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2015 IL App (5th) 140374-U

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 5-14-0374

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
BRYANNA KAY KEHRER,)	Williamson County.
)	
Petitioner-Appellee,)	
)	
and)	No. 13-D-172
)	
LEON FRANK KEHRER II,)	Honorable
)	Brian D. Lewis,
Respondent-Appellant.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Cates and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in its distribution of the parties' assets or debts.

¶ 2 Respondent, Leon Frank Kehrer II, appeals from a judgment of dissolution of marriage entered in the circuit court of Williamson County. The issue on appeal is whether the trial court erred in its distribution of the parties' assets and debts in its judgment of dissolution. We affirm.

¶ 3 **FACTS**

¶ 4 The parties were married on May 21, 1999. Each party had been previously

married, and both had two children from their previous respective marriages. The parties separated in October 2012. At the time of the second stage hearing on March 28, 2014, respondent's children were emancipated and one of petitioner's children was emancipated while the other was 16 and remained at home. During the marriage, the parties lived in a home petitioner owned prior to the marriage. During divorce proceedings, respondent signed over the home to petitioner.

¶ 5 The parties also owned a rental home they purchased during the marriage, which carried a mortgage of approximately \$49,000. Respondent testified the rental home was appraised at approximately \$65,000 to \$67,000, and that petitioner signed over that house to him when he signed over the other house to her. The parties also owned a timeshare in a condominium in Florida, purchased in 2002, and currently paid in full. Respondent testified petitioner could have the condo, as he had no desire for it.

¶ 6 During the marriage, respondent was a member of the Air Force Reserves and was deployed several times. Respondent held a degree in engineering when the parties married, and during the marriage he obtained a bachelor's and a master's degree in nursing. At the time of the hearing respondent was working as a nurse practitioner, and petitioner was a teacher in the Marion School District. Petitioner suffered a back injury, has undergone surgery for the injury, and may be in need of additional surgery.

¶ 7 During the marriage, respondent worked at the Veteran's Administration Hospital and accrued \$83,201.79 in a Thrift Savings Plan (TSP) through said employment as of December 31, 2013. Respondent also accrued a pension through the Federal Employee Retirement System (FERS). No documentation was provided to show the value of that

plan. Respondent also obtained a pension through the Air Force Reserves of which he was a member throughout the parties' marriage until August 9, 2013. Petitioner accrued a pension through the Illinois Teachers' Retirement System. Respondent testified he wanted to keep his FERS pension, and petitioner should keep her pension.

¶ 8 The parties formed Kehrer Corporation on September 28, 2011, which became the vehicle for a business known as Bubble Tea. The parties used a home equity loan on the residence owned by petitioner prior to the parties' marriage to finance Bubble Tea. The debt on the loan as of February 18, 2014, was \$46,514.93. Respondent testified that when the parties separated, the debt was only \$26,000. Bubble Tea is housed in a portable building designed by petitioner. Respondent testified the building was worth approximately \$50,000. Bubble Tea was for sale at the time of the hearing. Respondent has no interest in the company and testified petitioner could keep 100% of the proceeds from the sale of Bubble Tea and agreed to pay one half of the balance of \$26,000 "to end this."

¶ 9 Respondent purchased a 2013 Ford F-150 after the parties separated. He traded in his 2004 Ford Truck to make the purchase. Respondent admitted he forged petitioner's signature on the title to trade in the truck. There is a \$15,000 loan on the truck, and respondent makes the payments. Respondent was also in possession of a fully paid Gold Wing motorcycle and a 2004 Honda four-wheeler. He left a 2006 Honda motorcycle behind, but testified he also wanted possession of it. Petitioner drives a 2013 SUV which is paid in full.

¶ 10 Respondent testified he owes approximately \$49,000 in student loans and makes

payments of \$347.03 per month. Respondent testified petitioner owes much less in student loans. Respondent testified that he nets \$4,800 from his current job as a nurse practitioner. Petitioner earns \$1,553.40 twice a month and is paid on a 12-month schedule. Petitioner carried respondent on her health insurance throughout the separation and dissolution proceedings.

¶ 11 Petitioner testified that when she married respondent his visitation schedule with his children from his previous marriage was less than desirable. Because petitioner is a school teacher and is off in the summer months, she could watch his children. The parties worked together to take respondent's ex-wife back to court to get better visitation, which they accomplished. Respondent was in arrears for child support and medical expenses for his children. Petitioner testified she sold her late husband's stock and paid respondent's arrears and attorney fees.

¶ 12 Petitioner further testified she had previously worked as a teacher in Indiana and Florida and wanted to purchase time back from those jobs in order secure a better pension through the Illinois Teachers' Retirement System. She believed it would cost around \$7,000 or \$8,000 to purchase the additional years. Respondent told her they could purchase the time after he obtained his master's degree and obtained his nurse practitioner's license; however, as soon as he obtained his license and started working as a nurse practitioner, he left her. Petitioner asked that respondent be responsible for purchasing half of the additional years she could purchase toward her retirement and that the money be paid from his Thrift Savings Plan.

¶ 13 The parties had a joint Visa card. At the time they separated, there was a balance

of \$7,313.74 due. Petitioner asked respondent pay half of the balance. Petitioner admitted that at the time the parties separated, approximately \$26,000 was owed on the home equity loan. She said she needed the additional money borrowed to pay for the Bubble Tea business as well as finances at home because when respondent left, he was not giving her money and she could not meet all the household expenses. Petitioner denied that the portable building that houses Bubble Tea is worth \$50,000. She estimated that the value of the building and the business together might be around \$50,000. She said if she sold the business, she would split the sale amount with respondent. She asked that respondent be ordered to pay half of the \$46,000 on the home equity loan.

¶ 14 Petitioner testified she was in an automobile accident on January 1, 2013, in which she broke her back. She had one surgery and testified she may have to undergo another. She said she may be forced to go on disability because she is using up all of her sick days. Petitioner also sought \$1,500 in maintenance for five years.

¶ 15 After hearing all the evidence, the trial court awarded respondent his FERS retirement, his Air Force Reserve retirement, less 7 years, 1 month and 10 days, which was awarded to petitioner, and ordered Bubble Tea sold with the proceeds used to pay for the home equity loan. If there was not enough money from the sale of the business to pay off the loan, the trial court ordered each party responsible for half of any remaining amount owed. The trial court awarded petitioner "a percentage of the Thrift Savings Plan equal to half of the term of the marriage when the Plan was contributed to", which amounts to " 7 years, 5 months and 3.5 days of the life of the Plan." The trial court awarded petitioner her pension through the Illinois Teachers' Retirement System and

Bubble Tea, with the caveat that the business be sold and the proceeds applied to the home equity loan as set forth above. The trial court awarded each party the personal property in their possession, which for respondent included the Gold Wing motorcycle and the Honda four-wheeler, and which for petitioner included her vehicle and the 2006 Honda motorcycle. The trial court ordered each party to pay their own student loans and reserved the issue of maintenance based on petitioner's potential need for additional back surgery and the possibility she might have to go on disability.

¶ 16 On April 30, 2014, petitioner's counsel notified the trial court that the joint Visa bill had not been determined in the original ruling. The trial court then entered an order in which it stated that there was minimal evidence presented regarding the Visa debt, and based on the parties' respective incomes, ordered respondent to pay 70% of the bill and petitioner to pay 30%. On May 23, 2014, the trial court entered a judgment of dissolution and a retirement benefits order with regard the respondent's TSP. Respondent filed a motion to reconsider, which the trial court denied. Respondent now appeals.

¶ 17 ANALYSIS

¶ 18 The issue on appeal is whether the trial court erred in its distribution of the parties' assets and debts. Respondent insists the trial court made a disproportionate award of assets to petitioner. We disagree.

¶ 19 It is generally accepted that marital assets and debts must be equitably distributed between the parties. *In re Marriage of Underwood*, 314 Ill. App. 3d 325, 328, 731 N.E.2d 1003, 1006 (2000). Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act directs the trial court to divide marital property in just proportions

considering all relevant factors, including:

"(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property ***;

(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;

* * *

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

(10) whether the apportionment is in lieu of or in addition to maintenance;

[and]

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income[.]" 750 ILCS 5/503(d) (West 2012).

The trial court has broad discretion in the valuation and subsequent distribution of marital assets. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1113, 806 N.E.2d 701, 706 (2004).

¶ 20 On appeal, a trial court's division and distribution of marital assets will not be

reversed unless the trial court clearly abused its discretion. *In re Marriage of Awan*, 388 Ill. App. 3d 204, 213, 902 N.E.2d 777, 786 (2009). An abuse of discretion occurs only in cases in which no reasonable person would take the view adopted by the trial court. *Awan*, 388 Ill. App. 3d at 213, 902 N.E.2d at 786. Under the circumstances presented here, we cannot say the trial court abused its discretion in distributing marital assets or debts.

¶ 21 Respondent makes several specific arguments regarding the trial court's distribution of assets and debts. For example, respondent objects to the trial court's award to petitioner of one half of the marital portion of respondent's Air Force Reserves retirement and TSP while failing to award him any of petitioner's teacher's pension; however, what respondent fails to consider is that the trial court awarded him all of his FERS pension without giving any portion of it to petitioner. Respondent also objects to the trial court's order requiring him to pay 70% of the Visa credit card debt without any testimony as to what was charged on that account, by whom and when. However, as the trial court pointed out, respondent earns much more than petitioner and, therefore, has a greater ability to pay, and the debt was incurred during the parties' marriage.

¶ 22 Respondent also objects to the trial court's award of Bubble Tea to petitioner, but the record shows that respondent specifically testified he wanted nothing to do with the business, and petitioner could have it. He also agreed to pay one half of the balance of \$26,000 in order to put an end to the litigation. Under these circumstances and because the evidence shows the business is likely not worth more than the debt owed on it, we cannot say the trial court abused its discretion with regard to the award of the business to

petitioner or the division of the debt between the parties.

¶ 23 Respondent also criticizes the trial court's award of the marital home to petitioner, but the record shows respondent voluntarily signed over the home to petitioner during these proceedings. This seems fair in light of the fact that the home was owned by petitioner prior to the parties' marriage. Petitioner was a widow and was in possession of the home before she married respondent. We also cannot say the trial court abused its discretion in reserving the issue of maintenance. Petitioner testified that she may have to undergo a future back surgery, which could result in her being forced to go on disability. Under these circumstances, the trial court's decision to reserve the issue of maintenance appears sound.

¶ 24 Respondent makes other claims of inequity, but after careful review, we find that they have no merit. The facts here show that petitioner kept the home fires burning while respondent was deployed numerous times throughout the parties' 15-year marriage. Petitioner not only paid for respondent's arrears in child support and medical expenses, but she assisted him in paying for attorney fees to the attorney who secured more visitation with his children from a previous marriage. She also assisted respondent in his quest to become a nurse practitioner. However, petitioner did not reap any rewards for her efforts, as respondent separated from petitioner as soon as he became a nurse practitioner and started earning additional income.

¶ 25 Petitioner, a teacher, earns much less money than respondent. Petitioner testified that during the marriage she desired to buy back years of service from teaching positions in other states in order to improve her retirement earnings, but respondent encouraged her

not to do so until he finished his degree, and, thus, she has not been credited with additional years of service. The record is clear that respondent is financially secure, having several vested sources of income for retirement as well as the ability to earn even more money through his new career as a nurse practitioner. Petitioner, however, is not as financially secure. An equitable distribution does not require mathematical certainty, and under the facts presented here, we cannot say no reasonable person would take the view adopted by the trial court. Accordingly, respondent has failed to convince us that the trial court abused its discretion dividing the parties' marital estate.

¶ 26 For the foregoing reasons, we affirm the judgment of the circuit court of Williamson County.

¶ 27 Affirmed.