

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
SECOND DISTRICT

<i>In re</i> MARRIAGE OF PAMELA DeGROOT,	)	Appeal from the Circuit Court
	)	of Du Page County.
Petitioner-Appellant,	)	
	)	
and	)	No. 07—D—1586
	)	
ARNOLD DeGROOT,	)	Honorable
	)	James J. Konetski,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion when it denied maintenance to petitioner and when it divided the assets between the parties. We affirmed the judgment of the trial court.

In 2009, the trial court entered an order dissolving the eight-year marriage between petitioner, Pamela DeGroot, and respondent, Arnold DeGroot. Following the trial court's dissolution order, petitioner timely appeals, contending that the trial court erred in denying maintenance, awarding certain nonmarital and marital assets to respondent, failing to make specific findings with respect to the dissipation of marital assets, and ordering each party to pay their own attorney fees. We affirm.

First, the trial court's decision to deny petitioner maintenance did not constitute an abuse of discretion. See *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010) (noting that a trial court's determination regarding maintenance will not be disturbed absent an abuse of discretion). Section 504(a) of the Marriage Act and Dissolution of Marriage Act (the Marriage Act) (750 5/504(a) (West 2006)) provides a list of 12 factors a court should consider in determining maintenance, including the income and property of each party, the present and future earning capacity of each party, and any impairment of the present or future earning capacity of each party. See *In re Marriage of Nord*, 402 Ill. App. 3d at 292. The trial court is not required to give each factor equal weight so long as a reasonable balance is struck by the court. *Id.*

Here, the basis of petitioner's claim for maintenance is that she is unable to work due to a disability and that she will not be able to enjoy the same lifestyle as she did during the marriage. The record clearly reflects that the trial court questioned her veracity and discredited her testimony. Further, based on the evidence presented, the trial court could have reasonably rejected petitioner's claim that she was incapable of working, given petitioner's admissions on cross-examination that she had recently worked odd jobs, had previously intended to start her own company, and she drove from Idaho to Illinois on her own as recently as 2007. See *In re Marriage of Malec*, 205 Ill. App. 3d 273, 282 (1990) (stating that the credibility of the witnesses is for the trier of fact, who is in the best position to observe witnesses and their demeanor and assess the relative credibility of conflicting testimony on fact issues). In addition, petitioner testified that she rented a house in Aurora from her daughter; however, the trial court could have found this testimony not credible and that petitioner had an ownership interest in the house based on her admissions on cross-examination that she signed the contract for the sale of the house and that her daughter did not attend the closing.

The trial court could have found respondent's testimony that their lifestyle changed in 2003 when petitioner stopped working more credible, thereby rejecting petitioner's testimony that she would not be able to enjoy the same standard of living as she did during the marriage without maintenance. See 750 5/540(a)(6) (West 2008) (listing the standard of living during the marriage as a factor in determining maintenance); *In re Marriage of Malec*, 205 Ill. App. 3d at 282.

Second, our review of the record reflects that the trial court did not abuse its discretion when it classified the marital and nonmarital assets and distributed of the parties' marital assets. See *In re Marriage of Thornley*, 361 Ill. App. 3d 1067, 1071 (2005). Section 503 of the Marriage Act lists several factors a trial court should consider in determining the distribution of marital assets, and further provides that marital property should be divided in "just proportions" after considering all relevant factors, including contribution to the value of marital and nonmarital property, dissipation, duration of the marriage, and each spouse's reasonable opportunities to acquire assets or income. 750 ILCS 5/503(d)(1), (2), (4), (5), (11) (West 2006). The touchstone of a proper and just apportionment is whether the distribution is equitable, not mathematically equal. *In re Marriage of Dunlap*, 294 Ill. App. 3d 768, 778 (1998). A trial court has broad discretion in distributing marital assets. See *In re Marriage of Polksy*, 387 Ill. App. 3d 126, 140 (2008) (noting that a reviewing court will not reverse a lower court's distribution of marital assets unless "no reasonable person would have taken the view adopted by the trial court"). Determinations of the trial court regarding credibility, as the entity closest to the litigation and the trier of fact, are given great deference and there is a strong presumption the trial court made the right decision. *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641 (1997).

Here, the trial court classified the Prudential life insurance policies, the Siebert account, and respondent's defined-contribution plan and part of his pension plan through his work as respondent's nonmarital assets. The trial court further held that petitioner's social security disability benefits were not subject to allocation. With respect to marital property, the trial court held that the parties' marital residence in Carol Stream was to be sold and the net proceeds were to be divided equally. Any ownership interest in the Aurora residence was petitioner's exclusive property and awarded petitioner any funds her daughter owed her in connection with purchasing that residence. The trial court held that the marital portion of respondent's pension plan would be divided equally and that respondent would receive the marital portion of his defined-contribution plan as his sole property. The trial court awarded respondent the ING bank account and the LaSalle checking account as his sole property, and it awarded petitioner any remaining funds in her AT&T stock, the Charter One certificate of deposit, the Chase investment and Clipper fund retirement accounts, the IBM savings plan, and the Oppenheimer funds as her exclusive property. The trial court further held that petitioner would receive any interest in the "RLM" business, the laptop computer, and the GPS system as her exclusive property, whereas respondent was awarded the wine collection. The trial court ordered that each party was entitled to keep their vehicle and all other personal property in their respective possession. Finally, the trial court ordered that each party was responsible for their medical bills and other debts incurred during the marriage, and the parties were responsible for their own attorney fees.

The trial court's distribution of marital assets was consistent with the considerations provided in section 503 of the Marriage Act. The trial court ordered the parties' marital residence in Carol Stream to be sold and the net proceeds divided. Also, as noted above, the trial court further awarded

petitioner any interest she had in the Aurora residence she purchased after she moved out of the marital residence in 2006. Despite petitioner's testimony that she rented the Aurora house from her daughter, the trial court could have found this testimony not credible, given her admissions on cross-examination that she signed the contract for the sale of the house and that her daughter did not attend the closing. Further, as also discussed above, the trial court could have rejected petitioner's testimony that she was unable to work as a result of a disability as well as her testimony regarding the lifestyle the parties enjoyed during the marriage. See *In re Marriage of McHenry*, 292 Ill. App. 3d at 641. In addition, petitioner testified that she was currently receiving at least partial health insurance through Medicare. Given the conflicting testimony presented to the trial court regarding the section 503 factors, the trial court's distribution of marital assets, including its findings regarding health insurance and medical bills, was appropriate given the economic circumstances of the parties. Thus, the trial court's order was not one which "no reasonable person" would have adopted. See *In re Marriage of Polksy*, 387 Ill. App. 3d at 140.

Moreover, we reject petitioner's contention that the trial court abused its discretion by not specifically addressing her claims of dissipation. Dissipation of marital and nonmarital assets is a factor to be considered pursuant to section 503(d)(2) of the Marriage Act. 750 ILCS 5/503(d)(2) (West 2006). Petitioner's assertion is without merit, as the trial court expressly stated that it had considered the mandates of section 503 and the record contains no indication that the trial court ignored, misinterpreted, or misapplied those statutory factors. See *In re Marriage of Polsky*, 387 Ill. App. 3d at 2008. In the current matter, the only argument petitioner puts forth is that the trial court did not properly consider her testimony that assets were depleted after the marriage was irretrievably broken. However, again, the trial court could have reasonably rejected petitioner's testimony and

concluded there was not a sufficient basis to find dissipation. See *In re Marriage of McHenry*, 292 Ill. App. 3d at 641. Because the trial court expressly stated that it had considered the statutory factors provided in section 503 of the Marriage Act and the record fails to support petitioner's claim that the trial court did not properly consider those factors, including dissipation, we conclude that no abuse of the trial court's discretion occurred.

Finally, we find no abuse of discretion in the trial court's decision to deny petitioner attorney fees. See *In re Marriage of Awan*, 388 Ill. App. 3d 204, 214 (2009). Petitioner reiterates her arguments that the trial court erred in denying her attorney fees due to her disability and the disparity in income between the parties. However, as with its findings with respect to maintenance and distribution of marital property, the trial court could have reasonably rejected petitioner's testimony that she could not afford to pay her attorney bills, given all of her admissions on cross-examination that she was able to work odd jobs, previously planned to start her own business, and that she signed the contract for the purchase of the Aurora house.

For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

Affirmed.