No. 3–10–0433

Order filed April 15, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
ELIZABETH D. JORGENSON,	)	Rock Island County, Illinois
	)	
Petitioner-Appellee,	)	
	)	No. 07-D-89
and	)	
	)	
MARK S. JORGENSON,	)	Honorable
	)	Alan G. Blackwood,
Respondent-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

Held: The trial court's finding, that husband failed to rebut presumption that certain contributions made during the course of the marriage were a gift to the recipient estate, was not against the manifest weight of the evidence. The trial court's denial of the husband's request for reimbursement, therefore, was affirmed.

Petitioner, Elizabeth Darrell Jorgenson (Darrell), filed for dissolution of marriage from respondent, Mark Jorgenson (Mark). After a bench trial, the trial court entered a judgment for dissolution and divided up and distributed the parties' property. Mark appeals the property distribution, arguing that the trial court erred in denying his various requests for reimbursement. We

affirm the trial court's ruling.

FACTS

Mark and Darrell were married in 1999, when Mark was approximately 44 and Darrell was approximately 47. The marriage was a rocky one, and the parties spent about as much time living apart as they did living together. Mark worked as an executive vice president of an insurance company and had significant nonmarital financial assets going into the marriage and significant earnings during the marriage. However, after Mark and Darrell got married, Mark put the bulk of his nonmarital financial assets into the parties' marital joint checking account. Both of the parties earnings during the marriage went into that account as well.

In February of 2007, after several periods of separation and attempted reconciliation between the parties, Darrell filed a petition for dissolution of marriage. As part of the proceedings, Mark sought reimbursement for various contributions that had been made during the marriage. At trial, Mark called an accountant to testify as an expert witness. Of relevance to this appeal, Mark's expert testified that by examining various financial records, he and his staff were able to trace the source and use of the funds as follows: (1) approximately $126,000 was paid out of Mark's premarital assets and was used for Darrell's premarital debts (first category of contributions); (2) approximately $396,000 of Mark's premarital assets was contributed to the marital estate for marital expenses (second category of contributions); (3) approximately $137,900 of marital assets was contributed toward Darrell's premarital debts (third category of contributions); and (4) approximately $81,600 of marital assets was contributed toward Mark's premarital debts (fourth category of contributions).

As for the second category of contributions, Mark and his accountant both testified that all or most of the contributions were deposited into, or funneled through, the parties' marital joint

checking account and then used for other purposes. Mark testified further that he generally did not intend for the contributions to constitute a gift to the marital estate or to Darrell and that his and Darrell's understanding was that he would be reimbursed for every penny of his contributions. When asked about the specific nature of their agreement, Mark testified that the agreement evolved over time. In addition, Mark testified that Darrell had represented to him that he would be paid back for everything he contributed, possibly through the sale of Darrell's nonmarital residence. Darrell, on the other hand, denied any such understanding or representation and testified that Mark had promised to take care of her during the marriage, that money issues were a constant stress on the marriage, and that Mark was always complaining about money.

A one-page report summarizing the findings of Mark's expert accountant was admitted into evidence at trial as an exhibit. As a result of the accounting and the expert testimony, Mark sought to have approximately $352,600 reimbursed to his nonmarital estate, after an offset was taken for the forth category of contributions. That amount was calculated by using a 100% percent reimbursement rate for the first category of contributions and an approximately 50% reimbursement rate for the remaining categories of contributions. Mark also sought to be reimbursed for two loans that he had given to Darrell, a $5,000 loan and a $19,000 loan. The loans were provided, while the dissolution proceeding was pending and while Mark was paying court ordered payments to Darrell and certain other payments as directed by the court. In each case, Darrell allegedly signed documentation, acknowledging that Mark was loaning her money and that she would either pay him back or that he could obtain the money out of the property settlement in the dissolution proceeding. At trial, the loan documents related to the $5,000 loan were produced. No such documents were produced as to the $19,000 loan. However, Mark's expert accountant testified that during his

review, he saw a couple of loan documents reflecting a loan of $19,000 or $20,000 from Mark to Darrell. During her testimony at trial, Darrell acknowledged that she had signed certain loan documents but testified that she only did so because she needed money to live on and because Mark had refused to give her any money. Darrell testified further that at the time of the loans, she was suffering from certain illnesses that made it impossible for her to work.

In August of 2009, after the bench trial had concluded, the trial court issued a detailed written opinion reflecting its ruling on the matter. In the opinion, the trial court denied Mark's various requests for reimbursement, finding that Mark had failed to rebut the presumption that the contributions were a gift to the estates involved. The trial court found further that the $5,000 loan that Mark made to Darrell was offset by other monies that Mark owed to Darrell so that the $5,000 loan did not have to be repaid. The opinion did not specifically address the $19,000 loan that Mark made to Darrell. At the direction of the trial court, Darrell's attorney prepared a written judgment for dissolution of marriage, memorializing the ruling that the trial court had made in its opinion.

Thereafter, Mark filed a timely motion to reconsider. In the motion, among other things, Mark asked the trial court to make a determination as to the $19,000 loan. A hearing was held on the motion. After hearing the arguments of the attorneys, the trial court found that although the $19,000 transfer to Darrell was titled as a loan by the parties, it was presumed to be a gift under the law, because it was a transfer between spouses, and that Mark had failed to rebut the presumption of a gift. The trial court, therefore, denied the motion to reconsider, including Mark's request to be reimbursed for the $19,000 loan. Mark subsequently appealed.

ANALYSIS

Mark argues on appeal that the trial court erred in denying his various requests for reimbursement. Mark asserts that: (1) his premarital estate should be reimbursed for contributions it made to Darrell's premarital estate; (2) his premarital estate should be reimbursed for contributions it made to the marital estate; (3) the marital estate should be reimbursed for contributions made to Darrell's premarital estate; and (4) he should be reimbursed for loans that were made to Darrell. Darrell argues that the trial court's ruling was proper and should be affirmed.

In a dissolution of marriage proceeding, a trial court's ruling on a party's request for reimbursement will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Ford*, 377 Ill. App. 3d 181, 185-86 (2007). A ruling is against the manifest weight of the evidence only if it is clearly evident from the record that the trial court should have reached the opposite conclusion or if the ruling itself is arbitrary, unreasonable, or not based upon the evidence. *Best v. Best*, 223 Ill. 2d 342, 350 (2006). In addition, "[t]he determination of all issues regarding the credibility of the parties and their witnesses or the weight to give the evidence lies with the trier of fact." *In re Marriage of Werries*, 247 Ill. App. 3d 639, 642 (1993).

Before the parties' property can be assigned or divided in a dissolution of marriage proceeding, it must first be classified by the court as either marital or nonmarital. *In re Marriage of McCoy*, 225 Ill. App. 3d 966, 968 (1992). Under section 503(b)(1) of the Illinois Marriage and Dissolution of Marriage Act (Act), all property acquired by either spouse after the marriage and before a judgment of dissolution is presumed to be marital property, regardless of how title is actually held. 750 ILCS 5/503(b)(1) (West 2006); *McCoy*, 225 Ill. App. 3d at 968; *In re Marriage of Cecil*, 202 Ill. App. 3d 783, 787 (1990). A party can rebut the presumption of marital property by showing by clear and convincing evidence that the property falls into one of the categories of

exceptions listed in section 503(a) of the Act. See 750 ILCS 5/503(a), (b)(1) (West 2006); *In re Marriage of Gattone*, 317 Ill. App. 3d 346, 352 (2000).

However, property that would otherwise be classified as nonmarital under section 503(a) may be presumptively transmuted into marital property by an affirmative act of the contributing spouse, such as placing nonmarital property in joint tenancy or some other form of co-ownership with the other spouse. *Cecil*, 202 Ill. App. 3d at 787. Such an act by the contributing spouse raises a presumption that the contributing spouse made a gift of the property to the marital estate. *McCoy*, 225 Ill. App. 3d at 969. The contributing spouse may rebut that presumption by proving by clear, convincing, and unmistakable evidence that he or she did not intend to make a gift of the nonmarital property to the receiving estate. *McCoy*, 225 Ill. App. 3d at 969. Any doubts as to the classification of such property will be resolved in favor of finding that the property is marital property. *Gattone*, 317 Ill. App. 3d at 352. Thus, there is no right to reimbursement when a gift has been made, unless the presumption of a gift has been rebutted. See *Werries*, 247 Ill. App. 3d at 642.

In determining whether the contributing spouse has successfully rebutted the presumption of a gift, a court will consider several factors, including "(1) the size of the gift relative to the entire estate; (2) who paid the purchase price, made improvements, paid taxes on the property with solely acquired funds, and exercised control and management over the property; (3) when the asset was purchased; and (4) how the parties handled their prior financial dealings with each other." *Gattone*, 317 Ill. App. 3d at 352. No one factor is determinative. *Gattone*, 317 Ill. App. 3d at 353. If the contributing spouse sufficiently proves that the contribution was not a gift, the contributing estate is entitled to reimbursement for the contribution, as long as the contribution can be traced by clear and convincing evidence. See 750 ILCS 5/530(c)(2) (West 2006); *McCoy*, 225 Ill. App. 3d at 967-

68. The burden of proof is on the party seeking reimbursement. W*erries*, 247 Ill. App. 3d at 644. In addition, "[t]here is a presumption that transfers between husband and wife are gifts." *In re Marriage of Marx*, 281 Ill. App. 3d 897, 902 (1996); see also *In re Wilson's Estate*, 81 Ill. 2d 349, 356-57 (1980).

In the present case, the issue between the parties on appeal is very narrow. The parties do not dispute that Mark made the contributions in question and that he was able to trace those contributions at trial by clear and convincing evidence. The only dispute between the parties is whether the contributions in question were a gift to the other estates, so that reimbursement would not be required. See 750 ILCS 5/530(c)(2) (West 2006); *McCoy*, 225 Ill. App. 3d at 967-69. Mark asserts that he proved by clear and convincing evidence at trial that a gift was not intended and that he was, therefore, entitled to reimbursement. We do not agree with that assertion.

The trial court in the instant case was presented with conflicting evidence on this issue. Mark testified that no gift was intended and that Darrell understood that he was to be reimbursed. Darrell testified to the contrary. The trial court, as trier of fact, had to determine whether Mark had satisfied his burden to rebut the presumption of a gift by clear and convincing evidence. See *McCoy*, 225 Ill. App. 3d at 969. The trial court viewed Mark and Darrell's testimony first hand and was in the best position to assess the credibility of the witnesses. See *Werries*, 247 Ill. App. 3d at 642. In addition, although the amount of nonmarital funds that Mark contributed in this case was substantial, Mark made no effort to segregate those funds or to limit or restrict Darrell's access to them (see *Gattone*, 317 Ill. App. 3d at 354-55), despite the fact that Mark was a sophisticated business person. Based on the evidence presented and the applicable standard of review, we find that the trial court did not err when it ruled that the contributions were a gift to the various estates and when it denied Mark's

requests for reimbursement. The trial court's ruling was not against the manifest weight of the evidence and must be affirmed on appeal. See *Ford*, 377 Ill. App. 3d at 185-86.

As a final matter on appeal, we must address Mark's request for reimbursement for the two loans made to Darrell in the amount of $5,000 and $19,000. As Darrell correctly points out on appeal, however, the issue as to the $5,000 loan is moot because the trial court gave Mark full credit for the $5,000 loan in making its property distribution. As to the $19,000 transfer to Darrell, we find that the trial court's ruling was not against the manifest weight of the evidence. At the trial in this case, as with the other issue noted above, the trial court was presented with conflicting evidence as to the true nature of the transfer. Mark testified that the parties intended for the transfer to constitute a loan and Darrell herself acknowledged that she had agreed to repay Mark or to allow Mark to be repaid out of the settlement. Darrell also testified, however, that she agreed to those conditions only because Mark would not give her sufficient money to support herself and she was unable to work. In addition, as the trial court found, despite the label put on the transfer between the parties, the transfer was still a transfer between spouses during the course of the marriage. Thus, there was evidence before the trial court from which it could conclude that Mark failed to rebut the presumption that the $19,000 transfer to Darrell was a gift. See *Werries*, 247 Ill. App. 3d at 642; *Marx*, 281 Ill. App. 3d at 902; *Wilson's Estate*, 81 Ill. 2d at 356-57. Having found that the trial court's ruling on the $19,000 transfer was not against the manifest weight of the evidence, we need not address the parties' other assertions on that issue.

For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

Affirmed.