

2011 IL App (2d) 100431-U
No. 2-10-0431
Order filed September 12, 2011

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 DHAVAL AMIN,)	Appeal from the Circuit Court
)	of Du Page County.
Petitioner and Counter-Respondent,)	
Appellee,)	
)	
and)	No. 08-D-1047
)	
GUNJAN AMIN,)	
)	Honorable
Respondent and Counter-Petitioner,)	Robert J. Anderson,
Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

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

¶ 1 In May 2008, petitioner, Dhaval Amin, filed a petition for dissolution of marriage from respondent, Gunjan Amin; in January 2010, respondent filed a counter petition for dissolution. In March 2010, following a bench trial, the trial court presented its findings and entered a judgment, in which it dissolved the parties' marriage, divided the property, awarded rehabilitative maintenance

to respondent, and ordered petitioner to pay a portion of respondent's attorney fees. Respondent timely appeals, presenting issues regarding the classification and distribution of marital property, dissipation, maintenance, attorney fees, and purported fraud and perjury. We affirm.

¶ 2 On February 11, 2010, the trial court commenced a trial on the petitions. Petitioner testified that he has resided in a house on Shriver Court in Plainfield since November 2006. He and his mother, Kashmira Amin, executed a mortgage on the property; the principal balance was \$280,899.04. Petitioner testified that his parents paid \$72,000 as a downpayment on the house. Petitioner testified that he and his parents were listed as joint tenants on the warranty deed to the property.

¶ 3 Petitioner testified that he and respondent married on January 19, 2006. Petitioner testified that, after the marriage, respondent remained in India and did not live with petitioner at the Plainfield residence until January 2007. Petitioner testified that they separated in September 2007.

¶ 4 Petitioner produced copies of his federal income tax returns filed for 2006, 2007, and 2008. Petitioner testified regarding his other assets such as checking accounts, employment benefits, and personal property. Petitioner testified regarding his mortgage payments, real estate taxes, attorney fees, and other expenses, including a \$7,000 loan from his sister to help pay for his wedding to respondent.

¶ 5 On cross-examination, petitioner admitted that he drafted a check for \$5,000 from his checking account as an earnest money deposit on the Plainfield residence. Petitioner acknowledged he was married to respondent at the time he and his parents purchased the Plainfield residence. Petitioner further admitted that he took \$7,000 from his 401(k) account to pay for his attorney fees. Petitioner acknowledged that his mother wrote a check to him for \$66,000 at the time he purchased

the Plainfield residence and acknowledged that he was married to respondent at that time. Petitioner admitted that he told respondent that the house was theirs.

¶ 6 Petitioner also admitted that he filed immigration papers for respondent, including an Immigration and Naturalization Services I-864 Affidavit of Support, which reflected his agreement “to provide 125 percent of the federal poverty guidelines to her until [his] death, her death, or until she becomes qualified with 40 quarter hours of work, permanently departs the U.S., or becomes a citizen.” Petitioner acknowledged that the document provided that the obligation did not end upon divorce.

¶ 7 Respondent’s counsel asked the trial court to take judicial notice of the Federal poverty guidelines, and the trial court did so.

¶ 8 On redirect, petitioner testified that the \$5,000 earnest money was from funds that he had accumulated both prior to and during the course of the marriage. Petitioner testified that approximately 50% came from funds that he had earned during the course of the marriage.

¶ 9 Respondent testified that she lives in New Jersey and has resided there since petitioner filed for a dissolution. At their wedding, respondent gave petitioner a gold chain, a coin, and an envelope containing money. Respondent testified that prior to their marriage, petitioner told her that she would study and work in the United States. Respondent testified that she is unable to obtain employment in the United States based on her education and work experience in India. Respondent testified her only employment has been at Dunkin’ Donuts. Respondent was attending a school in New Jersey to become a certified massage therapist, and she has taken out a government loan for \$5,773. Respondent further testified that she had no health problems before her marriage but that she has since been prescribed medication for depression.

¶ 10 Respondent further testified that, at their wedding, petitioner gave her jewelry and clothes. Respondent testified that, when she left petitioner, she did not take any jewelry, including her engagement ring, with her. Respondent testified that she has no health insurance coverage and no vehicle. Respondent testified regarding her debts, including approximately \$4,000 she owes to her uncle and \$2,500 to her aunt, who have been supporting her, and \$10,000 to her father. Respondent testified that she was requesting the trial court to order petitioner to pay for her attorney fees and costs.

¶ 11 On cross-examination, respondent admitted that the gold chain, coin, and bracelet were gifts for petitioner and paid for by her parents. Respondent admitted that, once the gifts were given to petitioner, they were his to keep. On redirect, respondent testified that, traditionally, the gifts were returned in the event of a divorce.

¶ 12 At a hearing on March 16, the trial court presented its findings and rulings. The trial court stated that it considered the evidence presented, including the testimony, exhibits, case law the parties had submitted, and the arguments of the parties. The trial court also considered the required statutory factors pursuant to the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/501 *et seq.* (West 2008)).

¶ 13 The trial court found that petitioner received an income tax refund in 2006, 2007, and 2009, and ordered that each party receive one-half of the amounts. With respect to the Plainfield residence, the trial court found that petitioner established by clear and convincing evidence that the property was nonmarital; petitioner's parents contributed most of the down payment; petitioner paid \$5,000 toward the purchase, one-half of which was from income produced during the marriage; and respondent's name was not on the title. The trial court ordered petitioner to pay \$1,250 to

respondent for her interest in the house, which was one-half of the money that was earned during the marriage.

¶ 14 With respect to maintenance, the trial court considered the statutory factors, the affidavit of support, and the applicable case law. The trial court found that there was no obligation for petitioner to pay permanent maintenance to respondent. The trial court stated that permanent maintenance was not supported by case law or by the affidavit. The trial court explained that the marriage was of short duration. It noted that respondent was pursuing her education. The trial court found and “state[d] for the record” that respondent was “bright, intelligent and articulate.” The trial court stated that she would be able to be self-supporting in a short period of time. The trial court ordered petitioner to pay \$1,200 per month for 18 months as rehabilitative maintenance, reviewable.

¶ 15 The trial court further obligated respondent to complete her education, apply for employment, and provide her income tax returns and evidence of her residence and citizenship status or immigration status. The trial court admonished respondent that, if she sought review of the maintenance award, she would have to file a petition prior to the expiration of 18 months and then establish that she accomplished the court’s directives.

¶ 16 With respect to petitioner’s 401(k) plan, the trial court ordered an equal division of the balance of the vested interest but less any loans that were due. It found that petitioner took out loans for financing the marital ceremonies, and ordered the balance to be equally divided.

¶ 17 The trial court ordered the parties to pay their own debts to various family members and people who had given them money. It allowed the parties to keep the gifts they received during the marital ceremony. The trial court awarded petitioner his vehicle. The trial court also ordered petitioner to contribute \$2,500 toward respondent’s attorney fees.

¶ 18 On March 30, 2010, the trial court entered its written judgment. Respondent filed a timely notice of appeal. Respondent challenges the trial court's (1) classification of marital and nonmarital property; (2) distribution of property; (3) refusal to find that petitioner dissipated assets; (4) refusal to award permanent maintenance to her; (5) amount of attorney fees awarded to her; and (6) refusal to acknowledge "the fraud and perjury" of petitioner.

¶ 19 Before reaching the merits, however, petitioner has asked this court to strike, in whole or in part, respondent's brief for failure to comply with our supreme court's rules. Petitioner argues that respondent's Statement of Facts section is argumentative and contains no citations to the record and that her Argument section fails to reference pages of the record, in violation of Supreme Court Rules 341(h)(6) and (7) (Ill. S. Ct. Rs. 341(h)(6), (7) (eff. July 1, 2008)). Petitioner also argues that respondent's appendix violates Rule 342(a) (Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005)), in that it does not include the report of proceedings of March 16, 2010, in which the trial court set forth its opinion and findings for its opinion. Respondent, in her reply brief, acknowledged the errors regarding the citations to the record, and redrafted the Statement of Facts section with citations to the record. In her reply brief, respondent also cited to the record as part of her response to petitioner's brief.

¶ 20 Since the time respondent filed her reply brief, respondent requested, and this court granted, leave to file a supplement to the record. We have reviewed the briefs of the parties, respondent's appendix, the record on appeal, and the motions presented by the parties during the pendency of this appeal and our rulings regarding those motions. " 'Where violations of supreme court rules are not so flagrant as to hinder or preclude review, the striking of a brief in whole or in part may be unwarranted.' " *Hurlbert v. Brewer*, 386 Ill. App. 3d 1096, 1101 (2008) (quoting *Merrifield v. Illinois State Police Merit Board*, 294 Ill. App. 3d 520, 527 (1997)). We deny petitioner's request

to strike respondent's brief in whole or in part. See also *Artisan Design Build, Inc. v. Bilstrom*, 397 Ill. App. 3d 317, 322 (2009) (denying motion to strike, despite party's failure to comply with rules).

¶ 21 Respondent contends that the trial court's classification of the marital and nonmarital assets and distribution of the parties' marital assets were against the manifest weight of the evidence and an abuse of discretion. Respondent argues that the Plainfield residence was marital property because it was acquired after the marriage and because the money from petitioner's mother used to purchase the property was a gift to the marriage. Respondent argues that petitioner had approximately \$6,000 in his savings and checking accounts, which should have been classified as marital property and subject to distribution. Respondent argues that the trial court should have awarded petitioner's vehicle to her. Respondent also argues that her educational debts and living expenses should have been distributed to petitioner to pay. Finally, respondent argues that petitioner dissipated funds from his 401(k) and \$20,000 that petitioner paid to a cousin.

¶ 22 Before a trial court may dispose of property upon dissolution of marriage, the property must be classified as either marital or nonmarital. *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2009) (citing *In re Marriage of Didier*, 318 Ill. App. 3d 253, 258 (2000)). The trial court's classification will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Schmitt*, 391 Ill. App. 3d at 1017 (citing *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 663 (2008)). There is a rebuttable presumption that all property acquired by either spouse after the date of marriage but before the entry of judgment of dissolution is marital property, regardless of how title is held. 750 ILCS 5/503(b) (West 2010). However, a party can overcome this presumption by a showing of clear and convincing evidence that the property falls within one of the exceptions listed

in section 503(a) of the Act (750 ILCS 5/503(a) (West 2010)). *Schmitt*, 391 Ill. App. 3d at 1017 (citing *Didier*, 318 Ill. App. 3d at 258).

¶23 In the present case, the trial court classified the Plainfield residence as petitioner's nonmarital asset. The trial court found that petitioner had established by clear and convincing evidence that the property was nonmarital and explained that petitioner's parents contributed most of the down payment and respondent's name was not on the title. The evidence reflected that, despite the property being acquired in November 2006, after the January 2006 marriage, the parties had not yet begun to live together in the United States. Respondent arrived in the United States in January 2007, and stayed in the Plainfield residence for approximately nine months before leaving to live with relatives in New Jersey. Petitioner remained in the Plainfield residence, and respondent has remained in New Jersey. Despite respondent's assertion on appeal that the \$66,000 funds from petitioner's mother to petitioner "was sham to bar [respondent's] claims to the house," the trial court was in the best position to judge the credibility of the witnesses. See *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004). Moreover, despite respondent's assertion that the \$66,000 downpayment on the Plainfield residence was a gift from petitioner's mother to the marriage, there was no strong evidence to establish a gift. In support of her position, respondent states that petitioner's mother was the only means to establish gift intent, and she did not testify. Respondent's position is misplaced. The testimony of a transferring parent is not always necessary to prove a transfer was or was not a gift. See *In re Marriage of Wanstreet*, 364 Ill. App. 3d 729, 739 (2006) (citing *Didier*, 318 Ill. App. 3d at 258). Rather, a court may look to the language of the document. *Wanstreet*, 364 Ill. App. 3d at 735. The warranty deed to the property listed petitioner and his parents as joint owners of the property, and petitioner testified they were joint owners. Given the evidence presented, we cannot

say that the trial court's decision was against the manifest weight of the evidence. See *Wanstreet*, 364 Ill. App. 3d at 734-39; see also *Heroy*, 385 Ill. App. 3d at 669-73 (finding that husband's acquisition of real estate during the parties' 26-year marriage using income from nonmarital property was also nonmarital was not against the manifest weight of the evidence). We, therefore, uphold the trial court's classification of the Plainfield residence as nonmarital property.

¶ 24 With respect to petitioner's savings and checking accounts, and petitioner's vehicle that respondent claims should have been considered marital property, we deem these claims waived. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Respondent failed to cite any relevant authority in support of her claims of property to which she feels entitled. Because respondent failed to support or develop her claims with relevant authority or meaningful argument, we decline to consider them now.

¶ 25 Once the trial court classifies the property, section 503(d) of the Act requires the trial court to divide the parties' marital property between them in "just proportions considering all relevant factors." 750 ILCS 5/503(d) (West 2010). 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 Polsky*, 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). We will not disturb a trial court's division of marital assets unless it has clearly abused its discretion. *In re Marriage of Crook*, 211 Ill. 2d 437, 453 (2004).

¶ 26 Respondent challenges the trial court's distribution of \$1,250 as her interest in the house. Respondent also argues that all of her educational debts and living expenses should have been distributed to petitioner to pay. Respondent also requests the return of the jewelry, specifically the gold chain, coin, and watch, that were given to petitioner in contemplation of marriage.

¶ 27 Factors relevant in determining the just apportionment of marital property include the contributions of each party, the duration of the marriage, the relevant economic circumstances of each spouse, and the reasonable opportunity of each spouse for future acquisition of assets and income. 750 ILCS 5/503(d)(1), (d)(4), (d)(5), (d)(11) (West 2010). The trial court noted that the parties' marriage was relatively short in duration. The trial court also noted that the evidence established that petitioner's parents took title to the Plainfield residence and contributed almost all of the down payment. They, petitioner, and petitioner's sister resided in the home. The trial court further noted there was no equity in the residence other than the down payment. The trial court stated, "[t]here's no other evidence that's been presented on that issue." With respect to respondent's 401(k) plan, the trial court ordered an equal division of the balance of the vested interest but less any loans that were due. The trial court found that petitioner received income tax refunds in 2006, 2007, and 2009, and ordered that each party receive one-half of the amounts. The trial court ordered the parties to pay their own debts to various family members and people who have given them money. It allowed the parties to keep the gifts they received during the marital ceremony.

¶ 28 The trial court's distribution of marital assets was consistent with the considerations provided in section 503 of the Act. Of the \$5,000 that petitioner paid toward the purchase price of the Plainfield residence, the trial court found that one-half, or \$2,500, was paid from marital funds. Of that \$2,500, the trial court awarded respondent one-half, or \$1,250. The trial court ruled that each party should be responsible for their own debts and that each party should retain any and all gifts. Although respondent asserts that the gifts were conditioned on the marriage and should be returned, respondent also admitted on cross-examination that, once petitioner received them, they were his to keep. Given the testimony presented to the trial court regarding the section 503 factors, the trial court's distribution of marital assets, including its findings regarding the parties' debts to each of their families, was appropriate given the circumstances of the parties. Thus, the trial court's order was not one which "no reasonable person" would have adopted. See *Polsky*, 387 Ill. App. 3d at 140.

¶ 29 As part of the property distribution, respondent asserts that petitioner dissipated funds from his 401(k) and \$20,000 that he paid to a cousin. Dissipation of marital and nonmarital assets is a factor to be considered pursuant to section 503(d)(2) of the Act. 750 ILCS 5/503(d)(2) (West 2010). Respondent'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 *Polsky*, 387 Ill. App. 3d at 2008. In the current matter, respondent puts forth conclusions that dissipation occurred and argument that funds were unaccounted for. However, the trial court found that the funds paid to a cousin were for the marriage ceremonies in India, and the trial court found that petitioner used the funds from his 401(k) to meet his living expenses when he was unemployed. The trial court could have reasonably rejected respondent's argument and concluded there was not a sufficient basis to find dissipation. See

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 respondent's claim, we decline to find otherwise. See *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 204 (2005) (clarifying that the standard of review for a dissipation determination is the manifest-weight-of-the-evidence standard, not the abuse-of-discretion standard).

¶ 30 Next, respondent contends the trial court's award of rehabilitative maintenance instead of permanent maintenance was an abuse of discretion. Respondent argues that the trial court failed to consider her age, health, emotional state, individual needs, lack of education, income, debts, and her future opportunity for acquiring property. Respondent argues that the trial court failed to consider petitioner's total income and potential, erred in considering his debts as marital, and failed to consider his perjuries. Respondent also argues that the trial court failed to consider the Affidavit of Support.

¶ 31 "Permanent maintenance should be awarded where a spouse is not employable or is only employable at a lower income as compared to the spouse's previous standard of living." *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1044 (2008). Rehabilitative maintenance is appropriate where the spouse is employable at an income that would provide the spouse the approximate standard of living enjoyed during the marriage. *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 615 (2004). It is within the trial court's discretion to set the duration of the maintenance award. *Selinger*, 351 Ill. App. 3d at 614. The trial court is in a better position to determine whether permanent or rehabilitative maintenance was more appropriate. *In re Marriage of Golden*, 358 Ill. App. 3d 464, 469 (2005) (citing *In re Marriage of Gunn*, 233 Ill. App. 3d 165, 179 (1992)). The

court's decision to award permanent or rehabilitative maintenance will not be overturned unless the court abused its discretion. *Walker*, 386 Ill. App. 3d at 1044.

¶ 32 In this case, the parties married in January 2006 and separated in September 2007. At the time of trial, respondent was pursuing her education. The trial court expressly found and “state[d] for the record” that respondent was “bright, intelligent and articulate.” The trial court stated that she would be able to be self-supporting in a short period of time. The trial court's comments indicate that respondent will soon be employable at an income that would provide the approximate standard of living enjoyed during the marriage. With respect to the Affidavit of Support, petitioner agreed “to provide 125 percent of the federal poverty guidelines to her until [his] death, her death, or until she becomes qualified with 40 quarter hours of work, permanently departs the U.S., or becomes a citizen.” According to the poverty guidelines placed in evidence by respondent, 125% of the poverty level for a single person is \$1,128 per month. The trial court ordered petitioner pay \$1,200 per month for 18 months as rehabilitative maintenance, but allowed respondent to petition before the expiration of the 18 months to review and determine whether maintenance should be continued. The record clearly reflects that the trial court considered the Affidavit of Support, in addition to the statutory factors and the applicable case law in discussing and ruling on the issue of maintenance to respondent. The court's express findings and orders show it considered all of the statutory factors and the evidence before it. Accordingly, we find no abuse of discretion in the court's decision to award rehabilitative maintenance instead of permanent maintenance.

¶ 33 Respondent next contends that the trial court abused its discretion when it awarded only \$2,500 in attorney fees for her counsel, who had presented a balance owing of \$43,050. Respondent asserts that she demonstrated her inability to pay her attorney fees by owning no capital assets or

having financial stability, and she has no prospects of income or property. Attorney fees are generally the responsibility of the party who incurred the fees. *In re Marriage of Cantrell*, 314 Ill. App. 3d 623, 630 (2000). Section 508(a) of the Act (750 ILCS 5/508(a) (West 2010)) provides in part:

“The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his [or her] own or the other party’s costs and attorney’s fees.” 750 ILCS 5/508(a) (West 2010).

The propriety of an award of attorney fees is dependent upon a showing by the party seeking them of an inability to pay and the ability of the other spouse to do so. *Cantrell*, 314 Ill. App. 3d at 630.

¶ 34 In the present case, we find no abuse of discretion in the trial court’s decision in ordering petitioner to pay \$2,500 of respondent’s attorney fees. See *In re Marriage of Awan*, 388 Ill. App. 3d 204, 214 (2009). Respondent reiterates her claims of financial instability, and her inability to generate income. However, the trial court expressly found that respondent was “bright, intelligent and articulate” and would be able to be self-supporting in a short period of time. Even though the trial court stated the foregoing with respect to its ruling on maintenance, the trial court’s finding is also applicable in this context. The trial court had previously ordered petitioner to pay approximately \$5,000 for respondent’s attorney fees. Respondent had paid approximately \$12,110 for his own attorney’s services. On our review of the record, the trial court’s award and amount of fees was clearly based on the consideration of the factors set forth in the statute, and the work being compensated for was reasonably required and necessary for the proper performance of legal services in this case. See *Awan*, 388 Ill. App. 3d at 215. Accordingly, we find that the trial court did not abuse its discretion in awarding respondent attorney fees in the amount of \$2,500.

¶ 35 Respondent's final issue is whether the trial court abused its discretion in ignoring petitioner's fraud and perjury. Without citing to any pages of the record, respondent challenges petitioner's credibility in that "he has repeatedly lied since the inception of the matter. He lied in his Petition, at his prove up in July 2008, on his interrogatories, in his production, at his deposition, and even lied to the court at trial, and, later admitted that he had repeatedly lied." Respondent further asserts, again without citing to any pages of the record, that petitioner "lied on his loan application ***, lied on the mortgage documents, and lied at the closing of the real estate" and "withheld necessary evidence in his interrogatories, production, deposition, and in court." Respondent asks this court to strike petitioner's testimony.

¶ 36 We decline to review respondent's claim here because she provided nothing more than her own assertions in support of her contention. The trial court made no ruling with respect to respondent's claim of perjury, if in fact respondent presented a claim to the trial court. Moreover, this court has no duty to search the record to determine the veracity of factual assertions unsupported to citations to the record. *Jacobs v. Mundelein College, Inc.*, 256 Ill. App. 3d 476, 480 (1993). Therefore, to the extent that such assertions are unsupported by citations to the record, they are not ascertainable, and we decline to consider them.

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

¶ 38 Affirmed.