2015 IL App (5th) 130535-U

NO. 5-13-0535

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
TOMMY J. KUBLER,	)	Madison County.
	)	
Petitioner-Appellant and Cross-Appellee,	)	
	)	
and	)	No. 10-D-1125
	)	
DIANE E. KUBLER,	)	Honorable
	)	Dean E. Sweet,
Respondent-Appellee and Cross-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly calculated petitioner's child support arrearage owed to respondent, did not abuse its discretion in finding the Florida property to be marital property and awarding respondent 50% of that property, had appropriate jurisdiction to grant respondent's motion to correct scrivener's error, did not abuse its discretion in awarding respondent a portion of shares from petitioner's Invesco Investment Services account, did not abuse its discretion in allocating certain property and debt, and did not abuse its discretion in finding respondent in indirect civil contempt and ordering respondent to pay a portion of petitioner's attorney fees. The trial court erred in ordering respondent's attorney to prepare tax documents for both parties.

¶ 2 This appeal is taken from the judgment of dissolution of marriage on all remaining issues entered by the trial court and the trial court's ruling on the subsequently filed posttrial motions. There are a number of issues raised by petitioner on appeal, as well as several issues raised by respondent on cross-appeal.

¶ 3 The first issue on appeal concerns retroactive child support that petitioner, Tommy J. Kubler, owes respondent, Diane E. Kubler. Petitioner argues the trial court miscalculated the amount of retroactive support due respondent, alleging he was not given credit for all child support amounts paid. Respondent contends the trial court properly calculated petitioner's child support arrearage. After examining the record and the trial court's extensive order, we agree with respondent that petitioner's child support arrearage was properly calculated. Petitioner's argument that he was not given credit for all child support amounts paid is not consistent with the record.

¶ 4 The second issue raised on appeal concerns whether the parties' property located in Niceville, Florida, is marital property. Petitioner alleges the trial court abused its discretion and disregarded the manifest weight of the evidence in finding the property was marital property, as the property was purchased prior to the parties' marriage and there was no evidence presented to the trial court that the property's deed was ever transferred into joint names. Respondent contends the trial court properly classified the property as marital property and properly awarded her a portion of that marital property.

¶ 5 We agree with respondent. The deed to the property was never admitted as evidence, and respondent's name was added to the property's mortgage two separate times during the parties' marriage.

¶ 6 The third issue raised on appeal concerns the trial court's order correction entered on August 27, 2013. Petitioner argues the trial court did not have jurisdiction to grant respondent's motion to correct scrivener's error because the motion sought to correct judicial error and was filed more than 30 days after the entry of judgment. Respondent contends the trial court properly granted her motion to correct scrivener's error and had jurisdiction to modify its original judgment. We agree with respondent. The trial court's correction was a *nunc pro tunc* order correction that involved a clerical error rather than a judicial error. Therefore, the trial court had jurisdiction to enter its order of correction.

¶ 7 The fourth issue raised on appeal concerns petitioner's Invesco Investment Services account. Petitioner alleges the trial court abused its discretion and disregarded the manifest weight of the evidence in awarding respondent 4,991 shares from his account, as evidence reveals only 1,005 shares were acquired through payroll allotment during the parties' marriage. Respondent contends the trial court properly awarded her 4,991 shares of petitioner's Invesco Investment Services account #8479. After examining the record, we agree with respondent. The trial court's award to respondent was appropriate and was within the court's discretion.

¶ 8 The fifth issue in this appeal is raised by respondent on cross-appeal. Respondent alleges the trial court lacked jurisdiction to order her attorney to prepare petitioner's tax documents, while petitioner contends the trial court committed no error. Petitioner indicates the trial court ordered respondent's attorney to prepare tax documents to reflect the tax status of the income for each party, not solely petitioner, and had jurisdiction to do

so. We agree with respondent, as the trial court's order created an unnecessary and unjustified conflict of interest.

¶ 9 The sixth issue in this appeal is also raised by respondent on cross-appeal. Respondent alleges the trial court abused its discretion in its allocation of certain property and debt. Petitioner contends the trial court committed no error and did not abuse its discretion in its allocation of certain property and debt. We agree with petitioner. After examining the record and taking into consideration scrivener's error, we find the trial court did not abuse its discretion as there was no inequitable distribution of marital assets.

¶ 10 The final issue in this appeal is again raised by respondent on cross-appeal. Respondent argues the trial court abused its discretion in finding her in indirect civil contempt and ordering her to pay petitioner's attorney fees. Petitioner contends the trial court committed no error and did not abuse its discretion in finding respondent in indirect civil contempt and ordering respondent to pay a portion of petitioner's attorney fees. We agree with petitioner, as the trial court had sufficient evidence to find respondent in indirect civil contempt and was within its discretion to order respondent to pay a portion of petitioner's attorney fees.

¶ 11 For the following reasons, we affirm in part and reverse in part the judgment of the trial court. We affirm the trial court's (1) calculation of petitioner's child support arrearage owed to respondent, (2) finding of the Florida property to be marital property, (3) granting of respondent's motion to correct scrivener's error, (4) finding on the shares awarded to respondent from petitioner's Invesco Investment Services account #8479, (5) allocation of certain property and debt, and (6) finding of respondent in indirect civil

contempt and ordering her to pay a portion of petitioner's attorney fees. We reverse the trial court on (7) ordering respondent's attorney to prepare tax documents for both parties.

¶ 12 BACKGROUND

¶ 13 This matter was presented before the trial court on September 6, 2011, for hearing of all remaining issues raised in petitioner's petition for dissolution of marriage and respondent's counter pleadings.

¶ 14 The parties were married on May 30, 1992, and divorced on March 5, 2012. At the time of their marriage in May 1992, the parties lived together in Niceville, Florida. Petitioner testified he was a captain in the United States Air Force and had been a member of the Air Force for 16½ years at the time he married respondent. Respondent was a civilian employee of the Air Force at Eglin Air Force Base where petitioner was stationed at the time of their marriage.

¶ 15 Petitioner resigned from the Air Force in February 1996 and remained unemployed until August 2007. During petitioner's period of unemployment, respondent remained employed as a civilian contractor with the Air Force. Prior to petitioner's resignation from the Air Force, respondent and petitioner's first son, Austin, was born in September 1995. The parties' second son, Trevor, was born in February 1997.

¶ 16 Petitioner was a stay-at-home father and served in the role of "Mr. Mom" until he returned to regular employment in August 2007, while respondent worked full-time outside the home throughout the parties' marriage. During the years that he was a stay-at-home father, petitioner received his Air Force retirement, a portion of which was a

disability check from the Veterans Administration. Petitioner also received rental income from the Niceville, Florida, residence.

¶ 17 The parties relocated to several states throughout their marriage. Their first address was 19 Hampton Circle, Niceville, Florida, near Eglin Air Force Base. This residence was purchased by petitioner in 1991 for $115,000. The parties subsequently married in May 1992 and resided in the Niceville, Florida, residence thereafter.

¶ 18 In June 1993 the parties refinanced the Niceville, Florida, residence, at which time respondent's name was added to the mortgage on the residence. In June 2003 the Niceville, Florida, residence was refinanced for a second time, with both parties' names contained in the new note as co-borrowers.

¶ 19 The parties relocated from Niceville, Florida, to San Antonio, Texas, in 1993 when petitioner was transferred to Brooks Air Force Base. The parties kept the Niceville, Florida, residence as rental property after they relocated to San Antonio, and continued to use it as rental property throughout their entire marriage.

¶ 20 In the fall of 2000, the parties relocated from San Antonio to Colorado Springs, Colorado. Before joining respondent and their two children in Colorado Springs, petitioner stayed in San Antonio for five months and prepared their residence for sale.

¶ 21 The parties remained in a rental home in Colorado Springs for approximately one year and three months before respondent received a promotion and was transferred to Albuquerque, New Mexico, where she was employed as a GS-12 contracting specialist. The parties remained in Albuquerque for approximately two years before respondent

accepted a position at Scott Air Force Base in Illinois in the fall of 2004, at which time the parties purchased a residence at 1309 Bridlespur Lane, Troy, Illinois.

¶ 22 After living in the Troy, Illinois, residence for a little less than three years, petitioner and respondent separated in August 2007 after petitioner accepted a job as a GS-12 in Albuquerque, New Mexico. Respondent continued to be employed as a contracting specialist with the Air Force at Scott Air Force Base, and the children remained with respondent at the home in Troy.

¶ 23 Petitioner testified that the Troy residence was purchased for $186,000, and that he had made a house payment of $1,824 each month from the date the house was purchased through the date trial commenced. Petitioner also testified the last payment he made on the mortgage, taxes, or insurance for the Troy property was in April 2011.

¶ 24 Petitioner remained at his position in Albuquerque for 18 months until he accepted a permanent position with the Department of Defense Contract Management Agency in Amarillo, Texas. Petitioner filed a petition for dissolution of marriage on October 18, 2010, and respondent filed her responsive pleadings and petition for temporary relief on November 23, 2010. Petitioner continued to work in Amarillo until the hearing on all remaining issues that took place on September 6, 2011.

¶ 25 The court entered its final judgment of dissolution of marriage on March 5, 2012, and respondent filed a timely posttrial motion pursuant to section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2012)) on March 29, 2012. The trial court denied respondent's motion to reconsider on May 30, 2012.

¶ 26 On April 3, 2013, respondent filed a motion to correct scrivener's error, and petitioner subsequently filed a motion to strike the motion to correct scrivener's error. Additional postjudgment pleadings for contempt were filed by both parties.

¶ 27 The trial court entered its final order on August 27, 2013. We will summarize the order because it is so extensive. In relevant part, the order stated the following:

1. Concerning the Niceville, Florida, property, the court awarded petitioner and respondent 50% each of the net proceeds of the sale of the house, but reimbursed petitioner from the net proceeds of the sale for the amounts petitioner paid in preparing to sell the house that was beneficial to both parties.
2. Concerning child support arrearage and credit, petitioner owes a balance of $7,997.50 plus interest provided by the Illinois Marriage and Dissolution of Marriage Act to be paid to respondent within 14 days. This number reflected deductions from petitioner's payments made from October 14, 2011, through February 29, 2012, that were not accounted for in the March 5, 2012, order.
3. The court ordered petitioner's attorney to prepare a proposed document reflecting the percentages awarded to each party to be sent to Pension/FERS. Before sending that document to Pension/FERS, petitioner's attorney was ordered to forward the document to respondent's attorney for review, who had 10 days to file any objections. If there were no objections, the document would be sent to Pension/FERS. If Pension/FERS returned the document as

noncompliant, the court ordered the information to be sent to respondent's attorney for preparation of the document with the same process.

4. Concerning the scrivener's error, the court corrected its March 5, 2012, order and found 9,981 shares of petitioner's Invesco Investment Service account #8479 were acquired during the parties' marriage, and respondent was entitled to 4,991 shares for her marital portion of the account.

5. Regarding contempt, the court found both parties had been uncooperative in their compliance with previous orders, but found respondent had been in willful contempt.

6. Concerning attorney fees, the court ordered respondent to pay petitioner $2,500 within 14 days as a result of respondent's actions and inactions.

Both parties were ordered to take all necessary actions to effectuate the terms and conditions of this order and the previous court orders, including the execution of all documents.

¶ 28 On September 25, 2013, respondent's attorney filed her motion to reconsider the order entered on August 27, 2013. Also, on September 30, 2013, petitioner filed a posttrial motion for rehearing to modify or vacate the August 27, 2013, order. On September 30, 2013, the court entered an order denying all motions to reconsider and motions for rehearing, ruling the August 27, 2013, order was to remain in full force and effect. On October 29, 2013, petitioner filed a timely notice of appeal.

¶ 29 ANALYSIS

¶ 30 I. Child Support Arrearage

¶ 31 The first issue petitioner raises on appeal alleges the trial court improperly calculated his child support arrearage as he was not given credit for all child support amounts paid. Respondent contends the trial court properly calculated petitioner's child support arrearage. We agree with respondent.

¶ 32 In its order for temporary child support entered on April 4, 2011, the trial court ordered petitioner to pay respondent $1,824 per month for temporary support of the parties' two minor children. The temporary child support was awarded retroactive to November 23, 2010, with the arrearage amount reserved.

¶ 33 In its final judgment of dissolution of marriage entered on March 5, 2012, the trial court determined petitioner's child support arrearage owed to respondent totaled $27,360. However, the trial court credited petitioner $10,944 for child support arrearage paid to respondent from the period of November 23, 2010, through October 14, 2011. After petitioner was credited with $10,944, the balance petitioner owed respondent was $16,416 as of February 29, 2012, the last day of the month prior to this March 5, 2012, order.

¶ 34 From and after March 1, 2012, petitioner was ordered to pay respondent $2,036 per month in child support for the parties' two children, with the child support terminating on January 14, 2015, or when his youngest son graduates from high school, whichever occurs later.

¶ 35 On August 27, 2013, the trial court amended its original child support arrearage from $16,416 to a balance of $7,997.50 plus interest as provided by the Illinois Marriage and Dissolution of Marriage Act, and ordered petitioner to pay that sum directly to respondent within 14 days from the date of the court order. The court stated that it intended to allow petitioner to deduct amounts paid from October 14, 2011, through February 29, 2012, in its initial order, as the "October 14, 2012," date indicated in the initial order was "impossible and an obvious typographical error." The court credited petitioner for 10 payments of $841.85 made from October 14, 2011, through February 29, 2012, which totaled $8,418.50. The court then deducted this total from the previous amount of $16,416 listed in the March 5, 2012, order for a new total of $7,997.50 that petitioner owed respondent in child support.

¶ 36 Petitioner alleges the trial court made computational errors in its August 27, 2013, order when it determined petitioner owed a balance of $7,997.50 to respondent, asserting the undisputed recapitulation of the child support payments and credits set forth in petitioner's exhibit 4 indicate the remaining child support balance due was $2,401.93. We disagree.

¶ 37 The determination of the amount of a child support award is within the trial court's discretion and will not be disturbed without an abuse of discretion. *In re Marriage of Scafuri*, 203 Ill. App. 3d 385, 391, 561 N.E.2d 402, 405 (1990). The statutory guidelines contained in section 505 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/505 (West 2012)) establish a beginning point for analysis. *In re Marriage of Clabault*, 249 Ill. App. 3d 641, 651, 619 N.E.2d 163, 170 (1993).

¶ 38 " 'No judge should, or properly could, surrender the responsibilities of considering all relevant factors dictated by Illinois law in reaching an appropriate result.' " *In re Marriage of Scafuri*, 203 Ill. App. 3d at 391, 561 N.E.2d at 405 (quoting *In re Marriage of Blaisdell*, 142 Ill. App. 3d 1034, 1040, 492 N.E.2d 622, 626 (1986)). The guidelines shift the burden of presenting evidence to the parent who requests the court to deviate from the guidelines in setting a child support award. *In re Marriage of Scafuri*, 203 Ill. App. 3d at 391, 561 N.E.2d at 406.

¶ 39 Petitioner's exhibit 4 is a mortgage note for the Niceville, Florida, residence dated June 7, 1993. The mortgage note does not indicate anything concerning the parties' child support arrearage.

¶ 40 Respondent indicates the trial court's child support arrearage calculation is summarized as follows from the ordered entered on March 5, 2012, and August 27, 2013:

$27,360.00	Total child support due to 2/29/12, less
$10,944.00	Child support payments from 4/29/11 to 10/14/11
$ 8,418.50	Child support payments from 10/14/11 to 2/29/12
$ 7,997.50	Child support arrearage obligation to 2/29/12

We agree with respondent after examining the record. Petitioner has not presented evidence in his exhibit 4 or otherwise that the trial court abused its discretion in its calculation of child support owed to respondent. Accordingly, the trial court's discretion in its calculation of child support will not be disturbed on appeal.

¶ 41 II. Transmuted Marital Property

¶ 42 The second issue petitioner raises on appeal alleges the trial court abused its discretion and disregarded the weight of the evidence in finding petitioner's Niceville, Florida, property was marital property as respondent presented no evidence that the deed was ever transferred into joint names. Petitioner additionally alleges evidence from the record indicates respondent's name was only added to the mortgage loan at the time the residence was refinanced and not the deed.

¶ 43 Respondent contends the trial court properly classified the Niceville, Florida, property as marital property and properly granted respondent a portion of that property.

¶ 44 Prior to assigning or dividing property upon dissolution of marriage, the court must first classify the property as marital or nonmarital. *In re Marriage of Durante*, 201 Ill. App. 3d 376, 381, 559 N.E.2d 56, 60 (1990). The Marriage Act provides that all property acquired during the marriage is marital property regardless of how title to the property is held. 750 ILCS 5/503(b)(1) (West 2012). The Marriage Act also provides that any property acquired prior to the date of marriage is considered nonmarital property. However, any nonmarital property transferred into some form of co-ownership between the spouses during the marriage is presumed to be marital property. *In re Marriage of McCoy*, 225 Ill. App. 3d 966, 968, 589 N.E.2d 141, 143 (1992).

¶ 45 The party claiming the property is nonmarital has the burden of proof (*In re Marriage of Schriner*, 88 Ill. App. 3d 380, 383, 410 N.E.2d 572, 574 (1980)), and any doubts as to the nature of the property must be resolved in favor of finding that the

property is marital. *In re Marriage of Eddy*, 210 Ill. App. 3d 450, 456-57, 569 N.E.2d 174, 178 (1991).

¶ 46 The trial court has broad discretion under the Marriage Act to make an equitable apportionment of marital property, and a judgment allocating property will not be disturbed on appeal without an abuse of discretion. *In re Marriage of Kaplan*, 149 Ill. App. 3d 23, 31, 500 N.E.2d 612, 618 (1986). Discretion is abused only if no reasonable person could take the view adopted by the trial court. *In re Marriage of Kaplan*, 149 Ill. App. 3d at 31, 500 N.E.2d at 618.

¶ 47 In the instant case, petitioner never produced any deed or title indicating the property was not jointly titled in both parties' names. Furthermore, petitioner testified at trial that he added respondent's name to the deed on the Niceville, Florida, residence:

"Q. [Attorney for petitioner:] You can answer, Tommy. Did you have any reason other than refinancing to put Diane's name on that mortgage?

A. No, sir.

Q. At the time the new mortgage note was drawn, was there anything done with the deed listing of the property?

A. The deed was adjusted to add her name to it.

Q. And was there any reason you had in adding her name to the deed other than this refinancing?

A. No, Sir."

¶ 48 On cross-examination, petitioner again testified that he added respondent's name to the deed of the Florida residence:

"Q. [Attorney for respondent:] And you signed a Quit Claim Deed to [respondent] or some form of conveyance instrument to her making her a co-owner of the Florida property; is that true?

A. I'm not sure how that is with the law, sir.

Q. Well, you said you deeded it to [respondent] to reflect joint tenancy in 1993, correct? That was her [*sic*] testimony during direct. Are you recanting that testimony now, sir?

A. I do not understand the nuance of deeding her a piece of property.

Q. You put [respondent's] name on the property?

A. Okay.

Q. Right? Put [respondent's] name on the title of the property?

A. Yes.

Q. She's now a co-owner of the property?

A. Okay."

¶ 49 Petitioner testified further in cross-examination at trial:

"Q. [Attorney for respondent:] There is no question it is joint title now. As you testify here today, the Florida house is jointly titled, correct?

A. That is correct."

Respondent also testified during her cross-examination that the Florida residence was jointly titled to both her and petitioner:

"Q. [Attorney for petitioner:] Why was your name put on the deed to the Niceville property?

A. Because we refinanced together, sir."

¶ 50 Petitioner indicates *In re Marriage of Drennan*, 93 Ill. App. 3d 903, 418 N.E.2d 30 (1981), is directly on point to the case at issue. *Drennan* involved a husband who owned property prior to marriage and refinanced the property during marriage, at which time his wife's name was required to be added to the mortgage and deed as part of the mortgage refinancing. The husband testified during trial he never intended to transfer title or promised his wife he would transfer the property into her name.

¶ 51 The court in *Drennan* determined that the mere execution of a mortgage note is insufficient to constitute a transmutation of nonmarital property into marital property. *In re Marriage of Drennan*, 93 Ill. App. 3d at 907, 418 N.E.2d at 34.

¶ 52 In its order dated March 5, 2012, however, the trial court distinguished *Drennan* from the facts of the instant case and found petitioner failed to overcome the presumption of marital property. The trial court stated:

> "As authority for his position, [petitioner] cites In re Marriage of Drennan, 93 Ill. App. 3d 903 (1981). In that case the parties were married only three years. In that case no deed was ever executed transferring joint ownership to the spouse. That case found that based upon those facts, the mere signing of a note and mortgage to the spouse's parents did not result in the property being transmuted into marital property. Those are not the facts of this case. Here, it is unquestioned that joint ownership of the property with [respondent] was voluntarily transferred to [respondent] by [petitioner] approximately one year after the marriage. The parties continued to hold the property in their joint name from and after June 1993,

through and including this date. The only evidence presented by [petitioner] to offset the presumption is his testimony that it is his recollection he did not intend to have the property deemed to be marital property at the time of the transaction in 1993. He stated that the deed to his spouse was a mere formality required under Florida law in order to obtain more favorable interest rates. That formality placed the assets of both parties to the marriage as security for the property."

¶ 53 We agree with the trial court's finding. Petitioner testified that he refinanced the Florida residence twice to obtain lower interest rates. Petitioner also testified that because he was unable to refinance the property in his name alone, the paperwork for the refinancing of the property was completed with both his name and respondent's name.

¶ 54 Petitioner alleges that the sole purpose for including respondent's name on the mortgages that developed through the refinancing of the property was to obtain lower interest rates. Petitioner testified he never intended to make a gift to the marital estate by adding respondent's name to the mortgage, alleging the adding of respondent's name to the mortgage was required in order to refinance the house.

¶ 55 While petitioner's reason for adding respondent's name to the mortgage for refinancing purposes may be true, it is not a legitimate excuse that causes the property to be deemed a nonmarital asset. The trial court properly classified the property as marital property and appropriately awarded respondent a portion of such property. The portion awarded to respondent was within the trial court's broad discretion.

¶ 56 III. Scrivener's Error

¶ 57 The third issue petitioner raises on appeal alleges the trial court abused its discretion and disregarded the manifest weight of the evidence in granting respondent's motion to correct scrivener's error, as the motion sought to supply omitted judicial action or to correct judicial error and was filed more than 30 days following the entry of judgment. As such, petitioner contends the trial court was without jurisdiction to grant respondent's relief sought and abused its discretion in granting respondent's motion to correct scrivener's error.

¶ 58 Respondent contends the trial court properly classified her motion to correct a scrivener's error and had jurisdiction to modify its original judgment to correct a scrivener's error. We agree with respondent, as the trial court had jurisdiction to modify its original judgment *nunc pro tunc* to correct a scrivener's error.

¶ 59 In its original judgment for dissolution of marriage entered on March 5, 2012, the trial court awarded respondent a portion of petitioner's traditional IRA maintained with petitioner's Invesco Investment Services account #8479 (Account #8479). In its order the trial court stated:

> "[Petitioner] had a traditional IRA prior to the marriage which he maintained with Invesco Investment Services, #8479. The approximate value was $108,182. The total number of shares at the time of hearing was 12,284. The number of shares acquired during the marriage was 981.9. [Respondent] is awarded 492 shares of this account as and for her marital portion on the account.

The rest and remainder of that account is awarded to [petitioner] as and for his share of the marital property; and, as his non-marital property."

¶ 60 On April 3, 2013, respondent filed a motion to correct the scrivener's error alleging the trial court's March 5, 2012, order contained a scrivener's error in dividing the Account #8479. On April 5, 2013, petitioner filed a motion to strike respondent's motion alleging it was untimely. On July 8, 2013, the trial court ruled in favor of respondent and granted her motion to correct the scrivener's error. The court stated:

"The [c]ourt finds that it was the intent of the [c]ourt to type in the number '9981' instead of the '981.9.' actually typed.

The [c]ourt had determined that the total number of shares at the time of hearing was 12,284. The [c]ourt intended to subtract 2303 as the number of shares held at the time of the marriage from that 12,284, to arrive at '9981' as the number of shares acquired during the marriage. Instead of the '491' actually typed, the [c]ourt would have then awarded [respondent] one half of those shares, '4991.' The rest and remainder of that account would have been awarded to [petitioner] as and for his share of the marital portion of the marital property; and, as his non-marital property."

¶ 61 The court subsequently entered an order regarding respondent's motion to correct scrivener's error on August 27, 2013. This order read as follows:

"The [c]ourt previously entered a finding on July 8, 2013, regarding this matter. The [c]ourt hereby corrects the Order originally entered on March 5, 2012. Paragraph e. on page 7 shall read as follows:

'[Petitioner] had a traditional IRA prior to the marriage which he maintained with the Invesco Investment Services, #8479. The approximate value was $108,182. The total number of shares at the time of hearing was 12,284. The number of shares acquired during the marriage was 9981. [Respondent] is awarded 4991 shares of this account as and for her marital portion on the account. The rest and remainder of that account is awarded to [petitioner] as and for his share of the marital property; and, as his non-marital property.' "

¶ 62 Petitioner alleges the trial court did not have jurisdiction to modify its March 5, 2012, order because the modification did not concern a clerical error. Petitioner concedes that a trial court retains jurisdiction to enter a *nunc pro tunc* order correcting a final order or judgment even after expiration of the term in which a judgment was entered. *In re Marriage of Gingras*, 86 Ill. App. 3d 14, 16, 407 N.E.2d 788, 790 (1980). Thus, the issue presented before this court concerns whether or not the trial court's error was clerical.

¶ 63 A trial court generally loses jurisdiction to modify its judgment 30 days after the entry of the judgment unless a timely postjudgment motion is filed. *In re Marriage of Takata*, 304 Ill. App. 3d 85, 92, 709 N.E.2d 715, 720 (1999). However, a court may at any time modify its judgment *nunc pro tunc* to correct a clerical error or matter of form so the record conforms to the judgment actually rendered by the court. The function of a *nunc pro tunc* order is merely to correct the record of the judgment and not to alter the judgment actually rendered. *Dauderman v. Dauderman*, 130 Ill. App. 2d 807, 809, 263 N.E.2d 708, 710 (1970).

¶ 64 Clerical errors are "those errors, mistakes, or omissions which are not the result of the judicial function. Mistakes of the court are not necessarily judicial errors. The distinction between a clerical error and a judicial one does not depend so much upon the source of the error as upon whether it was the deliberate result of judicial reasoning and determination." *Dauderman*, 130 Ill. App. 2d at 810, 263 N.E.2d at 710-11.

¶ 65 *Duaderman* presents a similar situation as the instant case. In *Dauderman* the appellee motioned to amend a divorce judgment more than 30 days after the divorce decree was entered. The divorce judgment ordered one of the parties to pay $400 as alimony rather than $400 per month as the court intended when it entered the initial order. The trial court granted appellee's motion to amend the divorce judgment and modified its original order after finding it inadvertently omitted the words "per month."

¶ 66 On appeal, the appellant argued that the "amendment alters the substantive rights of the parties and is not a mere matter of form and that there must be some memorandum in the record other than the recollection of the trial judge on which to base the amendment, and that there is none in this case." *Dauderman*, 130 Ill. App. 2d at 809, 263 N.E.2d at 710.

¶ 67 The appellate court affirmed the order, noting the wording of the original divorce judgment demonstrates that the words "per month" were inadvertently omitted. The court specifically stated, "There can be no doubt that the omission of the words 'per month' in the alimony provision of the divorce decree was a clerical error even though it affected the amount of money to be paid under the decree and was signed, as submitted, by the trial judge." *Dauderman*, 130 Ill. App. 2d at 809, 263 N.E.2d at 710.

¶ 68 In the instant case, the trial court's omission resembles the court's omission in *Dauderman*. The omission was clearly clerical in nature as it was not the result of judicial reasoning, and was within the power of the court to correct outside the 30-day period following entry of judgment.

¶ 69 Petitioner cites to *In re Marriage of Takata*, 304 Ill. App. 3d 85, 709 N.E.2d 715 (1999), which held that a mathematical error in determining a spouse's income for the purpose of setting child support is not a clerical error, but rather a judicial error as it is the product of the judicial function.

¶ 70 Petitioner also cites to *Robinson v. Point One Toyota, Evanston*, 2012 IL App (1st) 111889, 984 N.E.2d 508, which held that the trial court's errors in calculating attorney fees were judicial errors that could not be corrected after expiration of the 30-day period following entry of final judgment.

¶ 71 While *Takata* and *Robinson* support petitioner's position that the trial court's error was a judicial error, these two cases do not apply to the facts of the instant case. The trial court's error in the instant case was not a judicial error that involved any substantive reasoning or other calculation, miscalculation, or omission like the errors identified in *Takata* and *Robinson*. The error in the instant case was a typographical error that was not the result of deliberate judicial determination or reasoning. The trial court judge typed the number "981.9" in his order, but intended to type "9981."

¶ 72 Accordingly, the trial court's error was clerical and not the result of judicial function, and the trial court had jurisdiction to modify its original order *nunc pro tunc* after expiration of the 30 days following entry of its original order.

¶ 73 IV. Invesco Shares

¶ 74 Petitioner alleges the trial court abused its discretion and disregarded the manifest weight of the evidence in awarding respondent 4,991 of petitioner's Invesco Investment Services account #8479 (Account #8479) shares because the evidence at trial established that only 1,005 shares were acquired through payroll allotment during the parties' marriage.

¶ 75 Respondent contends the trial court properly awarded her 4,991 shares of petitioner's Account #8479. We agree with respondent.

¶ 76 In its original judgment entered on March 5, 2012, the trial court determined petitioner's Account #8479 was established prior to the parties' marriage. From this determination the trial court found that the premarital portion was nonmarital property that belonged to petitioner, and that 981.9 shares had been acquired during the marriage. The trial court evenly split the 981.9 shares acquired during marriage and awarded 50% to petitioner and 50% to respondent.

¶ 77 In its August 27, 2013, order ruling on respondent's motion to correct scrivener's error, the court determined that it intended to type the number "9981" instead of "981.9" when referring to the number of shares from petitioner's Account #8479 to be distributed to each party. Exactly as it did in its original order, the court then awarded each party 50% of the total amount of shares from petitioner's Account #8479, which amounted to respondent receiving 4,991 shares.

¶ 78 Petitioner alleges his exhibit 18 indicates that 1,005 shares were purchased during the parties' marriage rather than 9,981 as the trial court calculated. The trial court's

finding on the tracing of marital or nonmarital funds will not be disturbed by a reviewing court unless it is contrary to the manifest weight of the evidence. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 641, 616 N.E.2d 1379, 1383 (1993).

¶ 79 Petitioner's exhibit 18 indicates petitioner made monthly contributions of $166.66 to his Account #8479 throughout the marriage and also indicates the number of shares purchased through each transaction. However, petitioner fails to indicate how he arrived at the number 1,005. The record does not support petitioner's assertion that 1,005 shares were purchased during the parties' marriage rather than the 9,981 figure the trial court found.

¶ 80 The trial court calculated a total of 9,981 shares after carefully considering all of the evidence presented to it. It was within the trial court's discretion to determine 9,981 shares had been acquired during the parties' marriage, and trial court did not disregard the manifest weight of the evidence presented to it.

¶ 81 V. Conflict of Interest

¶ 82 The first issue raised by respondent on cross-appeal alleges the trial court lacked jurisdiction to order her attorney to prepare tax documents for petitioner. Petitioner contends the trial court committed no error and did not lack jurisdiction to order respondent's attorney to prepare tax documents to reflect the tax status of the income for both parties. We agree with respondent. The trial court erred in ordering respondent's attorney to prepare tax documents for the opposing party, as this order created an unjustified and unnecessary conflict of interest.

¶ 83 The trial court's August 27, 2013, order stated the following concerning the preparation of tax documents for each party:

> "[Respondent] puts forth the proposition that each of the parties should each bear his or her own tax liability for the profits/capital gains on the sale of the property. The [c]ourt agrees if that is possible given the parties[']tax status. [Respondent's] attorney shall prepare the appropriate tax documents for each of the parties to submit with their tax returns to reflect such tax status of the income for each of the parties."

¶ 84 Respondent's attorney filed a timely motion to reconsider the trial court's August 27, 2013, order arguing the trial court did not have authority or jurisdiction to order respondent's counsel to take any action on behalf of petitioner as such would constitute a conflict of interest. The trial court denied respondent's motion to reconsider on September 30, 2013.

¶ 85 Respondent asserts her attorney cannot comply with the court's August 27, 2013, order because it orders her attorney to take action that may be contrary to respondent's interest, hence creating a potential conflict of interest.

¶ 86 Illinois Rule of Professional Conduct 1.7 governs a conflict of interest involving current clients:

> "Rule 1.7. Conflict of Interest: Current Clients
>
> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." Ill. R. Prof. Conduct (2010) R. 1.7(a) (eff. Jan. 1, 2010).

¶ 87 Rule 1.9 governs a lawyer's duties to former clients, and provides that a "lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent." Ill. R. Prof. Conduct (2010) R. 1.9 (eff. Jan. 1, 2010).

¶ 88 In the instant case, the trial judge ordered respondent's attorney to prepare appropriate tax documents for each party. This order created a potential conflict of interest because petitioner's interests are adverse to respondent's interests, and respondent did not give informed consent to her attorney to assist the opposing party. This potential conflict of interest should have been avoided by the trial court. We reverse the portion of the trial court's August 27, 2013, order instructing respondent's attorney to prepare petitioner's tax documents.

¶ 89 VI. Abuse of Discretion–Allocation of Certain Property and Debt

¶ 90 The second issue raised by respondent on cross-appeal concerns the trial court's allocation of certain property and debt between the parties. Respondent alleges the trial court abused its discretion in its allocation of certain property and debt, while petitioner

contends the trial court committed no error and did not abuse its discretion in its allocation of certain property and debt. We agree with petitioner. The trial court did not abuse its discretion.

¶ 91 After considering all relevant factors, the trial court may use its discretion to distribute marital property in whatever proportions it deems equitable, and a reviewing court will not disturb that decision without a showing that there was an abuse of that discretion. *In re Marriage of Wentink*, 132 Ill. App. 3d 71, 75, 476 N.E.2d 1109, 1112 (1984). An abuse of discretion occurs only when the court acts arbitrarily and without the employment of conscientious judgments or exceeds the bounds of reason and ignores recognized principles of law that results in substantial injustice. *In re Marriage of Wentink*, 132 Ill. App. 3d at 75, 476 N.E.2d at 1112.

¶ 92 In the instant case respondent alleges the trial court abused its discretion in finding the net sum to be divided by the parties from the sale of the Florida residence totaled $144,979.23, arguing the net sum to be divided should have totaled $185,678 because that represents the actual proceeds from the sale of the Florida residence. Respondent alleges the trial court made no findings or calculations to explain the $40,698.77 difference between the actual proceeds of the house and the sum the court arrived at to be divided evenly between the parties. We disagree.

¶ 93 As indicated in petitioner's exhibit 3, petitioner submitted detailed documentation to the trial court of repairs and rehabilitation expenditures made to the Florida property that were necessary in order to sell the property. Petitioner also testified that the property

was in need of substantial repairs and improvements to be put in a saleable condition after being used as a rental property for approximately 20 years.

¶ 94 After considering the repairs and improvement made to the Florida property, the trial court deducted the cost of the repairs and improvements, $40,698.77, from the actual proceeds of the house, $185,678, and divided the remaining balance equally between the parties in its August 27, 2013, order. Respondent's allegation that the trial court made no findings or calculations to explain the $40,698.77 difference is unfounded, as this amount directly correlates to the money spent on repairs and improvements to the property that was beneficial to each party. Accordingly, the trial court did not abuse its discretion in finding that the net sum to be divided by the parties from the sale of the Florida property was $144,979.23 rather than $185,678, as this number reflected the deduction from the cost of repairs and improvements to the house.

¶ 95 Respondent also alleges the trial court abused its discretion in finding petitioner had already paid respondent a portion of his Air Force military pension that petitioner was already receiving. Respondent alleges the trial court's August 27, 2013, order should be reversed and remanded to the trial court with instructions to determine a proper arrearage judgment in favor of respondent against petitioner for the unpaid pension payments from the date of the divorce until the present and to enter a separate qualified domestic relations order dividing the military pension for all future payments.

¶ 96 In his brief, petitioner concedes that those monies have not been paid and remain due and outstanding to respondent. Petitioner asserts respondent is correct in her

argument to the extent that petitioner had not paid the arrearage amount to respondent as stated in the trial court's August 27, 2013, order.

¶ 97 A final point raised by respondent concerning the trial court's alleged abuse of discretion contends the trial court abused its discretion in ordering respondent to pay 50% of petitioner's tax liability on the sale of the Florida residence. Respondent indicates the trial court judge stated the following during a hearing held on May 2, 2013: "A simple way to say it though, there will be no contribution for tax liabilities to or from either party as a result of this [sale of Florida real estate]." Respondent asserts the trial court's order entered on August 27, 2013, reversed the trial court judge's ruling on May 2, 2013, and was prejudicial to respondent because she was unable to properly prepare for the hearing and introduce evidence of potential tax consequences to the parties from the sale of the Florida real estate. We disagree.

¶ 98 Respondent's argument that the August 27, 2013, order was prejudicial to her with regard to her being ordered to pay 50% of petitioner's tax liability on the sale of the Florida residence is misguided. Respondent essentially argues that she is entitled to 50% of the sale proceeds from the Florida residence because it is marital property that was transmuted by way of the parties' marriage and the adding of her name to the mortgage, but also argues she should not have been ordered to pay 50% of the tax liability on the sale of the residence. These two arguments contradict one another.

¶ 99 As petitioner indicates in his brief, he would agree to be held fully responsible for all capital gains due and owing and would not expect respondent to contribute to those capital gains if he were awarded the entire sale proceeds from the sale of the house.

However, as discussed above, the house was transmuted from nonmarital property to marital property at the time respondent's name was added to the mortgage of the house.

¶ 100 If respondent had not been awarded 50% of the house's sale proceeds, her argument that she should not have to pay 50% of the tax liability would be reasonable. However, that is not the situation presented in the instant case. Accordingly, because respondent was awarded 50% of the sale proceeds from the house, the trial court did not abuse its discretion in ordering respondent to pay 50% of petitioner's tax liability on the sale of the house.

¶ 101 VII. Contempt

¶ 102 The final issue on appeal is raised by respondent on cross-appeal. Respondent alleges the trial court abused its discretion in finding her in indirect civil contempt and ordering her to pay petitioner's attorney fees. Petitioner contends the trial court committed no error and did not abuse its discretion in finding respondent to be in indirect civil contempt and ordering her to pay a portion of petitioner's attorney fees. We agree with petitioner.

¶ 103 In its final judgment of dissolution of marriage entered on March 5, 2012, the trial court ordered the following concerning the Troy residence:

> "1309 Bridlespur Lane, Troy, Illinois, *** shall be sold at auction on or before September 1, 2012. Within 35 days the parties shall each submit a proposed auctioneer for the [c]ourt for appointment by the [c]ourt. The parties may agree to an auctioneer and submit such name to the [c]ourt for appointment.

> The parties agreed to list the property for sale through a real estate broker, or other sales mechanism, with terms and conditions agreeable to the parties. Such an agreed sales process may be approved by the [c]ourt as part of the post judgment proceedings. Absent such post judgment agreement and order, the Troy house will be sold as directed herein."

¶ 104 A little over a year after the March 5, 2012, order was entered, petitioner filed a petition for adjudication of indirect civil contempt alleging respondent had failed and refused to keep the Troy property listed on the market with a real estate broker and refused to complete the sale at auction as the trial court ordered. Petitioner also alleged respondent routinely failed to pay the mortgage payments on time which negatively affected petitioner's credit score because the mortgage was primarily listed in his name.

¶ 105 In its August 27, 2013, order, after considering the amount of legal expenses incurred by petitioner as a result of respondent's actions and inactions, the trial court found respondent in "willful contempt for her refusal to execute simple documents, make mortgage payments, and regarding the sale of the residence," and ordered respondent to pay petitioner $2,500 in attorney fees within 14 days from the date the order was entered. The court also ordered respondent to comply with all previous court orders within 14 days and reimburse petitioner for any interest lost "as a result of her failure to execute the Thrift Savings Plan documents in a timely manner." The court determined no additional sanctions were appropriate at that time.

¶ 106 Respondent alleges it is clear from the record that she made reasonable efforts to comply with the previous court orders concerning retirement accounts. Respondent

indicates she had a compelling reason to not sell the Troy residence as she and her children continued to reside at the residence after the trial court's order was entered.

¶ 107 Proof of willful disobedience of a court order is essential to any finding of indirect civil contempt. *In re Marriage of Tatham*, 293 Ill. App. 3d 471, 480, 688 N.E.2d 864, 871 (1997). The burden rests upon the alleged contemnor to show that noncompliance was not willful and that he or she has a valid reason for failure to follow the court order. *In re Marriage of Tatham*, 293 Ill. App. 3d at 480, 688 N.E.2d at 871. "Whether a party is guilty of contempt is a question of fact for the trial court, and a reviewing court should not disturb the trial court's determination unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion." *In re Marriage of McCormick*, 2013 IL App (2d) 120100, ¶ 17, 995 N.E.2d 529.

¶ 108 Regarding an award of attorney fees, the Marriage Act indicates: "In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party." 750 ILCS 5/508(b) (West 2012).

¶ 109 On July 22, 2013, petitioner testified at a hearing that the Troy residence was never listed for sale, was never placed on the multiple listing service, and was never shown to potential buyers, a for-sale sign was never placed in the front yard, and there were repeated late mortgage payments made by respondent, all to petitioner's detriment.

Petitioner also testified he made demands for the house to be auctioned but it had never been auctioned.

¶ 110 Respondent also testified at the same hearing on July 22, 2013, that the Troy residence was never listed on the multiple listing service and that she never had an open house or a showing of the house.

¶ 111 From petitioner and respondent's testimony, the trial court had sufficient evidence to find respondent in contempt for her failure to abide by the trial court's order, and had proper authority pursuant to the Marriage Act to award reasonable attorney fees to petitioner. Accordingly, the trial court committed no error and did not abuse its discretion in finding respondent in contempt and ordering respondent to pay a portion of petitioner's attorney fees.

¶ 112 CONCLUSION

¶ 113 For the reasons stated herein, we affirm in part and reverse in part the judgment of the circuit court of Madison County. We affirm the trial court's (1) calculation of petitioner's child support arrearage owed to respondent, (2) finding of the Florida property to be marital property and awarding respondent 50% of that property, (3) granting of respondent's motion to correct scrivener's error, (4) finding on the number of shares awarded to respondent from petitioner's Invesco Investment Services account #8479, (5) allocation of certain property and debt, and (6) finding of respondent in indirect civil contempt and ordering her to pay a portion of petitioner's attorney fees. We reverse the trial court's (7) ordering of respondent's attorney to prepare tax documents for both parties.

¶ 114 Affirmed in part and reversed in part.