

NOTICE
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2014 IL App (4th) 130928-U

NO. 4-13-0928

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 15, 2014
Carla Bender
4th District Appellate
Court, IL

In re: MARRIAGE OF SPENCER H. LEARNED,)	Appeal from
Petitioner-Appellant,)	Circuit Court of
and)	McLean County
JULIE A. BOPP-LEARNED,)	No. 12D330
Respondent-Appellee.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Pope and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* Nonmarital funds contributed by ex-wife to pay ex-husbands' nonmarital debt were transmuted into ex-husband's nonmarital property, and ex-wife was entitled to full reimbursement from ex-husband's nonmarital estate.

¶ 2 On September 19, 2013, the circuit court of McLean County entered a judgment dissolving the marriage of petitioner, Spencer Learned, and respondent, Julie Bopp-Learned. Petitioner appeals, arguing the trial court erred when it found respondent, by clear and convincing evidence, successfully rebutted the presumption her contribution of \$50,914 in nonmarital funds to pay petitioner's nonmarital debt was a gift to his nonmarital estate. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Petitioner and respondent married in October 2009 and resided together until May 2011, when petitioner vacated the marital home. No children were born to the marriage. This

was petitioner's fourth marriage and respondent's second. Each entered the marriage with two properties.

¶ 5 On June 3, 2013, the trial court held a hearing on one disputed issue concerning a contribution of \$50,914 from respondent's nonmarital estate to petitioner's nonmarital estate. The following facts are drawn from the evidence presented at the hearing and, except as noted, are undisputed.

¶ 6 Respondent entered the marriage with two properties. In 1993, respondent purchased 1312 Diane Drive in Bloomington, Illinois, and, together with her former husband, paid off the \$60,000 mortgage. The residence has a market value of approximately \$161,000 and is respondent's nonmarital property. At the time of their marriage, respondent took out a \$10,000 home equity line of credit on 1312 Diane Drive. Respondent also owns a residence at 22 Berenz Place in Bloomington, Illinois.

¶ 7 Petitioner entered the marriage with a single-family dwelling at 713 South Vale Street in Bloomington, Illinois. He purchased the property in 1991 and it is his nonmarital property. The Vale Street property, which is valued at \$120,000, had a first mortgage of \$18,350 and a home equity line of credit (second mortgage) of \$39,558. Petitioner's third ex-wife's name remained on the second mortgage. Petitioner also owns a duplex at 511 East Locust Street in Bloomington, Illinois, in which he had no equity—principal due on the then-existing mortgage was \$96,866 and the appraised value was \$76,166. Petitioner made payments on both properties.

¶ 8 The parties agreed to live at 1312 Diane Drive and generate rental income from the remaining three properties. Respondent transferred title to 22 Berenz Place into joint tenancy with petitioner and petitioner transferred title to 511 East Locust Street into joint tenancy with

respondent. The marital residence remained in respondent's name, while 713 South Vale Street remained in petitioner's name.

¶ 9 Respondent was unemployed in the beginning of the marriage and later worked for District 87 as a substitute teacher. Her federal income tax return reflected a gross income of \$14,578.00 in 2011 and \$1,177.00 in 2012. Petitioner worked at Anliker Custom Wood at the time of marriage and, beginning July 2012, he started working at State Farm. His federal income tax return shows a gross income of \$7,473 in 2012.

¶ 10 Respondent testified petitioner had financial obligations from his prior marriage and, in September or October 2010, asked for respondent's help. Respondent agreed to pay petitioner's nonmarital debt and, in return, petitioner agreed to add respondent's name to 713 South Vale Street as joint tenant. Respondent explained petitioner was not able to borrow from the equity in 713 South Vale Street because of his credit and because his ex-wife, who was still on the mortgage, would not consent to a new mortgage. In contrast, petitioner testified he never asked respondent to pay his nonmarital debt. Instead, respondent proposed to him and, in exchange for his hand in marriage, offered to pay his nonmarital debt. Respondent denies proposing to petitioner and further denies offering to pay his nonmarital debt.

¶ 11 On November 17, 2010, respondent executed a \$110,000 balloon note to refinance the debt on 1312 Diane Drive. (The refinance paid off the \$10,000 home equity loan, leaving respondent \$100,000 in new money.) Beginning November 23, 2010, respondent paid in full several of petitioner's nonmarital debts, amounting to \$50,914. Specifically, respondent paid \$18,350.44 toward the first mortgage on 713 South Vale Street; \$17,233 as an equalization payment to petitioner's former spouse; \$11,000 to petitioner's attorney; \$1,657 for petitioner's daughter's dental expenses; \$256 for delinquent property insurance; and \$1,193 and \$1,225 for

his delinquent real estate taxes from 2008 and 2010, respectively. Respondent used the remaining loan proceeds to make monthly loan payments and to pay living expenses. Petitioner testified he never discussed taking out a balloon note and does not know where respondent obtained the money to pay off his debt.

¶ 12 On January 26, 2011, petitioner inquired about adding respondent to the deed on 713 South Vale Street. In a letter dated January 27, 2011, petitioner's attorney stated, "you have created a problem for yourself. Your [third] ex-wife, Julie, remains on the note securing the mortgage for Vale Street. Until her name is removed from the note, *** there is nothing you can do to get your current wife's name[, Julie,] on the deed the way she wants it."

¶ 13 Five months later, in May 2011, petitioner vacated the marital home. Petitioner did not add respondent as joint tenant to 713 South Vale Street, nor did he remove his former wife from the second mortgage on the property. In June and October 2011, despite the parties' separation, respondent made two payments on 713 South Vale Street in hopes of saving the marriage and because she continued to believe petitioner would add her as joint tenant to 713 South Vale Street.

¶ 14 On August 9, 2013, the trial court entered an order adopting the parties' proposed judgment of dissolution and ordered petitioner to reimburse respondent \$50,914.

¶ 15 This appeal followed.

¶ 16 **II. ANALYSIS**

¶ 17 Petitioner asserts the trial court erred in finding respondent established, by clear and convincing evidence, her contribution of \$50,914 to petitioner's nonmarital estate was not a gift. We disagree.

¶ 18 "Before disposing of property upon a dissolution of marriage, the trial court must first classify the property as marital or nonmarital." *In re Marriage of Gattone*, 317 Ill. App. 3d 346, 351, 739 N.E.2d 998, 1002 (2000). "A reviewing court will not disturb the trial court's classification unless it is contrary to the manifest weight of the evidence." *Id.* Here, the trial court accepted the parties' stipulation respondent contributed nonmarital funds to pay petitioner's nonmarital debt.

¶ 19 Section 503(c) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/503(c) (West 2010)) provides when marital property and nonmarital property are commingled, the contributing estate is transmuted to the classification of the estate receiving the contribution. However, the contributing estate can be reimbursed from the receiving estate unless the contribution "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 2010).

¶ 20 Applying section 503(c)(1) of the Dissolution Act (750 ILCS 5/503(c)(1) (West 2010)), respondent's contribution of \$50,914 was transmuted to petitioner's nonmarital estate when it was used to pay nonmarital debts, including the first mortgage on petitioner's nonmarital property. "Although section 503(c)(1) of the Act refers to the commingling of marital and nonmarital property, we see no reason why that section should not apply when one spouse's nonmarital funds are contributed to the other spouse's nonmarital property resulting in a loss of identity of the contributing funds." *In re Marriage of Snow*, 277 Ill. App. 3d 642, 649, 660 N.E.2d 1347, 1351-52 (1996). Pursuant to section 503(c)(2) of the Dissolution Act, respondent is entitled to have her \$50,914 reimbursed from petitioner's nonmarital estate if it is traceable by

clear and convincing evidence and not intended to be a gift. Respondent's contributions of \$50,914 are traceable by clear and convincing evidence. The only dispute is whether the contributions in question were a gift from respondent's nonmarital estate to petitioner's nonmarital estate.

¶ 21 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, 990 N.E.2d 1184. To successfully rebut the presumption of gift, "the donor spouse must present clear, convincing and unmistakable evidence that there was no donative intent." *Id.* ¶ 26, 990 N.E.2d 1184. "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." *Id.* ¶ 27, 990 N.E.2d 1184.

¶ 22 Petitioner first argues respondent failed to meet the clear-and-convincing standard because "[t]here is a plethora of contradiction as to what the parties said to one another and when they said it."

¶ 23 The trial court was presented with conflicting evidence. Respondent testified six weeks to a month before taking out the balloon note on 1312 Diane Drive, she and petitioner had a discussion about taking out the balloon note to pay the first mortgage on 713 South Vale Street and to pay off petitioner's ex-wife. In return, petitioner agreed to give respondent a one-half interest in 713 South Vale Street. Absent the one-half interest in 713 South Vale Street, she would not have taken out the balloon note.

¶ 24 In contrast, petitioner denied respondent's stated intent. He testified he never had any discussions with respondent about a balloon note and does not know where respondent obtained the money to pay off his debt. Rather, petitioner asserts respondent proposed to him

and offered to pay his debts in return for his hand in marriage. Petitioner testified having his debt paid off in exchange for marriage "seemed like a good deal."

¶ 25 The trial court heard the testimony and was best able to observe the demeanor of the witnesses as they testified. The court's written order noted the "clearly distinguishable demeanors of the witnesses" and described petitioner's response to questions as "hesitant," "more vulnerable," "self-conscious," and "less plausible." In contrast, the trial court found respondent's testimony "considerably more coherent and confident." Given the parties here were the only witnesses to testify, the trial court's determination as to credibility was central to its adjudication of the issue. The trial court has the function to resolve conflicting testimony by assessing the credibility of witnesses and the weight to be accorded their testimony, and the court's findings will not be disturbed unless they are against the manifest weight of the evidence. *In re Marriage of Sturm*, 2012 IL App (4th) 110559, ¶ 6, 970 N.E.2d 117. The trial court in this case resolved any conflicts in respondent's favor. The court's decision to accept respondent's testimony over petitioner's was not an abuse of discretion.

¶ 26 Petitioner next argues the trial court erred when it found the timeline of events supported respondent's testimony. The trial court found it unlikely respondent would wait one year after marriage to pay petitioner's debt because the accrual of interest would result in a higher payment. Petitioner asserts the parties waited for dissolution judgment to be entered from petitioner's third marriage so they could determine the precise amount of petitioner's indebtedness. However, we find the evidence also supports a contrary finding—namely, petitioner waited until October 2010 (after dissolution judgment was entered) to approach respondent and ask for help. The court did not believe petitioner's testimony an agreement was

reached prior to marriage, and the timing of the dissolution judgment supports respondent's testimony as well. The court's judgment was not against the manifest weight of the evidence.

¶ 27 Although not raised in the parties' briefs, several factors weigh in favor of overcoming the presumption of a gift. Factors to be considered in determining whether a party has rebutted the presumption of gift include the size of the gift relative to the entire estate; when the property was purchased; who paid the purchase price, made improvements, paid the taxes, and exercised control and management over the property; and how the parties handled prior financial dealings with each other. *In re Marriage of Guerra*, 153 Ill. App. 3d 550, 556, 505 N.E.2d 748, 752 (1987).

¶ 28 The record shows, for a period of 16 years prior to the parties' marriage, respondent, along with her former husband, purchased 1312 Diane Drive, took out a mortgage, and made all payments on the property. Likewise, petitioner purchased 713 South Vale Street in 1993 and lived on the property for a period of 18 years prior to the marriage. He took out two mortgages and made payments on the property. Respondent never added petitioner as joint tenant to 1312 Diane Drive and petitioner never added respondent as joint tenant to 713 South Vale Street. The parties exercised control and management over their own property, separated their financial affairs, and dealt at arm's length.

¶ 29 As to the \$110,000 in equity acquired from 1312 Diane Drive, those funds remained under respondent's control and she sought to segregate the funds from the marital estate and limit petitioner's access to them. The only reason she agreed to pay petitioner's debts was because he promised to add her as a joint tenant to 713 South Vale Street as security for the transfer. *Cf. In re Marriage of Didier*, 318 Ill. App. 3d 253, 266, 742 N.E.2d 808, 818 (2000) (wife's contribution presumed a gift where she never requested any security for the transfer).

Petitioner's inquiry and letter from his attorney support respondent's testimony regarding petitioner's offer to add her as joint tenant in consideration for paying his debts. These facts are a significant indication respondent never intended to make a gift of the \$50,914.

¶ 30 The size of the purported gift relative to her estate was large and this factor weighs in respondent's favor. It is unlikely respondent, who had gross income of \$14,578 in 2011 and \$1,177 in 2012, would take out a balloon note on a mortgage-free property unless she was receiving some consideration in return. Respondent's contributions were substantial and it is not reasonable to presume she intended to make a gift of \$50,914 to her husband, who was in his fourth marriage. See *In re Marriage of Hagshenas*, 234 Ill. App. 3d 178, 189, 600 N.E.2d 437, 445 (1992) ("The larger the gift in relation to the size of the entire estate, the less likely it is it was intended to be a gift.").

¶ 31 Finally, the parties' prior financial dealings weigh in favor of finding no donative intent. Unlike the properties at 511 East Locust Street and 22 Berenz Place, in which the parties added each other to the deed as joint tenants and agreed to share in the rental income, the record shows no intent on respondent's (or petitioner's) part to change the nonmarital character of 1312 Diane Drive (or 713 South Vale Street).

¶ 32 Under these circumstances, the trial court did not err in finding respondent successfully rebutted the presumption of a gift. Since the contribution was not a gift, respondent established a right to reimbursement from petitioner's nonmarital estate in the amount of \$50,914. See *Snow*, 277 Ill. App. 3d at 649, 660 N.E.2d at 1352 (wife entitled to full reimbursement from husband's nonmarital estate where she contributed \$9,000 of her nonmarital funds to improve husband's nonmarital home); *McBride*, 2013 IL App (1st) 112255, ¶ 39, 990

