2011 IL App (2d) 110233-U
No. 2-11-0233
Order filed December 23, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF BRUCE MAXSON, Petitioner-Appellant, and ELIZABETH ANN MAXSON, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Lee County. No. 10-D-2 Honorable Jacquelyn D. Ackert, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

Held: Trial court erred in not concluding that presumption of gift arose where wife transferred non-marital property into a trust; trust instrument evinced the parties' intent to relinquish their rights as individual owners of separate non-marital property; trial court's classification of trust property as non-marital was against the manifest weight of the evidence where wife did not present clear and convincing evidence to overcome presumption of gift.

¶ 1 Following a judgment dissolving the marriage between petitioner, Bruce Maxson, and respondent, Elizabeth Maxson (Betsy), the circuit court of Lee County entered an order classifying certain property held in a family trust as Betsy's non-marital property. Bruce appeals, contending

that the property held in the trust was marital property subject to equitable distribution between the parties. For the following reasons, we reverse and remand.

¶ 2 BACKGROUND

¶ 3 Bruce and Betsy were married on December 30, 1989, and had one child. On January 8, 2010, Bruce filed a petition for dissolution of marriage. The trial court entered a judgment dissolving the marriage on August 17, 2010. The parties reached an agreement as to custody but disputed the issues of maintenance, child support, and property division.

¶ 4 The parties stipulated as to certain facts. The home located at 60 Browns Beach in Rock Falls, Illinois, had been in Betsy's family for four generations. When Betsy's father died on April 3, 2006, title to the home was held by a trust. Upon her father's death, Betsy received a substantial sum of life insurance proceeds. In January 2007, Betsy used $280,236 of the proceeds to purchase the Browns Beach home from the trust. Title was placed in Betsy's name only.

¶ 5 Between January 2007 and October 2009, Bruce and Betsy spent approximately $500,000 renovating the Browns Beach home. The sources of the funds were as follows: $100,000 from the life insurance proceeds; $150,000 from the sale of Bruce and Betsy's prior home in Connecticut; and $250,000 borrowed by Bruce individually and secured by a mortgage on the Browns Beach home.

¶ 6 In July 2008, Bruce and Betsy retained an attorney to assist them in estate planning. The attorney prepared a declaration of trust entitled the Maxson Family Trust Dated August 4, 2008 (the Illinois trust). Bruce and Betsy signed the declaration on that date. On the same day, Betsy signed a warranty deed transferring title to the Browns Beach home to the trust. Betsy also closed her account that held the remaining life insurance proceeds and transferred them into an account held by the trust (the trust account). Bruce signed a quitclaim deed transferring ownership of a timeshare in Las Vegas to the trust.

¶ 7 At trial, Bruce testified that he had been employed by Verizon for the duration of the marriage and that he and Betsy had made several job-related moves. They moved to California in 1998, where they purchased a home. In 2006, the parties sold their California home and moved to Connecticut, where they purchased their next home. When Betsy's father died, the parties made the joint decision to purchase the Browns Beach home. The most liquid funds available for the purchase were Betsy's life insurance proceeds. The parties intended for the home "to be our last house, the property we would be in for the rest of our lives." Bruce acknowledged that Betsy purchased the home in her name alone, but testified that the purchase was a joint decision "as husband and wife."

¶ 8 Bruce also testified regarding a family trust that preceded the Illinois trust. While living in California, the parties had consulted an attorney, who had set up the Maxson Family Trust Dated November 11, 2003 (the California trust). The declaration of trust, which was entered into evidence at trial, provided that all property transferred into the California trust would retain its character as community property, quasi-community property, or separate property. Although Bruce testified that the trust had held title to the parties' California and Connecticut homes, nothing else in the record indicates what property was contained in the trust. The schedules attached to the trust instrument for listing the parties' separate property and the community property were left blank. Upon moving into the Browns Beach home, the parties terminated the California trust and created the Illinois trust.

¶ 9 The declaration of the Illinois trust was also entered into evidence at trial. The trust instrument appointed Bruce and Betsy co-trustees, and made the parties' daughter a beneficiary. Regarding the parties' powers as co-trustees, the trust provided that, although each trustee individually could sign on behalf of the trust, "no transfer of real estate shall be made from the trust except on the signatures of both of us." The trust directed the trustees to pay to the parties during their lifetimes in at least quarter-annual installments any income generated by the trust. It also

provided that, upon the death of one spouse, the trust shall continue for the benefit of the surviving spouse. The trust directed that, upon the death of the survivor, a successor trustee shall distribute the remaining trust principal and any income into a new trust for the benefit of the parties' daughter.

¶ 10 The tenth article of the trust provided that the parties made no "promise as to revocability, after the death of either of us." Further, the parties "specifically agree[d] that the survivor may amend or completely revoke this trust and no other beneficiary of the trust shall have any right to object to such change." The article went on:

> "We wish that the same effect be given to this trust during our lifetimes and on the death of the first to die as if all of the property held in trust were held jointly with right of survivorship without any trust provisions. The survivor shall have full control over all assets upon the death of the first to die."

In addition to being revocable upon the death of one spouse, the parties could "jointly" revoke the trust at any time during their lifetimes "by written instrument delivered to the trustee."

¶ 11 On the same day they signed the declaration of trust, the parties executed wills directing that the residue of their estates be transferred into the trust upon their deaths.

¶ 12 The parties' testimony regarding the purpose of the California and Illinois trusts was largely consistent, but differed in some respects. Bruce testified that the "first and foremost" purpose of the California and Illinois trusts was to provide for the parties' daughter in the event of their deaths, while another important purpose was to minimize estate tax liability and to avoid probate. Betsy also testified that the primary purpose of the trust was to provide for their daughter in the event of the parties' deaths, and agreed that another purpose was to reduce estate tax liability and to avoid probate, which was something Betsy's father had recommended. Bruce later added that two additional purposes were to "pool[] all of our interests" and "to establish a survivorship and joint

relationship." When asked by his attorney whether the parties had used the trust as others might use a joint tenancy to "put[] the house in both names," Bruce answered, "I think that's fair, yes." Betsy did not testify as to whether she had intended to make a gift to the marital estate when she transferred title to the house to the Illinois trust. When asked by Bruce's attorney whether the Browns Beach home was the parties' marital home, Betsy did not respond. When asked whether she and Bruce had lived there during the marriage, she testified, "Yes."

¶ 13 Regarding control and direction over the trust account, Bruce testified that he was the "primary point of contact" for the bank that held the account. He would meet with employees of the bank to "do regular account reviews, performance review, [and] investment strategy discussion." Bruce would also provide "guidance or direction *** around either withdrawals or the discontinuation of withdrawals from the account." Betsy testified that she was "pretty disassociated with the financial aspect of anything that was going on." The periodic meetings regarding the trust account were "nothing that interest[ed] [her] at all." Betsy stated that, when she and Bruce separated, he told her, "I don't know what you're going to do about your bills. You haven't seen one in 24 years." When asked whether that was a fair statement, Betsy said, "Yes, it was."

¶ 14 Bruce further testified that, for a period of time, the parties had received monthly distributions from the trust of approximately $2,000 representing trust income. They had used the funds for family expenses, including to pay off credit cards.

¶ 15 Regarding the $250,000 home equity loan that went toward improvements to the Browns Beach home, Bruce testified that he alone executed the loan agreement as a matter of convenience. The loan agreement, which was admitted into evidence at trial, was signed by Bruce individually, while the mortgage on the Browns Beach home that secured the loan was signed by Bruce as trustee of the Illinois trust. Bruce testified that he made the interest payments on the loan from the trust

account. It is unclear based on the record before us how property taxes and homeowners' insurance premiums on the home were paid, although there was testimony that at least a portion of the taxes and insurance premiums were paid using marital funds.

¶ 16 Bruce also testified that, after he filed for divorce, he contacted the bank and attempted to pay off the home equity loan using funds from the trust account. An employee of the bank declined to do so without Betsy's approval. Betsy testified that the bank employee had been aware of the pending divorce, and that is what had prompted the employee to require Betsy's approval. At the time of the dissolution, the mortgage still had a balance of approximately $249,000, while the trust account had a balance of approximately $344,000.

¶ 17 On December 1, 2010, the trial court entered a written order resolving the issue of property division. The court found the Browns Beach home and the life insurance proceeds to be Betsy's non-marital property:

> "The court finds that the evidence established that Betsy received a substantial sum of money from her father's life insurance trust and she used a portion of that to purchase the Browns Beach home. At the time of acquisition, she took title to both assets in her name only. The Maxson Family Trust was established as an estate planning tool and was not intended to be a gift of Betsy's non-marital estate to the Maxson marital estate. The court finds that the Browns Beach home is Betsy's non-marital property.
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> In addition to the Browns Beach home, Betsy's non-marital assets awarded to her include the remaining balance of her life insurance money *** that was placed into the Maxson Family Trust ***."

The court also ordered that Betsy reimburse the marital estate for the $150,000 from the sale of the parties' Connecticut home that was used towards improvements to the Browns Beach home. Finally, the court directed Betsy to "make a good faith effort to remove Bruce's name from the note and mortgage on the Browns Beach home." Bruce filed this timely appeal.

¶ 18 ANALYSIS

¶ 19 On appeal, Bruce argues that the trial court erred in finding that the Browns Beach home and the life insurance proceeds contained in the Illinois trust were Betsy's non-marital property. Bruce contends that, by transferring the home and the life insurance proceeds into the trust, Betsy transferred them into a form of co-ownership, which gave rise to a presumption that Betsy intended a gift to the marital estate. Bruce further argues that Betsy did not present clear and convincing evidence at trial to rebut the presumption of gift.

¶ 20 Betsy responds that she did not transfer the home and the life insurance proceeds into a form of co-ownership, because Bruce merely was a co-trustee and a co-beneficiary of the Illinois trust, not a co-owner of the trust property. Betsy further contends that, even if the circumstances did give rise to the presumption of gift, she presented clear and convincing evidence to rebut the presumption. She argues that the trial court's finding that the parties created the trust for estate planning purposes only was not against the manifest weight of the evidence.

¶ 21 Section 503(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) defines "marital property" as "all property acquired by either spouse subsequent to the marriage." 750 ILCS 5/503(a) (West 2010). The section then exempts certain categories of property, which it classifies as "non-marital property." 750 ILCS 5/503(a) (West 2010). Among the exempted categories are "property acquired by gift, legacy or descent" and "property acquired *** in exchange for property acquired by gift, legacy or descent." 750 ILCS 5/503(a)(1), (a)(2) (West 2010).

¶ 22 Section 503(b)(1) of the Act outlines certain presumptions applicable to determining whether property is marital or non-marital. 750 ILCS 5/503(b)(1) (West 2010). The section provides that all property acquired by either spouse during a marriage is presumed to be marital property. 750 ILCS 5/503(b)(1) (West 2010). The same presumption arises when non-marital property is "transferred into some form of co-ownership between the spouses." 750 ILCS 5/503(b)(1) (West 2010). Property acquired during a marriage will be presumed to be marital "regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, or community property." 750 ILCS 5/503(b)(1) (West 2010). A party can overcome the presumption "by a showing that the property was acquired by a method listed in subsection (a) of this Section." 750 ILCS 5/503(b)(1) (West 2010).

¶ 23 Illinois courts have continued to apply the common-law presumption of gift following adoption of the Act. *In re Marriage of Rogers*, 85 Ill. 2d 217, 222-23 (1981); 1 H. Gitlin, *Gitlin on Divorce* § 8-9, at 8-46 (3d ed. 2001). While the statute's plain language provides that a party can rebut the presumption that property transferred into a form of co-ownership has become marital "by a showing that the property was acquired by a method listed in subsection (a)" (750 ILCS 5/503(b)(1) (West 2010)), the case law holds that a party must also demonstrate by clear and convincing evidence that he or she did not intend a gift to the marital estate (*In re Marriage of Gattone*, 317 Ill. App. 3d 346, 352 (2000); *In re Marriage of Johns*, 311 Ill. App. 3d 699, 703 (2000); *In re Marriage of Cecil*, 202 Ill. App. 3d 783, 787 (1990)). This rule is based on the presumption that a spouse who transfers non-marital property into a form of co-ownership intended a gift. *Gattone*, 317 Ill. App. 3d at 352; *Johns*, 311 Ill. App. 3d at 703; *Cecil*, 202 Ill. App. 3d at 787.

¶ 24 The initial issue here is whether Betsy transferred the home and the life insurance proceeds into a "form of co-ownership" when she transferred them into the Illinois trust, such that a presumption of gift arose. Bruce argues that the trust was a form of co-ownership, because the trust instrument stated that it was to be treated "as if all of the property held in trust were held jointly with right of survivorship without any trust provisions." Betsy responds that, as a co-trustee and co-beneficiary of the Illinois trust, Bruce did not "own" the trust property. Betsy contends that Bruce's control over the property was more limited than that of a co-owner, because he could not transfer the real estate without both parties' signatures, and because his actions were limited by the fiduciary duties he owed to the trust beneficiaries.

¶ 25 At least one Illinois court has held that a spouse's transfer of non-marital property into a joint trust was sufficient to give rise to a presumption of gift. *In re Marriage of Benz*,165 Ill. App. 3d 273, 280 (1988). However, the court reached its holding in one sentence and offered no analysis to support it. See *Benz*, 165 Ill. App. 3d at 280. Rather than conclusively hold that the Illinois trust was a "form of co-ownership" sufficient to give rise to the presumption of gift, we look to the trust instrument itself to resolve the issue. Our primary concern in construing the trust instrument is to discover the intent of the grantors. *Altenheim German Home v. Bank of America, N.A.*, 376 Ill. App. 3d 26, 32 (2007). We must consider the plain and ordinary meaning of the words used, as well as the document as a whole. *Altenheim*, 376 Ill. App. 3d at 32 (citing *Eychaner v. Gross*, 202 Ill. 2d 228, 256 (2002)). If the language of the trust instrument is clear and unambiguous, we must ascertain the grantors' intent from that language. *Altenheim*, 376 Ill. App. 3d at 32. Our review is *de novo*. *Altenheim*, 376 Ill. App. 3d at 32 (citing *Stein v. Scott*, 252 Ill. App. 3d 611, 614 (1993)).

¶ 26 After reviewing the trust instrument, we conclude that the clear and unambiguous language of the instrument evinced the parties' intent to relinquish their rights as individual owners of

separate non-marital property. While we agree with Betsy that Bruce was not a co-owner of the trust property in a traditional sense, we disagree with her that the trust instrument was insufficient to give rise to a presumption of gift. Several trust provisions lead us to this conclusion. Regarding the Browns Beach home, the trust instrument provided that "no transfer of real estate shall be made from the trust except on the signatures of both [spouses]." By agreeing to this provision, Betsy voluntarily limited a key right she enjoyed as the non-marital owner of the home. See *Department of Transportation v. Anderson*, 384 Ill. App. 3d 309, 312 (2008) ("The primary elements of ownership are the rights of possession, use and enjoyment, the right to change or improve the property, and *the right to alienate the property*." (Emphasis added.)).

¶ 27 Regarding the right of survivorship, the trust instrument provided that the surviving spouse "shall have full control over all assets upon the death of the first to die." The trust further stated that Bruce and Betsy "wish[ed] that the same effect be given to this trust during our lifetimes and on the death of the first to die as if all of the property held in trust were held jointly with right of survivorship without any trust provisions." The parties made no "promise as to revocability, after the death of either of us," and "specifically agree[d] that the survivor may amend or completely revoke this trust and no other beneficiary of the trust shall have any right to object to such change." We agree with Bruce that the clear and unambiguous language of these provisions revealed the parties' intent to transfer control of all trust property to the surviving spouse upon the other spouse's death. Notably, upon Betsy's death, Bruce could have revoked the trust and retained title to the trust property in his name alone. This was another relinquishment of Betsy's rights as the non-marital owner of the home and the life insurance proceeds. After all, Betsy could have placed the property into a trust set up in her name alone and given Bruce no control over the property upon her death.

¶ 28 We also consider it significant that neither party could revoke the trust during the parties' lifetimes without the consent of the other spouse. The trust instrument provided that the parties could "jointly" revoke the trust at any time during their lifetimes "by written instrument delivered to the trustee." Again, Betsy relinquished a key right that she enjoyed as the non-marital owner of the home and the life insurance proceeds, as the trust granted Bruce a degree of control over the trust property that she could not take away without Bruce's consent. See *Anderson*, 384 Ill. App. 3d at 312 (an aspect of ownership is the right of control over the property). Even though Bruce's right to control the property as a co-trustee may have been more limited than that of a traditional co-owner, it was much greater than it would have been had Betsy retained ownership in her name alone.

¶ 29 Given these considerations, we conclude that the trust instrument was sufficient to give rise to a presumption of gift to the marital estate, even if the trust was not a traditional "form of co-ownership." The clear and unambiguous language of the trust instrument evinced the parties' intent to relinquish—or at least severely limit—their rights as individual owners of separate non-marital property. We note that the trial court skipped the initial step of determining whether the presumption of gift arose when Betsy transferred the property into the Illinois trust. The court concluded that the Illinois trust was an "estate planning tool." However, evidence that a spouse transferred property into a form of co-ownership for estate planning purposes is relevant to determining whether a spouse has rebutted the presumption of gift. See *In re Marriage of Wojcicki*, 109 Ill. App. 3d 569, 572-75 (1982) (respondent's testimony concerning estate planning supported conclusion that the respondent had rebutted the presumption of gift). Consequently, the trial court erred in not concluding that the presumption of gift arose under these circumstances.

¶ 30 The next issue is whether Betsy presented clear and convincing evidence to rebut the presumption of gift. Our inquiry is no longer limited to the language of the trust instrument.

Compare *Altenheim*, 376 Ill. App. 3d at 32 (construction of trust is limited to language of trust instrument if the meaning is clear and unambiguous), with *Gattone*, 371 Ill. App. 3d at 352 (listing the extrinsic factors relevant to determining whether a party has rebutted a presumption of gift). Some factors for determining whether a party has rebutted a presumption of gift include (1) the size of the gift relative to the party's entire non-marital estate; (2) who paid the purchase price, made improvements, paid taxes on the property, and exercised control and management over the property; (3) when the asset was purchased; and (4) how the parties handled their prior financial dealings with each other. *Gattone*, 371 Ill. App. 3d at 352; see also *In re Marriage of Guerra*, 153 Ill. App. 3d 550, 558 (1987) (emphasizing the first factor); *Wojcicki*, 109 Ill. App. 3d at 574 (emphasizing the second, third, and fourth factors). The "focal point" of our inquiry is the donor's intent. *Cecil*, 202 Ill. App. 3d at 788. The presumption should not be easy to overcome. *In re Marriage of Berger*, 357 Ill. App. 3d 651, 661 (2005). "If it were, an unnecessary failure of certainty and predictability would enter the financial relationships of spouses and would create wasteful and cumbersome litigation ***." *Berger*, 357 Ill. App. 3d at 661. "Any doubts as to the nature of the property are resolved in favor of finding that the property is marital." *Gattone*, 317 Ill. App. 3d at 352. We will reverse the trial court's classification of the property if it was against the manifest weight of the evidence. *Gattone*, 317 Ill. App. 3d at 352.

¶ 31 The first factor—the size of the gift relative to the spouse's entire non-marital estate—weighs in favor of classifying the Browns Beach home and the life insurance proceeds as Betsy's non-marital property, but the factor is not conclusive. See *Gattone*, 317 Ill. App. 3d at 353 ("the determination of whether property is marital or nonmarital does not hinge on a single factor"). Betsy testified that, in addition to the life insurance proceeds she inherited from her father, she inherited an ownership interest in oil and gas leases that generated income of approximately $200

per month, as well as 500 shares of stock in the Sauk Valley Bank, which apparently had no value. The record also reflects that Betsy owned a life insurance policy with a cash surrender value of approximately $4,850, one-third of which was paid for prior to the marriage, and certain non-marital personal property, valued at approximately $37,545.[1] When Betsy transferred the Browns Beach home, which she purchased for $280,236, and the remaining life insurance proceeds, which totaled at least $344,000,[2] into the Illinois trust, she was transferring the majority of her non-marital estate. Conservatively, the property she transferred into the trust accounted for 80% of her entire non-marital estate. While the Browns Beach home and the life insurance proceeds accounted for a significant portion of Betsy's non-marital estate, this fact alone is not clear and convincing evidence that Betsy did not intend a gift.

¶ 32 Betsy relies on *Guerra* to argue that it would be unreasonable to presume that she intended a gift of such a large portion of her non-marital estate. In *Guerra*, the appellate court held that a husband had overcome a presumption of gift to the marital estate when he deposited into a joint bank account approximately $891,514 from the sale of stock purchased prior to the marriage. *Guerra*, 153 Ill. App. 3d at 553-54, 558. The funds represented approximately 44% of the husband's entire non-marital estate, and the court considered it unreasonable to presume that the husband intended a gift of such a large portion of his non-marital estate to what was his fourth wife, especially

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[1]Three appraisals were admitted into evidence. The total appraised value of the parties' personal property was $64,965. The trial court classified as marital $27,420 of the property, of which it awarded $19,145 to Betsy and $8,275 to Bruce. The court classified the remaining items as Betsy's non-marital property, which were calculated to be worth $37,545.

[2]The balance in the account at the time of the dissolution was approximately $344,000.

considering that the husband had several children from prior marriages. *Guerra*, 153 Ill. App. 3d at 558. Other considerations supported the court's holding, including that the husband and wife in practice had treated the joint account as the husband's separate "blue" account, while they had treated another joint account as the wife's separate "pink" account. *Guerra*, 153 Ill. App. 3d at 557-58. *Guerra* is distinguishable from the present case, which involves a long-term first marriage during which the parties commingled nearly all of their assets and made little-to-no effort to keep their non-marital estates separate.

¶ 33 The second factor—who paid the purchase price, made improvements, paid taxes on the property, and exercised control and management over the property—mostly weighs in favor of classifying the Browns Beach home as marital property. Although Betsy paid the purchase price for the home and contributed $100,000 of her life insurance proceeds towards improvements, the parties' spent an additional $400,000 of marital funds on improvements—$250,000 from a home equity loan in Bruce's name and $150,000 from the sale of the couple's Connecticut home. Bruce testified about the extensive renovations, which were based upon joint decisions by both spouses. Once sufficient renovations had been completed, the parties moved into the home together with their daughter and exercised joint control over the home. Although the record is unclear on this point, it appears that at least a portion of the property taxes and homeowners' insurance premiums were paid from marital funds. These facts significantly differ from the facts of a case like *Wojcicki*, in which the husband overcame the presumption of gift, in part, by showing that he had not only paid the purchase price for the properties in question, but also had made substantial improvements to the properties prior to the marriage, exercised exclusive control over the properties, and paid all property taxes and maintenance costs using non-marital funds. *Wojcicki*, 109 Ill. App. 3d at 574. The record

contains no evidence that Betsy made an effort to exercise exclusive control over the Browns Beach home or to pay for the improvements using non-marital funds only.

¶ 34 The second factor also weighs in favor of classifying the life insurance proceeds as marital. The only applicable element is the exercise of control and management, which both parties testified was exercised largely by Bruce. Bruce would meet with employees of the bank that held the trust account to "do regular account reviews, performance review, [and] investment strategy discussion." Bruce would also provide "guidance or direction *** around either withdrawals or the discontinuation of withdrawals from the account." Betsy, on the other hand, testified that she was "pretty disassociated with the financial aspect of anything that was going on." The periodic meetings regarding the trust account were "nothing that interest[ed] [her] at all." Moreover, the parties used distributions of income from the trust account to pay for family living expenses.

¶ 35 The third factor—when the asset was purchased—weighs in favor of classifying the Browns Beach home as marital property. Betsy purchased the home in January 2007, seventeen years after the parties were married and three years before Bruce filed for divorce. Neither party testified that there was any discord in the marriage at the time of the purchase. Bruce testified that he and Betsy jointly made the decision to purchase the home. They made the decision "as husband and wife," intending for the home "to be our last house, the property we would be in for the rest of our lives." Notwithstanding that the Browns Beach home had been in Betsy's family for four generations, Betsy did not purchase the home until she and Bruce decided to sell their Connecticut home and move to Illinois. The third factor is not relevant to classifying the life insurance proceeds.

¶ 36 The fourth factor—how the parties handled their prior financial dealings with each other—weighs in favor of classifying the Browns Beach home as marital property. Bruce testified that the parties' California and Connecticut homes were both held in the California trust.

Consequently, Betsy's decision to place the Browns Beach home in the Illinois trust was consistent with the parties' prior handling of their previous marital homes. Betsy did not retain title to the Browns Beach home in her name only, nor did she transfer it into a trust set up in her name alone; instead, she treated the home exactly as the parties' had treated their prior homes.

¶ 37 The fourth factor also weighs in favor of classifying the life insurance proceeds as marital property. Again, the parties had a history of placing marital property into a trust. Both the California and the Illinois trusts were named the "Maxson Family Trust." Although the California trust provided that all property transferred into the trust would retain its character as community property, quasi-community property, or separate property, nothing in the record suggests that the parties utilized that provision of the trust to segregate non-marital property, as the schedules attached to the declaration of the California trust for listing the parties' separate property were left blank. Betsy could have placed the life insurance proceeds in a trust set up in her name alone, but instead she treated the funds as the parties had treated their marital property in the past. We also find it significant that Betsy never testified that she had not intended a gift to the marital estate when she transferred the property into the Illinois trust.

¶ 38 Betsy relies on *Wojcicki* to argue that she rebutted the presumption of gift by presenting evidence that the parties formed the Illinois trust for purposes of estate planning. In *Wojcicki*, the court considered evidence of the husband's estate planning to support its conclusion that he had rebutted the presumption of gift. *Wojcicki*, 109 Ill. App. 3d at 573-74. The husband had encountered difficulty succeeding to title with respect to certain properties following the death of his first wife, and he testified that his motivation in transferring the properties into joint tenancy with his second wife was "to insulate himself and [his second wife] from similar difficulties in the event of the death of one or the other." *Wojcicki*, 109 Ill. App. 3d at 573. However, as we mentioned

above, the court in *Wojcicki* supported its holding with other considerations, including evidence that the husband made substantial improvements to the properties prior to the second marriage, that he exercised exclusive control over the properties, and that he paid all property taxes and maintenance costs using non-marital funds. *Wojcicki*, 109 Ill. App. 3d at 574.

¶ 39 Unlike the husband in *Wojcicki*, Betsy did not present clear and convincing evidence to corroborate her claim that she transferred the Browns Beach home and the life insurance proceeds into the Illinois trust for estate planning purposes only. The only evidence she presented was her testimony that the primary purpose of the trust was to provide for her daughter in the event of the spouses' deaths, and her testimony that another purpose of the trust was to reduce estate tax liability and avoid probate, which was something Betsy's father had recommended. However, Bruce and Betsy had a history of utilizing trusts to accomplish these objectives, and they had previously placed marital property into the California trust towards that end. It was Betsy's burden to rebut the presumption of gift, and she did not present evidence that she could not have accomplished the same objectives with a trust set up in her name alone. Consequently, the estate planning evidence Betsy presented to rebut the presumption of gift was not clear and convincing but was ambiguous and inconclusive. The other two cases Betsy relies upon are also distinguishable. See *In re Marriage of Davis*, 215 Ill. App. 3d 763, 772-73 (1991) (home remained marital property where the husband had transferred title into the wife's name alone as part of estate tax planning); *In re Marriage of Wittenauer*, 103 Ill. App. 3d 53, 55 (1981) (mere fact that the husband transferred title to property into wife's name alone as an estate planning device did not render the property non-marital).

¶ 40 Based on the foregoing, we conclude that the trial court's finding that the Browns Beach home and the life insurance proceeds were Betsy's non-marital property was against the manifest weight of the evidence. The record does not contain clear and convincing evidence that would rebut

the presumption that Betsy intended a gift to the marital estate when she transferred the home and the life insurance proceeds into the Illinois trust. Adopting the words of the court in *Berger*, if it were easy to overcome the presumption of gift, "an unnecessary failure of certainty and predictability would enter the financial relationships of spouses and would create wasteful and cumbersome litigation, as happened here." *Berger*, 357 Ill. App. 3d at 661.

¶ 41 CONCLUSION

¶ 42 For the above reasons, we reverse the judgment of the circuit court of Lee County, and we remand with directions to classify the Browns Beach home and the life insurance proceeds as marital property and to redistribute the marital property.

¶ 43 Reversed and remanded with directions.