2019 IL App (3d) 180313-U

Order filed August 9, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
JULIE A. WITVOET,	)	Will County, Illinois.
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-18-0313
and	)	Circuit No. 15-D-1167
	)	
MARK J. WITVOET,	)	
	)	Honorable Dinah Archambeault,
Respondent-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: In a dissolution of marriage proceeding, the trial court did not err when it found the parties invested in the family business in the form of a loan repayable to the parties. As such, it did not abuse its discretion when it awarded each party one-half of the loan amount.

¶ 2 Petitioner, Julie Witvoet, and respondent, Mark Witvoet, married in 1993. In 2015, Julie filed a petition for dissolution of marriage. At trial, Julie testified and presented evidence to show that the couple invested money in the family business in the form of a loan. The business therefore was obliged to repay the loan. The trial court awarded the business to Mark. It awarded

each party one-half of the value of the loan. After determining that Julie was required to pay Mark to equalize the division of marital assets, the court credited Julie's obligation with one-half of the loan amount. Mark appeals. We affirm.

¶ 3 FACTS

¶ 4 The parties married in 1993. In July 2015, Julie filed a petition for dissolution of marriage citing irreconcilable differences. At the time of the dissolution, they had two minor children. In June 2017, the parties entered into an allocation of parental responsibilities judgment and parenting time order. In June/July 2017, the court held a trial to address, *inter alia*, the division of marital assets. Mark's appeal concerns the court's findings and award regarding his business, Witvoet Tires Sales, Inc. (WTS).

¶ 5 At the bench trial, Julie testified that during the marriage, she worked approximately 25 hours per week for WTS as the company's accountant. She managed accounts receivable and payable in addition to setting up the initial books and records for WTS. She was also employed as a pharmacist.

¶ 6 Mark testified he is the sole owner of WTS. The S corporation, founded in 2008, sells used and new tires. Originally, Mark started WTS with his cousin, David. They each paid in $51,500 for one-half of the ownership interest. Mark classified himself and his cousin as equal shareholders in the company. Mark and Julie took out a home equity loan of $50,000 to make the original investment. By the time of trial, Julie and Mark had paid off the home equity loan.

¶ 7 David began suffering from medical issues. Mark decided to buy out David's interest in WTS. This is evidenced by David and Mark's "Agreement for the Sale of Stock." Mark paid David $51,000 for David's 250 shares in WTS. Julie's parents loaned the parties the $51,000.

¶ 8 Since 2008, WTS listed approximately $103,000 in liabilities on its corporate tax returns. WTS listed this amount on schedule L, line 20, entitled "Mortgages, notes, bonds payable in 1 year or more." Julie testified the parties' accountant advised her to set up WTS this way so they could get their initial investments out of the company in the future. Line 19, on schedule L, entitled "Loans from shareholders" is blank. From 2008 on, Mark signed all of WTS's corporate tax returns. These returns included the phrase "[u]nder the penalty of perjury, I declare that I have examined the return including schedules and statements, and to the best of my knowledge and belief it is true, correct and complete." Despite his signature, Mark testified he did not know what the $103,000 reflected; Mark did not read WTS's tax returns before signing them. Julie averred Mark never questioned her about this entry or its classification. Mark answered "Yes" when asked if WTS owed this amount to the parties. He reaffirmed his understanding as such throughout his June 29, 2017, testimony.

¶ 9 On July 5, 2017, Mark changed his testimony. He said WTS did not owe the $103,550.

¶ 10 Julie retained Jeffrey W. Brend of Levin & Brend, P.C., to perform a valuation of WTS. Brend testified that the $103,550 listed on WTS's books and records was a loan owed to its shareholders. He averred the amount could and should be listed on Mark's balance sheet as Mark could, at any time, pay himself that amount from company funds. Brend classified the amount as "an account receivable of the marital assets." Had Brend removed the $103,550 debt from WTS's books, his valuation of the business would have increased.

¶ 11 On October 26, 2017, the court entered a judgment of dissolution of marriage. The court awarded Mark WTS as his sole and exclusive property. The court found, *inter alia*, that the $103,550 listed as a note payable on WTS's tax return constituted a loan due to the parties. The court found Mark's testimony to the contrary inconsistent, suspect, and not credible. It awarded

each party 50% of the loan amount or $51,775. Accordingly, the court credited Julie $51,775 against the lump sum the court ordered her to pay Mark to equalize each parties' share of the marital assets.

¶ 12 ANALYSIS

¶ 13 On appeal, Mark argues that the trial court's finding regarding the money the parties invested into WTS was against the manifest weight of the evidence. He additionally argues the trial court abused its discretion in awarding Julie a credit of her half of the investment against the lump sum payment the court ordered her to pay Mark.

¶ 14 I. Standard of Review

¶ 15 "When a party challenges a trial court's *findings of fact*, the appellate court will affirm unless the court's *findings* were against the manifest weight of the evidence." (Emphases in original.) *People ex rel. Sussen v. Keller*, 382 Ill. App. 3d 872, 877 (2008). This includes a trial court's determination of the credibility of witnesses and the inferences the court should draw from their testimony. *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006). A finding of fact is against the manifest weight of the evidence when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 70.

¶ 16 We review the trial court's division of marital property under an abuse-of-discretion standard. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700 (2006). "[A] reviewing court will not substitute its judgment for the trial court's disposition in marital property matters." *In re Marriage of Hart*, 194 Ill. App. 3d 839, 847 (1990). The court acts within its discretion when it values and distributes marital property; we will not disturb the trial court's award unless no

reasonable person would adopt the view taken by the court. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1113 (2004).

¶ 17 II. Trial Court's Findings

¶ 18 Mark first contends that the $103,550 the parties invested in WTS was not a loan but, rather, an equity investment. Julie responds by pointing out Mark presented no evidence at trial to support such a conclusion. His inconsistent position as to whether the $103,550 was a loan does not mean he made the argument that the money was an equity investment—or a capital investment as he referred to it at trial.

¶ 19 Mark directs this court to a federal case and the 16 factors it outlines to determine whether an investment is a debt or equity. See *Fin Hay Realty Co. v. United States*, 398 F.2d 694, 696 (1968). Mark did not make this argument below. He cites additional federal authority in his brief but no Illinois case law to support this position. "A reviewing court is entitled to have issues clearly defined with *pertinent* authority." (Emphasis added.) *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). Federal cases interpreting federal statutes are not binding precedent upon Illinois courts of review. *People v. Claxton*, 2014 IL App (1st) 132681, ¶ 19 (judgment vacated on other grounds). Thus, we do not find Mark's cases persuasive.

¶ 20 At oral argument, Julie called Mark's position a "push argument." That is, without the $103,550 debt, WTS's value would increase by that amount. It must be considered somewhere in the division of property, ultimately leading to the same result. We agree.

¶ 21 Julie presented more than sufficient evidence to conclude that the parties intended the contested amount to be a loan. Since its inception, Mark and Julie used personal funds to finance WTS. The amount had been on the books since WTS's inception in exactly the same form. An accountant advised her to set up the company books this way so she and Mark could get their

money back. Mark did not counter or rebut Brend's testimony. Mark averred that the amount was a loan due to WTS's shareholders. He maintained this position until a several day break in testimony. The trial court had ample evidence to determine that the $103,550 was, in fact, a loan the parties made from their personal funds with the intention to be repaid eventually. Mark's inconsistent testimony opened himself up to scrutiny. The trier of fact did not find him credible. The court's finding was not against the manifest weight of the evidence.

¶ 22 III. Trial Court's Division of Marital Property

¶ 23 Mark contends that even if we find that the trial court properly characterized the $103,550 as a loan, the court abused its discretion by offsetting any amount Julie paid to Mark because the loan was "worthless."

¶ 24 Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) requires the court to divide marital property in "just proportions" considering several relevant factors. 750 ILCS 5/503(d) (West 2018). Factors relevant here include:

> "(1) each party's contribution to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property ***;
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> ***
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> (3) the value of the property assigned to each spouse;
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> (4) the duration of the marriage;
>
> (5) the relevant economic circumstances of each spouse when the division of property is to become effective ***;
>
> ***

> (8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;
>
> ***
>
> (12) the tax consequences of the property division upon the respective economic circumstances of the parties." *Id.*

A court's apportionment is appropriate if "it is equitable in nature." *In re Marriage of Hart*, 194 Ill. App. 3d 839, 847 (1990). This is a fact specific inquiry. *In re Marriage of Bentivenga*, 109 Ill. App. 3d 967 (1982). We will not reverse absent an abuse of discretion, *i.e.*, a decision that is "clearly against logic." *Petryshyn v. Slotky*, 387 Ill. App. 3d 1112, 1116 (2008).

¶ 25 Applying the statutory factors, the trial court's award was not an abuse of discretion. The trial court equally divided the marital estate between the parties. We reaffirm that the trial court's findings regarding this amount were not against the manifest weight of the evidence. As such, the court did not abuse its discretion in equally dividing the loan between the two parties.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 28 Affirmed.