2019 IL App (1st) 172616-U

SECOND DIVISION
January 29, 2019

No. 1-17-2616

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF JOHN PORA	)	Appeal from the
	)	Circuit Court of
Petitoner-Appellant,	)	Cook County, Illinois.
	)	
and	)	No. 14 D2 30307
	)	
RENEE PORA,	)	Honorable
	)	Jeanne M. Reynolds,
Respondent-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's judgment of dissolution affirmed where court did not err in awarding reimbursement to respondent-appellee or in imputing income to petitioner-appellant.

¶ 2 On July 23, 2014, petitioner-appellant John Pora filed a petition for dissolution of his 12 year marriage to respondent-appellee Renee Pora. Renee filed her counterpetition on August 20, 2014. After entering a judgment addressing the custody, visitation, and care for the parties'

minor child, M.P., in June 2015, the court held a trial on all remaining issues, including child support and property division, in November 2016 and resuming in January 2017. John appeals from the court's judgment of dissolution entered on June 30, 2017, arguing that the court erred in (1) awarding Renee a $150,000 lien against John's non-marital property, and (2) in imputing $20,000 of income to John. Finding no error, we affirm.

¶ 3 BACKGROUND

¶ 4 John and Renee were married on July 13, 2002. At the time of their marriage, John lived at 414 Pamella Lane in Northbrook, Illinois. John's mother, Aurelia Pora, purchased a vacant lot on Pamella Lane in 1958. In 1994, Aurelia and John obtained a mortgage on the property in the amount of $159,353, although John was not on the title to the property until August 1995, when Aurelia quitclaimed her interest to herself and John in exchange for $20,000. In 1995, 1998, 2000, and 2001, John and his mother obtained additional mortgages and lines of credit on the property. In June 2003, after John's marriage to Renee, Aurelia quitclaimed all her interest in the property to John in consideration of John's payment to her of $65,000.

¶ 5 John had built a single family residence on the property prior to his marriage to Renee and John alone remained on the deed to the house during the parties' marriage. Nevertheless, in 2003 and again in 2005, Renee and John as mortgagees took out mortgages and lines of credit on the residence. The 2005 mortgage identified the borrowers as "John Pora and Renee P. Pora, husband and wife, in joint tenancy." Also between 2003 and 2005, John and Renee built an addition to the house that cost approximately $200,000 to $250,000. Finally, the parties made a number of home improvements between 2003 and 2012, though John and Renee disputed the exact cost of the improvements. Renee provided the court with a list of improvements and an estimate of their costs ($325,000), but could not provide receipts for all expenditures.

¶ 6 Renee testified that John told her that they owned the property as joint tenants. Based on this representation, Renee testified that in addition to her employment earnings, she also contributed $270,000 from her non-marital retirement accounts to the home improvements, mortgage payments, and real estate taxes on the house. On cross-examination, Renee admitted that she did not have documents fully substantiating these claims. In June 2014, before John filed for dissolution, Renee withdrew $45,000 from the parties' joint savings account to "reimburse" herself for some contributions she made, over John's protests.

¶ 7 John denied telling Renee that she was an owner of the property, but could not explain why Renee's name appeared on a real estate tax bill or why she was identified as a joint tenant on the 2005 mortgage application. John also contended that the improvements to the house were financed through loans as opposed to Renee's contributions from her non-marital property.

¶ 8 In 2012, John refinanced the parties' loans on the property and took out new loans in his name alone. At the time of trial, the balance on those loans was approximately $550,000.

¶ 9 The parties disputed the fair market value of the property. Renee relied on a 2016 valuation by the Cook County Assessor valuing the property at $911,000. Less the balance of the mortgage indebtedness, which Renee calculated at $555,159, Renee valued the equity in the property at $352,841. On the other hand, John valued the property at between $650,000 to $700,000 based on a neighbor's recent sale of property. Accordingly, he estimated the equity on the home was between $100,000 to $150,000.

¶ 10 With regard to the parties' income, the court found that John earned a base salary of $110,000 as a project manager with Faithful & Gould, Inc, with a potential for bonus income. In addition, John testified that he worked part time as a contractor on small construction projects. While John was sometimes paid in cash for this work, he also bartered his work for goods and

services, such as improvements on the Pamella Lane property. John admitted that he received three checks between December 2014 and January 2015 from Justin Caine totaling $17,263 for a "side job." According to John, some of that money was used to purchase materials for the job. John also received additional income for smaller side jobs in 2014 amounting to $1550.

¶ 11 Renee worked during the marriage until the parties' child was born, and then resumed employment from 2008 through 2011, when she was laid off. She went back to school and obtained a degree in nursing in 2015. Since May 2016, Renee has been employed as a nurse with an annual income of $73,716. According to Renee's social security earnings record, she was taxed on approximately $475,000 of income during the parties' marriage.

¶ 12 The court entered its judgment of dissolution in June 2017. The court found, in relevant part, that the Pamella Lane residence was John's non-marital property. Although the court found that there was no credible evidence regarding the fair market value of the property, the court granted Renee a lien of $150,000 against the property based on "her contributions to John's non-marital estate and for contributions made with marital income" to the non-marital estate. The court also imputed $20,000 of income to John based on his part time contractor work. The court calculated this amount based on its finding that John was not forthcoming regarding the "exact amount of his additional income" he earned from this work and failed to provide corroborating documents to verify the jobs he undertook.

¶ 13 John moved to reconsider the court's judgment, which the court denied on September 22, 2017. John filed his timely notice of appeal on October 20, 2017, and on October 23, 2017, the matter came before the trial court on, among other things, "John's motion for *** bystander's report of trial proceedings." The court set the matter over to December 18, 2017 for "entry of the bystander's report of trial proceedings." In the interim, the case was again before the court on

November 9, 2017, at which time the court granted Renee 14 days to serve "proposed amendments or an alternative proposed report of proceedings on all parties." The record on appeal contains no further orders by the trial court until the entry of a certified bystander's report by the court on June 29, 2018.

¶ 14 ANALYSIS

¶ 15 Before turning to the merits of the appeal, we initially address Renee's argument that we should reject the certified bystander's report for failing to comply with Illinois Supreme Court Rule 323(c), which provides, in relevant part:

> "The proposed report shall be served on all parties within 28 days after the notice of appeal is filed. Within 14 days after service of the proposed report of proceedings, any other party may serve proposed amendments or an alternative proposed report of proceedings. Within 7 days thereafter, the appellant shall, upon notice, present the proposed report or reports and any proposed amendments to the trial court for settlement and approval. The court, holding hearings if necessary, shall promptly settle, certify, and order filed an accurate report of proceedings." Ill. S. Ct. Rule 323(c) (eff. July 1, 2017).

Renee maintains that John failed to serve his proposed bystander's report on her within 28 days after filing the notice of his appeal and also failed to timely present his proposed modifications to the report 7 days after receiving Renee's proposed changes or modifications.

¶ 16 Renee devotes 10 pages of her argument to this issue before belatedly acknowledging (in one sentence) that the bystander's report of June 29, 2018 was signed by counsel for both parties and certified by the trial court. The certified report explicitly states that (i) John provided his initial proposed report to Renee's counsel "on or about October 23, 2017" (within the 28 days

required by Rule 323(c)), (ii) that the matter was continued "from time to time," and (iii) that John ultimately replied to Renee's proposed modifications to the report.

¶ 17 Under these circumstances, we conclude that Renee has forfeited any challenge to the timeliness of the bystander's report. It is well settled that a party cannot complain of an error which it induced the court to make or to which it consented. *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004). By signing the report without objection, Renee implicitly conceded that it complied with Illinois Supreme Court Rules. If Renee believed the proposed bystander's report was not in compliance with Rule 323(c), the time to raise that argument was at the hearing on the report's certification, not well over 6 months later on appeal. Renee's failure to timely object to the trial court's certification of the bystander's report forfeits her challenge to the report on appeal.

¶ 18 Turning to the merits, John urges us to find error in two aspects of the trial court's dissolution judgment. First, he argues that the trial court erred in awarding Renee a $150,000 lien against the Pamella Lane property as reimbursement for her contributions to improvements and maintenance of the property. The Illinois Marriage and Dissolution of Marriage Act (the Act) provides a right for reimbursement for contributions made by one estate of property to another estate of property under certain circumstances. Specifically, Section 503(c) of the Act states, in relevant part:

> "When one estate of property makes a contribution to another estate of property, the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation. No such reimbursement shall be made with respect to a contribution that is not traceable by clear and convincing evidence or that was a gift. The court may provide for reimbursement out of the

marital property to be divided or by imposing a lien against the non-marital property that received the contribution." 750 ILCS 5/503(c)(2)(A) (West 2016).

We will reverse a trial court's award of reimbursement only if it is against the manifest weight of the evidence.[1] See *In re Marriage of Stuhr*, 2016 IL App (1st) 152370, ¶ 61. A finding is against the manifest weight of the evidence where the opposite conclusion is apparent or where the findings are unreasonable, arbitrary, or not based on the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002).

¶ 19 John challenges the trial court's award on three bases: (i) Renee's non-marital contributions to the Pamella Lane property were not traceable by clear and convincing evidence; (ii) Renee was already reimbursed for her contributions by her use of the property during the parties' marriage; and (iii) the court's failure to assign a fair market value to the property precluded its award of a lien. John's contentions are not borne out by either the law or the record.

¶ 20 At trial, Renee testified that she contributed $270,000 of her retirement income to the Pamella Lane property. In support of that testimony, she provided documents showing withdrawals totaling approximately $250,000 from her retirement accounts during the marriage. She also provided documents evincing corresponding deposits in the parties' joint accounts. To be sure, the documentary evidence of deposits from her retirement accounts totals approximately $70,000 less than the $270,000 Renee testified to contributing. And there is no evidence

[1] We recognize that our supreme court has reviewed a trial court's decision awarding reimbursement for an abuse of discretion, but in citing the standard of review the court made only a passing reference to the general standard for reviewing a trial court's division of marital assets. *In re Marriage of Crook*, 211 Ill. 2d 437, 453-55 (2004). The specific decision of whether to award reimbursement, however, is a factual finding better subject to review under the manifest weight standard. See *In re Marriage of Dhillon*, 2014 IL App (3d) 130653, ¶ 29; *In re Marriage of Ford*, 377 Ill. App. 3d 181, 185-86 (2007).

documenting that the entirety of Renee's retirement deposits went towards expenses associated with the Pamella Lane property. But a party's testimony alone may rise to the level of clear and convincing evidence on the issue of tracing. See *In re Marriage of Henke*, 313 Ill. App. 3d 159, 174 (2000) (accepting respondent's testimony on the cost of improvements and the source of payments from the marital estate to non-marital property as a basis for awarding reimbursement). Moreover, given the trial court's factual finding that John assured Renee she was a joint tenant of the property, it is understandable that Renee may not have kept exact track of all the amounts she contributed to the property over the course of the parties' 12-year marriage. Accordingly, we conclude that the trial court was entitled to credit Renee's testimony that the amounts she withdrew from her retirement accounts went to the Pamella Lane property even in the absence of documentary evidence supporting that testimony.

¶ 21 John next cites *Crook* for the proposition that an estate is not entitled to reimbursement for mortgage payments toward non-marital property where the estate has already been compensated for its contributions by use of the property during marriage. *Crook*, 211 Ill. 2d at 454. But the trial court expressly considered that the parties lived together in the Pamella Lane property for over 12 years and enjoyed the improvements to the home. The court's award of a lien notwithstanding this fact suggests that it found that the use of the property did not sufficiently compensate Rene for her $270,000 non-marital contribution. We cannot say this finding was against the manifest weight of the evidence.

¶ 22 Where courts have concluded that the use of the non-marital property compensated the estate making the contribution, the sums contributed were substantially smaller than the $270,000 Renee contributed here. See, *e.g. Crook*, 211 Ill. 2d at 453 (marital estate contributed $40,000 to pay off loan on non-marital property); *In re Marriage of Snow*, 277 Ill. App. 3d 642,

(1996) (marital estate contributed $25,000 to mortgage on non-marital property). Here, the court awarded Renee's non-marital estate a lien of only $150,000, which, subtracting the $45,000 Renee reimbursed herself, is $75,000 less than the amount Renee contributed. This reduction can be attributed to the trial court's consideration of the fact that Renee used and enjoyed the property during the parties' 12-year marriage.

¶ 23 Finally, we find no error in the court's awarding the lien despite the fact that it could not assign a fair market value to the property. *In re Marriage of Albrecht*, 266 Ill. App. 3d 399 (1994), supports this conclusion. In that case, the petitioner contended that the trial court erred in failing to reimburse the marital estate for sums the estate contributed for improvement and maintenance of the non-marital residence. *Id.* at 400. The trial court's decision was based on its finding that there was no evidence that the fair market value of the residence increased as a result of the improvements. *Id.* On appeal, we reversed, noting in part that the improvements would remain with the property after dissolution and could have some value even if they did not cause the residence's value to appreciate. *Id.* at 401; see also *In re Marriage of Adams*, 183 Ill. App. 3d 296, 305 (1989) (finding that section 503(c)(2) of the Act "limits required evidence of appreciation of the non-marital property to contributions of personal effort.").

¶ 24 In this case, the Poras' marriage, spanning 12 years, was substantially longer than the marriages in *Albrecht* (6 years) and *Adams* (28 months). Nevertheless, the reasoning of these cases still applies. The $325,000 in improvements, including an outdoor kitchen, steam sauna in the master bedroom, and cedar gazebo with outdoor chandelier, and the $200,000 addition added value to the residence regardless of whether they increased the fair market value of the property. As such, it would be inequitable to allow John to enjoy these improvements indefinitely without some reimbursement to Renee's estate. See *Albrecht*, 266 Ill. App. 3d at 401.

¶ 25 The second and final issue on appeal is whether the trial court erred in imputing an additional $20,000 per year of income to John based on his part time employment as a contractor on small construction projects. We review the trial court's determination of net income for an abuse of discretion. *In re Marriage of Liszka*, 2016 IL App (3d) 150238, ¶ 47. A trial court abuses its discretion only where we determine that no reasonable person would reach the conclusion the trial court did. *In re Marriage of Wojcik*, 2018 IL App (1st) 170625, ¶ 31.

¶ 26 This court has recognized three circumstances under which a trial court may impute income to a non-custodial parent: (i) where the payor is voluntarily unemployed; (ii) where the payor is attempting to evade a support obligation; or (iii) where the payor has unreasonably failed to take advantage of an employment opportunity. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009). Here, the trial court explicitly found that while John testified he received payments of both cash and goods for his part time work, "John has not been forthcoming on the exact amount of his additional income or provided [corroborating] documents to verify the jobs he received income by bartering for his services or for goods used to improve the [Pamella] Lane property." This observation falls squarely under the second circumstance supporting the imputation of income this court recognized in *Gosney*, namely, that the payor (John) is attempting to evade a support obligation. See *id.* And the court was in the best position to determine whether John testified completely and credibly regarding his additional income. See *Racky v. Belfor USA Group, Inc.*, 2017 IL App (1st) 153446, ¶ 107 ("[A] reviewing court will not disturb the trial court's determination of credibility because the trial court has a superior vantage point, which cannot be reproduced from the cold record, to observe and judge the witnesses' demeanor and credibility.").

¶ 27 To the extent John argues that the $20,000 figure the court reached is speculative, we disagree. The evidence at trial revealed that John earned $19,173 between November 1, 2014 and September 2015, with over half of that income earned for a single "side job" in December 2014 and January 2015. Given the court's finding that John was less than forthcoming as to the amounts he earned as a part-time contractor, we cannot say it was unreasonable for the court to impute annual income of $20,000 based on his part time work. Accordingly, we find no error in the court's calculation imputing this additional income to John. For that reason, we also reject John's contention that the court erred in denying his motion for reconsideration on this issue.

¶ 28 Affirmed.