000 of nonmarital funds as a gift toward the addition. The court found no evidence to

suggest he had expected future reimbursement or "conditioned the contribution on their continued marriage."

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 In this appeal, Paul challenges the trial court's disposition relating to the residence and the two DeWitt Savings Bank accounts. However, after our review of the issues presented, we conclude the court's decision was not erroneous.

¶ 22 A reviewing court will not reverse a trial court's determination of whether one estate of property is entitled to reimbursement from another unless it is against the manifest weight of the evidence. *In re Marriage of Ford*, 377 Ill. App. 3d 181, 185-86 (2007). We also apply a manifest-weight-of-the-evidence standard to a trial court's characterization of an asset as marital or nonmarital. *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 658 (1998). "A judgment is against the manifest weight of the evidence when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *In re Marriage of Levinson*, 2012 IL App (1st) 112567, ¶ 33. Otherwise, we apply an abuse-of-discretion standard to the distribution of property award. *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 648 (2009). Applying these standards to the issues presented, we affirm.

¶ 23 A. Reimbursement of Funds Contributed to the Nonmarital Residence

¶ 24 First, respondent claims he should be compensated for the nonmarital funds and personal effort he contributed to the residence, which resulted in a "substantial gain in equity." He argues, "residing in the home was not just compensation or reimbursement for the level of contribution made to Dixie's non[marital] estate." Although Paul argues he is entitled to reimbursement, he does not indicate the amount he is claiming. He states only that the "marital

estate should be reimbursed for the value that was added to Dixie's non[]marital estate." As his only supporting common law authority, Paul distinguishes this court's decision in *In re Marriage of Crook*, 334 Ill. App. 3d 377, 389 (2002). There, under similar circumstances, this court held the marital estate was not entitled to reimbursement because, for one reason, the marital estate "had been more than compensated for the [husband's] contribution" by providing the husband a home, "free of rent or mortgage payments, and the buildings necessary to sustain a successful farming operation for nearly 18 years." The supreme court affirmed this court's decision on that issue. *In re Marriage of Crook*, 211 Ill. 2d 437, 455 (2004).

¶ 25 Section 503(a)(6) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/503(a)(6) (West 2014)) provides that "property acquired before the marriage" is known as " 'non[]marital property.' " Also classified as nonmarital property, which is "subject to the right to reimbursement," is the increase in the value of one spouse's nonmarital property by the efforts or contributions by the other spouse. 750 ILCS 5/503(a)(7) (West 2014).

¶ 26 Under section 503(c)(1), where marital and nonmarital property are comingled "by contributing one estate of property into another resulting in a loss of identity of the contributed property, the classification of the contributed property is transmuted to the estate receiving the contribution." 750 ILCS 5/503(c)(1) (West 2014). An estate that makes a contribution to another estate "shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation; provided, that no such reimbursement shall be made with respect to a contribution which is not retraceable by clear and convincing evidence, or was a gift, or, in the case of a contribution of personal effort of a spouse to non[]marital property, unless the

effort is significant and results in substantial appreciation of the non[]marital property." 750 ILCS 5/503(c)(2) (West 2014).

¶ 27 Where a spouse transfers nonmarital property into a form of co-ownership, a presumption arises the spouse intended a gift to the receiving estate. *In re Marriage of McBride*, 2013 IL App (1st) 112255, ¶ 25. To successfully rebut the presumption of a gift, "the donor spouse must present clear, convincing and unmistakable evidence that there was no donative intent." *McBride*, 2013 IL App (1st) 112255, ¶ 26. "If it is determined that one estate of property makes a contribution to another estate of property and it was not a gift, the contributing estate should be reimbursed from the estate receiving the contribution." *McBride*, 2013 IL App (1st) 112255, ¶ 27. However, "no right to reimbursement arises when the marital estate has already been compensated by its use of the nonmarital property during the marriage." *Crook*, 211 Ill. 2d at 454.

¶ 28 According to Paul, although there was a "transmutation of the marital monies and his efforts," his money and efforts resulted in an increase in the amount of equity in Dixie's nonmarital property. Thus, according to Paul, the marital estate is entitled to reimbursement because merely residing in the home was not just compensation for the level of contribution he made to Dixie's nonmarital property.

¶ 29 The facts of this case are also similar to those presented in *In re Marriage of Snow*, 277 Ill. App. 3d 642, 650 (1996), where this court held the marital estate was not entitled to reimbursement of \$25,000 contributed to the nonmarital estate. As in the case before us, the parties in *Snow* resided in a nonmarital residence during their 11-year marriage. Together they paid a \$25,000 mortgage on the home with marital funds. *Snow*, 277 Ill. App. 3d at 646. They also each contributed nonmarital funds toward the completion of additions to the nonmarital

home. *Snow*, 277 Ill. App. 3d at 648. This court held, because there "was no clear evidence of the value of the appreciation, if any, due to respondent's personal efforts," the marital estate was not entitled to reimbursement for the respondent's personal efforts in remodeling the petitioner's nonmarital residence. *Snow*, 277 Ill. App. 3d at 650. Further, the payment of \$25,000 of marital funds through the payment of a mortgage on the petitioner's nonmarital residence was not subject to reimbursement because the marital estate was already "compensated by the use of that property." *Snow*, 277 Ill. App. 3d at 650 (citing *In re Marriage of Albrecht*, 266 Ill. App. 3d 399, 401 (1994)).

¶ 30 The testimony presented at the trial here showed Paul's contribution of money and effort toward the addition was intended as a gift, donated out of love and respect for the marriage. He presented no evidence that he made the contribution to the nonmarital residence with the intent of being reimbursed. As such, because he benefited from living in the house payment-free for over 30 years, the trial court reasonably found he had already been sufficiently compensated for his contribution. Further, Paul failed to prove the \$20,000 he contributed toward the addition were indeed his nonmarital funds. Nevertheless, the court found Paul failed to overcome the presumption that his contributions, in the form of his efforts and presumably nonmarital funds, were gifts. We conclude the trial court did not abuse its discretion in finding the marital estate was not entitled to reimbursement.

¶ 31 B. DeWitt Savings Bank Accounts

¶ 32 Paul also contends the trial court erred in awarding Dixie the DeWitt Savings Bank savings account as her nonmarital property. Dixie testified she "probably" opened the savings account, with the number ending in 1429, in November 2010 with a \$15,000 CD. With regard to this account, the trial court noted as follows:

"Petitioner did not articulate clearly where the money in this account originated. She did testify that it probably came from a CD. She had a nonmarital CD. She further testified that respondent never hinted that he believed her bank accounts were marital, lending credence to the notion that only nonmarital funds were placed in this account. Respondent offered no testimony or evidence to suggest that marital funds were ever placed in or commingled with this account. This account is assigned to petitioner as her nonmarital property."

¶ 33 In this appeal, Paul makes no reasonable argument that the trial court's classification of the DeWitt Savings Bank savings account as nonmarital property was error. He states only that Dixie "provided absolutely no independent testimony as to where the monies came from that funded the DeWitt Savings Bank Account ending 1429." According to Dixie, Paul made no claim to this account during their marriage. She said she opened this account for the benefit of her children and has made gifts to her children from that account. Paul did not provide evidence to dispute her claim that this savings account, although opened during the marriage, was ever considered marital property accessible to him. Based on the record before us, we cannot say the trial court's classification of the savings account as Dixie's nonmarital property was against the manifest weight of the evidence.

¶ 34 With regard to the DeWitt Savings Bank checking account, Dixie testified she opened this checking account during the marriage, with her children as joint owners. She said her retirement income was deposited into this account, but she maintained this account as her separate checking account from Paul. Because her retirement income was deposited into this checking account during the marriage, the trial court correctly classified the asset as marital, but awarded it to Dixie.

¶ 35 Paul makes no clear argument challenging the trial court's disposition of either DeWitt Savings Bank account. Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), requires an appellant's brief to contain argument supported by citations of the authorities and the pages of the record relied on. "A failure to cite relevant authority violates Rule 341 and can cause a party to forfeit consideration of the issue." *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. This court "is not a depository in which the appellant may dump the burden of argument and research." (Internal quotation marks omitted.) *Kic*, 2011 IL App (1st) 100622, ¶ 23. The issue respondent raises is not clearly articulated and we decline to *sua sponte* state the issue, formulate an argument, and then make a decision. See *Skidis v. Industrial Comm'n.*, 309 Ill. App. 3d 720, 724 (1999) ("Statements unsupported by argument or citation to relevant authority will not be considered, and this court will not become the advocate for, as well as the judge of, points an appellant seeks to raise.").

¶ 36

III. CONCLUSION

¶ 37

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

¶ 38

Affirmed.