NO. 5-09-0226

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
RICHARD JONES,	)	Madison County.
	)	
Petitioner-Appellant and Cross-Appellee,	)	
	)	
and	)	No. 06-D-949
	)	
CHRISTY JONES,	)	Honorable
	)	Duane L. Bailey,
Respondent-Appellee and Cross-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Chapman and Justice Stewart concurred in the judgment.

R U L E 2 3 O R D E R

Held: The trial court's final ruling on the division of property pursuant to the parties' dissolution of marriage is not against the manifest weight of the evidence, nor was it an abuse of the trial court's considerable discretion, and therefore, it is affirmed.

Petitioner, Richard Jones, appeals the trial court's final ruling on the division of property pursuant to the dissolution of his marriage to respondent, Christy Ann Jones. In this appeal, petitioner raises three issues: (1) whether the trial court erred in finding that all of his individual retirement account (IRA) was marital property, (2) whether the trial court erred in finding that all of his investment accounts were marital property, and (3) whether the trial court erred in excluding the second mortgage on the house in determining the equity therein. Respondent has filed a cross-appeal in this matter. The issue raised in the cross-appeal is whether the trial court erred in its subsequent determination that petitioner should be reimbursed $60,000 from his IRA. We affirm.

BACKGROUND

This case involves the property distribution of an affluent couple subsequent to their dissolution of marriage. Petitioner is a retired dentist. Respondent worked for petitioner in his dental practice prior to their marriage. Petitioner started his dental practice in 1966. Respondent began working for him in June 1977.

The parties married on July 17, 1982. The parties were married for 26 years. Petitioner was 45 years old at the time of the marriage and respondent was 26. It was petitioner's second marriage and respondent's first marriage. Petitioner had three children with his first wife and no children with respondent.

Respondent continued to work for petitioner for a few years after their marriage, and then for the next 10 years she worked as a fill-in for employee vacations and sick days. Over the course of several years, respondent took numerous college courses and ultimately earned a degree in finance from Southern Illinois University around 1990. Respondent also took some real estate classes. However, respondent was never gainfully employed again. Petitioner told respondent that she did not need to work and that he would take care of her. At the time of the trial, respondent was unemployed.

Petitioner established a Keogh plan when he started his dental practice. He made contributions to that plan until 1972, when he incorporated his practice. He then maintained the Keogh plan as an inactive retirement plan. In 1983, petitioner established an IRA in his name. Initial funding came from a $2,000 contribution from the parties' joint checking account and a rollover of his Keogh plan in the amount of $10,675.42. Respondent also established an IRA in her name around the same time. It was funded with a $2,000 contribution from the parties' joint checking account.

When petitioner incorporated his business in 1972, he also established a corporate pension plan and a corporate profit-sharing plan for both himself and his employees.

Petitioner contributed 10% of each employee's gross salary to the pension fund and 15% of gross salary to the profit-sharing plan, up to $30,000. Respondent participated in both plans during the time she was employed by petitioner. The pension and profit-sharing plans were made up of various types of securities, including stocks, bonds, and debentures. The shares were never segregated to the employees, meaning that separate accounts were not maintained per employee. Instead, there was a pool of investments, which were periodically adjusted. Petitioner testified he made adjustments and trades to the plans approximately 30 times per year.

In December 2001, petitioner retired from the practice of dentistry and sold his practice to his associate. Petitioner withdrew his money from the pension and profit-sharing plans and rolled it over into an existing IRA. It was not the same IRA petitioner established in 1983, but one that was established in 2000, but with proceeds from the original IRA. Respondent also withdrew her money in each plan and rolled it over into her existing IRA.

At the trial Michael Fitzgerald, CPA, testified that he had been doing accounting work for both of the parties and the professional dental corporation for a number of years. The accounting firm for which he worked was already doing work for petitioner when Fitzgerald started working for the firm. He would annually update the profit-sharing plan and the pension plan for petitioner in the following manner:

> "We would take the fair market value of the statement that Dr. Jones would give us. We would then go back to the prior year and start with the end of the prior years[']['] which is the beginning of the current year's numbers, and we would roll forward contributions that would have gone in, any earnings that the plan would have made, any distributions that would have gone out, and we would adjust all of those to come up with ending balances for the current year."

Each year a participant would get an account balance, and the full report would go to

petitioner as the trustee of the plans.

In 2001, the value of the pension plan was $2,114,369. By 2002, the value dropped to $47,190. The large reduction was due to distributions made to Patricia Ahern, as well as petitioner and respondent. All three rolled their pension distributions into IRAs. The profit-sharing plan saw a similar reduction. In 2001, the value of that plan was $2,903,614, and in 2002, it was reduced to $59,201. Patricia Ahern received a distribution of $166,144, respondent received $44,230, and petitioner received $2,396,551.

Mr. Fitzgerald testified that at the request of petitioner he determined which assets in the profit-sharing and pension plans were marital and which were premarital. He testified that he used the methodology provided for in article V, paragraph 5.4, of the pension and profit-sharing plans, both of which explain how to allocate the earnings to the participants in establishing the value of the accounts. Mr. Fitzgerald testified that this is the generally accepted method to use for those calculations.

With regard to respondent, Mr. Fitzgerald valued her pension account at $965 and her profit-sharing account at $1,465, as of December 31, 1981. The next year, her pension was valued at $2,378, and her profit-sharing was valued at $3,832. Mr. Fitzgerald found the values for each plan for each year until 2002, when respondent's pension plan was valued at $32,474 and her profit-sharing was valued at $44,371, for a total of $76,845. He then separated that amount into premarital and marital and found that $33,909 was premarital while $42,936 was marital.

With regard to petitioner, Mr. Fitzgerald valued his pension plan as of October 31, 1981, at $117,759 and his profit-sharing plan at $207,462. Because the parties married in July 1982, Mr. Fitzgerald started determining marital and premarital as of the date of their marriage. Mr. Fitzgerald valued the premarital pension plan as of October 31, 1982, at $144,785 and the marital portion at $4,375. With regard to the profit-sharing plan, Mr.

Fitzgerald valued the premarital portion at $286,962 and the marital portion at $6,563 as of October 31, 1982. He continued those calculations until December 31, 2002, when the premarital portion was worth $2,774,734 and the marital portion was worth $1,413,334. Mr. Fitzgerald testified that he arrived at the $2,774,734 amount in the following manner:

> "From starting off at 10/31/81 with $117,000 number that we talked about, and then each year none of the contributions went into the premarital column. They all went into the marital. So, the only thing that was increasing the premarital would have been the increments or the decrements in the value of the assets, so basically the earnings."

The same type of calculation was also performed with regard to the profit-sharing plan.

Mr. Fitzgerald treated $10,647 from petitioner's Keogh plan as a premarital asset and the $2,000 Dr. Jones put into the IRA after the parties' marriage as a marital asset. Mr. Fitzgerald determined that the final share of premarital assets in the profit-sharing IRA as of May 31, 2008, was $3,027,200 and that the marital share was $1,555,030.

On February 26, 2002, the corporate pension and profit-sharing plans were terminated and the money was rolled into petitioner's IRA. At that point the total rollover was $4,188,068, of which $2,774,734 was premarital and $1,413,334 was marital.

In addition to the IRA, petitioner maintained a separate brokerage account with Alton Securities Group (ASG) that had approximately $60,000 in it when the parties married and, as of May 2008, was valued at $1,080,555.16. The trial court originally determined that the entire IRA and separate brokerage account were marital property, but in response to petitioner's posttrial motion, the trial court agreed that the original $60,000 was premarital and directed the marital estate to reimburse petitioner $60,000.

On cross-examination, Mr. Fitzgerald admitted that he performed these calculations at the behest of petitioner in preparation for the trial. During the parties' marriage, Mr.

Fitzgerald never kept separate records of what was marital and what was premarital. Initially, petitioner had $10,675 in premarital assets and then added $2,000, which was considered marital. Mr. Fitzgerald could not determine what form the $10,675 took, but he said that the $2,000 was used to buy 227.886 shares of AMCAP Funds. Mr. Fitzgerald testified that petitioner normally invested in stocks and made numerous changes to his investments; however, all the calculations done by Mr. Fitzgerald are based upon the initial account balance and the ratio between the two. Respondent's attorney pointed out that there was an immediate loss to the account, which Mr. Fitzgerald agreed was a "giant loss." Mr. Fitzgerald could not determine if the loss was from the AMCAP Funds or something in which the premarital money was invested. Nevertheless, Mr. Fitzgerald calculated the loss on the original ratio:

"Q. [Respondent's attorney:] And because we don't know the answer to whether the marital contribution lost or whether the nonmarital contribution lost, you just allocate it based on percentage, the relative part 2,000 bears the total and 10,675 bears the total:

A. [Mr. Fitzgerald:] That's correct.

Q. Okay. That is the case throughout your computations. These–these allocations of loss or appreciation in value–contributions based on appreciation of value are always done based on the ratio as to the account–one account bears to the other, right?

A. Yes.

* * *

Q. And so the bottom line of all of that is we cannot tell here. We can't trace, if you will, what happened to the original marital contributions and stock, whether it went up and down and made zillions of dollars because AMCAP was a great investment, or whether it came from the other premarital, or whether the other

premarital stuff fell flat and was a zero? We just can't tell from looking at this.

A. From looking at that, no. And Dr. Jones may have that detailed to go through it, but I did not have that detail. We based it on the ratio."

Mr. Fitzgerald agreed that all the rollovers of money from IRAs, the profit-sharing plan, and the pension plan were accomplished by at least March of 2002. There were losses and gains throughout the years.

Respondent's attorney pointed out that if you look at the profit-sharing plan in 1994, it was worth $184,500, but by 1995, it was only worth $94,000. A total of 23 government securities were liquidated between 1994 and 1995, thus reducing it by half. Mr. Fitzgerald's records also show that while there were no bonds or debentures in 1994, $777,000 was used to purchase new bonds and debentures soon thereafter. Petitioner reduced the common stock by approximately half in the profit-sharing plan. Moreover, the records show that petitioner took a loan from the profit-sharing plan. He later paid that money back with interest, but there is no way to know what the loan was used to purchase.

Petitioner never earned more than $200,000 per year in his dental practice. Petitioner agreed that the large quantities of money accumulated in the IRAs and joint accounts were not the result of necessarily investing a lot of money from his salary but were the result of his prowess as an investor. The parties filed joint tax returns during their marriage. After petitioner retired, he took out $10,000 per month and deposited it into the parties' joint checking account, on which the parties lived. By the time of the trial, petitioner was taking $14,500 per month out of his IRA for living expenses. Petitioner also received over $1,600 per month in social security benefits. For the nine months preceding the trial, petitioner gave respondent $2,000 per month from his nearly $16,000 in income. Respondent did not feel that her "stipend" was enough because her total monthly expenses were around $3,100.

According to respondent, the parties' marital discord stemmed from her refusal to

continue writing checks to petitioner's children and his desire to add his children's names as beneficiaries of his IRA. According to respondent, if she agreed to make his children beneficiaries on the IRA, they would receive three-quarters and she would be stuck with two home mortgages, which exceeded the value of the marital residence.

Approximately 10 years before the trial, petitioner took out two mortgages on the family home. The first mortgage was from Carrollton Bank in the amount of $180,000. Petitioner testified that there is an outstanding balance of approximately $124,000 on that loan. The second mortgage was for $100,000 from petitioner's sister and brother-in-law. The second requires interest payments only at 8.25%. The bank recorded its mortgage. The relatives did not. The loans allowed petitioner to buy an airplane. Petitioner sold the airplane in March 2007 and deposited the proceeds into his IRA. Petitioner testified that he regarded the airplane proceeds as marital.

After hearing all the evidence, the trial court found that all of petitioner's and respondent's IRAs were marital property. However, because respondent's IRA was "insignificant as opposed to the IRA held by [petitioner]," the trial court awarded the entirety of respondent's IRA to her, subject to an offset with petitioner's IRA. Petitioner filed a posttrial motion in which he argued, *inter alia*, that he was entitled to a $60,000 offset. The trial court agreed and required the marital estate to reimburse petitioner for $60,000 that was in the account as of the date of the parties' marriage. The trial court denied the motion as it related to the proceeds of the sale of petitioner's professional corporation. The trial court awarded the marital home to petitioner and required him to pay respondent half of the equity in the home. The circuit court ultimately excluded the $100,000 loan from his relatives from the equity calculation on the basis that the loan could be forgiven, which would prevent respondent from receiving a proper division of assets. The trial court found petitioner's former dental office building to be a nonmarital asset and awarded it to petitioner. The trial

court awarded "minimum maintenance" for a "short period of time" to respondent, finding that once the assets have been distributed, respondent will have more than enough assets "to maintain a more than adequate lifestyle." The circuit court then divided the marital property equally between the parties and ordered each party to pay their own attorney fees and costs. Petitioner now appeals, and respondent has filed a cross-appeal.

ANALYSIS

I. Individual Retirement Account (IRA)

The first issue we are asked to address is whether the trial court erred in finding that all of petitioner's IRA was marital property. Petitioner contends that the IRA was always nonmarital property, even if the marital property increased its value, and that the uncontradicted evidence established what part of the IRA was attributable to marital property and what part was attributable to nonmarital property. We disagree.

According to section 503 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503 (West 2006)), prior to distributing property upon the dissolution of a marriage, the trial court must classify the property as marital or nonmarital. *In re Marriage of Davis*, 215 Ill. App. 3d 763, 768, 576 N.E.2d 44, 47 (1991). On the review of a trial court's findings on the existence of marital and nonmarital property, a manifest-weight-of-the-evidence standard is applied. *In re Marriage of Berger*, 357 Ill. App. 3d 651, 659-60, 829 N.E.2d 879, 887 (2005). "A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent, or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 106, 658 N.E.2d 450, 461 (1995).

Property acquired by either spouse after the marriage but prior to the judgment of dissolution is generally presumed to be marital property regardless of how the title is held. *In re Marriage of Davis*, 215 Ill. App. 3d at 768, 576 N.E.2d at 47-48. Section 503(b)(1) of

the Act states, "The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (a) of this Section." 750 ILCS 5/503(b)(1) (West 2006). Section 503(a)(6) of the Act excepts certain property known as nonmarital property where the "property [was] acquired before the marriage." 750 ILCS 5/503(a)(6) (West 2006). It is undisputed that the parties' contributions made during the marriage were marital property. While petitioner asserts that the evidence was uncontradicted that the assets in the IRA could be traced as marital and nonmarital, our review of the record indicates the opposite.

Section 503(c) addresses the situation here where there has been a commingling of marital and nonmarital property. Section 503(c) specifically provides as follows:

> "(c) Commingled marital and non-marital property shall be treated in the following manner, unless otherwise agreed by the spouses:
>
> (1) When marital and non-marital property are commingled by contributing one estate of property into another resulting in a loss of identity of the contributed property, the classification of the contributed property is transmuted to the estate receiving the contribution, subject to the provisions of paragraph (2) of this subsection; provided that if marital and non-marital property are commingled into newly acquired property resulting in a loss of identity of the contributing estates, the commingled property shall be deemed transmuted to marital property, subject to the provisions of paragraph (2) of this subsection.
>
> (2) When one estate of property makes a contribution to another estate of property, or when a spouse contributes personal effort to non-marital property, the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation; provided, that no such

reimbursement shall be made with respect to a contribution which is not retraceable by clear and convincing evidence, or was a gift ***." 750 ILCS 5/503(c) (West 2006).

While Mr. Fitzgerald attempted to support petitioner's theory that his premarital contributions could be traced, it is clear that the funds were commingled and their identity lost. Once marital and nonmarital funds are commingled and lose their identity through the acquisition of newly created assets during the marriage, the assets are marital. 750 ILCS 5/503(c)(1) (West 2006); *In re Marriage of Davis*, 215 Ill. App. 3d at 769, 576 N.E.2d at 48 (citing *In re Marriage of Malters*, 133 Ill. App. 3d 168, 478 N.E.2d 1068 (1985)). "Tracing requires that the source of the funds be identified." *In re Marriage of Davis*, 215 Ill. App. 3d at 770, 576 N.E.2d at 49.

The instant case is similar to *In re Marriage of Davis*. In that case, the husband inherited assets from his mother during his marriage and used the inheritance to open a money-market account with Merrill Lynch. A year later, he inherited assets from his father and also deposited that inheritance into the Merrill Lynch account. *In re Marriage of Davis*, 215 Ill. App. 3d at 767-68, 576 N.E.2d at 47. These assets from his parents' estates were his nonmarital property (see Ill. Rev. Stat. 1987, ch. 40, pars. 503(a)(1), (a)(2)), and the stock he bought was marital property (see Ill. Rev. Stat. 1987, ch. 40, par. 503(a)). The husband argued he created the money-market account with nonmarital property and that, under section 503(c)(1), any subsequent deposits of marital property into the account were transmuted to his nonmarital property. *In re Marriage of Davis*, 215 Ill. App. 3d at 768, 576 N.E.2d at 47.

Our colleagues in the First District disagreed with the husband, finding that items of both marital property and nonmarital property were commingled into new property, resulting in the third type of transmutation described in section 503(c)(1). *In re Marriage of Davis*, 215 Ill. App. 3d at 769, 576 N.E.2d at 48. By depositing funds into the money-market account,

the husband had bought shares in the account, and Merrill Lynch in turn used those shares to buy new stocks and bonds. *In re Marriage of Davis*, 215 Ill. App. 3d at 769, 576 N.E.2d at 48. Although the shares in the account were initially nonmarital, the husband later began buying more shares with marital property. It was impossible "to distinguish which *** shares were used to purchase additional stocks or bonds." *In re Marriage of Davis*, 215 Ill. App. 3d at 769, 576 N.E.2d at 48. "Thus, newly created assets came into being. Once marital and nonmarital funds are commingled and lose their identity through acquisition of a newly created asset during the marriage, the asset is marital." *In re Marriage of Davis*, 215 Ill. App. 3d at 769, 576 N.E.2d at 48.

In the instant case, by the very nature of the IRA and petitioner's numerous trades and adjustments to the plans over the years that ultimately came to compose the IRA, it is simply impossible to ascertain the source of the funds with which specific stocks and securities were purchased. It is undisputed that both petitioner's pension plan and his profit-sharing plan were ultimately deposited into his IRA. Over the years, petitioner, an astute investor, would make more than 30 trades or adjustments per year. On cross-examination, Mr. Fitzgerald admitted that after one year he could not determine where petitioner's original $10,675 Keogh rollover and $2,000 marital contribution went. Fitzgerald conceded there was a "giant loss" in the first year, but he could not determine whether that loss was from the AMCAP Funds, which had been purchased with the $2,000 marital contribution, or from an investment created by the $10,675. If after only one year it was impossible to trace the investments, there is no way we can find with any certainty which of these investments were created by marital contributions versus nonmarital contributions. Mr. Fitzgerald's attempt to distinguish the monies on the initial ratio created by the initial investments is simply not convincing.

After careful consideration, we cannot say that the trial court's classification of the assets in petitioner's IRA as marital is against the manifest weight of the evidence. We agree

with the trial court's finding that all of petitioner's IRA was marital. Petitioner's premarital assets are simply not traceable and have been transmuted.

II. Investment Account

The second issue raised by petitioner is whether the trial court erred in finding that all of petitioner's investment account at Alton Securities Group (ASG) was marital property. Petitioner contends that the funds in the account as of the date of the marriage and the proceeds of the corporate dissolution were his nonmarital assets. He contends that the same logic used by the trial court with respect to the $60,000 that was in the account prior to the parties' marriage requires that he also be awarded $220,000 for the sale of his dental practice as well $90,000 for the corporation's retained earnings. We disagree.

Mr. Fitzgerald again attempted to formulate charts to show which funds were marital and which were nonmarital, but as with the IRA, his attempts failed to properly trace the nonmarital money. The funds in this account, like the IRA, were clearly commingled and transmuted into marital property. With regard to the dental practice, another dentist purchased the dental practice for $220,000. This amount represents $54,140 in corporate stock, $162,860 for goodwill, and $3,000 for a restrictive covenant. Petitioner maintained ownership of the building, which he purchased prior to the parties' marriage for $34,000. The trial court awarded him the building, which he still owned. However, the $220,000 was deposited into petitioner's ASG brokerage account. Mr. Fitzgerald was unable to show what happened to this $220,000.

We also point out that the dental practice clearly grew and prospered during the parties' 26-year marriage due to investments of marital assets and the efforts of both parties. It is true that petitioner earned a substantial salary during the marriage, from which respondent clearly benefited; however, to say that respondent is not entitled to any of the proceeds of the sale of the dental practice would be an injustice. Thus, we disagree with petitioner that the $310,000

in proceeds from the sale of his dental practice are identical in principle to the $60,000 of nonmarital funds in this account at its inception.

Furthermore, respondent points out that petitioner purchased two airplanes during his marriage, a Cessna 182, which he later sold for $97,000, and a Lancair Columbia 300, which cost $340,000 and required petitioner to borrow $280,000 and the rest of which came from his ASG account. The $97,000 from the sale of the Cessna was deposited into petitioner's ASG account. In order to purchase the second airplane, petitioner borrowed money from the Carrollton Bank, using the equity in the marital home as collateral. Petitioner also borrowed $100,000 from relatives without respondent's consent. When petitioner sold the second airplane, the proceeds were again deposited into the ASG account. Petitioner conceded that the revenue from the sale of the planes was marital property.

Petitioner also deposited other marital funds into the ASG account in question, including rental income from his dental building, his social security income, and joint income tax refunds. "When a brokerage account is established during a marriage with nonmarital funds and marital funds are later added to that account," "you have a situation where 'marital and non[]marital property are commingled into newly acquired property resulting in a loss of identity of the contributing estates.' " *In re Marriage of Mouschovias*, 359 Ill. App. 3d 348, 355, 831 N.E.2d 1222, 1227-28, (2005) (quoting 750 ILCS 5/503(c)(1) (West 2002) and citing *In re Marriage of Davis*, 215 Ill. App. 3d at 770, 576 N.E.2d at 48-49). In this situation, "the commingled property shall be deemed transmuted to marital property." 750 ILCS 5/503(c)(1) (West 2006). This is the situation with the ASG brokerage account. We disagree with petitioner that he was entitled to $310,000 from that account.

III. Second Mortgage

The final issue raised by petitioner is that the trial court erred in excluding the second mortgage on the house in determining the equity in the home. Petitioner contends that the

ruling was against the manifest weight of the evidence because it is speculative in that there is no evidence that petitioner's relatives have any intention of forgiving the loan and because the ruling gives respondent a double recovery. We disagree.

The facts surrounding the mortgages are important to note. The mortgages were taken on the home by petitioner in order to purchase an airplane. Petitioner secured a loan from the Carrollton Bank for $180,000, of which $124,000 was still due as of the time of the trial. Petitioner also borrowed $100,000 from his sister and brother-in-law. Petitioner was specifically asked whether his sister and brother-in-law have a security interest in the house. Petitioner replied, "They're supposed to, but I never filed it." Petitioner has only made interest payments on the loan and has failed to pay down the loan at all. Furthermore, we note that petitioner expressly stated his desire to keep the marital home and his willingness to be responsible for any indebtedness on the home. Under these circumstances, we cannot say the trial court erred in dividing the equity in the marital home as it did by excluding the second mortgage to petitioner's relatives.

IV. Cross-Appeal

The cross-appeal filed by respondent pertains to the $60,000 reimbursement ordered by the trial court to reimburse petitioner for his initial $60,000 investment to his Keogh plan. Respondent asserts that the $60,000 reimbursement to petitioner is inconsistent with the trial court's general findings that the Keogh plan proceeds had been commingled with other marital contributions and lost their individual identity. Respondent asserts the trial court's reimbursement was erroneous and should be reversed.

In ordering petitioner to be reimbursed $60,000, the trial court stated as follows:

> "[Petitioner] raises an interesting point concerning the possibility of reimbursement for the initial $60,000.00 that was used to establish the first Keogh, whether or not [petitioner] is entitled to be reimbursed said amount of money since that was first

> money used to establish the account. It was clearly from his proceeds. The question is the identity of that sum of money was established early on and he was not married at the time of the establishment of that sum of money. That sum of money lost its' [*sic*] identity once it was put into a different investment instrument and a new identity was created, as previously decided by the Court, and from that point on the Court maintains it became a marital instrument. The Court does find the argument concerning reimbursement for the $60,000.00 to be a practical one and modifies its' [*sic*] previous Order to the extent that the marital portion of the retirement instrument held by the Alton Securities Group shall reimburse [petitioner][] the sum of $60,000.00."

We refuse to reverse the trial court's decision to reimburse petitioner for his initial $60,000 investment.

"Section 503(c)(2) of the Act provides that when one estate contributes to the property of another estate, the contributing estate is to be reimbursed from the estate receiving the contribution notwithstanding any transmutation, provided the reimbursement is traceable by clear and convincing evidence." *In re Marriage of Davis*, 215 Ill. App. 3d at 770, 576 N.E.2d at 49; 750 ILCS 5/503(c)(2) (West 2006). Petitioner was not asking for any interest or growth, but merely his initial $60,000 investment, which petitioner proved he invested. The $60,000 was invested before the parties married and is not similar to the sale of petitioner's dental practice for the simple reason that the practice grew during the parties' 26-year marriage with the help of marital money.

The main question in determining the apportionment of marital property is whether the distribution is equitable, and each case is *sui generis*. *In re Marriage of Demar*, 385 Ill. App. 3d 837, 852, 897 N.E.2d 322, 334 (2008). We are not to disturb a trial court's division of marital property unless an abuse of discretion is shown. *In re Marriage of Demar*, 385 Ill. App. 3d at 852, 897 N.E.2d at 334. Given the vast nature of the marital estate, we refuse to

say that the trial court's decision to reimburse petitioner his initial $60,000 was in error.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Madison County is hereby affirmed.

Affirmed.