2012 IL App (4th) 120357-U

NO. 4-12-0357

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 26, 2012
Carla Bender
4th District Appellate
Court, IL

In re: the Marriage of	)	Appeal from
STEPHANIE LEISCHNER,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
and	)	No. 09D35
WILLIAM LEISCHNER,	)	
Respondent-Appellant.	)	Honorable
	)	Arnold F. Blockman,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: Where the claimed errors were speculative or not supported by the evidence and certain leases amounted to sham transactions, the trial court's valuation of the farming operation was not against the manifest weight of the evidence.

¶ 2 Where certain nonmarital tractor pulling assets and accounts were commingled with marital property during the marriage, the trial court did not err in finding the property to be part of the marital estate.

¶ 3 Where the evidence indicated four engines on a pulling tractor were marital property, the trial court did not err in valuing the tractor with those four engines.

¶ 4 In January 2009, petitioner, Stephanie Leischner, filed a petition for dissolution of marriage against respondent, William Leischner. In June 2010, the trial court issued a judgment of dissolution of marriage as to grounds only. In March 2012, the court issued an amended

memorandum opinion and supplemental judgment of dissolution of marriage on the remaining issues.

¶ 5 On appeal, William argues the trial court erred in valuing certain property and characterizing property as part of the marital estate. We affirm.

¶ 6 I. BACKGROUND

¶ 7 William and Stephanie were married in April 1992. Two children were born as a result of the marriage, Jed, born in 1995, and Abbey, born in 1999.

¶ 8 In January 2009, Stephanie filed a petition for dissolution of marriage. In June 2009, William filed a response and a counterclaim for dissolution of marriage. In June 2010, the trial court issued the judgment of dissolution of marriage on grounds only and reserved jurisdiction to determine ancillary matters.

¶ 9 Hearings on the remaining matters took place between April 2011 and October 2011. Stephanie testified she was 43 years old and has bachelor's degrees in agricultural business and accounting. She is employed by the University of Illinois and earns approximately $47,000 per year. The parties lived in Weldon during the marriage. The parties originally purchased 20 acres during the marriage and later traded the acreage for 28 acres.

¶ 10 Stephanie stated William participated in tractor pulling prior to and during the marriage. Prior to the marriage, William owned a modified tractor, known at the Dirtslinger, that would hold two or three engines. During the marriage, William built a new tractor in 2005 that would hold four engines. William also bought a turbine tractor, called the Dirt Challenger, which has three turbine engines on it.

¶ 11 William, 59 years old at the time of the hearing, testified he is a self-employed

farmer, farming approximately 1,100 acres. In 2008 and 2010, William reportedly grossed over $400,000 in farm income, and in 2009, he reportedly grossed over $600,000 in farm income.

¶ 12 During the marriage, William's farming operation maintained an operating notice with Farm Credit Services. The note was held in the names of both William and Stephanie. As of June 1, 2010, the operating note expenses incurred for 2009 had not been paid and a balance of $288,722.32 was due. Although the parties would normally roll the loan over to the next year, Stephanie refused to sign as obligor on the operating note for the 2010 crop year. As a result, Farm Credit Services would not extend a line of credit to William in his name only. William eventually paid off the note by selling several pieces of farm equipment, which resulted in an increased tax liability due to capital gains and depreciation recapture.

¶ 13 William secured the necessary farming inputs on credit from his vendors. He also obtained equipment through lease agreements with David Reed. The debts were paid off when the 2010 crop was harvested and sold.

¶ 14 William testified he engaged in tractor pulling across the country. His tractor pulling operation is set up as a sole proprietorship. He receives sponsorships in the form of cash or products. He received over $51,000 in prize money in 2010. He purchased the three-engine Dirtslinger prior to the marriage and added a fourth engine in 2000. The three-turbine-engine Dirt Challenger was purchased during the marriage. Although his expenses were paid with sponsorships and prize money, he did use other accounts to make up for losses.

¶ 15 David Reed testified he had two lease arrangements (Reed leases) with William. One equipment lease entered into in April 2010 was for a "Great Plains Turbo Till," which Reed purchased for $41,000. The five-year lease required William to pay $11,187.70 per year to Reed.

¶ 16 Reed received two checks from ADM Weldon, a grain elevator, for $28,598.11 and $27,340.41 in December 2010 or January 2011. Reed stated these payments from William indicated the lease had been paid in full. When Reed asked William why he paid off the lease early, William stated he wanted to make sure Reed was taken care of. On questioning by the trial court, Reed stated he and William did not discuss any attempt to hide assets or income.

¶ 17 Reed also leased a John Deere planter to William in January 2011. Reed stated it was a five-year lease with payments of $18,000 for four years and $14,000 for the fifth year. Reed stated William made one payment of $18,000 from his farm account.

¶ 18 The parties stipulated to the affidavit of Brian Knox, the owner and operator of Sassy Engines, which sells, repairs, and rebuilds engines used in tractor pulling events. Knox stated the Dirtslinger had four Sassy engines, two of which were owned by Knox. Knox stated he loaned the two engines to William, and William is to eventually return them in the same condition as when he received them or buy them outright. Knox also stated he loaned the engines to William as part of his business plan and knew that William could not afford to purchase them as he was going through a divorce. William testified he had no written agreement with Knox concerning the two engines and he had no intention of buying them.

¶ 19 The parties entered several appraisals into evidence. The first Shaff appraisal listed multiple farm implements, including cultivators, planters, and tractors. The second Shaff appraisal listed a mower, an auger, and a loader, among other items.

¶ 20 In March 2012, the trial court issued an amended memorandum and supplemental judgment of dissolution of marriage. The court found the farm equipment subject to equitable distribution as follows:

First Shaff Appraisal	$779,000.00
Second Shaff Appraisal	$ 35,350.00
Third Shaff Appraisal	$ 1,500.00
Great Plains Tool	$ 55,938.52
	$871,788.52

The court also listed the crop sales subject to equitable distribution as follows:

2010 Crop Sales	$419,410.52
2011 Sales of 2010 Crop	$ 52,046.94
2010 Sales of 2009 Crop	$ 6,827.66
	$478,285.12

The court listed certain marital debt related to the farm equipment and crops as follows:

Farm Operating line of Credit	$290,265.11
Farm Credit Equipment	$ 83,160.76
Farm Credit W900 Kenworth	$ 30,642.75
John Deere 2210 Cultivator	$ 11,475.61
John Deere 9770 Combine	$175,178.27
John Deere 1770 Planter	$ 57,814.55
	$648,537.05

Accordingly, the total equity in the marital farm equipment and the crop proceeds amounted to $701,536.59 (we note the trial court's calculation was nine cents less). The court awarded William all farm equipment and tractor pulling assets. The court also ordered William to assume all debts associated with the farming operation and the tractor pulling business.

¶ 21 The trial court found the Reed leases amounted to "sham transactions." Both transactions occurred after the parties separated and during the pendency of the ancillary proceedings. The court found William "was clearly seeking to avoid having any additional farm marital equipment in his name that would be subject to equitable division by the Court." Accordingly, the court concluded the two pieces of machinery under the Reed leases constituted marital farm equipment owned by William and subject to equitable distribution.

¶ 22 As to the tractor pulling assets, the trial court found "a constant flow of funds between the Dirtslinger checking account and the marital farm checking account." The court noted two of the current four engines on the Dirtslinger were purchased by William during the marriage. The other two engines were provided during the marriage by Brian Knox, the owner of Sassy Engines, as part of the Sassy Engines marketing plan. The court found the Dirtslinger checking account, the Dirtslinger, and the Dirt Challenger constituted marital property subject to equitable division. The court valued the Dirtslinger at $175,000, which included its four engines.

¶ 23 The trial court found the value of the net marital assets to be $995,100.86 and divided the assets at 57% for William and 43% for Stephanie. The court awarded William 28.57 acres of farm land adjacent to the former marital residence and ordered him to pay Stephanie $399,667.23 as a property settlement. The court denied Stephanie's request for permanent maintenance and also denied both parties' requests for contribution to attorney fees. This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 A. The Farming Operation Valuation

¶ 26 William argues the trial court erred in its valuation of the farming operation. We disagree.

¶ 27 Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act requires the trial court to divide marital property "in just proportions" considering the enumerated and relevant factors. 750 ILCS 5/503(d) (West 2010). Such factors include, *inter alia*, the contribution of each party, the relevant economic circumstances of each spouse when the division is to become effective, the reasonable opportunity of each spouse to further acquire capital assets and

income, and the tax consequences of the property division. 750 ILCS 5/503(d) (West 2010).

¶ 28 The first step in the division of property is to establish the value of the parties' assets. *In re Marriage of Lundahl*, 396 Ill. App. 3d 495, 504, 919 N.E.2d 480, 488 (2009). A trial court's valuation of marital assets "is a question of fact that will not be disturbed on review unless it is contrary to the manifest weight of the evidence." *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 151-52, 838 N.E.2d 282, 289 (2005); see also *Lundahl*, 396 Ill. App. 3d at 505, 919 N.E.2d at 488 (noting the manifest-weight standard is utilized "when assigning value to an asset after classification because valuation of marital assets is generally a factual determination").

¶ 29 1. *2010 Crop and Expenses*

¶ 30 William argues the trial court erred in using gross figures for the 2010 crop and in not considering the expenses incurred. The trial court found the total equity in the marital farm equipment and the crop proceeds minus the marital debt amounted to $701,536.50. William argues $6,827.66 should have been deducted for the crop proceeds received in 2010 for the 2009 crops. He also argues the farm debts should include $207,614.89 in additional expenses for the 2010 crop and $24,521.81 in average compensation due to him. Incorporating these corrections, William contends the adjusted net equity in the farm should be $463,572.25.

¶ 31 After reviewing the arguments on appeal and considering the testimony and exhibits presented in this case, we find William's claims of error speculative or not supported by the evidence. The trial court considered all available evidence and drafted an exhaustive judgment order admirably addressing the litany of difficult issues in this case. Any errors in the valuation of the farming operation were *de minimus*, and nothing indicates the court's order was against the manifest weight of the evidence.

¶ 32 2. *Reed Leases*

¶ 33 William argues the trial court erred in declaring the Reed leases to be sham transactions and by including the related farm equipment in its distribution.

> "Generally, a spouse has an absolute right to dispose of his or her property in any manner and without the concurrence of the other spouse. [Citations.] Such disposition of property is permissible even where its sole purpose is to minimize or defeat the statutory marital interest the other spouse may have in the property conveyed. [Citations.] Nevertheless, where a conveyance from a spouse to a third party is essentially nothing more than a sham transaction, it is tantamount to a fraud and subject to defeasance by the other spouse." *In re Marriage of Shehade*, 137 Ill. App. 3d 692, 699-700, 484 N.E.2d 1253, 1258 (1985).

A trial court's determination that a particular transaction was a sham will not be overturned unless it is against the manifest weight of the evidence. *Shehade*, 137 Ill. App. 3d at 701, 484 N.E.2d at 1259.

¶ 34 In this case, William obtained the right to use the Great Plains tool and the John Deere planter in 2010 and 2011. Reed testified he paid $41,000 for the Great Plains tool when he purchased it in 2010. The lease specified William was to pay $11,187.70 per year for five years. Reed stated William paid the lease in full within the first year. The payments were made via two checks from a grain elevator at William's direction. Reed had never leased equipment to William before, and the equipment would be William's to keep at the end of the lease period. Reed

admitted he was helping William out, and William paid off the lease early to make sure Reed was taken care of.

¶ 35 Reed also testified to his purchase of the John Deere planter for $90,000 in January 2011. The lease required William to pay $18,000 per year for five years. Reed stated he never used the planter, it had always been in William's possession, and William will own it at the end of the five-year period.

¶ 36 The trial court found the Reed leases amounted to sham transactions. The court stated both transactions were entered into well after the parties separated and during the pendency of the ancillary proceedings. The court found William "was clearly seeking to avoid having any additional farm marital equipment in his name that would be subject to equitable division by the Court."

¶ 37 The trial court had the opportunity to consider the evidence and weigh the credibility of the witnesses. In these transactions between friends, a reasonable person could conclude the leases were nothing more than a subterfuge to help William in his contested divorce proceedings. We find sufficient evidence established the Reed leases were sham transactions intended to hide farm equipment off the books for William's benefit and ultimately to Stephanie's detriment. Thus, the trial court's determination was not against the manifest weight of the evidence.

¶ 38 B. The Dirtslinger and the Dirt Challenger as Marital Property

¶ 39 William argues the trial court erred in finding the Dirtslinger and the Dirt Challenger to be marital property. We disagree.

¶ 40 Prior to disposing of property upon dissolution, the trial court must classify

property as either marital or nonmarital. *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017, 909 N.E.2d 221, 228 (2009). Nonmarital property includes property acquired prior to the marriage. 750 ILCS 5/503(a)(6) (West 2010). In the division of property, "each spouse is to receive his or her own nonmarital property." *In re Marriage of Werries*, 247 Ill. App. 3d 639, 649, 616 N.E.2d 1379, 1388 (1993); see also 750 ILCS 5/503(d) (West 2010) ("the court shall assign each spouse's non-marital property to that spouse").

¶ 41 The party claiming certain property is nonmarital has the burden of proof. *In re Marriage of Jelinek*, 244 Ill. App. 3d 496, 504, 613 N.E.2d 1284, 1290 (1993). " 'Any doubts as to the nature of the property are resolved in favor of finding that the property is marital.' " *In re Marriage of Didier*, 318 Ill. App. 3d 253, 258, 742 N.E.2d 808, 813 (2000) (quoting *In re Marriage of Hegge*, 285 Ill. App. 3d 138, 141, 674 N.E.2d 124, 126 (1996)). The trial court's classification of property as marital or nonmarital will not be disturbed on appeal unless is against the manifest weight of the evidence. *Lundahl*, 396 Ill. App. 3d at 502, 919 N.E.2d at 486.

¶ 42 When marital property and nonmarital property are commingled resulting in a loss of identity of the contributing estates, the commingled property is deemed transmuted to marital property. 750 ILCS 5/503(c)(1) (West 2010).

> "Commingling of assets can occur in two ways. First, one asset can be so intermingled with another as to lose its identity. This often occurs when cash is involved. H uses his personal savings account to buy the family station wagon after the kids are born. In this example, the cash loses its identity as a nonmarital asset. Second, assets from two different estates can be combined

to acquire new property. H and W each sell nonmarital homes to buy a new home. The new home becomes marital property."

Werries, 247 Ill. App. 3d at 642, 616 N.E.2d at 1383-84.

Notwithstanding any transmutation, the contributing estate is entitled to reimbursement from the estate receiving the contribution, "unless the contribution cannot be retraced by clear and convincing evidence or was a gift." *In re Marriage of Henke*, 313 Ill. App. 3d 159, 167, 728 N.E.2d 1137, 1143 (2000); 750 ILCS 5/503(c)(2) (West 2010).

¶ 43 In the case *sub judice*, William participated in tractor pulling prior to his marriage with Stephanie. The Dirtslinger tractor and the Dirtslinger checking account existed prior to the marriage. The trial court found modifications, improvements, and changes were made to the Dirtslinger during the marriage. William testified he purchased new frame rails, added a fourth engine in 2000, purchased several replacement engines and new tires during the marriage, and was constantly replacing and rebuilding parts.

¶ 44 We find the trial court's determination that the funds transferred in and out of the Dirtslinger checking account over the course of the parties' 18-year marriage to cover parts and service for the Dirtslinger were marital property was not against the manifest weight of the evidence. It is unclear what amount of funds existed in the Dirtslinger account prior to the marriage, but any amounts were so intermingled with marital funds from the parties' farm account that they lost their identity as nonmarital funds.

¶ 45 The trial court's decision pertaining to the Dirt Challenger was also correct. As the Dirt Challenger was partially purchased with commingled property, it too constituted marital property. See *In re Marriage of Davis*, 215 Ill. App. 3d 763, 769, 576 N.E.2d 44, 48 (1991)

("Once marital and non-marital funds are commingled and lose their identity through acquisition of a newly created asset during the marriage, the asset is marital"). Moreover, William testified parts and tires were purchased for the Dirt Challenger from funds in the Dirtslinger account. Accordingly, the Dirt Challenger, like the Dirtslinger and its related account, constituted marital property subject to equitable division.

¶ 46 C. The Dirtslinger Valuation

¶ 47 William argues the trial court erred when it valued the Dirtslinger with all four engines. We disagree.

¶ 48 A trial court's valuation of marital assets "is a question of fact that will not be disturbed on review unless it contrary to the manifest weight of the evidence." *Wojcik*, 362 Ill. App. 3d at 151-52, 838 N.E.2d at 289. Also, "[i]t is the province of the trial judge to determine the credibility of the witnesses." *In re Marriage of Barnes*, 324 Ill. App. 3d 514, 520, 755 N.E.2d 522, 528 (2001).

¶ 49 Stephanie's expert valued the Dirtslinger between $135,000 and $175,000 with its four engines. William's expert valued the Dirtslinger with only two engines at $69,400. William argued the Dirtslinger should be valued with only two of the four engines because Knox had loaned him the two Sassy engines. In his affidavit, Knox stated he loaned the engines to William as part of his business plan and he knew William could not afford to purchase them as he was going through a divorce.

¶ 50 The trial court found the two engines from Knox amounted to a gift rather than a loan. The court stated no written documentation existed to detail the terms of the alleged loan. No documents detailed when the engines had to be returned or how much William should pay.

Moreover, both William and Knox benefitted financially from the arrangement. We conclude there was sufficient basis in the record to support the court's finding that Knox intended the engines as a gift and therefore the Dirtslinger should be valued with all four engines.

¶ 51 In closing, we commend the trial court for its thoughtful and detailed memorandum opinion, which we found most helpful.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we affirm the trial court's judgment.

¶ 54 Affirmed.