

No. 1-13-0961

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:)	Appeal from the
)	Circuit Court of
CASSANDRA G. KINCY,)	Cook County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 11 D 2063
)	
KEITH KINCY,)	Honorable
)	Debra B. Walker,
Defendant-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Howse and Justice Epstein concurred in the judgment.

O R D E R

¶ 1 **Held:** In this divorce proceeding, we affirm the trial court's finding that the nonmarital property was transmuted into marital property and its division of that marital property to the parties, but reverse and remand its finding regarding the proper valuation date for the marital property.

¶ 2 Following dissolution of the marriage between petitioner, Cassandra Kincy, and respondent, Keith Kincy, the circuit court entered orders disposing of the parties' property. Keith

appeals, challenging the trial court's findings that the house, which he purchased, was transmuted into marital property, and that Cassandra was entitled to 55% of its value. Alternatively, Keith contends that the trial court's date of valuation of the marital residence was in error where it utilized the value of the residence at the date the property was divided, rather than at the time the judgment for dissolution of marriage was entered. Although Cassandra has not filed a brief in response, we will consider the appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 3 Cassandra and Keith were married on August 7, 1999, and had two children, Kia and Kennedy. Cassandra filed her petition for dissolution of marriage on March 2, 2011. On August 17, 2011, the trial court entered a default judgment of dissolution of marriage. Keith filed a motion to vacate the judgment of dissolution of marriage, which was granted in part following a hearing on April 11, 2012. As relevant to this appeal, the court vacated the property division of the house located at 10043 South Forest Avenue in Chicago, and set the matter for trial.

¶ 4 According to the bystander's report filed by Keith and entered by the court, the trial on property distribution occurred on October 2, 2012. Both parties testified, in pertinent part, that the house was purchased in 1997, the house and the mortgage were solely in Keith's name, and the parties kept separate bank accounts. Keith also testified that he and Cassandra were not living together at the time the house was purchased. According to Keith, he paid the mortgage, real estate taxes, electric bill, cable bill, and all other expenses for the household, except that Cassandra bought food, paid the phone bill, and was responsible for one improvement to the house, *i.e.*, installing one glass block window. Keith noted that he was responsible for the improvements, renovations, and upkeep of the house. In particular, Keith renovated the kitchen and bathroom with the \$22,000 he received from selling real estate, installed new windows and

roof, refinished the floors, and paid for other miscellaneous repairs. Cassandra never gave him money or deposited any money in his accounts.

¶ 5 Cassandra testified that the parties lived together at the time Keith bought the house, and that Keith told her he would put her name on the house. At the time of their marriage, Cassandra helped Keith improve his bad credit rating. Cassandra further testified that she was responsible for installing new windows in the house, bought food, paid the phone bill, purchased the children's needs, as well as clothing for Keith and the children. In addition, Cassandra testified that she was employed throughout the marriage and lost her job in January of 2011.

¶ 6 After trial, the court made its findings orally, which were then memorialized in an October 4, 2012, "Order After Trial," prepared by Keith's counsel and signed by the attorneys for both parties, as well as the judge. As relevant to this appeal, the order stated that the trial court found Cassandra's contributions to the household "substantial." In doing so, the court specifically listed her contributions as: buying food and clothing, paying the phone bill, and servicing the marital estate by doing the grocery shopping and caring for the children. The court thus found that the nonmarital real estate was transmuted to a marital asset, and awarded Cassandra 55% of the equity in the house. The court indicated that the date of valuation of the property was October 2, 2012, as that was the date of the hearing on the division of the property. The court ordered that the parties obtain an appraisal of the marital residence within 21 days.

¶ 7 On November 1, 2012, Keith filed a motion to reconsider, requesting that the trial court reconsider its rulings that the house was transmuted from Keith's nonmarital property into marital property, and that Cassandra was awarded 55% of the equity in the real estate. Keith further requested that the court find that the house was his nonmarital property and award him 100% of its value. On December 11, 2012, the trial court denied Keith's motion to reconsider.

¶ 8 Pursuant to the trial court's October 4, 2012 order, the parties obtained an appraisal of the marital residence. The trial court utilized the value from the appraisal (\$95,000) in its February 14, 2013 order, setting final distribution of property.

¶ 9 Keith filed a notice of appeal on March 18, 2013. In it, he indicated that he was appealing, "(1) Portions of the Order After Trial entered on October 4, 2012; (2) Order denying [his] motion for reconsideration entered December 11, 2012; and (3) Portions of Order setting final distribution of property entered on February 14, 2013."

¶ 10 In his brief on appeal, Keith first asserts that the trial court's classification of the house as a marital asset was against the manifest weight of the evidence. In particular, he contends that the court erred in finding that the house was transmuted into marital property based solely on the fact that Cassandra made financial contributions to the family's basic needs and took care of the children.

¶ 11 In order to distribute property upon the dissolution of marriage, the trial court must first classify the property as either marital or nonmarital property. *In re Marriage of Blunda*, 299 Ill. App. 3d 855, 861 (1998). A trial court's property classification will not be disturbed unless it is contrary to the manifest weight of the evidence. *Id.* The determination of whether property is to be classified as marital or nonmarital is governed by section 503 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503 (West 2010)). Section 503(a)(6) of the Act provides that "nonmarital property" is property acquired by either spouse before the marriage. 750 ILCS 5/503(a)(6) (West 2010). With regard to the commingling of marital and nonmarital property, section 503(c)(1) of the Act provides:

"(1) When marital and nonmarital property are commingled 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 2010).

Notwithstanding any transmutation, however, section 503(c)(2) of the Act provides that:

"When one estate of property makes a contribution to another estate of property, or when a spouse contributes personal effort to nonmarital property, the contributing estate shall be reimbursed from the estate receiving the contribution *** 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 nonmarital property, unless the effort is significant and results in substantial appreciation of the nonmarital property. Personal effort of a spouse shall be deemed a contribution by the marital estate. The court may provide for reimbursement out of the marital property to be divided ***." 730 ILCS 5/503(c)(2) (West 2010).

¶ 12 Here, Cassandra testified that she helped Keith improve his bad credit rating, was responsible for installing new windows in the house, bought food, paid the phone bill, purchased the children's needs, as well as clothing for Keith and the children. In addition, Cassandra indicated that she was employed throughout the marriage. In Keith's testimony, he acknowledged that Cassandra bought food, paid the phone bill, and installed one glass-block window. He also testified that he paid the mortgage, real estate taxes, electric bill, cable bill, and all other expenses for the household, including improvements, renovations, and upkeep of the house. After evaluating the evidence, the trial court found Cassandra's contributions to the household "substantial," and held that "the nonmarital real estate was transmuted to marital property."

¶ 13 Keith, however, asserts that no transmutation occurred because there was no evidence presented at trial regarding how Cassandra's general efforts and contributions to the household were significant or increased the value of the home. In so arguing, Keith relies on cases where the reviewing court found no transmutation of property occurred because the contribution of

marital assets to the nonmarital property was not significant. See *e.g. In re Marriage of Olson*, 96 Ill. 2d 432, 439-40 (1983) (finding that transmutation did not occur where the appellant produced no evidence that "the work which he performed on the *** property was more than is normally required in a marriage relationship or that the work he performed increased the value of the house"); *In re Marriage of Snow*, 277 Ill. App. 3d 642, 650 (1996) (the marital estate was not entitled to reimbursement where there was no evidence of the value of appreciation due to the respondent's personal efforts, and because both parties benefitted from living in the house, the marital estate had already been compensated for its contributions); *In re Marriage of Siddens*, 225 Ill. App. 3d 496, 499 (1992) ("no reimbursement was required for improvements made to [nonmarital property] when the evidence was insufficient to establish increased value").

¶ 14 We acknowledge that the cases cited by Keith show that no transmutation of property occurs where there is a lack of evidence demonstrating that a party's efforts were significant and increased the value of the nonmarital property. However, in this case, the trial court found that Cassandra's contributions to the household were, in fact, "substantial." Given that a trial court's property classification will not be disturbed unless it is contrary to the manifest weight of the evidence, (*Blunda*, 299 Ill. App. 3d at 861), we see no reason in the record to upset the court's decision finding that the nonmarital property in question transmuted into marital property. See *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 669 (2008) (a trial court's decision is against the manifest weight of the evidence only where "the opposite conclusion is clearly evident or where it is unreasonable, arbitrary, and not based on the evidence").

¶ 15 Based solely on the above argument, Keith next contends that Cassandra's award of 55% of the equity in the house should be reversed, and he should be awarded 100% of its value.

¶ 16 A trial court's division of marital property will not be disturbed absent an abuse of

discretion. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 649 (1993). As we have already found that it was not against the manifest weight of the evidence for the trial court to designate the house as a marital asset, we reject Keith's second argument and find that the trial court did not abuse its discretion in awarding Cassandra 55% of the equity in it.

¶ 17 In the alternative, Keith contends that the trial court erred when it failed to use the date of dissolution of marriage as the date of valuation of the house. We agree.

¶ 18 In this case, the parties' marriage was dissolved on August 17, 2011. On October 2, 2012, a trial occurred that resulted in the division of the parties' property. The court specifically held that the date of valuation of the property would be October 2, 2012, and that, within the following 21 days, the parties had to obtain an appraisal of the house located at 10043 South Forest Avenue in Chicago. The order of February 14, 2013, noted that the property appraised at \$95,000, and the court awarded Cassandra 55% of that amount as previously ordered (minus the mortgage balance).

¶ 19 Keith, relying on *In re Marriage of Mathis*, 2012 IL 113496, now contends that the trial court's date of valuation of the property was in error because it utilized the value of the residence at the time the property was divided, instead of the time the dissolution occurred.

¶ 20 In *Mathis*, the supreme court held that, in bifurcated dissolution proceedings, the valuation of marital property must be determined at the time when the court enters judgment for dissolution after a trial on grounds for dissolution or another date near it. *Id.* at ¶ 30. The supreme court observed that the rule setting the valuation date at the date of the dissolution judgment was supported by "the near-unanimous weight of authority," by the other relevant statutory provisions, and by strong policy considerations. *Id.* at ¶ 26.

¶ 21 Contrary to *Mathis*, the court in the present case valued the subject property about 14

months after the judgment of dissolution was entered and following the trial on property distribution. In accordance with the *Mathis* decision, we reverse and remand this cause to the trial court for purposes of setting the date of valuation of the property at August 17, 2011, the date of dissolution of the marriage.

¶ 22 For the foregoing reasons, we reverse the trial court's judgment regarding the date of valuation of the property, remand the matter to the trial court to set the date of valuation at August 17, 2011, and affirm in all other respects.

¶ 23 Affirmed in part; reversed and remanded in part.