No. 3--09--0472

Order filed May 6, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In re MARRIAGE OF STEVEN M. PATTERMANN,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Petitioner-Appellee,	)	
and	)	No. 05--D--1439
GINA L. PATTERMANN,	)	Honorable Robert P. Brummund,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Wright and McDade concurred in the judgment.

ORDER

Held: On review of a dissolution of marriage action, this court holds the following: the $320,000 check from Pattermann Builders, Inc. to Steven and Gina Pattermann was a distribution to the parties rather than a loan; the trial court's finding that the parties' cross-claims for dissipation were a "wash" was not against the manifest weight of the evidence; and Pattermann Builders' retained earnings accrued during the marriage were marital property. In light of our rulings, the trial court's property distribution is remanded for further proceedings.

Steven and Gina Pattermann were married on August 14, 1998.

The parties filed for dissolution in August of 2005. In 2008, the trial court entered a judgment for dissolution of marriage. The dissolution classified a $320,000 check from Pattermann Builders, Inc. (PBI) to G & S Land Development, L.L.C. (G & S) as a loan. The trial court found that the parties' cross-claims for dissipation were a "wash" and that PBI's retained earnings were not marital property. Finally, the trial court refused to place a specific value on PBI in making its property distribution, but awarded Gina the marital home and 60% of the marital property. On appeal, Gina argues that each of these rulings was in error. We affirm in part, reverse in part and remand with directions.

FACTS

On August 14, 1998, Steven and Gina were married. The couples' first child was born in June of 1997. Their second child was born in November of 1998.

When the parties were married, Steven was a residential home builder and the sole owner of PBI. Steven started PBI in 1976. At the start of the parties' marriage, Gina was a homemaker. Early in the marriage, Gina also attended law school. Steven financed part of Gina's studies with checks drawn from PBI. Steven stated that these funds were intended to be loans.

Throughout the marriage, Steven worked as the manager of PBI. In return, PBI compensated Steven with a variety of income distributions, annual salaries, and loans. During the early years of the marriage, Steven was paid solely by distributions. Steven later received a salary in addition to the distributions. From 1998 to 2006, Steven earned an average gross income of $830,000 per year.

After the parties were married, they moved into a home that was built by PBI. In February of 2000, the parties purchased a second home in Naples, Florida (Naples home). This home was financed by a commercial loan and a distribution Steven took from PBI. A few months later, the parties purchased a condominium located at 3930 Deer Crossing Court, Naples, Florida (Deer Crossing). In 2001, the parties purchased their marital home from PBI. The purchase was financed by a $479,000 mortgage and funds distributed from PBI. Although both parties filled out the mortgage documents, only Steven signed the mortgage.

In 2002, Steven took out a line of credit for $500,000 on the parties' Naples home. Steven used the proceeds to repay various loans from PBI, including Gina's law school loans. Later in the year, the parties mortgaged their Deer Crossing condominium. The proceeds were used, in combination with a distribution from PBI, to release the first mortgage on their Naples home.

In 2003, Steven individually purchased undeveloped property in Naperville, Illinois, for $824,488. The property was known as Chestnut River Point. Steven financed the purchase with personal funds and a $180,000 distribution from PBI. A 2004 appraisal of Chestnut River Point valued the property between $1.43 million and $2.5 million.

By the fall of 2003, Gina discovered that commercial property, located across the street from the Plainfield Walmart, was for sale. Gina persuaded Steven to purchase the property as an investment and as appeasement for cheating on her. The parties then formed G & S to take title to the property and manage its development. Gina and Steven each shared a 50% interest in the company. G & S closed on the property in September of 2004. The 20% down payment was financed by a $320,000 draw from PBI. At the time, the draw was documented as a distribution.

Early in 2005, the parties entered an agreement to purchase a second condominium in the Cherry Oaks complex, in Naples, Florida (Cherry Oaks). This property was financed by a $180,000 mortgage taken out on the parties' Naples home. Several months later, Steven took a $245,000 home equity line of credit against the parties' marital home. The home equity line funds were used to pay expenses on the parties' Florida properties and Steven's personal expenses. Checks from this line of credit further indicated that he deposited $15,000 into the college savings funds for each of the couple's two children.

In the late summer of 2005, Gina and Steven filed separate petitions for dissolution of marriage. Gina's Du Page County petition was subsequently consolidated with Steven's Will County petition. Shortly after the dissolution filing, Steven sold the Chestnut River Point property to PBI for $1.4 million. Steven felt that this was a fair price, even though it was lower than the appraised value.

By November 2005, Steven had moved out of the marital home. The trial court ordered Steven to place $15,000 per month in a joint checking account to pay for the parties' monthly expenses. Throughout the pendency of this case, Gina used some of the funds for nonmarital purposes, and Steven occasionally failed to contribute the full $15,000 each month.

Early in 2006, Steven discussed the classification of PBI's $320,000 distribution that was used to finance G & S's down payment for the Plainfield commercial property. Steven informed his accountant that this transaction was intended to be a loan, but had been incorrectly documented as a distribution. Consequently, PBI's accountant rebooked the transaction as a loan and filed an amended 2005 income tax return. At trial, PBI's accountant testified that this was the only transaction that she had changed from a distribution to a loan. Additionally, Steven's accounting expert testified that the only benefit for such a change was for property classification purposes in a marriage dissolution case.

By the end of 2006, PBI had nearly $2.5 million in retained earnings. This represented an accumulation of $1.4 million since the parties had married. Additionally, Steven's 401(k) retirement account had a value of $527,713.57. However, this amount was depleted by $320,000 in withdrawals Steven made in 2007. Pursuant to the trial court's order, Steven withdrew $100,000 from his 401(k) account as compensation for Gina's attorney fees. The trial court further ordered Steven to take an additional $60,000 advance to pay the mortgages on the parties' Florida properties. Despite Steven's $60,000 in payments, each of the parties' three Florida properties were in arrears or in foreclosure by mid-2007. In an August 2007 order, the trial court ordered the parties to sell all three of the properties. The parties' Naples home was sold for $1.22 million in March of 2008.

Starting in early 2006, Steven began withdrawing funds from PBI as loans. By June 2007, Steven stopped receiving a salary. Steven testified that during this period, PBI was forced to sell homes at a loss and purchased lots with credit. As a result, Steven's gross income for 2006 and 2007 declined substantially, and he withdrew $98,000 in loans from PBI.

In comparison, Gina was working as the executor of her friend's estate in late 2006. Gina received $30,000 in executor's fees. In 2007, Gina took over her deceased friend's

DUI counseling clinic. As the manager of the clinic, Gina received $8,000 per month. However, this position was temporary, as Gina was required to find a buyer for the business.

The trial court filed its judgment for dissolution of marriage on August 25, 2008. In its property distribution, it awarded Gina the marital residence, which was valued at $900,000, but was subject to the initial mortgage and Steven's home equity line of credit. The trial court stated that Gina was entitled to 60% of the proceeds from the sale of the parties' Cherry Oaks and Deer Crossing condominiums. Steven was to receive the remaining 40% of the proceeds. At the time, the parties' Naples home had been sold at a $13,000 profit. The proceeds were applied towards the parties' attorney fees.

The trial court required Steven to pay $4,000 per month in child support for their two children. Gina was awarded $2,000 per month maintenance for a term of 30 months. The parties were instructed to jointly divide their personal property. Further, Gina was awarded two of the automobiles, and Steven and PBI received one each.

The trial court classified the funds the parties received from PBI to purchase the Plainfield commercial property as a loan. At the time of the dissolution, the Plainfield commercial property had been sold. The profits from the sale were distributed to the parties' attorneys to cover their fees. As a result, the $320,000 down payment loan remained unpaid. Therefore, the trial court ordered Steven to repay $220,000 of the loan and Gina to repay $100,000 of the loan.

Reviewing each party's allegations of dissipation, the trial court determined that the claims were a "wash." Additionally, the trial court indicated that PBI and its retained earnings were Steven's nonmarital property.

On May 20, 2009, the trial court ruled on the parties' cross-motions for reconsideration. The trial court refused to reconsider its decision not to specifically value Steven's nonmarital assets. Further, the trial court noted that it had "previously found that Pattermann Builders, Inc. [was] the non-marital property of [Steven], as well as the retained earnings account." Gina's motion for specific dissipation findings was denied. The trial court stated that it had "carefully reviewed the evidence with respect to the value of the marital property and/or dissipation" and it did "not believe it must make specific findings of each allegation of dissipation[.]" Finally, the trial court refused to reconsider its ruling on the classification and repayment of the $320,000 loan. Gina appeals.

ANALYSIS

Initially, we note that no appellee's brief has been filed. However, we find that we may reach the merits of the case because the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

I. $320,000 Loan

We begin our analysis with Gina's contention that the $320,000 transfer from PBI to G & S was a distribution to the parties rather than a loan. Gina argues that the trial court's loan classification was against the manifest weight of the evidence and Steven did not prove by clear and convincing evidence that the $320,000 was a loan. Specifically, Steven was unable to produce a note, evidence of an interest rate, or repayment schedule. Moreover, testimony from PBI's accountant indicated that this was the only transaction initially documented as a distribution and later switched to a loan. Steven's expert corroborated this statement, finding that the only benefit from the change was in regards to the treatment of property in a marriage dissolution case.

The transfer of one spouse's nonmarital property into joint ownership of both spouses is presumptively a gift. *In re Marriage of Berger*, 357 Ill. App. 3d 651 (2005). The transferring spouse has the burden of rebutting this presumption with evidence that "not only is 'clear and convincing,' but also 'unmistakable.' " *Id.* at 660.

We review a trial court's designation of property as marital or nonmarital under the manifest weight of the evidence standard. *In re Marriage of Gurda*, 304 Ill. App. 3d 1019 (1999). A trial court's decision is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where it is arbitrary, unreasonable, and not based on the evidence. *In re Marriage of Matchen*, 372 Ill. App. 3d 937 (2007).

The evidence for this issue clearly indicates that the $320,000 from PBI should have been treated as a gift. Our review of the record confirms Gina's allegations that the $320,000 transaction was not initially documented or handled as a loan. Steven's failure to present evidence of a note, collateral, repayment schedule or loan classification discussion with Gina further demonstrates that the gift presumption was not overcome. See *In re Marriage of Didier*, 318 Ill. App. 3d 253 (2000). Moreover, the evidence presented by Steven to the contrary was not clear and convincing. Steven's expert witness testified that the only benefit for reclassifying a distribution as a loan was to remove marital assets to his nonmarital estate. Additionally, the loan classification is suspect because PBI's accountant did not reclassify the transfer until after the parties filed for dissolution. See *In re Marriage of Heinze*, 257 Ill. App. 3d 782 (1994).

Here, the opposite conclusion is clearly evident from our review of the record. The $320,000 from PBI to G & S was originally handled as a distribution and was not classified as a loan until after the parties' dissolution filings. Therefore, the trial court's loan classification is reversed.

II. Dissipation

Second, Gina argues that the trial court's dissipation findings were against the manifest weight of the evidence. She contends that her dissipation claims were not a "wash" and the trial court erred in failing to make specific dissipation findings. Gina argues that she made specific allegations of incidents where Steven spent marital funds for purposes unrelated to the marriage. Steven then responded with general and vague statements about his use of the funds.

Dissipation "is a spouse's use of marital property for his or her own benefit, for a purpose unrelated to the marriage, during a time when the marriage is suffering from an irreconcilable breakdown." *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d 761, 779 (2007). Once a party is accused of dissipation, the burden shifts to him or her to show by clear and specific evidence how the funds were expended. *In re Marriage of Jerome & Martinez*, 255 Ill. App. 3d 374 (1994). Section 503(d) of the Illinois Marriage and Dissolution Act (Act) requires a trial court to consider "the dissipation by each party of the marital or non-marital property" in making its property distribution. 750 ILCS 5/503(d)(2) (West 2008). We apply a manifest weight of the evidence standard when called upon to review a trial court's dissipation findings. *In re Marriage of Vancura*, 356 Ill. App. 3d 200 (2005). However, we review its final property distribution under an abuse of discretion standard. *Id.*

We are not persuaded by Gina's arguments. Both parties made thousands of dollars in dissipation claims against the other. However, the record demonstrates that both failed to clearly and specifically explain how the funds were used. Furthermore, many of Gina's alleged incidents of dissipation do not fit within the dissipation definition, because they either benefited the marital estate, fell outside the relevant period, or were offset by the actions of the other spouse.

We also note that the trial court was "not required to list what conduct constituted dissipation and how it arrived at a particular dollar amount." See *Tabassum*, 377 Ill. App. 3d at 779. Here, the trial court stated that it "carefully reviewed the evidence with respect to the value of the marital property and/or dissipation" and correctly determined that it did not have to make specific findings on each allegation of dissipation.

The trial court's determination that the parties' dissipation claims were a "wash" was not against the manifest weight of the evidence, and we affirm its ruling on this issue.

III. Retained Earnings

Thirdly, Gina argues that the trial court's order classifying PBI's retained earnings as nonmarital property was against the manifest weight of the evidence. Gina cites the fact that Steven had unfettered control over PBI during the course of the marriage because he was the sole shareholder. Gina argues, in light of the recent decision in *In re Marriage of Lundahl*, that Steven's high degree of control and ability to make voluntary disbursement indicates that the retained earnings accrued during the marriage are marital property. *In re Marriage of Lundahl*, 396 Ill. App. 3d 495 (2009).

Generally, a spouse's retained earnings in a closely held company are nonmarital property. See *In re Marriage of Joynt*, 375 Ill. App. 3d 817 (2007). However, retained earnings in a closely held company become marital property when the shareholder spouse holds a controlling interest in the company or otherwise exercises substantial influence over the decision to retain or disburse net earnings. *Id.*

In analyzing a trial court's retained earnings classification, we are instructed to consider two factors: " '(1) the nature and extent of the stock holdings, *i.e.*, is a majority of the stock held by a single shareholder spouse with the power to distribute the retained earnings; and (2) to what extent are retained earnings considered in the value of the corporation.' " *Lundahl*, 396 Ill. App. 3d at 503 (quoting *Joynt*, 375 Ill. App. 3d at 819). Examining a trial court's marital property classification, we apply a manifest weight of the evidence standard. *Gurda*, 304 Ill. App. 3d 1019.

In this case, the evidence demonstrated that Steven had complete control over PBI and used its retained earnings to pay personal and business expenses. Steven was PBI's sole shareholder. The record clearly indicates that Steven would often take distributions and loans from PBI to pay personal and family expenses, purchase personal property, and acquire real estate. Additionally, Steven used PBI's retained earnings to finance company purchases and to pay for large personal expenses. Application of the two *Lundahl* factors indicates that PBI's retained earnings were marital property because Steven had absolute control over the use of the retained earnings and used the retained earnings for personal expenses. See *Lundahl*, 396 Ill. App. 3d 495.

We find that application of Section 503(a)(8) of the Act further demonstrates that PBI's retained earnings accrued during the marriage were marital property. Section 503(a)(8) states that income from property acquired prior to marriage is nonmarital property if it "is *not* attributable to the personal efforts of a spouse." (Emphasis added.) 750 ILCS 5/503(a)(8) (West 2008). Here, the increase in PBI's retained earnings were attributable to Steven's efforts, making such funds marital property. Therefore, we remand this issue with instruction for the trial court to classify PBI's retained earnings accrued during the marriage as marital property and to include these funds in its property distribution.

IV. Distribution

Finally, Gina argues that the trial court's percentage distribution of the marital estate was an abuse of discretion. Specifically, Gina contends that the trial court's award of the marital home and a 60% interest in the Florida properties were virtually worthless because the properties were either encumbered or in foreclosure. In comparison, Steven received only 40% of the marital assets, but received nonmarital property worth between $2.6 million and $3.8 million. Gina states that the trial court should have specifically valued PBI and considered the marital portion of Steven's 401(k) in making its distribution.

Section 503(d) of the Act requires a trial court to divide the parties' marital property in "just proportions." 750 ILCS 5/503(d) (West 2008). To make such a division, a trial court must consider the value of both the marital and nonmarital property owned by the parties. 750 ILCS 5/503(d)(2) (West 2008); see also *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641 (2009). Decisions concerning the division of marital property lie within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion. *In re Marriage of Polsky*, 387 Ill. App. 3d 126 (2008). The trial court abuses its discretion when "no reasonable person would take the view adopted by the trial court." *Id.* at 135.

We note that the trial court was not required to place a specific value on PBI, Steven's nonmarital property, as long as the evidence presented established the value of the nonmarital asset. See *Sanfratello*, 393 Ill. App. 3d 641. Here, the trial court noted that it had considered evidence of the value of both parties' nonmarital assets in making its distribution. As a result of Steven's greater nonmarital property, it awarded Gina a larger share of the marital property. We find no error in this regard. Nevertheless, we remand the trial court's property distribution for reconsideration, based on our rulings concerning the alleged loan and the classification of the retained earnings.

CONCLUSION

For the foregoing reasons, we affirm those portions of the Will County circuit court's judgment concerning dissipation. We reverse that part of the judgment regarding the $320,000 loan classification and the classification of PBI's retained earnings as marital property, and remand the matter with direction for the trial court to issue a revised property distribution that considers these two issues.

Affirmed in part and reversed in part; cause remanded with directions.