

NOTICE

Decision filed 07/03/12. 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.

2012 IL App (5th) 110055-U
NO. 5-11-0055
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
STEVEN K. RENTH,)	St. Clair County.
)	
Plaintiff-Appellant,)	
)	
and)	No. 06-D-1051
)	
NIKKI K. RENTH,)	Honorable
)	Randall W. Kelley,
Defendant-Appellee.)	Judge, presiding.

PRESIDING JUSTICE DONOVAN delivered the judgment of the court.
Justices Chapman and Spomer concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court made a fair and equitable division of the parties' marital assets and property after taking into account individual assets. Furthermore, trial court did not err in finding no evidence of dissipation or in failing to reimburse Husband for payments made to wife during dissolution proceedings.

- ¶ 2 Steven K. Renth, Husband, appeals the division of property between Husband and Wife, Nikki K. Renth, as entered by the circuit court of St. Clair County, following a judgment of dissolution of the parties' marriage. We affirm.

- ¶ 3 The parties were married in April of 1981. Two children were born to the marriage, both of whom were above the age of majority by the time of the parties' dissolution of marriage. Both still live with the parties, however, and are not working. Husband filed a petition for judgment of dissolution of marriage in December of 2006.

- ¶ 4 During the majority of the marriage, both parties had full-time employment. By the

time of the dissolution hearing, neither was working. In 1984, Husband started Five Star Builders, a company which built new homes. The company stopped building in 2007, however, when the economy took a downturn and building of new construction slowed in general. Wife testified that when the business was in existence she helped when she could with the painting, wallpapering, and landscaping of new homes. Husband countered her testimony claiming that she helped "very sparingly." The trial court awarded Husband \$20,000 for the equity in the company. Husband argued that the company no longer had any value.

¶ 5 Wife was employed at Scott Air Force Base from 1984 until November 2008, when she was removed from her position for absenteeism. Her adjusted base pay was \$82,736 at the time she was forced to leave. Her official record revealed that she had been absent 734 hours, with more than half of these hours being unauthorized without leave. Wife testified she missed work because she had an ulcer and was sick. There was also some evidence to suggest that by the end of the parties' marriage Wife may have had a gambling and drinking problem. She received two DUIs in 2006 and one in 2008, resulting in her driving privileges being revoked until 2014 and the payment of some \$5,000 in fines. Wife testified that she really had not been trying to get a new job since losing her old one because she does not have transportation. She further claimed that she spent a great deal of her time working on health insurance issues for Husband. In 2008, Husband was diagnosed with esophageal cancer. Husband underwent numerous treatments and surgeries and was told by doctors that he was not likely to return to work. As of the hearing date, Husband had not worked for 2½ years.

¶ 6 Towards the end of the parties' marriage, they sold one of their homes. They netted \$264,000 from the sale. Each took \$50,000 to put in their individual accounts. Another \$35,000 was spent on a new vehicle for their son. The court also ordered that Wife's vehicle be paid for from the proceeds. Prior to the final division of property, the court also ordered

Husband to pay \$75,000 to Wife and her attorney as an advance. Husband also claimed he paid \$16,500 for costs, expenses, and fees pursuant to court order as an additional advancement on the final distribution. Husband claims he was not reimbursed or credited in the final settlement order for either advance.

¶ 7 The parties also owned a seven-acre property on Eidmann Road in Belleville where husband lived and had his business. The property included a 4,000-square-foot pole barn with an air-conditioned office and full bath, and a three-acre lake with a sandy beach area. Husband hired a residential real estate appraiser as his expert to value the property. In September of 2007, husband's appraiser valued the home at \$300,000. In 2009, the appraiser updated his earlier appraisal based on new comparable sales and adjusted the value to \$275,000, consistent with an overall drop in real estate values. Wife pointed out that the comparables used did not feature the same size acreage or a lake. Wife's expert believed the value of the home and property to be \$375,000 because the property had many upscale qualities including a swimming dock. The comparables the Wife's expert used were 12 to 15 miles from the Eidmann property, however, and the most expensive one was valued at only \$310,000. The court determined the value of the property to be \$336,000. The residence was awarded to Husband provided he pay Wife \$168,000 for her share. If Husband chose not to pay the monies to Wife, the property was to be sold with the net proceeds of the sale being divided equally between the parties. Wife, on the other hand, was awarded the home in which she was residing in Mascoutah upon payment to Husband of one-half of the net equity in her house. This home was valued at \$150,000. If Wife chose not to pay Husband his share, this house too was to be sold with the proceeds being divided equally.

¶ 8 Other evidence revealed that both parties admitted to having relationships after the parties separated. Both also admitted to having spent significant sums of money on their new relationships.

¶ 9 On May 12, 2010, the court entered a judgment of dissolution. The court denied maintenance to both parties and further denied each party's claims of dissipation of assets. Both parties were awarded their respective pension accounts and various bank accounts. Remaining accounts were divided equally, resulting in Husband being awarded a total of \$329,608 in assets and Wife \$392,608. The court further denied reimbursement to Husband for the monies he claims were given to Wife as advancements.

¶ 10 Husband raises numerous issues on appeal claiming that the court's classification, valuation, and division of marital property was against the manifest weight of the evidence. He further contends the court erred in not reimbursing him for \$97,500 in payments made to Wife during the proceedings and in failing to find that Wife had dissipated marital assets. He also finds fault with the court's failure to reserve the issue of maintenance in favor of Husband. In reviewing the trial court's determination on the issues of dissipation and the valuation of marital property, we are to use a manifest-weight-of-the-evidence standard of review. In reviewing the court's ultimate division of marital property, we are to employ the abuse-of-discretion standard of review. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700, 843 N.E.2d 478, 482-83 (2006). We further note that the trial court has broad discretion to distribute marital assets, and mathematical equality is not required. *In re Marriage of Hubbs*, 363 Ill. App. 3d at 704, 843 N.E.2d at 486. We conclude the court, in this instance under the circumstances presented, made a fair and equitable division of the parties' marital assets and property. We choose not to go into the details of each and every account and asset. Again, after reviewing the record and taking into account the discretion of the court in valuing such assets and weighing the credibility of the parties (see *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641, 686 N.E.2d 670, 675 (1997)), we conclude there was no abuse of the court's discretion in making the determinations it did, nor were valuations made against the manifest weight of the evidence. We also note that each party was awarded

their individual retirement accounts and assets, and these awards were further taken into account when dividing the remainder of the property. Additionally, Wife acknowledged that certain advances of monies were made to her during the course of the proceedings. We agree that the court did not err in denying Husband's request for reimbursement of these advances, however. Again, the advances were also taken into account in distributing all of the assets in an equitable fashion.

¶ 11 We do choose to address the issue of the valuation of one of the largest assets, however, that being the Eidmann Road property. Husband's expert valued the property at \$275,000, while Wife's valued it at \$375,000. The court found the value to be \$336,000, based on the testimony of both experts. We see no reason to disturb the court's valuation. See *In re Marriage of Stone*, 155 Ill. App. 3d 62, 70-71, 507 N.E.2d 900, 905 (1987) (when court's valuation of residence is within range testified to by appraisers, such valuation will not be disturbed). The property features a custom home on seven acres overlooking a lake with a beach and swimming dock. The property also contains a large outbuilding formerly used for husband's business with an office space. Given that the property is unique, neither expert was able to find comparable properties that contained all of the same features. Clearly the court took everything into consideration in reaching its valuation. Accordingly we find no error.

¶ 12 We also agree that the court did not err in finding no dissipation of assets by either party. Dissipation is the use of marital property for one spouse's benefit or for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown. *In re Marriage of Asher-Goettler*, 378 Ill. App. 3d 1023, 1031, 883 N.E.2d 564, 570 (2008). The court found no evidence to support dissipation on either side. For instance, the majority of the monies allegedly improperly used by Wife went into buying the house she moved into after the parties separated. Husband helped her look at the house and told her to

take the down payment out of one of their accounts. These monies too were accounted for in distributing the marital property as Husband was awarded one-half of the equity in the property.

¶ 13 Husband also asserts the court erred in failing to reserve the issue of maintenance for him as he is ill. The court declined to award maintenance to either party given that Wife is also not employed. Petitions to modify such awards can be made if the situation of either party should radically change in the future. See *In re Marriage of Popovich*, 149 Ill. App. 3d 643, 500 N.E.2d 1109 (1986). Again, we find no error.

¶ 14 For his final issue, Husband finds fault with the court naming Wife as the custodian of their daughter's college fund account. Given Husband's poor health, it was not unreasonable for the court to name Wife as the custodian of the account. Additionally, Wife testified that she went into rehab in 2008 and had gotten her life back in order. It was for the trial court to make such credibility determinations.

¶ 15 For the aforementioned reasons, we affirm the judgment of the circuit court of St. Clair County.

¶ 16 Affirmed.