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2012 IL App (3d) 110169-U

Order filed January 18, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
TAMARA L. BAUER,)	Bureau County, Illinois
)	
Petitioner-Appellee,)	
)	Appeal No. 3-11-0169
and)	Circuit No. 09-D-63
)	
JEFFREY N. BAUER,)	
)	Honorable Cornelius J. Hollerich
Respondent-Appellee.)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion when ordering an equalization payment. However, the trial court erred in finding petitioner met her burden of establishing a *prima facie* case of dissipation. Petitioner failed to prove the existence of the allegedly dissipated funds. The trial court's finding that respondent dissipated any assets is against the manifest weight of the evidence. As such, the trial court erred in finding respondent dissipated marital assets.

¶ 2 Respondent, Jeffrey Bauer, appeals from an order of the circuit court of Bureau County finding he dissipated \$26,349 of marital assets and commanding him to pay petitioner, Tamara Bauer, half that sum. He claims the finding is against the manifest weight of the evidence. Respondent further argues that the trial court abused its discretion in ordering him to pay Tamara a \$21,710 equalization payment as part of the property distribution in their divorce.

¶ 3 FACTS

¶ 4 Jeffrey and Tamara were married on September 23, 1989. They have three children. The parties separated in the summer of 2008. Tamara filed a petition for dissolution of marriage on June 26, 2009. The parties came to an agreement concerning child custody and submitted a joint parenting agreement to the court on January 11, 2010. No issues are raised on appeal concerning child custody or child support.

¶ 5 The trial court held hearings regarding the parties' financial matters after which each party filed a position paper suggesting how property should be distributed. After considering evidence submitted at the hearings, the parties' financial affidavits, stipulations, exhibits and testimony presented, the trial court issued a 16-page decision on December 15, 2010, which detailed the distribution of the parties' property. The trial court then entered, on February 22, 2011, a judgment for dissolution of marriage, which incorporated the decision and ordered assets distributed as described in the December 15, 2010, written decision.

¶ 6 The written decision identifies two major assets at issue in this appeal: a laundromat in Orland Park and a storage business in Princeton. Evidence adduced at trial indicated that

Tamara and Jeffrey shared the responsibilities of running the laundromat from 1997 until 2006. In 2006, they built a house in Princeton and moved there from Joliet. From 2006 to the time of the trial, Tamara was the primary caretaker of the storage facility; Jeffrey continued to operate the laundromat.

¶ 7 Tamara testified that the laundromat made money in two ways: "drop-off" laundry and use of the machines by the customers. If a customer would drop off their laundry to be cleaned by the laundromat employees, a "drop-off" ticket generated. Tamara submitted copies of thousands of drop-off tickets dated from January 2, 2009, until August 21, 2010.

¶ 8 Tamara noted that the laundromat also contains a coin changer which has a digital readout to keep track of dollars fed into the machine. The readout has five digits and zeros out after it reaches 99,999. The coin changer holds \$800 in coins. At the beginning of every year, Tamara and Jeffrey would zero out the coin changer. Money was collected from the coin changer, as well as from the machines themselves, weekly. The Bauers would fill the coin changer with coins collected from the machines. Each week there would be more coins collected from the machines than needed to fill the coin changer. Those excess coins were referred to as "extra coin."

¶ 9 Tamara continued her testimony by noting that she felt the deposits for the laundromat were decreasing so she visited it four times between December 24, 2009, and August 23, 2010, to check the digital readout on the coin machine. She also wanted to inspect a daily log which indicated the number on the digital readout each day and how much money was taken from the

machine daily. Tamara testified on every day Jeffrey recorded the digital read out in a log, he also took dollar bills from the machine. Jeffrey recorded the amount of dollar bills extracted from the machine in the log as well. As of January 2, 2009, the machine read 00372.

¶ 10 Tamara indicated that on December 24, 2009, the counter read 24,203 "but that had flipped. That had flipped from 99,000, and I know that by the logs." As such, Tamara claimed the "coin changer" took in \$124,203 during the time period. Tamara calculated the drop-off total from January 1, 2009, until December 24, 2009, at \$32,821.50. The "extra coin" deposited during that time frame was \$30,433.78. Adding these three amounts together, Tamara testified that the laundromat took in \$187,457.50. Tamara notes deposit slips from January 1, 2009, until December 24, 2009, indicate \$155,807.07 was deposited into the account. Therefore, Tamara claims \$31,650.43 in income was not deposited into their account.

¶ 11 While continuing to focus on the time frame of January 1, 2009, until December 24, 2009, Tamara acknowledges that from the cash generated by the laundromat, by agreement between Jeffrey and her, she would receive \$300 cash each week and Jeffery would take \$100 a week. She testified that the amount of cash the two took during that time equaled \$20,400. When subtracted from her \$31,650.43 figure, Tamara claimed Jeffrey dissipated the marital estate by \$11,250.43 over those 12 months.

¶ 12 Schedule C of the tax returns entered into evidence show the following "gross receipts or sales" for the laundromat:

2005 - \$168,283

2006 - \$188,462

2007 - \$177,632

2008 - \$164,279

2009 - \$155,801

Using the same mathematical formula (*i.e.*, adding the extra coin with the receipts from drop-offs and the counter on the coin changer then subtracting the cash each party received from monies collected before the deposit), Tamara calculated the amount dissipated from December 24, 2009, until August 22, 2010, as \$17,912.

¶ 13 Jeffrey testified that the two separated in April of 2009. Jeffrey testified that up until January 2010, all of the deposits and bookkeeping for the laundromat and storage facility were done by Tamara. Tamara would count the currency and checks on a weekly basis and write that figure on a deposit slip. Tamara had access to all of the money to be deposited just as Jeffrey did prior to the deposit being made. Tamara also had access to the laundromat at any given time.

¶ 14 Jeffrey testified that the change machine is a static device. That is, it is a pass-through device and does not, in and of itself, generate any income. For every dollar it takes in, it also dispenses a dollar. As such, Jeffrey claimed the device and readout from the device cannot be used as a measure of income for the laundromat.

¶ 15 Jeffrey's exhibits included a summary of laundromat receipts for 2009 and through August 22 of 2010. The exhibit (attached) indicates that in 2009, the laundromat took in \$159,928. Of that, \$34,075 was from "drop-off" business and \$125,853 is listed under the

category "changer."

¶ 16 The trial court agreed with Tamara's method of determining how much income the laundromat generated and found that between January 1, 2009, and August 22, 2010, Jeffrey dissipated \$29,162. However, the trial court further found that "the point of irreconcilable breakdown" did not occur until April of 2009. As such, the trial court adjusted the amount to \$26,349 and ordered that Jeffrey pay Tamara one-half of that figure, or \$13,174.

¶ 17 The trial court's order further distributed a substantial number of marital assets, including the laundromat, a storage business, painting business, mowing business, two residences, a savings account, four automobiles, a riding law mower, a boat and trailer, and a \$6,000 note owed to the couple by Mike Anderson. In allocating the parties' debts and assets, the trial court awarded Tamara the storage business and Jeffrey the laundromat. The court did not award either party maintenance.

¶ 18 Finding that it was faced with "the anomalous situation in which Tamara has greater equity, no maintenance and a far inferior income stream" since it awarded her the storage business and Jeffrey the laundromat, the court awarded Tamara an "equalizing payment" of \$10,855 per year for two years. That amount equates to \$904.58 a month for 24 months.

¶ 19 The judgment of dissolution, incorporating these findings and orders, was entered on February 22, 2011, by the trial court. Jeffrey filed his notice of appeal on March 9, 2011.

¶ 20 ANALYSIS

¶ 21 Jeffrey argues on appeal that the trial court's finding that he dissipated marital assets is

against the manifest weight of the evidence. He also argues the trial court abused its discretion when ordering him to pay \$21,710 in equalizing payments.

¶ 22

A. Equalizing Payments

¶ 23 Jeffrey claims that the trial court abused its discretion when awarding Tamara "equalizing payments" totaling \$21,710 (\$904.58 monthly for 24 months) as part of the property distribution in the divorce. Jeffrey acknowledges that the trial court "considered certain factors under 750 ILCS 5/503(d) including contributions that each party made to the marital estate" but submits it erred when weighing the 503(d) factors.

¶ 24 Decisions pertaining to the distribution of marital assets will not be disturbed absent an abuse of discretion. *In re Marriage of Polsky*, 387 Ill. App. 3d 126 (2008). An abuse of discretion is found only when no reasonable person would take the view adopted by the trial court. *Id.* at 135. Section 503(d) of the Act directs the court to consider the following factors when distributing marital assets: the contribution of each party to the acquisition, preservation or increase in value of the marital property; the dissipation by each party of the marital property; the value of the property assigned to each spouse; the duration of the marriage; the relevant economic circumstances of each spouse when the division of property is to become effective; any obligations arising from a prior marriage; any antenuptial agreement; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each party; custodial provisions for any children; whether the apportionment is in lieu of or in addition to maintenance; the reasonable opportunity of each spouse for future acquisition

of capital assets and income; and, the tax consequences of property division. 730 ILCS 5/503 (d) (West 2008).

¶ 25 Again, Jeffrey argues the trial court simply got the equation wrong when weighing these factors. He notes the trial court stated that Tamara made larger contributions to the marital assets when Tamara stated that from the time they bought the laundromat until August of 2006, she and Jeffrey devoted equal time to it. Jeffrey notes Tamara further acknowledged that after August of 2006, Jeffrey ran the laundromat and she ran the storage business, which lost money. Until August of 2006, they shared the child rearing duties. Tamara is seven years younger (44) than Jeffrey (51), has a bachelor's degree and significant experience in bookkeeping and accounting. Jeffrey has an associates degree and only been employed in the car parts business and running the laundromat for the bulk of his life. Jeffrey maintains that when assessing those fact, the trial court abused its discretion in awarding the equalizing payments. Jeffrey also points out that Tamara asked to be awarded the storage business as she did not want to move from Princeton or take care of the laundromat.

¶ 26 Tamara responds by arguing that the storage facility awarded to her lost \$1,875 in the previous year while the laundromat made \$71,954 in profit. She claims given this disparity in income, the trial court did not abuse its discretion in awarding her the equalizing payment. Given the deferential standard of review, we agree.

¶ 27 Jeffrey acknowledges that in addition to her duties with the laundromat during the marriage, Tamara kept the family's books/accounts. When she was working at the laundromat,

not only were her tasks equal to Jeffrey's but she also kept track of the family's finances and accounts. While Jeffrey paints the trial court's assessment that Tamara made greater contributions of the marriage as simply wrong, we cannot say that no reasonable person would take the view adopted by the trial court. Trial courts have "broad discretion" in weighing the 503(d) factors and fashioning a plan to distribute marital assets. *In re Marriage of Demar*, 385 Ill. App. 3d 837, 853 (2008). We hold that trial court did not abuse its discretion when ordering Jeffrey to make the equalizing payments.

¶ 28

B. Dissipation of Assets

¶ 29 As this court noted in *In re Marriage of Awan*, 388 Ill. App. 3d 204 (2009), dissipation refers to a spouse's use of marital property for his or her sole benefit for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown. *Id.* at 215.

¶ 30 "Because determinations regarding dissipation of marital assets are factual, the trial court's decision will not be reversed unless it is against the manifest weight of the evidence. *In re Marriage of Manker*, 375 Ill. App. 3d 465 (2007). Once a *prima facie* case for dissipation has been made, the burden shifts to the party charged with dissipation to prove by clear and specific evidence how the funds were spent. *Id.* at 476. Whether a given course of conduct constitutes dissipation depends upon the facts of the particular case; a spouse does not dissipate when spending marital assets for legitimate family expenses and necessary and appropriate purpose. *In re Marriage of Carter*, 317 Ill. App. 3d 546 (2000). A party claiming dissipation satisfies their burden of making a *prima facie* showing of dissipation by establishing the other party has

liquidated marital assets and "obtained exclusive control over" the liquid asset. *In re Marriage of Jerome & Martinez*, 255 Ill. App. 3d 374, 394-95 (1994).

¶ 31 We hold the trial court erred in finding Tamara made a *prima facie* showing of dissipation. A party charged with dissipation need not establish how funds were spent until "a *prima facie* case of dissipation is made ***." *In re Marriage of Murphy*, 259 Ill. App. 3d 336, 339 (1994); *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d 761 (2007). Tamara failed to make a showing that the funds, allegedly dissipated by Jeffrey, ever existed.

¶ 32 On appeal, Tamara argues that the dissipation issue question of fact calls into question the parties' credibility. We do not question Tamara's credibility. Tamara's method of calculating the income and, therefore, determining the amount of dissipated assets is set forth in the statement of facts. We find this method to be, as a matter of law, inherently unreliable. Clearly, the amount of income generated by the laundromat would be the money actually removed from the washers and dryers in addition to the money represented by the receipts for the drop-off laundry. A coin changer is pass-through device. For every dollar deposited, it gives out four quarters. There was no testimony that the coin changer was completely filled each time the machines were emptied. The only testimony regarding when the coin machine was totally refilled was with respect to at the end of each year. The bills removed from the coin changer were not income. Based on these considerations, we hold that the finding that Jeffrey dissipated \$26,000 in marital assets is against the manifest weight of the evidence and, therefore, that portion of the order is reversed.

¶ 33 Therefore, we hold the trial court erred in finding Jeffrey dissipated marital assets and reverse the portion of its order directing Jeffrey to pay \$13,174 for dissipation.

¶ 34 CONCLUSION

¶ 35 For the foregoing reason, the judgment of the circuit court of Bureau County is affirmed in part and reversed in part.

¶ 36 Affirmed in part, reversed in part.