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2012 IL App (3d) 110598-U

Order filed July 10, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

<i>In re</i> MARRIAGE OF JILL E. CARRINGTON,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit
	)	Bureau County, Illinois
Petitioner-Appellee,	)	
	)	Appeal No. 3-11-0598
and	)	Circuit No. 10-D-36
	)	
BRIAN R. CARRINGTON,	)	Honorable
	)	Marc P. Berbabei
Respondent-Appellant.	)	Judge Presiding

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JUSTICE LYTTON delivered the judgment of the court.  
Presiding Justice Schmidt and Justice Holdridge concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Home purchased by husband three-and-a-half years before marriage to wife was not purchased in contemplation of marriage and, therefore, not marital property. Cause remanded for redistribution of marital property and reconsideration of maintenance and child support.

¶ 2 Jill and Brian Carrington were married in 2005. In 2010, Jill filed a petition for dissolution of marriage. Following hearings, the trial court ruled that a home purchased by Brian in 2001 constituted marital property because it was purchased in contemplation of marriage. In its division

of marital property, the court awarded the home to Jill. We reverse and remand.

¶ 3 Jill and Brian began dating in May 1999, when they were both 18 years old. Jill and Brian had a child, Makina, in July 2000. When Makina was born, Brian and Jill lived in Jill's parents house. In December 2000, Jill and Brian discussed finding a place of their own and began looking for a house. Jill found a house that she liked and told Brian about it. Brian called a realtor, and Brian, Jill and their parents looked at the home together.

¶ 4 In October 2001, Brian purchased the home for \$65,000. He paid \$250 in earnest money and \$2430,76 at the closing. He obtained a mortgage of \$61,500 for the remaining balance. Both the deed and the mortgage were in Brian's name only. Jill did not attend the closing or sign any documents related to the purchase of the home.

¶ 5 After making some minor renovations, including painting and decorating, Jill, Brian and Makina moved into the home. In 2004, Brian refinanced the home, taking some equity out of the home and increasing the outstanding mortgage to \$65,000.

¶ 6 Jill and Brian became engaged in December 2004, and were married in July 2005. They had their second child, Brandon, in September 2007. Brian refinanced the home in 2009, to obtain a better interest rate. At that time, the mortgage balance was \$47,823.70.

¶ 7 In April 2010, Jill filed a petition for dissolution. In July 2010, Jill and Brian had another child, Ali. In August 2010, the trial court found grounds to dissolve the parties' marriage and entered an agreed final custody judgment that awarded the parties joint custody of the children with Jill designated as residential custodian.

¶ 8 Phase II hearings regarding financial matters were held in January, March and May 2011. At the hearings, Jill testified that she and Brian first talked about getting married when she was

pregnant with Makina. She and Brian talked about how they would get married, who would be in the wedding and "all of the great stuff that you would do for a wedding." Soon after Makina was born, Brian told her that he wanted to be with her for the rest of his life and said, "[W]e will get married."

¶ 9 Jill and Brian began talking about purchasing a home in December 2000, because they thought that they needed to get out of Jill's parents' house and "be a family." Jill testified that the home was placed in Brian's name alone because she was in school, not working full time and had no credit at the time of the purchase.

¶ 10 According to Jill, she and Brian agreed before they moved into the home that she would pay for all of the utilities and Brian would pay the mortgage and insurance. Jill purchased the washer, dryer and water softener for the home. Jill's parents purchased carpeting for two bedrooms. Jill and Brian jointly decided what furnishings to buy. According to Jill, Brian always referred to the house as "our house." During the marriage, Jill and Brian made various improvements to the house, including installing new windows, remodeling the kitchen and a bathroom and adding air conditioning to a portion of the home.

¶ 11 Brian moved out of the home and stopped making mortgage payments in March 2010. Jill made the mortgage and real estate tax payments after that. According to the 2009 real estate tax bill, the house had a fair market value of \$91,488.

¶ 12 Brian testified at the hearings that he discussed marriage with Jill "[v]ery little" and only in "general conversation" before asking Jill to marry him. He testified that he first started thinking about marrying Jill when Makina was four or five years old, in approximately 2004. He did not start thinking about marriage before that because "[w]e just didn't know where we were going to be, what

we were going to be doing. Then we were both really young still." He said he purchased the home because he wanted a place of his own. Brian said that he did not consider putting Jill's name on the house because he did not want her to have an ownership interest in it. He claimed that he always considered the home to be only his. He said that he asked Jill to come live in the house with him because he and Jill had a child together.

¶ 13 Brian testified that he stopped making mortgage payments on the house in June 2010. He told Jill that she had to make the payments after that because she was living there. He never intended for Jill and the children to stay in the house indefinitely. According to Brian, the home was worth \$106,000.

¶ 14 In June 27, 2011, the trial court entered a decision on the phase II issues. With respect to the home, the trial court found that it was purchased in contemplation of marriage and, therefore, marital property. In so holding, the trial court noted that while the time between the purchase of the home and the marriage was substantial (3 years and 8 months) and only Brian's name was on the deed, note and mortgage, the totality of the circumstances required a finding that the "home was acquired in contemplation of marriage" because Jill and Brian (1) "established a *de facto* husband and wife and family relationship," (2) used their joint efforts to locate and prepare a "suitable family home," (3) each used funds to buy items for the home, and (4) each assumed financial responsibility for the home. The court found Jill's testimony that Brian called the home "our house" to be more credible than Brian's testimony to the contrary. The court also accepted Jill's testimony that both she and Brian expressed a mutual intent to marry when they discovered Jill was pregnant with Makina. The court found that the parties' express intent to marry before the home was purchased was consistent with a finding that the home was purchased in contemplation of marriage.

¶ 15 The court determined that the value of the home was \$98,744, with an outstanding mortgage of \$42,617, giving it a net equity value of \$56,127. The court awarded the home to Jill. After the court divided the remaining marital property and debt, Jill received a net equity award of \$95,064, including the value of the home. This accounted for 80.06% of the net equity of the marital estate. Brian received a net equity award of \$23,682.64, or 19.94% of the marital net equity. The court explained that Jill was entitled to a greater portion of the marital property, in part, because Brian's income and earning potential were superior to Jill's, and Jill had greater needs and responsibilities as the children's primary physical custodian.

¶ 16 The court denied Jill's request for maintenance, explaining that "[a] two to four year reviewable rehabilitative maintenance award of approximately \$400 to \$600 per month would be warranted in this case certainly if the court divided the marital property and debt net equity equally and even if in the more likely event the equity was divided in proportions favoring Jill but substantially less so than its actual division." The court stated that its "division of marital property and debt is in part an apportionment in lieu of maintenance."

¶ 17 The trial court entered a judgment for dissolution in July 2011. As part of the judgment, the trial court ruled that the home was marital property and awarded it to Jill. The order provided that no maintenance would be paid by either party, stating that "[t]he court's division of marital property and debt net equity (80.6 percent to Jill and 19.94 percent to Brian) requires a finding that a maintenance award is not appropriate." The trial court also ordered Brian to pay semi-monthly child support of \$471.

¶ 18 I. Classification of Home

¶ 19 Brian argues that the trial court erred in finding that the home was marital property because

it was purchased in contemplation of marriage.

¶ 20 In an action for dissolution of marriage, a circuit court's classification of property as marital or nonmarital will not be reversed by a reviewing court unless its classification is against the manifest weight of the evidence. *In re Marriage of Weisman*, 2011 IL App (1st) 101856, ¶ 20. A court's finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary or not based on the evidence presented. *Id.*

¶ 21 Although property acquired before marriage is generally not considered marital property, it may be characterized as such where it was acquired "in contemplation of marriage." *Weisman*, 2011 IL App (1st) 101856, ¶ 22. In determining whether property was acquired in contemplation of marriage, a court should examine the totality of the circumstances to determine if the parties intended the property to serve as the marital home. *Id.* at ¶ 26. In doing so, a court may consider (1) the identity of the person who signed the offer and/or contract, (2) the name in which title is held, (3) the amount of time between the purchase and the marriage, and (4) whether equity in the property was acquired with marital funds. *Id.* The burden is on the party seeking to have the property classified as marital to establish that it was purchased in contemplation of marriage. See *In re Marriage of Reeser*, 97 Ill. App. 3d 838, 840 (1981).

¶ 22 Here, the evidence established that Brian purchased the home in October 2001. Title to the property was in his name alone. While Jill assisted Brian in finding the home, she did not attend the closing or sign any documents related to the purchase of the property, including the offer or contract for sale. Brian paid the earnest money for the property, as well as the costs at closing. Brian obtained a mortgage for the remaining balance. The mortgage was in Brian's name only.

¶ 23 Over three years after the home was purchased, Brian and Jill became engaged, and over six months after that, they were married. When they were married, the debt on the property was just under \$65,000. By the end of the marriage, the mortgage balance was \$42,617. During the course of the marriage, the couple made various improvements to the home. By the end of the marriage, the home was worth \$98,744.

¶ 24 After analyzing the relevant factors, we find that the trial court's ruling that the home was purchased in contemplation of marriage to be against the weight of the evidence. Of the four factors identified above, three weigh against a finding that the home was purchased in contemplation of marriage. First, Brian signed all of the paperwork related to the purchase of the home, including the offer and contract for sale. Second, title to the home was in Brian's name alone. Third, the home was purchased over three years before Brian and Jill were engaged and over three-and-a-half years before they were married. Only the fourth factor weighs in favor of finding that the house was purchased in contemplation of marriage since much of the equity in the house was earned during Brian and Jill's marriage through the use of marital funds. However, that marital funds were used to reduce the property's indebtedness and increase its value is insufficient to establish that the home was purchased in contemplation of marriage. See *In re Marriage of Leisner*, 219 Ill. App. 3d 752, 763 (1991); *Reeser*, 97 Ill. App.3d at 840.

¶ 25 We believe that the most important factor in this case is the length of time between the purchase of the property and the marriage. In every case where a reviewing court has affirmed a trial court's finding that a home was purchased in contemplation of marriage, the length of time between the purchase and the marriage was significantly less than in this case and never more than a year. See *Weisman*, 2011 IL App (1st) 101856 (3 months); *In re Marriage of Olbrecht*, 232 Ill. App. 3d

358 (1992) (4 months); *In re Marriage of Jacks*, 200 Ill. App. 3d 112 (1990) (1 hour); *In re Marriage of Ohrt*, 154 Ill. App. 3d 738 (1987) (2 months); *In re Marriage of Malter*, 133 Ill. App. 3d 168 (1985) (6 to 12 months); *Stallings v. Stallings*, 75 Ill. App. 3d 96 (2 months) (1979). In only one case did more than a year elapse between the purchase of the property and the marriage, and the appellate court reversed the trial court's finding that the home was purchased in contemplation of marriage. See *Leisner*, 219 Ill. App. 3d at 762-63 (home purchased 15 months before engagement and 19 months before marriage was not purchased in contemplation of marriage).

¶ 26 In this case, Brian and Jill's marriage took place over three years after Brian purchased the home. The credible evidence established that Brian expressed a desire to marry Jill sometime in the future before he purchased the home. However, the marriage was not imminent and did not occur until several years later. Under these circumstances, Jill and Brian could not have intended the property to serve as the "marital home." See *Weisman*, 2011 IL App (1st) 101856, ¶ 26. Thus, the trial court's finding that the home was purchased in contemplation of marriage is against the manifest weight of the evidence.

¶ 27

## II. Remand

¶ 28 Under the trial court's division of property, the home was a significant asset and constituted nearly half of the value of the entire marital estate. Because the trial court erred in classifying the home as marital property, we reverse the trial court's property division and remand the case for reevaluation and redivision of all the marital assets. See *In re Marriage of Schinelli*, 406 Ill. App. 3d 991, 1004 (2011); *In re Marriage of Patrick*, 233 Ill. App. 3d 561, 572 (1992). On remand, the trial court must consider the enhanced value of Brian's non-marital property in its reexamination of the apportionment and distribution of the marital estate. See *In re Marriage of Jelinek*, 244 Ill. App.

3d 496, 507 (1993).

¶ 29 In addition, the division of marital property and the financial resources of the parents are among the factors that must be considered in determining maintenance and child support. See 750 ILCS 5/504(a)(1) (West 2010); 750 ILCS 5/505(a)(2)(b) (West 2010). Thus, when a trial court remands for reapportionment of marital property, the interrelated issues of maintenance and child support need to be readdressed by the trial court as well. See *In re Marriage of Guerra*, 153 Ill. App. 3d 550, 559 (1987); *In re Marriage of Wilson*, 110 Ill. App. 3d 809, 815-16 (1982); *In re Marriage of Peshek*, 89 Ill. App. 3d 959, 968-69 (1980). On remand, the trial court should consider whether any changes to child support or maintenance are warranted in light of the adjusted financial resources of the parties. See *In re Marriage of Perlmutter*, 225 Ill. App. 3d 362, 380 (1992).

¶ 30 The order of the circuit court of Bureau County is reversed and remanded for further proceedings consistent with this decision.

¶ 31 Reversed and remanded.