2013 IL App (2d) 121383-U
No. 2-12-1383
Order filed September 16, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF BRADLEY L. DANEMAN, Petitioner-Appellant, and ANTOINETTE KOURY DANEMEN, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Ogle County. No. 2011-D-46 Honorable Michael T. Mallon, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Burke and Justice Schostok concurred in the judgment.

ORDER

Held: Trial court's judgment was affirmed in part and reversed in part where the court's classification of property as nonmarital was not against the manifest weight of the evidence, where the court did not abuse its discretion in distributing equity in marital home, where the court correctly applied the law in dividing funds in a 401(k) plan, and where the appellant forfeited the issue of dissipation, but where the court misclassified one item of personal property as marital property.

¶ 1 Following dissolution of the marriage between petitioner, Bradley Daneman, and respondent, Antoinette Koury Daneman, the circuit court of Ogle County entered an order disposing of the parties' property. Bradley appeals, challenging the trial court's distribution of the equity in the

marital home, of funds in a 401(k) plan and a checking account, and of items of personal property. For the following reasons, we affirm in part and reverse in part.

¶ 2 I. BACKGROUND

¶ 3 Bradley and Antoinette were married on October 19, 2002, and had no children during their marriage. Antoinette was previously widowed; Bradley was previously divorced. Bradley petitioned for dissolution of marriage in March 2011, and Antoinette counterpetitioned in November of that year. On December 14, 2011, the trial court dissolved the marriage. The only contested issue was the division of property, which went to trial on November 14, 2012.

¶ 4 A. Marital Home

¶ 5 Antoinette testified that she married her first husband in 1959. In 1976, they purchased the home located at 1325 Tenth Avenue in Rochelle, Illinois. Her first husband passed away in 1983. Bradley moved into the home with Antoinette prior to their marriage in October 2002. Bradley was having "financial issues," and, in March 2000, he and Antoinette took out a debt consolidation loan in the amount of $31,922.65. The loan was used to consolidate Bradley's car loan balance of $15,578.06, Bradley's credit card debt of $10,553.42, and Antoinette's home equity loan balance of $5,791.17. The Tenth Avenue home was used as collateral for the debt consolidation loan. The parties refinanced the debt consolidation loan in July 2002 to secure a lower interest rate.

¶ 6 In November 2004, Antoinette and Bradley purchased a home located at 628 North Sixth Street in Rochelle. They took out an $80,000 bridge loan along with a traditional mortgage in the amount of $78,500. According to Antoinette, they put down $84,061 at the closing, in addition to $2,000 in earnest money that Antoinette had paid from her personal checking account.[1] When the

[1]There is a discrepancy between Antoinette's testimony and the HUD-1 settlement statement

Tenth Avenue home was sold in February 2005, the bridge loan was paid off, which left $21,816.44 in cash proceeds from the sale of the house. On cross-examination, when asked if she had ever placed Bradley's name on the deed to the Tenth Avenue house, Antoinette testified, "No, not knowingly." However, she acknowledged that both she and Bradley signed the warranty deed in February 2005 when the Tenth Avenue house was sold.

¶ 7 Antoinette agreed that the appraised value of the Sixth Street house was $138,500. She testified that the mortgage balance was $31,006, which left equity of $107,494. She further testified that, after her nonmarital contributions of $2,000 and $84,061 were accounted for, the net equity in the house was $21,433.

¶ 8 Bradley testified that he moved into the Tenth Avenue house in 1998. When asked if Antoinette placed his name on the title to that home, Bradley testified, "[Y]es, at the end when we had, when we were trying to sell it and negotiate." He further testified that all of the loans for which the Tenth Avenue house served as collateral were paid off during the marriage. When the parties

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dated November 17, 2004, which was admitted into evidence at trial. Line 303 of the statement indicated that Bradley and Antoinette put down $75,391.25 in cash at the closing. The $84,061 figure that Antoinette testified was the parties' down payment appeared on line 220 of the statement and was not a down payment but was the total of (1) the $2,000 in earnest money paid by Antoinette, (2) the $78,500 mortgage, and (3) a $3,561.08 credit from the sellers for unpaid property taxes for the first 11 months of 2004. See U.S. Department of Housing and Urban Development, *Shopping for Your Home Loan: HUD's Settlement Cost Booklet*, http://www.hud.gov/offices/hsg/ramh/res/Settlement-Booklet-January-6-REVISED.pdf (explaining how to read a HUD-1 settlement statement). Because the parties do not address this discrepancy, we will overlook it.

purchased the Sixth Street house in November 2004, they put $84,061 down,[2] which was funded by the $80,000 bridge loan taken out in both Antoinette's and Bradley's names. The proceeds from the sale of the Tenth Avenue house in February 2005 were used to pay off the bridge loan, and the approximately $21,000 remaining was deposited into a joint checking account.

¶ 9 B. 401(k) Plan

¶ 10 Antoinette testified that, through her former employer, First National Bank of Rochelle, she had a 401(k) plan to which she made contributions both before and during the marriage. The parties stipulated to the admission of a document prepared by Carolyn Neal, an employee of First National Bank, which reported the amounts of Antoinette's contributions before and during the marriage. On December 14, 2011, the 401(k) plan had a balance of $219,122. Before the marriage, Antoinette contributed $83,787 to the plan, and, during the marriage, she contributed $60,658. The contributions had grown by a total of $74,677 over the life of the plan, and 42% of that growth, or $31,365, was attributable to the growth of Antoinette's contributions during the marriage. According to the exhibit, if Bradley were to be reimbursed for 50% of the contributions during the marriage, plus 50% of the growth attributable to those marital contributions, he would receive $46,011.50.

¶ 11 C. Checking Account

¶ 12 Antoinette testified that the parties had two joint checking accounts during the marriage but that, in practice, Antoinette used one account and Bradley used the other. Antoinette testified that, in March 2011, which was the same month Bradley filed his petition for dissolution of marriage, she closed the joint account that she typically used and transferred a total of $35,000 into an account

[2]Again, there is a discrepancy between Bradley's testimony and the HUD-1 settlement statement dated November 17, 2004, which indicated that the parties put down only $75,391.25.

opened in her name alone. Of the funds transferred, $6,000 came from the joint account that Bradley typically used. At that time, $6,091 remained in Bradley's joint account.

¶ 13 Antoinette further testified that, between March 2011 and the time of trial, she spent a total of $31,400 from her new account. She paid $7,000 to her attorney, $5,000 to Bradley pursuant to a court order, $8,400 in mortgage payments, and $11,000 in real estate taxes. Her monthly social security checks were deposited into the account, and she also used the account to pay her daily living expenses. At the time of trial, her account had a balance of $9,000.[3]

¶ 14 Bradley's testimony corroborated Antoinette's testimony that, during the marriage, the parties had two joint checking accounts, but Bradley used one and Antoinette used the other. He further agreed that, at the time he filed for dissolution of marriage, Antoinette's account had a balance of $35,020, and his account had a balance of approximately $6,000.

¶ 15 D. Personal Property

¶ 16 Bradley testified that he had prepared a list of items of personal property that he purchased prior to the marriage. The list was admitted into evidence and contained 63 items. Upon further questioning by his attorney, Bradley testified that several items on the list were purchased during the marriage, including stone bust book ends, a brass fudge kettle, a Weber gas grill, and two wooden elephants.

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[3]Both parties used the date of trial as the valuation date for the marital checking accounts, which was incorrect. See *In re Marriage of Mathis*, 2012 IL 113496, ¶ 30 (holding that, "in a bifurcated dissolution proceeding, the date of valuation for marital property is the date the court enters judgement for dissolution following a trial on grounds for dissolution [(citation)] or another date near it"). Again, neither party addresses this discrepancy, so we will overlook it.

¶ 17 Antoinette testified that she had marked on a copy of Bradley's list of personal property the items that she believed were purchased during the marriage. In addition to the items Bradley testified were purchased during the marriage, Antoinette's marked list, which was admitted into evidence, identified a washer and dryer, watch crystal lenses and four cases, and a basement freezer. Antoinette further testified that, although Bradley purchased the kitchen refrigerator and stove prior to the marriage, he gifted those items to the Sixth Street house after the parties purchased it. According to Antoinette, he did so because her refrigerator and stove were sold with the Tenth Avenue house.

¶ 18 E. Trial Court's Order

¶ 19 On November 16, 2012, the trial court issued a written judgment and order. The court found the Sixth Street home was marital property and awarded it to Antoinette. The court further found that the property was "subject to contribution" from Antoinette's nonmarital estate.[4] After taking into account Antoinette's nonmarital contributions, the court determined the "net equity in the marital property" was $21,433. The court determined that Bradley was not entitled to any portion of the equity in the home. The court based its decision on "the equities herein specifically, an offset for the debt consolidation loan primarily for the benefit of [Bradley]."

¶ 20 Regarding Antoinette's 401(k) plan, the trial court awarded Bradley $46,011.50 as "his share of the marital portion" of the plan. The court awarded Antoinette the remaining balance. Regarding the marital checking accounts, the court ordered Antoinette to pay Bradley $4,500. Regarding personal property, the court awarded Antoinette the refrigerator, freezer, washer, dryer, Weber gas

[4]In other words, Antoinette's nonmarital estate was entitled to reimbursement for its contributions to the marital estate.

grill, vintage Coke machine, brass fudge kettle, stone bust book ends, watch crystal lenses with four cases, and two wooden elephants. The court awarded Bradley the remaining items on the list. Bradley timely appealed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, Bradley argues that (1) the trial court's classification of the Tenth Avenue house as Antoinette's nonmarital property was against the manifest weight of the evidence, (2) the court abused its discretion in distributing the equity in the Sixth Street marital home, (3) the court's division of the increase in value of Antoinette's 401(k) plan was error, (4) the court's failure to find that Antoinette dissipated funds in the marital checking account was against the manifest weight of the evidence, and (5) the court abused its discretion in allocating personal property to Antoinette.

¶ 23 Section 503 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503 (West 2012)) governs the disposition of property in dissolution of marriage proceedings. A court must first classify the parties' property as either marital or nonmarital. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 44. The Act defines "marital property" as "all property acquired by either spouse subsequent to the marriage" (750 ILCS 5/503(a) (West 2012)) and provides for a rebuttable presumption that all property acquired by either spouse during a marriage is marital (750 ILCS 5/503(b)(1) (West 2012)). The same rebuttable presumption arises when nonmarital property is "transferred into some form of co-ownership between the spouses." 750 ILCS 5/503(b)(1) (West 2012). The presumption can be overcome by clear and convincing evidence that the property was acquired by a method listed in section 503(a) of the Act. 750 ILCS 5/503(b)(1) (West 2012); *Romano*, 2012 IL App (2d) 091339, ¶ 45. "Any doubts as to the nature of the property are resolved

in favor of finding that the property is marital." *In re Marriage of Gattone*, 317 Ill. App. 3d 346, 352 (2000).

¶ 24 Section 503(c) of the Act governs the disposition of commingled marital and nonmarital property. 750 ILCS 5/503(c) (West 2012). It provides that, "[w]hen marital and non-marital 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 2012). The section further provides that, where marital and nonmarital property have been commingled, "the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation." 750 ILCS 5/503(c)(2) (West 2012). However, " no such reimbursement shall be made with respect to a contribution which is not retraceable by clear and convincing evidence, or was a gift." 750 ILCS 5/503(c)(2) (West 2012).

¶ 25 Case law provides that, where a spouse transfers nonmarital property into a form of co-ownership, a presumption arises that the spouse intended a gift to the marital estate. *Gattone*, 317 Ill. App. 3d at 352. To overcome the presumption of gift, and, accordingly, to be entitled to reimbursement pursuant to section 503(c)(2) of the Act, a spouse must demonstrate by clear and convincing evidence that he or she did not intend a gift. *Gattone*, 317 Ill. App. 3d at 352; see also *In re Marriage of Flemming*, 143 Ill. App. 3d 592, 597 (1986) ("Section 503(c)(2) does not mandate reimbursement for property which was gifted to the marital estate.").

¶ 26 We review a trial court's classification of property as marital or nonmarital using the against-the-manifest-weight-of-the-evidence standard. *Gattone*, 317 Ill. App. 3d at 352. A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or

when the court's findings appear to be unreasonable, arbitrary, or not based upon the evidence. *Romano*, 2012 IL App (2d) 091339, ¶ 44.

¶ 27 Once a court has classified the parties' property as marital or nonmarital, it must assign each spouse's nonmarital property to that spouse. 750 ILCS 5/503(d) (West 2012). The court then is to divide the marital property between the parties without regard to marital misconduct and in "just proportions," taking into account all relevant factors from those listed in section 503(d) of the Act. 750 ILCS 5/503(d) (West 2012). We review a trial court's findings on the individual factors using the against-the-manifest-weight-of-the-evidence standard, but we review a court's final property disposition for an abuse of discretion. *Romano*, 2012 IL App (2d) 091339, ¶ 121. "A trial court abuses its discretion only where no reasonable person would have distributed the property as the trial court did." *Romano*, 2012 IL App (2d) 091339, ¶ 121.

¶ 28 A. Classification of Tenth Avenue Home

¶ 29 Bradley argues that the trial court's classification of the Tenth Avenue home as Antoinette's nonmarital property was against the manifest weight of the evidence.[5] According to Bradley, the

[5] The trial court's written order did not contain a finding that the Tenth Avenue home was Antoinette's nonmarital property. However, it is clear from the record, and from Antoinette's testimony specifically, that the trial court accepted Antoinette's position that the total of $86,061 she contributed toward the purchase of the Sixth Street house was a contribution of funds from her nonmarital estate. Antoinette testified that $84,061 of the $86,061 in nonmarital funds she contributed were traceable to the sale of the Sixth Street home. The court found that the "net equity" in the Tenth Avenue home was $21,433, which is the result of subtracting $86,061 in nonmarital

evidence was "clearly apparent" that Antoinette transferred title to the Tenth Avenue house into both parties' names. Bradley further argues that, because of the misclassification, the court erroneously ruled that Antoinette's nonmarital estate was entitled to reimbursement for the proceeds from the sale of the Tenth Avenue house that were used to pay off the bridge loan that was used to purchase the Sixth Street marital home.

¶ 30 Bradley's argument in support of his alleged co-ownership of the Tenth Avenue house is without merit. As evidence that he and Antoinette co-owned the Tenth Avenue house, Bradley refers to the warranty deed executed when the Tenth Avenue house was sold in February 2005. The record contains a copy of only one page of the deed and does not include a signature page. The page of the deed in the record refers to Bradley and Antoinette as the grantors of the property. As Antoinette argues, it is just as plausible that Bradley's name appeared on the deed only in order to release any right he may have had to a homestead exemption as it is that his name appeared on the deed in order to release an ownership interest. Notably, the warranty deed contained a release and waiver of "all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois." See 735 ILCS 5/12-904 (West 2012) (providing that a spouse's release or waiver of his or her homestead exemption must be in writing); *Mason v. Truitt*, 257 Ill. 18, 23-24 (1912) (holding that, where parol evidence of lost warranty deed did not indicate whether deed contained release and waiver of husband's homestead exemption, the deed "conveyed only the excess, if any, above the homestead estate of $1,000"). Simply put, the warranty deed was not the evidence of co-ownership that Bradley contends it was and, without evidence that the home had been transferred into "some form of co-ownership between the spouses" (750 ILCS 5/503(b)(1) (West 2012)), no presumption arose that

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contributions and a $31,006 mortgage balance from the $138,500 fair market value of the home.

the Sixth Street home was marital property. Although Antoinette, as the party claiming the Sixth Street home was nonmarital property, bore the burden of proof (*Romano*, 2012 IL App (2d) 091339, ¶ 45), she met that burden by presenting undisputed evidence that she acquired the home prior to the marriage (see 750 ILCS 5/503(a)(6) (West 2012) (defining "non-marital property," in part, as "property acquired before the marriage")).

¶ 31 Moreover, Bradley did not testify that Antoinette ever executed a deed that listed the two of them as grantees. When asked if Antoinette placed his name on the title to the home, Bradley simply testified, "[Y]es, at the end when we had, when we were trying to sell it and negotiate." Had a deed existed that listed Bradley and Antoinette as grantees, as opposed to grantors, it would have been easy-to-produce evidence of his ownership interest. The HUD-1 settlement statement from the closing of the Tenth Avenue property listed Antoinette as the only seller, and all proceeds from the sale of the home were paid to her. Furthermore, Antoinette testified that she never knowingly placed Bradley's name on the deed to the Tenth Avenue house. See *In re Marriage of Cecil*, 202 Ill. App. 3d 783, 788 (1990) (noting that, in determining whether a spouse has intended to gift property to the marital estate, the focal point of the inquiry is the spouse's donative intent). In sum, to the extent that the trial court classified the Tenth Avenue house as Antoinette's nonmarital property, its classification was not against the manifest weight of the evidence.

¶ 32 B. Equity in Sixth Street Marital Home

¶ 33 Bradley next contends that the trial court abused its discretion in awarding the equity in the Sixth Street marital home entirely to Antoinette. He offers two arguments in support of his contention. First, he argues that the court's disbursement of the equity was erroneous because the proceeds from the sale of the Tenth Avenue house were not Antoinette's nonmarital property.

However, we have already determined that the trial court's classification of those funds as nonmarital property was not against the manifest weight of the evidence. Second, Bradley argues that the trial court's disbursement of the equity was erroneous because the court improperly concluded that "the loans and debts" were primarily for Bradley's benefit.

¶ 34 Bradley's second argument ignores the trial court's written order. The court determined that Bradley was not entitled to any portion of the "net equity" in the Sixth Street home because the "equities herein" warranted applying "an offset for the debt consolidation loan primarily for the benefit of [Bradley]." On appeal, Bradley does not dispute that the debt consolidation loan was primarily for his benefit; rather, he argues that "the loans and debts" were not primarily for his benefit. It is unclear to which "loans and debts" Bradley is referring. The evidence was undisputed that the debt consolidation loan that the parties borrowed in March 2000 and refinanced in July 2002 was primarily for Bradley's benefit. Only $5,791.17 of the $31,922.65 loan was used to pay Antoinette's home equity loan. The remaining portion was used to pay Bradley's premarital debts, which totaled $26,131.48, an amount greater than the $21,433 in "net equity" that the trial court determined remained in the Sixth Street marital home. Bradley has failed to show how the trial court abused its discretion in awarding the equity in the home to Antoinette.

¶ 35 C. Funds in 401(k) Plan

¶ 36 Bradley next argues that the trial court's division of Antoinette's 401(k) plan was error. Bradley relies on *In re Marriage of Phillips*, 229 Ill. App. 3d 809 (1992), in arguing that the trial court should have reimbursed the parties' marital estate for all of the 401(k)'s growth that occurred during the marriage—whether the growth was attributable to nonmarital or marital contributions. In other words, according to Bradley, the marital estate should have been reimbursed for the full

$74,677 in growth of the plan, not just the portion (42% or $31,365) that was attributable to the growth of Antoinette's contributions during the marriage.[6]

¶ 37 Bradley misreads *Phillips* and ignores the body of case law supporting the trial court's division of the plan. In *Phillips*, the trial court erroneously classified as marital property a spouse's savings plan that pre-dated the marriage. *Phillips*, 229 Ill. App. 3d at 818. The appellate court remanded to the trial court with directions to classify the savings plan as nonmarital property, subject to reimbursement to the marital estate for contributions made during the marriage. *Phillips*, 229 Ill. App. 3d at 818. The court stated, "All accumulations in the plan, even those resulting from contributions of marital property, are nonmarital property, subject to reimbursement." *Phillips*, 229 Ill. App. 3d at 818.

¶ 38 Bradley contends that *Phillips* stands for the proposition that a marital estate must be reimbursed for *any* increase in value of a nonmarital asset during a marriage. However, Bradley overstates *Phillips*' holding, because the case involved an increase in value that resulted from marital contributions only. Contrary to Bradley's overly broad reading of *Phillips*, Illinois law is clear that a marital estate is not entitled to be reimbursed for increases in the value of a nonmarital asset that are not attributable to marital contributions or to the significant personal efforts of a spouse. See *In*

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[6]The trial court's written order did not contain a finding that the marital estate was entitled to reimbursement for the $31,365. However, it is clear from the record that the trial court accepted Antoinette's position that Bradley was entitled to 50% of Antoinette's contributions during the marriage, and to 50% of the growth attributable to Antoinette's contributions during the marriage. The trial court awarded Bradley $46,011.50, which consisted of 50% of $60,658 plus 50% of $31,365.

re Marriage of Raad, 301 Ill. App. 3d 683, 687 (1998) ("If the increase in value *** of nonmarital property resulted from a contribution of the marital estate, the marital estate is entitled to reimbursement. *** Conversely, if the increase in value of the nonmarital property did not result from a contribution from the marital estate, the marital estate in not entitled to reimbursement."); *In re Marriage of Hagshenas*, 234 Ill. App. 3d 178, 202 (1992) (holding that a spouse who proved appreciation of an investment account would be entitled to a percentage of the increase equal to the percentage of nonmarital assets in the account); *In re Marriage of Leisner*, 219 Ill. App. 3d 752, 764-65 (1991) (holding that a trial court improperly reimbursed marital estate for growth of pension and profit-sharing plan that was attributable to monies contributed to the plan prior to the marriage); *In re Marriage of Di Angelo*, 159 Ill. App. 3d 293, 297 (1987) ("[I]f the increase in the value of the pension and the I.R.A. (profit sharing account) resulted from a contribution of the marital estate, then the marital estate was entitled to reimbursement."); see also 750 ILCS 5/503(c)(2) (West 2012).

¶ 39 Bradley presented no evidence that the entire $74,677 in growth of the 401(k) plan was attributable to marital contributions or to his significant personal effort. Rather, the only evidence was the document showing that only 42% of that growth, or $31,365, was attributable to marital contributions. The remainder of the growth was attributable to contributions Antoinette made to the plan prior to the marriage. Based on this evidence, the marital estate was entitled to be reimbursed for $31,365, not $74,677, and the trial court did not abuse its discretion in awarding Bradley 50% of the reimbursed amount.

¶ 40 D. Dissipation of Funds in Checking Account

¶ 41 Bradley next argues that the trial court erred in awarding him only $4,500 of the funds from the marital checking account. Bradley's only contention in support of this argument is that the trial

court should have found that Antoinette dissipated marital funds when she withdrew $35,000 from the marital checking accounts and spent a large portion of those funds on attorney fees, mortgage payments, and property taxes.

¶ 42 Bradley did not raise the issue of dissipation in the trial court, and he cannot raise it for the first time on appeal. See *Romano*, 2012 IL App (2d) 091339, ¶ 85 (holding that a party could not raise the issue of dissipation for the first time on appeal). Nowhere during his closing argument, or anywhere else in the record, did Bradley raise the issue of dissipation. Bradley acknowledges in his opening brief that the trial court did not "specifically address" the issue of dissipation; however, based on the record before us, it is apparent that the trial court did not address the issue of dissipation because Bradley never raised it. We also note that, although Antoinette argued in her brief that Bradley forfeited the issue of dissipation,[7] Bradley did not respond to her forfeiture argument in his reply brief. Even if Bradley had not forfeited the issue, he failed to make a *prima facie* showing that Antoinette used marital property for her sole benefit for a purpose unrelated to the marriage at a time when the marriage was undergoing an irreconcilable breakdown. See *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497 (1990) (defining "dissipation"); *In re Marriage of Manker*, 375 Ill. App. 3d 465, 477 (2007) (noting that the burden does not shift to the party charged with dissipation until a *prima facie* case for dissipation has been made).

¶ 43 E. Personal Property

[7]In support of her forfeiture argument, Antoinette asserts that Bradley failed to file a notice of intent to claim dissipation as required under section 503(d)(2) of the Act (750 ILCS 5/503(d)(2) (West 2012)). However, the notice-of-intent-to-claim-dissipation provision was added by Public Act 97-0941, which did not become effective until January 1, 2013, after the trial in this matter.

¶ 44 Bradley's final argument on appeal is that the court abused its discretion in allocating personal property to Antoinette. The trial court awarded to Antoinette a refrigerator, freezer, washer, dryer, Weber gas grill, vintage Coke machine, brass fudge kettle, stone bust book ends, watch crystal lenses with four cases, and two wooden elephants. Bradley asserts that, because the items were his premarital property, the trial court should have awarded them to him.

¶ 45 Bradley's argument is correct, but only with respect to the vintage Coke machine. Bradley testified that all of the items on the list he prepared and admitted into evidence were items he "paid for and brought into the marriage," but his testimony was not unopposed. Bradley himself later testified that the stone bust book ends, brass fudge kettle, two wooden elephants, and Weber gas grill were purchased during the marriage. Antoinette testified that she had marked the items on Bradley's list that she believed were purchased during the course of the marriage. All of the items the trial court awarded to Antoinette were marked on the list, except for the vintage Coke machine. Antoinette further testified that Bradley gifted the refrigerator and stove when he placed them in the Sixth Street home. Based on the evidence presented, the trial court's classification of the vintage Coke machine as marital property was against the manifest weight of the evidence. However, its classification of the other 10 items awarded to Antoinette was not against the manifest weight of the evidence. See *Romano*, 2012 IL App (2d) 091339, ¶ 44 (a decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or when the court's findings appear to be unreasonable, arbitrary, or not based upon the evidence). Because the only evidence concerning the vintage Coke machine was that it was Bradley's premarital property, the trial court abused its discretion in awarding it to Antoinette. See 750 ILCS 5/503(d) (West 2012) (providing that a trial court must assign each spouse's nonmarital property to that spouse).

¶ 46 III. CONCLUSION

¶ 47 For the foregoing reasons, we affirm the judgment of the circuit court of Ogle County, except for the portion of the judgment that awarded the vintage Coke machine to Antoinette, which we reverse.

¶ 48 Affirmed in part and reversed in part.