

NOTICE

Decision filed 09/19/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130392-U

NO. 5-13-0392

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
CHARLES T. SANDERS,)	Saline County.
)	
Petitioner-Appellant,)	
)	
and)	No. 09-D-155
)	
TONI L. SANDERS,)	Honorable
)	Todd D. Lambert,
Respondent-Appellee.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.

Presiding Justice Welch and Justice Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not abuse its discretion in apportioning the net proceeds of the marital home or Father's pension.

¶ 2 Petitioner, Charles T. Sanders, Father, appeals the judgment of the circuit court of Saline County dividing the marital property of the parties. Father believes the net proceeds of the marital home and his pension should have been apportioned more favorably to him because of his permanent inability to work, the amount of time the minor children spend with him, and the significant negative impact on the parties' marital assets allegedly attributable to the actions of respondent, Toni L. Sanders, Mother. We

affirm.

¶ 3 The parties were married in 1992. Three children were born to the marriage, one daughter who, at the time of the dissolution of the marriage, was 17, and two boys who were 13 and 10. Father filed a petition for dissolution of the parties' marriage in September of 2009. The dissolution was granted, and the court awarded each party, as part of the division of marital assets, one-half of Father's pension. The court also awarded Father 60%, and Mother 40%, of the net proceeds of the marital home. Father takes issue with the division pertaining to these two properties. He believes he should have been awarded a larger percentage of each because of his inability to work and because of the amount of time the parties' two younger children spend with him. Father also believes Mother squandered a lump sum settlement he received after a work-related accident. Father formerly was a tree trimmer. Unfortunately, while working in July of 1999, he fell out of a tree and into a hole, thereby shattering his knee and ankle and suffered severe nerve damage and pain to other parts of his body. The injuries he sustained in the fall have prevented him from returning to work. Father's health has recently improved, however, because of epidurals he has been receiving every three months in addition to the readjustment of various other medications he had been taking.

¶ 4 In 2003, Father received a worker's compensation settlement for his injuries which included a lump sum payment of \$190,000. He also received a lump sum pension payment of \$42,000. Both the pension payment and compensation settlement were depleted, mostly by Mother, according to Father, prior to the parties separating. It should be noted that the parties did pay off the \$39,000 mortgage on the marital home and

purchased two vehicles, a four-wheeler, and a lawn mower with some of the monies shortly after they were received. Father believes Mother also loaned her mother some \$50,000 of the settlement funds during their marriage, monies which he believes were never paid back to the joint marital account. Father testified that Mother was withdrawing anywhere from \$1,000 to \$2,000 every other day from their account, without any explanation as to what the money was being used for or where it was going. Once Father learned that the settlement monies and pension funds had been depleted, he removed Mother's name from the bank account. Within hours of his doing so, Mother left the marital home and refused to return unless he put her name back on the account. When asked about the account, Mother explained that the money belonged to both of them, and offered no other explanation as to why she allegedly had spent so much of the funds.

¶ 5 Father's income is approximately \$2,600 per month. Of this amount, approximately \$1,080 represents a medical annuity to be used to pay Father's medical expenses. During some months, the entirety of the annuity payment is used for medical costs; in other months, only \$300 may be used for medical expenses. Mother testified her monthly income from two part-time jobs is approximately \$1,290. She also receives \$702 from social security for the children. Mother attended school during the marriage to become a licensed practical nurse and did work in that field for a period of time. She did not testify, however, as to why she was no longer working in that field or if she could increase her income by becoming a nurse again.

¶ 6 Father argues on appeal that he should have been awarded a greater percentage of

the proceeds from the marital home and his pension. He points to his disability and limited income potential, as well as the amount of time that the two boys spend with him. He also notes that all of his social security benefits received for the children are sent directly to Mother. Father explained he has custody of the minor children from 3 p.m. until 7 p.m. every weekday during the school year, and from 8 a.m. to 3 p.m. each day during the summer. He also has the children alternate weekends. Father testified that his two sons often stay with him until 8 p.m. on weekdays and eat every meal with him, every day. While the parties' daughter spends more time with Mother, she does visit Father as well. The trial court, however, noted all of these factors in making its award. Father already benefitted from residing in the marital residence, since the separation of parties, rent-free. And, even though Mother was awarded custody, she was not awarded child support because she was already receiving social security benefits for the minor children. That benefit will decrease as the children reach 18 years old, while Father's income will remain the same. Given that the parties' incomes were fairly equal, the court chose to divide the assets of the somewhat lengthy marriage in a fairly equal manner as well. We cannot say the court erred in so doing. The Illinois Marriage and Dissolution of Marriage Act requires the court to divide marital property in just proportions, after taking into consideration various factors. 750 ILCS 5/503(d) (West 2012); see also *In re Marriage of Thomas*, 239 Ill. App. 3d 992, 996, 608 N.E.2d 585, 588 (1993). A trial court's distribution of marital assets will not be disturbed on appeal unless the trial court clearly abused its discretion in making that distribution. See *In re Marriage of Hall*, 278 Ill. App. 3d 782, 663 N.E.2d 430, 431 (1996). The question is not whether we agree with

the trial court. Rather, the question is whether no reasonable person would take the view adopted by the trial court. See *Hall*, 278 Ill. App. 3d at 785, 663 N.E.2d at 431. The record shows that, in this instance, the trial court considered the relevant factors and divided the marital property in what it believed to be just proportions. Because we cannot say under the circumstances presented that no reasonable person would take the view adopted by the trial court, we find no abuse of the court's discretion. *In re Marriage of DeRossett*, 173 Ill. 2d 416, 422, 671 N.E.2d 654, 657 (1996).

¶ 7 We further note that workers' compensation awards constitute marital property when accrued during the marriage of the parties. *DeRossett*, 173 Ill. 2d at 421, 671 N.E.2d at 656. Consequently, the workers' compensation award received here by Father was marital property belonging to both parties. The proceeds from the award were deposited into a joint account which admittedly Mother had a right to access. Moreover, Father's award was received in 2003, some six years before the parties separated. There was no evidence presented that the marriage was undergoing an irreconcilable breakdown when the monies were received. 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. *In re Marriage of Miller*, 342 Ill. App. 3d 988, 994, 796 N.E.2d 135, 141 (2003). Here, Father presented little evidence to support his claim of dissipation. His evidence consisted of only a few checks, totaling some \$1,875. Such minimal amounts do not support Father's contention that Mother squandered the majority of the settlement monies. While in reality Mother may have indeed squandered the money, Father failed to prove his claim.

¶ 8 For the foregoing reasons, we affirm the judgment of the circuit court of Saline County.

¶ 9 Affirmed.