2014 IL App (2d) 130889-U
No. 2-13-0889
Order filed August 18, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re THE MARRIAGE OF EDWARD DYKSTRA,	)	Appeal from the Circuit Court of Carroll County.
Petitioner-Appellee,	)	
and	)	No. 12-D-28
BIANCAROSA DYKSTRA,	)	Honorable Val Gunnarsson,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly credited to husband the value of the marital home at the time husband put wife's name on deed as his contribution to the marital estate. 750 ILCS 5/503(d)(1) (West 2012). Wife forfeited any argument that the valuation of the marital home should have been at the time of the parties' marriage and not at the time that she was added onto the deed. Trial court relied upon a proper 2008 valuation of the marital home in awarding credit to husband. Wife forfeited argument that trial court failed to reimburse marital estate for prepaid 2013 marital expenses. Trial court erred in holding that reimbursement was not necessary on ground that parties' contributions of marital assets to their non-marital property constituted "a wash." The judgment of the trial court was affirmed in part, reversed in part, and remanded.

¶ 2 Respondent Biancarosa Dykstra (Biancarosa), appeals from the judgment dissolving her marriage to petitioner Edward Dykstra (Edward). On appeal, Biancarosa contends that the trial

court erred: (1) in its valuation and distribution of the marital residence; (2) in its valuation and distribution of the balance of the marital estate; and (3) in denying her claim for maintenance. For the following reasons we affirm in part, reverse in part, and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 The record reflects that on November 21, 2007, Edward and Biancarosa were married. On August 6, 2012, Edward filed a petition for dissolution of marriage on the grounds of mental cruelty. 750 ILCS 5/401(a)(1) (West 2012). At the time the petition was filed, Edward was 54 years old and Biancarosa was 66 years old. After a hearing on February 26, 2013, the grounds of mental cruelty were established. On April 26, 2013, a bench trial was held on property issues and maintenance.

¶ 5 The evidence at trial established that in October 2000 Edward's parents deeded to him 4.06 acres of land and a house located on that land at 2825 Scenic Bluff Road in Thompson, Illinois. Edward's parents lived in that home and farmed the surrounding land from 1976 until 1991, when Edward moved into the home. After the parties married, that home became the marital residence. In April 2008, Edward, Biancarosa, and Edward's parents executed a quit claim deed wherein Edward conveyed to himself and Biancarosa the original 4.06 acre tract as tenants by the entirety and Edward's parents conveyed an adjacent 0.964 acre tract to Edward and Biancarosa as tenants by the entirety. Edward's parents owned 300 acres of land adjacent to the marital residence. Edward rented 274 of those acres from his parents and grew corn and raised steers on that property. At the time Edward filed the petition for dissolution of marriage the marital residence consisted of 5.024 acres and included the house and an extensive set of outbuildings on the property.

¶ 6 Prior to the parties' marriage, Biancarosa was an instructor for 24 years at Fayetteville Technical Community College in Fayetteville, North Carolina, where she taught math, geometry and algebra. She receives a pension of $348 per month from that employment and has a 401(k) in the amount of $10,000. She also receives Social Security benefits in the amount of $900 per month.

¶ 7 Joseph Clarkson, a general certified appraiser, testified that he had been an appraiser since 1977 and he was certified to appraise commercial, agricultural and residential properties. He had resided in Carroll County for 16 years. Clarkson testified that when preparing an appraisal he obtains information about the property from the assessor's office, performs a physical inspection, measures the property's improvements and analyzes the property based upon other types of properties sold in the market. Clarkson said he was asked to perform two appraisals of the property, an appraisal of the property's value in 2008, and an appraisal of the current value of the house in 2012. To do this, Clarkson testified that he used information he was given regarding the condition of the property and followed up by analyzing the property against similar properties. According to Clarkson, the highest and best use of the property was as a single family rural residential property.

¶ 8 Clarkson referred to the 2008 appraisal as a "retrospective valuation" and said it was done in May or June of 2012. He used the same walk-through of the property that he used for the 2012 appraisal, but he looked at comparable properties that had sold in 2007 and 2008 to arrive at a valuation. Clarkson said that he was told there had not been significant changes to the property from 2008 to 2012. When asked whether an additional bathroom had been put in between 2008 and 2012, Clarkson said that if that was the case, he had not picked up on that during his initial discussion with the homeowner. The home currently had two bathrooms in it,

but he did not recall whether it had two bathrooms in his 2008 report. From his recollection, he believed he assigned a value of $165,000 to the home in 2008. At that point, Biancarosa's attorney said that he was willing to stipulate to the admission of the older appraisal and the newer appraisal "to make things move along." The trial court then asked Edward's attorney whether he would be willing to stipulate to Biancarosa's appraisal, and Edward's attorney stipulated to that appraisal. Clarkson was then shown a copy his 2008 retrospective valuation and he noted that he appraised the home at $163,000. He also noted that the retrospective valuation listed the home as having one bathroom.

¶ 9 Clarkson testified that on the property was a two story brick dwelling that had been extensively updated. According to him, the other buildings on the property offered limited additional value because a five-acre cattle feed yard was of very limited use unless you had an extensive farming operation to build the feed stuffs to feed the cattle. Clarkson said that other farmers were not interested in buying that type of property because they were looking to purchase more land instead of looking for cattle feeding improvements. Based upon all the criteria he used to calculate an appraisal, Clarkson found the current value of the marital residence was $185,000.

¶ 10 Michael Blean testified that he was a certified general appraiser who was also hired to prepare an appraisal for the real estate located at 2825 Scenic Bluff Road. Blean used a sales comparison approach which compares similar properties and makes adjustments for different statistically significant characteristics. Blean said that he gave somewhat more value to the outbuildings on the property than did Clarkson. Like Clarkson, Blean also testified that the highest and best use of the property was residential. The reason he gave greater value to the outbuildings was because one of the buildings, the hoop building, was almost new and because it

had "flexibility in its use." Specifically, Blean said that the hoop building did not have to be used for cattle shelter and that some people rent them out for round hay bale storage, equipment storage, or other uses. One building on the property could be used as a small handyman shop. Another building, a barn, had historic value, and on a five-acre site, Blean thought that someone might buy that for horses. Blean also gave value to a small utility shed on the property. He believed that the value he assigned to the property, $215,000, was also well supported by two comparable sales.

¶ 11 On cross-examination, Blean said that with regard to the two sales comparisons, one of the homes was located in a different county and was sold more than two years before trial. All of his sales comparables except one were more than a year old from when he did his appraisal.

¶ 12 Edward testified that before he owned it, the marital residence belonged to his parents, who lived in the home from 1976 to 1991. Edward moved into the home in 1991 and took ownership of it in 2000. In 2008, the residence was titled jointly in the parties' names. The marital residence is contiguous to approximately 300 acres of land which is owned by his parents, of which he rents 274 acres. Since taking over the farm Edward has raised cattle in 8 to 11 month cycles and then sold them. Although he sells some of the corn that he grows on the farm, a majority of the corn is used to feed the cattle. With regard to the farming operation, Edward said that he did everything himself–all the field work, tending to the cattle, maintaining the farm equipment, and handling the sales of the livestock and the grain. Biancarosa did not keep track of the commodities markets in Chicago and she did not consult with him regarding the price of cattle or when to sell to cattle. Although he and Biancarosa had a business card with their email address on it they never had a website to his knowledge.

¶ 13 Edward said that he pays for a majority of the farming operation from the income made from the sale of the cattle. He has an operating loan that he sets up each March with his bank. It is an open line of credit that he uses to pay his expenses. He had to take out a second line of credit this year because he spent more money on the cattle than he had planned to spend. His first line of credit was for $400,000 with an additional $10,726.61 in interest. The second line of credit was for $123,000 and had $478.71 of interest associated with it. He also had farming equipment which he purchased during the marriage that has debt associated with it. In the spring of 2012 he purchased a corn planter for $53,500. The loan on that planter was rolled into a previous debt on 33-acres acres of land that he purchased in 2006 prior to the marriage. At the time of trial, the principal balance on the loan for the 33-acres of land and the corner planter was $75,683.68, with $4,185.72 of interest due. He pays $9,500 yearly in principal and interest on the loan. There was also $59,913.50 owed on the marital residence and surrounding land.

¶ 14 Edward testified that his farming operation had produced the following taxable income in the past five years: (1) 2008 ($25,766); (2) 2009 ($43,508); (3) 2010 ($41,700); (4) 2011 ($24,182); (5) 2012 ($24,700). He said the range in taxable income was attributable to the difference in the price of corn and cattle from year to year.

¶ 15 Edward also testified about other items of personal property acquired during the parties' marriage. He purchased eight cattle feeders, but said that they had no independent value because they were attached to part of the hoop building. For the same reason, Edward said that the augers, which were part of the hoop building, had no additional value. Edward noted that Biancarosa owned residential real estate in Fayetteville, North Carolina, which she rented out during the marriage. The rent payments were deposited into Biancarosa's personal checking account. The taxes and mortgage on that property were paid by direct deposit from a separate

account held by Biancarosa. During the marriage $4,000 was used from the parties' farm account to pay for repairs and improvements to the house. The cost for other improvements to Biancarosa's house came out of her checking account, which rent money was also deposited into. Biancarosa's retirement payments and her Social Security benefits were also deposited into her checking account. With regard to the parties' lifestyle during the marriage, Edward said that they would go out to eat about twice per month, but much of their time was spent doing work on the marital residence. During their marriage, new flooring, wiring, dry wall and plumbing were installed.

¶ 16 Biancarosa testified that she participated in the farming business. During the marriage, the parties doubled the number of cattle and bought a new barn building. According to Biancarosa, her role was to choose the price of the cattle, although she could not contact the vendors directly because of her accent. She designed a business card and made advertisements for the business, and helped construct a big sign outside the house to attract additional customers. She also created a website for the cattle operation.

¶ 17 With regard to property, Biancarosa said that she owned a Toyota Matrix automobile which was sold during the marriage for $7,000. A few months later they purchased a Chrysler Sebring. The down payment for that car came from the parties' joint checking account.

¶ 18 At the conclusion of the trial the parties submitted written closing arguments and a memorandum decision was entered. In the memorandum, the trial court found that during the marriage, at the apparent urging of Biancarosa, Edward had gradually increased the number of cattle that he raised. Unfortunately, the court noted, over the brief time of their marriage the net farm income had actually declined. In turn, Edward had been unable to pay off the operating loans and had carried over debt, and interest on that debt, to each subsequent loan.

¶ 19 With regard to the marital residence, the trial court found the following:

> "The marital residence is a single-family brick farm house on approximately 5.02 acres at 2825 Scenic Bluff Road, Thomson, originally owned by Edward's parents who deeded four acres with the house to Edward prior to marriage *but all of which through subsequent transfers has become the parties' marital property*. The residential property includes several out-buildings, the principal of which is a "hoop building" used to feed and water cattle." (Emphasis added.)

¶ 20 As to the value of that marital property, the court found that the testimony of Edward's appraiser was more persuasive, and therefore, found the value of the house, the outbuildings and the 5.02 acres to be $185,000. The court then found, "[o]f this amount, Edward should be credited $163,000 as his contribution to its value in accordance with 750 ILCS 5/503(d)(1) *after which the marital estate's interest in the property is found to be $22,000*." (Emphasis added.)

¶ 21 In valuating the marital debts, the trial court found that the farm operation seemed to have survived by virtue of the seemingly low rent charged by Edward's parents for the 274 acres upon which Edward grew the corn and fed the cattle. It found that the parties' farm income had decreased by 2009 and their debt had been building, despite Biancarosa's claim that she had expanded the business through her advice relating to the purchase and sale of cattle.

¶ 22 With regard to the division of the marital estate, the court found that Edward should be awarded the marital residence, the 5.02 acres, the outbuildings, all of the cattle, the corn and the farm equipment identified in the memorandum. He was awarded those items free and clear of any claim by Biancarosa, and he was to be solely responsible for the debt secured by that property. Edward was made solely responsible for the repayment of the two operating loans, and he was to hold Biancarosa harmless on them as well. Each party was given his or her own

personal property. Biancarosa's home in North Carolina was found to be non-marital property, as well as her pension and other personal bank accounts. The 33-acre tract which Edward purchased before the parties' marriage was declared to be his non-marital property, along with his retirement accounts, stock and insurance policies. Edward was ordered to pay Biancarosa half of the difference between the marital estate's assets and its liabilities.

¶ 23 Each party filed a motion to reconsider. In her motion, Biancarosa contested the valuation of the marital residence, the treatment of the payments to Edward's 33-acre non-marital property, maintenance, the overall distribution of assets, and attorney fees. In his motion, Edward argued that the court erred in finding that a particular piece of farm equipment, an "IH Disc" valued at $6,000, was marital property.

¶ 24 With regard to the 33-acre tract, the trial court held that although marital funds were used to pay down the debt on Edward's 33-acres of land, marital funds were also used to make payments on Biancarosa's non-marital home. Therefore, the court said that it treated both actions "as a wash." The trial court then entered a judgment for dissolution of marriage, which incorporated a grant of Edward's motion to reconsider and a denial of Biancarosa's motion.

¶ 25 In the judgment of dissolution order the trial court again found that the marital residence and the 5.02 acres surrounding it, were marital property. The trial court found that the marital estate, before debts, was fixed at $705,235. Specifically, the trial court found that the marital property, including the residence, had a highest and best use as a single-family residence. It reiterated its findings in the memorandum and found the current value of that property to be $185,000 and that its value in 2008 was $163,000. Edward was credited with $163,000 as his contribution to the marital estate. The marital estate's interest in the real estate was found to be the difference between the current value and the 2008 value of the marital residence, or $22,000.

The court found that the cattle had a value of $440,640 and the corn in storage was valued at $163,345. The farm equipment was valued at $67,250. The trial court valued Edward's vehicle, a 2007 Mercury Mountaineer, at $12,000, and no value was set for Biancarosa's 2010 Chrysler Sebring because no value had been established.

¶ 26 The trial court found that the marital debt was $623,421, which included the first operating loan ($410,726), the second operating loan ($88,620), the combined loan for the 33-acres and the corn planter ($60,245) and the mortgage on the marital residence ($63,830). The difference in total marital assets and debts was therefore $81,814.[1]

¶ 27 In the judgment the court also found the following to be Edwards's non-marital property: (1) the 33-acre tract of land purchased prior to the parties' marriage; (2) the farming equipment in his possession, except that equipment already valued as marital property in the judgment; and (3) any retirement, stocks, and insurance policies in his name. The court found the following to be Biancarosa's non-marital property: (1) the house in Fayetteville, North Carolina; (2) her pension; and (3) any other retirement or bank accounts in her name.

¶ 28 The trial court awarded Edward the marital residence with its 5.02 acres and outbuildings and ordered him to hold Biancarosa harmless on the existing mortgage. It also gave Edward all of the cattle and corn, the corn planter, two grain wagons, a portable generator, hay stacker, manure spreader and mower. Edward was to hold Biancarosa harmless on the debt secured by those items, as well as on the two operating loans. The parties were each ordered to keep any personal property in their possession and hold the other harmless on it. Biancarosa was awarded

[1] The debt associated with the second operating loan, the combined loan for the 33-acres and the corn planter, and the mortgage on the marital residence differ from the amounts to which Edward testified. However, the parties do not dispute the trial court's numbers.

the Chrysler Sebring and Edward was awarded the Mercury Mountaineer. Edward was ordered to pay Biancarosa half of the interest in the marital estate, or $40,907. Both parties were denied maintenance, and Edward was ordered to pay $1,000 toward Biancarosa's attorney fees.

¶ 29 II. ANALYSIS

¶ 30 On appeal, Biancarosa contends that the trial court erred in the following ways: (1) in its distribution of the marital residence; (2) in improperly calculating her equitable portion of the marital estate; and (3) in denying her maintenance. We will address each argument accordingly.

¶ 31 A. Distribution of Marital Residence

¶ 32 Biancarosa first argues that the trial court erred in its distribution of the jointly titled marital residence. She divides her argument into four subparts: (1) because Edward gifted the marital residence to her, she is entitled to an equitable distribution of the entire residence, not only the increase in value subsequent to being gifted the residence; (2) the trial court erroneously calculated the marital estate's interest in the residence based on the time it was jointly titled instead of based on the time of the parties' marriage; (3) even if the equitable distribution is limited to the increase in value during the time it was jointly titled, the trial court was not presented with competent evidence to properly valuate the property as of 2008; and (4) the trial court failed to value the outbuildings on the land containing the marital residence.

¶ 33 The placing of title to non-marital property in joint tenancy with a spouse raises a presumption that a gift was made to the marital estate and that the property has become marital property. *In re Marriage of Steel*, 2011 IL App (2d) 080974, ¶ 74. The trial court must divide the marital property without regard to marital misconduct in just proportions, considering all relevant factors including the factors established in section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act). 750 ILCS 5/503(d) (West 2012).

¶ 34 Section 503(d) of the Act provides that the trial court shall divide the marital property in just proportions after considering all the relevant factors, which include:

"(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including (i) any such decrease attributable to a payment deemed to have been an advance from the parties' marital estate under subsection (c—1)(2) of Section 501 and (ii) the contribution of a spouse as a homemaker or to the family unit;

(2) the dissipation by each party of the marital or non-marital property, provided that a party's claim of dissipation is subject to the following conditions:

* * *

(3) the value of the property assigned to each spouse;

(4) the duration of the marriage;

(5) the relevant economic circumstances of each spouse when the division of property is to become effective ***;

(6) any obligations and rights arising from a prior marriage of either party;

(7) any antenuptial agreement of the parties;

(8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of the parties;

(9) the custodial provisions for any children;

(10) whether the apportionment is in lieu of or in addition to maintenance;

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(12) the tax consequences of the property division upon the respective economic circumstances of the parties." 750 ILCS 5/503(d) (West 2012).

¶ 35 Another section of the Act, section 503(c), "provides a right to reimbursement for contributions made by one estate which have enhanced the value of an item of property classified as belonging to another estate." *In re Marriage of Albrecht*, 266 Ill.App.3d 399, 400–01 (1994). "The reimbursement is made to the contributing estate, not to the contributing spouse." *Id*. at 401. However, reimbursement is not allowed for a contribution that was a gift to the marital estate. *In re Marriage of Johns*, 311 Ill. App 3d 699, 703 (2000).

¶ 36 The touchstone of proper apportionment is whether it is equitable, and each case rests on its own facts. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 121. An equitable division does not necessarily mean an equal division, and one spouse may be awarded a larger share of the assets if the relevant factors warrant such a result. *Id*. (citing *In re Marriage of Henke*, 313 Ill. App. 3d 159, 175 (2000)). 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 that the trial court made the right decision. *In re Marriage of Wright*, 212 Ill. App. 3d 392, 395 (1991). A reviewing court applies the manifest weight of the evidence standard to the factual findings of each factor on which a trial court may base its property disposition, but it applies the abuse of discretion standard in reviewing the trial court's final property disposition. *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. *Id.* (citing *Henke*, 313 Ill. App. 3d at 175).

¶ 37 i. Total Value of Marital Residence

¶ 38 Biancarosa argues that the trial court erroneously reimbursed Edward's non-marital estate the value of his gift to the marital estate. She claims that as a matter of law, "reimbursing" Edward for the full value of his gift of the marital residence to the marital estate cannot be an equitable distribution for purposes of section 503 of the Act. 750 ILCS 5/503 (West 2012). In support of this contention, Biancarosa cites to *In re Marriage of Rogers*, 85 Ill. 2d 217 (1981), *In re Marriage of Atkinson*, 87 Ill. 2d 174, 180 (1981), and *In re Marriage of Johns*, 311 Ill. App. 3d 699, 703 (2000) for the proposition that even where one party furnished all consideration out of non-marital funds, it is proper to consider the entirety of the property to be marital property, absent convincing rebutting evidence.

¶ 39 We are not persuaded. Here, it is clear from the judgment for dissolution that the trial court *did treat* the marital residence as part of the marital estate. After doing so, it then awarded Edward a credit of $163,000 (based upon the 2008 value of the marital residence) for his contribution to the estate. This type of credit is controlled by section 503(d)(1) of the Act (750 ILCS 5/503(d) (West 2012)) and not as a reimbursement under section 503(c) of the Act. 750 ILCS 5/503(c) (West 2012). In her reply brief, Biancarosa argues "Edward's position fails to explain why a dollar for dollar 'offset' for contribution is not simply a re-titled reimbursement of a gift to the marital estate. Tellingly, Edward fails to cite a single instance where a dollar for dollar reimbursement was upheld, under any theory of law."

¶ 40 Biancarosa has cited no authority for the proposition that section 503(d)(1) of the Act prohibits, "as a matter law," a credit of the full value of a spouse's contribution to the marital estate at the time it became marital property. However, both parties cite to this court's decision in *Johns*, wherein this court did not rule out the possibility of the full value of a spouse's gift

being credited as that's spouse's contribution to the marital estate pursuant to section 503(d)(1) of the Act. *Johns*, 311 Ill. App. 3d 633, 703 (2000); 750 ILCS 5/503(d)(1) (West 2012).

¶ 41 In *Johns*, the wife owned a lot on which she had built a garage prior to the parties' marriage. After the marriage, the parties constructed a home on the wife's lot and the wife placed title to the lot in joint tenancy with the husband. The trial court found the value of the lot and garage to be $9,500 and held that the wife was entitled to an offset against the current value of the marital residence in that amount. The court then awarded the marital residence to the wife, and ordered her to pay the husband one-half of the value of the property after deducting the $9,500 set off. The husband filed a motion to reconsider and argued that the property was placed in joint tenancy, creating a presumption of a gift to the marital estate. The trial court denied the motion, and said, "I think by statute the presumption is that it is to be marital, but I think the court can decline to accept that presumption, and I did give her credit for contributing that part of the residence and I will keep that in effect." *Id*. at 702. On appeal, this court first determined that the lot and garage became marital property when it was placed in co-ownership during the marriage. It then noted that the trial court could then have considered the wife's contribution of the lot and garage in its division of marital assets under section 503(d) of the Act. *Id*. at 703-04. However, the court held that it was unclear whether the trial court awarded the wife an offset for the garage and lot based on her contribution to the marital estate under section 503(d) of the Act, or whether the trial court incorrectly decided to award the wife an offset based upon the mistaken belief that a portion of the property in question was nonmarital in nature. In reversing and remanding the case, this court held "[b]ecause of the trial judge's confusion on this point, it is unclear whether the trial court decided to award [wife] an offset for the garage and lot because of an *appropriate consideration of* [*wife's*]*contribution to the acquisition of marital property* as one

of several factors to be considered under section 503(d) in dividing marital property, or whether the court inappropriately decided to award [wife] an offset based on the mistaken belief that a portion of property in question was nonmarital in nature." (Emphasis added.) *Id*. at 704. It is clear that this court did *not* hold that if the trial court awarded the wife the full value of the garage and lot as her contribution to the marital estate pursuant to section 503(d) of the Act such an award was improper.

¶ 42 We have reviewed the record in this case and find that the trial court did not abuse its discretion in crediting Edward $163,000 as his contribution to the marital estate pursuant to section 503(d)(1) of the Act. 750 ILCS 5/503(d)(1) (West 2012). Here, Edward lived in the marital residence for 17 years, and he owned the residence for 8 of those years, before he put Biancarosa's name on the title to the property. Before Edward owned it, his parents owned the home for 24 years and farmed the property on the surrounding acres that they still own. After Edward put Biancarosa's name on the title to the property the parties were only married a little over four years before Edward filed for divorce. As we have noted, each case involving the equitable distribution of marital property rests on its own facts. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 121. Based upon the facts before the trial court in this case we cannot say that any erred occurred.

¶ 43 ii. Calculation of Marital Estate's Interest in Marital Residence

¶ 44 Next, Biancarosa argues that even if the trial court correctly limited the marital estate's interest in the marital residence to the increase in value of the residence, the proper time to calculate the marital interest was in 2007, at the time the parties were married, and not 2008, when the title of the marital home was transferred from Edward to both parties. She contends that even if the marital residence is considered non-marital until the point of the transfer, the

estate has a right to all contributions to the residence, especially those derived from living in a comfortable, well-maintained home because of a spouse's contributions made during the marriage.

¶ 45 In her brief, Biancarosa does not allege that she offered a 2007 valuation to the trial court and such a valuation was rejected. She also does not give any specific information about what marital contributions she made to the martial residence between 2007 and 2008 which would alter the 2008 valuation. Accordingly, she has forfeited this issue. Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006); *People v. Bui*, 381 Ill. App. 3d 397, 421-22 (2008) (a point raised but not sufficiently presented is waived).

¶ 46 iii. Sufficiency of 2008 Valuation

¶ 47 Biancarosa next claims that even assuming the value of the martial residence could be limited to the increase in value of the residence since the time the property was jointly titled, the trial court erred when it relied upon a valuation that, "by the appraiser's own testimony, was not in accordance with proper methods of valuation and thus not competent evidence." In response, Edward argues that Biancarosa has waived any claim of error here because she stipulated to the admission of the 2008 valuation at trial, failed to object to its admission, and failed to produce any contradictory evidence as to the value of the marital residence. In reply, Biancarosa contends that she only stipulated to the admission of the expert's report, and nothing more. She argues that she actively challenged the methodology used by Edward's appraiser at trial and she also raised these issues in her motion to reconsider.

¶ 48 "A trial court's determination of the value of marital assets in a division-of-property proceeding will not be disturbed on appeal unless it is against the manifest weight of the evidence." *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 203 (2005). A decision is against

the manifest weight of the evidence only where the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary, or not based on the evidence presented. *McBride v. McBride*, 2013 IL App (1st) 112255, ¶ 24.

¶ 49 We agree with Biancarosa that she has not waived this argument because she stipulated to the admission of the 2008 retrospective valuation at trial. It is clear from the record that both parties were stipulating to the admission of the appraisals and not their contents.

¶ 50 Turning to the merits of this issue, we hold that the trial court did not err in relying on the 2008 valuation of the marital residence. Contrary to Biancarosa's contention, Edward's appraiser *did not* testify that the 2008 valuation violated proper methods of valuation. The record pages that Biancarosa cites to in support of her argument indicate that Clarkson testified that the 2008 valuation was a retrospective appraisal of the property, and that he determined the value of the home at that time from talking to Edward about the condition of the home in 2008 and in reviewing comparable sales from that time period. For example, Clarkson's 2008 retrospective valuation of the home was based on it having one bathroom, and the 2012 appraisal was based upon the home having two bathrooms.

¶ 51 Biancarosa argues that the trial court improperly relied upon Clarkson's 2008 valuation because: (1) he could not have gone back in time to actually inspect the property in 2008; (2) it was improper for him to rely upon Edward's recollection of the condition of the house in 2008; and (3) the 2008 appraisal did not have a proper foundational basis. We disagree. Here, Biancarosa did not submit an appraisal with a 2008 valuation to refute Clarkson's 2008 valuation. Also, she cites no law case law for the proposition that retrospective valuations of property are improper. Clarkson was an appraiser who had resided in Carroll County for 16 years, was certified to appraise both residential and agricultural properties, and had over 30

years' experience in his field. For all these reasons, the trial court's reliance on Clarkson's retrospective valuation of $163,000 for the marital residence in 2008 was not against the manifest weight of the evidence.

¶ 52 iv. Value of the Outbuildings

¶ 53 Biancarosa also claims that the trial court erred in accepting Clarkson's 2008 valuation because it failed to value the entirety of the property. Specifically, she argues that to suggest the outbuildings, which facilitated the cattle farming operation, have absolutely no worth is entirely illogical, and for the trial court to disregard the value of the outbuildings is "the very definition of against the manifest weight of the evidence and cannot lead to an equitable distribution as a matter of law."

¶ 54 Biancarosa is incorrect that Clarkson's 2008 retrospective valuation of the marital property excluded a valuation of the outbuildings. Although Clarkson testified that the highest and best use of the property was as a residential property, he also referred to the outbuildings in his testimony about his valuation of the property. Specifically, he said that the existing buildings offered limited additional value to the marital property, and that a five-acre cattle feed yard was of very limited use unless someone had an extensive farming operation to build the feed stuffs to feed the cattle. Clarkson said that other farmers were not interested in buying that type of property because they were looking to purchase more land instead of looking for cattle feeding improvements. Biancarosa's appraiser also acknowledged in his testimony that Clarkson valued the outbuildings when he said that he gave somewhat more value to the outbuildings than did Clarkson. Accordingly, we find no error.

¶ 55 B. Biancarosa's Equitable Portion of the Marital Estate

¶ 56 Next, Biancarosa contends that the trial court erroneously calculated her portion of the marital estate. Specifically, she argues that the trial court failed: (1) to reimburse the marital estate for the pre-payment of the 2013 marital expenses; (2) to reimburse the marital estate for the marital funds used to further increase the equity in Edward's non-marital property; and (3) to account for her contribution to the increase in value of the parties' farming business.

¶ 57 A trial court has broad discretion in the division of marital assets, and we will reverse its determinations only if it is clear that the trial court has abused that discretion. *In re Marriage of Crook*, 211 Ill. 2d 437, 453 (2004). A trial court abuses its discretion only where its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 121.

¶ 58 i. Reimbursement for Prepayment of 2013 Marital Expenses

¶ 59 Biancarosa contends that the trial court erred in determining that the entirety of one of the operating loans was a marital debt when some of that money was used to prepay 2013 expenses. In response, Edward argues that this issue has been waived because Biancarosa did not raise it at trial.[2] Even if not waived, Edward claims, the prepaid expenses for 2013 were paid during the 2012 tax year and, therefore, during the parties' marriage.

¶ 60 In her reply brief Biancarosa does not refute Edward's argument that she failed to raise this issue at trial. Accordingly, we find that it has been forfeited. *Board of Managers of Hidden Lake Townhome Owners Ass'n v. Green Trails Improvement Ass'n*, 404 Ill. App. 3d 184, 194

[2] Although Edward uses the term "waived" here we recognize that forfeiture is the failure to make a timely assertion of a right, while waiver stems "from an affirmative act, is consensual, and consists of an intentional relinquishment of a known right." *Gallagher v. Lenart*, 226 Ill. 2d 208, 229 (2007).

(2010) (issues not raised in the trial court are forfeited and may not be raised for the first time on appeal).

¶ 61 ii. Marital Funds Used to Increase Equity in Edward's Non-Marital Asset

¶ 62 Biancarosa next argues that the trial court erred in failing to credit the marital estate with the marital funds that were used to pay the mortgage on the 33 acres of non-marital property that Edward purchased prior to the parties' marriage. Specifically, she contends that Edward paid down the loan against the 33 acres at the rate of $9,500 per year, for a total over five years of $47,500. However, no reimbursement in that amount was awarded to the marital estate. She also contends that the marital estate was saddled with some of that debt, because Edward commingled the debt from the corn planter (which was found to be attributable to the marital estate) with the debt on the 33 acres of non-marital property.

¶ 63 In response, Edward argues that the trial court did not err in failing to reimburse the marital estate for the funds used to pay the debt against the 33 acres under the circumstances of this case. Specifically, he claims that during the parties' marriage, Biancarosa rented out her house in North Carolina, also non-marital property, and used the rent money to pay down the mortgage and real estate taxes on that property. The mortgage payment on Biancarosa's home was $675 per month, which totaled $40,500 over the same five years. In addition, $4,000 of marital funds was used to make repairs and improvements to Biancarosa' home. Edward then refers to the hearing on Biancarosa's motion to reconsider, where the trial court said that marital funds were used to pay off the debt on Edward's 33-acres of land, and marital funds were also used to make payments on Biancarosa's non-marital home. The trial court then stated that it treated both actions "as a wash." Finally, Edward notes that the parties used his non-marital land

to support their lifestyle by raising corn on it for their farming operation, and also by using the land to secure a loan for a marital asset, the purchase of the corn planter.

¶ 64 As we have noted, section 503(c) of the Act provides a right to reimbursement for contributions made by one estate which have enhanced the value of an item of property classified as belonging to another estate. *In re Marriage of Albrecht*, 266 Ill. App. 3d 399, 400–01 (1994); 750 ILCS 5/503(c) (West 2012). The reimbursement is made to the contributing estate, not to the contributing spouse. *Id*. at 401. For the contributing estate to be reimbursed, the contribution must be traceable by clear and convincing evidence. *Id*. The court may provide for reimbursement out of the marital property to be divided or by imposing a lien against the non-marital property which received the contribution." 750 ILCS 5/503(c)(2) (West 2012).

¶ 65 Here, the trial court abused its discretion when, at the hearing on Biancarosa's motion to reconsider, it held that since marital assets were used to pay for both Biancarosa and Edward's non-marital property, both transactions were therefore "a wash." It is telling that on appeal, Edward does not argue that marital funds were used to pay the mortgage and real estate taxes on Biancarosa's non-marital home. Instead, Edward states that those payments were made from income generated from renting the property. Edward only alleges that $4,000 of marital funds was used for repairs and improvements on that property. Accordingly, we reverse the portion of the trial court's order calculating the total marital assets in this case. On remand, the trial court should hold a hearing on whether these contributions could be traced by clear and convincing evidence. If it finds clear and convincing evidence of these contributions, it should then determine whether, and in what amount, reimbursement to the marital estate should be credited, taking into account all relevant factors, *i.e.*, the commingling of marital debt on the 33 acres.

¶ 66 ii. Biancarosa's Remaining Arguments

¶ 67 We need not address Biancarosa's remaining arguments regarding the equitable distribution of the marital estate or maintenance because issues of property disposition pursuant to section 503 of the Act and maintenance under section 504 of the Act are interrelated. *In re Marriage of Ryman*, 172 Ill. App. 3d 599, 614 (1988). For example, in evaluating a spouse's request for maintenance, courts consider the size of the spouse's non-marital estate and the amount of marital property awarded to her. *In re Marriage of Dann*, 2012 IL App (2d) 100343, ¶ 155; 750 ILCS 5/504(a)(1) (West 2012) (factors relevant to maintenance determination include "the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance"). Since we have reversed the trial court's calculation of the assets in the marital estate and remanded that issue for new hearing, we also direct the trial court to re-determine the equitable distribution of the marital assets if the court finds reimbursement to the marital estate is proper.

¶ 68 III. CONCLUSION

¶ 69 In sum, the trial court properly credited Edward the value of the marital home in 2008 as his contribution to the marital estate. 750 ILCS 5/503(d)(1) (West 2012). Biancarosa forfeited any argument that even if such a credit was proper, the valuation of the marital home should have been done in 2007 when she never offered a 2007 valuation or provided any details regarding her contributions to the home between 2007 and 2008. The trial court's reliance on the 2008 retrospective valuation of the marital home was not against the manifest weight of the evidence. Biancarosa forfeited the issue of whether the trial court erred in failing to reimburse the marital estate for the prepayment of marital expenses. Finally, the trial court erred in holding that contributions of marital assets to both parties' non-marital property constituted "a wash."

¶ 70 Accordingly, the judgment of the circuit court of Carroll County affirmed in part, reversed in part, and remanded for proceedings consistent with this order.

¶ 71 Affirmed in part; reversed in part; remanded.