2013 IL App (5th) 120016-U

NO. 5-12-0016

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
ROBERT W. TUTTLE,	)	Crawford County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 07-D-104
	)	
MARY LOU TUTTLE,	)	Honorable
	)	Kimbara Harrell,
Respondent-Appellee.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Spomer and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held*: Where no copy of a prenuptual agreement was located, the trial court correctly held that the agreement was unenforceable. The trial court did not err in finding that marital assets were used to pay a mortgage on a nonmarital property. Valuations of realty based upon expert evidence were proper. Where the court averaged two appraisal amounts to reach a value, we reverse and remand that portion of the order because there was no evidentiary basis for that value. Where the trial court mistakenly found that one appraisal amount covered two properties rather than one, that portion of the judgment must be reversed and remanded. Where the court's order of dissipation of marital assets was proper, it will be affirmed. Where the husband's farming business did not pay rent, the trial court's order that the husband must make payment to the wife for the unpaid rent was correct. Where the maintenance award is limited in time and amount, the award will be affirmed.

¶ 2 FACTS

¶ 3 Factual Background of Marriage

¶ 4 Robert W. and Mary Lou Tuttle were married on April 21, 1981. No children were born during the marriage, but Robert had two children from a prior marriage to a Colleen

Kay Tuttle (later known as Colleen Kay Pye), and Mary Lou had one child from a prior marriage. The parties separated in November 2007 and were divorced on September 13, 2010, after 29 years of marriage. Before marriage, the parties allegedly entered into an prenuptial agreement, but at the time of the divorce, a copy could not be found. Both Robert and Mary Lou testified that they remembered that the agreement essentially provided for each party keeping his or her own property and that anything derived from each individual's property would remain the property of that individual. At trial, Mary Lou testified that Robert came into the marriage owning farmland and that she owned no real estate when she married Robert. From the time of the marriage until 2003, the parties acquired 10 different parcels of real estate of varying sizes, totaling 595.20 acres.

¶ 5 During the marriage, two corporations were formed–Tuttle Grain, Inc., and Tuttle Farms, Inc. Robert operated both businesses, while Mary Lou did miscellaneous bookkeeping and various errands for the businesses.

¶ 6 While still married, on December 15, 2003, Robert created the Robert W. Tuttle Revocable Trust into which he deeded real estate he owned before the marriage, as well as real estate acquired during the marriage. Robert was the sole beneficiary of the trust, as well as the trustee, and the settler of the estate. Mary Lou had no legal status with respect to the trust. This trust was structured to be converted upon Robert's death to the Robert W. Tuttle Descendants' Trust, with eight beneficiaries. Mary Lou was not made a part of this planned trust either.

¶ 7 After filing his divorce petition, Robert gave Farmers and Merchants Bank a financial statement dated November 14, 2007. That statement represented his net worth at $1,943,922.13. An earlier financial statement given to the bank and signed by both Robert and Mary Lou dated October 27, 2004, showed a net worth of $1,850,800.36.

¶ 8 After Robert and Mary Lou separated, Robert purchased real estate in Yuma, Arizona,

for $100,000 on March 18, 2008. He used funds from both of his corporations. The property was apparently deeded to Colleen Kay Pye. At trial, Robert testified that he was loaning Colleen the money to purchase this Arizona home and that he expected her to pay the money back to him.

¶ 9 The Divorce Judgment

¶ 10 On October 4, 2011, the trial court entered its judgment on all remaining issues. The court found that the prenuptial agreement was statutorily required to be in writing and thus was unenforceable.

¶ 11 The Assets. The court acknowledged that marital property needed to be divided in just proportions. The court granted Mary Lou one-half of the mortgage payments made on the marital home during the marriage–$24,000. Mary Lou received a home appraised at $45,000 that she moved to when the parties separated. Five pieces of realty purchased during the marriage, some of which were in the trust, were construed as marital property, and Mary Lou was awarded half of the values of those properties–$434,970. Purchase of the Yuma, Arizona, property was construed to be a dissipation of marital assets, and the court awarded Mary Lou one-half of the purchase amount–$50,000. The court determined that Tuttle Farms, Inc., formed in 2002, which held the farmland, had not paid acreage rent for the years 2002 through 2010. Because Mary Lou had cosigned on farm loans during the marriage, the court concluded that Mary Lou was considered to be part of Tuttle Farms, Inc. The court determined that Mary Lou should receive one-half of the rental amount due for those years–$221,000. On the basis of the past five years of financial data, a financial expert rendered his opinion that the value of Tuttle Grain, Inc., was $845,359. He also opined that the net income per year should be $85,675; however, Tuttle Grain had been operating at a loss totaling $660,000. The court awarded this asset to Robert.

¶ 12 The total monetary amount of the assets awarded to Mary Lou was $774,970.

¶ 13 Life Insurance. The court concluded that the insurance which had a value of $98,000 was marital property, and it ordered Robert to list Mary Lou as one-half beneficiary of the policy.

¶ 14 Maintenance. The parties separated on November 1, 2007. Mary Lou asserted that she was entitled to back maintenance totaling $3,500 per month. She had received $1,000 per month since the separation pursuant to a court order. The court awarded Mary Lou maintenance in the monthly amount of $1,000 for a period of five years, with termination during those five years if Mary Lou died, remarried, or cohabitated with another partner.

¶ 15 Issues on Appeal

¶ 16 Robert appeals from the trial court's order, raising the following issues:

1. The court should have given effect to the prenuptial agreement;
2. The court erred in awarding Mary Lou certain assets that Robert considered to be nonmarital property;
3. The court erred in disposing of and dividing the marital property;
4. The court erred in giving Mary Lou an interest in property held by the Robert W. Tuttle Trust;
5. The court erred in finding that Robert dissipated marital assets;
6. The court erred in awarding Mary Lou back farm rental income from Tuttle Farms, Inc.; and
7. The court erred in awarding spousal maintenance.

¶ 17 ISSUES, LAW, AND ANALYSIS

¶ 18 Validity of Premarital Agreement

¶ 19 The question to be determined is whether the written agreement was necessary in light of both parties' acknowledgment that there was an agreement and both parties' general agreement as to its terms. The trial court concluded that the premarital agreement was

invalid because the written document was no longer in existence. The court cited to the Illinois Uniform Premarital Agreement Act (750 ILCS 10/3 (West 2010)). Robert argues that the trial court applied the wrong law and that we should reverse on the basis of common law because the Act did not apply to agreements executed before January 1, 1990 (750 ILCS 10/11 (West 2010)), and the parties in this case agree that the agreement was entered into prior to their 1981 marriage.

¶ 20 Our review is *de novo* because we are determining proper application of law. *Case v. Galesburg Cottage Hospital*, 227 Ill. 2d 207, 213, 880 N.E.2d 171, 175 (2007).

¶ 21 The trial court applied the Illinois Uniform Premarital Agreement Act which took effect on January 1, 1990, and which requires that a premarital agreement must be in writing and signed by both parties in order to be enforceable. 750 ILCS 10/3 (West 2010). Robert claims that a writing is not required prior to 1990, while Mary Lou says that even at common law courts have held that the premarital agreement must be written. See *Lee v. Central National Bank & Trust Co. of Rockford*, 56 Ill. 2d 394, 308 N.E.2d 605 (1974); *McAnulty v. McAnulty*, 120 Ill. 26, 11 N.E. 397 (1887). Generally speaking, at common law in Illinois, prenuptial and antenuptial agreements which determined rights to property and maintenance were valid so long as three conditions were met:

> "(1) an unforeseen condition of penury is not created due to lack of property resources or lack of employability [citation], (2) the agreement is entered into with full knowledge and without fraud, duress, or coercion [citation], and (3) the agreement is fair and reasonable [citation]." *Warren v. Warren*, 169 Ill. App. 3d 226, 229-30, 523 N.E.2d 680, 682-83 (1988) (citing *In re Marriage of Burgess*, 138 Ill. App. 3d 13, 15, 485 N.E.2d 504, 505-06 (1985); *Volid v. Volid*, 6 Ill. App. 3d 386, 392, 286 N.E.2d 42, 47 (1972); *Eule v. Eule*, 24 Ill. App. 3d 83, 87, 320 N.E.2d 506, 509 (1974)).

¶ 22 In this case, the trial court stated that the contract needed to be written, and it cited

both statutory and case law. See 750 ILCS 10/3 (West 2010); *In re Marriage of Jelinek*, 244 Ill. App. 3d 496, 502, 613 N.E.2d 1284, 1289 (1993). As neither party had produced a written copy of the agreement, the trial court concluded that it was "unable to determine if the three required [*Warren v. Warren*] conditions have been met" and proceeded to divide the properties as if there was no premarital agreement.

¶ 23 We agree with the trial court's decision. In order to accurately follow the terms of a prenuptial agreement, the writing is necessary. The parties in this case testified generally about the terms, but without the written document there is no way to confirm their statements. Before passage of the Illinois Uniform Premarital Agreement Act, courts considered the fairness of the agreement utilizing the elements set forth in *Warren v. Warren*. Even before the statutory act codifying the written requirement, it would be most difficult, if not impossible, to properly consider and address whether the terms were fair to the parties if the writing was nonexistent. Furthermore, agreements relative to marriage of the type claimed in this case have always been governed by the statute of frauds, which mandates that in order "to charge any person upon any agreement made upon consideration of marriage *** [the agreement] shall be in writing, and signed by the party to be charged therewith." 740 ILCS 80/1 (West 2010); see also *McAnulty v. McAnulty*, 120 Ill. 26, 34, 11 N.E. 397, 400 (1887); *Lee v. Central National Bank & Trust Co. of Rockford*, 56 Ill. 2d 394, 402-03, 308 N.E.2d 605, 610 (1974).

¶ 24 We do not agree that the prenuptial agreement can be upheld in absence of a copy of the written agreement simply because there may have been a written agreement at one time. Application of the terms of the agreement in the general way suggested by Robert Tuttle, with consideration of the fairness requirements, is simply impossible. As Robert Tuttle is the party seeking to enforce this agreement, it was incumbent upon him to produce the agreement for consideration by the court. Consequently, we find that the trial court's

conclusion on this issue was proper–that the court could not enforce an agreement that was not before the court.

¶ 25 Payments During Marriage on Nonmarital Mortgage

¶ 26 At issue is a piece of property Robert was awarded in his divorce from his previous wife, Colleen Kay Tuttle, on November 5, 1975. Shortly thereafter, on May 28, 1976, he mortgaged the property for $90,000. Mary Lou and Robert were married in 1981. The mortgage on this property was paid off and released on October 31, 1989. In the court's order, the court acknowledged that the property was nonmarital, that despite the fact that the mortgage payments were presumably made with marital assets, the property did not lose its nonmarital character and was not transmuted into marital property. However, because marital assets were used to pay the mortgage, the court determined that Mary Lou was entitled to one-half of the payments made on this mortgage from the date of their 1981 marriage until the mortgage release in late 1989.

¶ 27 If contributions made to nonmarital property can be traced by clear and convincing evidence, Illinois courts have held that reimbursement must be made. *In re Marriage of Ryman*, 172 Ill. App. 3d 599, 606, 527 N.E.2d 18, 23 (1988). At issue then, is the source of these mortgage payments. Neither party provided specific evidence that the payments in question came from a marital source. However, we are able to determine from the record that the income Robert earned during the marriage came from the operation of Tuttle Farms–which owned farmland–and from Tuttle Grain–which sold augers and grain carts. While the Tuttle Farms and Tuttle Grain farmland and equipment may or may not have been nonmarital in nature, income derived from these assets–regardless of classification–is construed as marital income. *In re Marriage of Reed*, 100 Ill. App. 3d 873, 877, 427 N.E.2d 282, 285 (1981). From our review of the record and the trial court's order, it is logical that the mortgage payments were made with these marital income funds because these two

businesses were the income-producing assets for the Tuttles. Consequently, Mary Lou was properly entitled to one-half of the total amount of mortgage payments made during the marriage.

¶ 28 Marital Property Division and Valuation

¶ 29 Robert divides this issue into two parts. The first part involves a house located in Hutsonville which was awarded to Mary Lou in the judgment. Robert does not dispute the designation of this house as marital and does not dispute the trial court's award of the house to Mary Lou. What he objects to is the fact that the trial court chose not to award him a credit for one-half of the $45,000 value of the house. The second part of the issue involves the trial court's valuation of five properties purchased during the marriage.

¶ 30 Lack of Credit for the Hutsonville House. The trial court explained in its order that the house was purchased during the marriage and that Mary Lou's mother occupied the home. In June 2007, Mary Lou moved to this house. The house was appraised at $45,000. Mary Lou states that Robert paid off the mortgage with a $1,100 payment but that she and her mother made all other payments on the mortgage.

¶ 31 In analyzing the trial court's order, it appears clear that the trial court construed this property separately from five other properties which were numbered and discussed following the award of this house to Mary Lou. With the other numbered five categories of property, Robert received credits.

¶ 32 The trial court's property division decision is only restricted by reason and will not be reversed unless it can be shown that the trial court abused its discretion. *In re Marriage of Siddens*, 225 Ill. App. 3d 496, 500, 588 N.E.2d 321, 324 (1992). The issue for the reviewing court is not whether it necessarily agrees with the trial court's determination as to marital asset division, but whether the trial court acted arbitrarily without employing conscientious judgment, or if in view of all circumstances of the case, the trial court exceeded the bounds

of reason so that no reasonable person would follow the trial court's position. *In re Marriage of Siddens*, 225 Ill. App. 3d at 500, 588 N.E.2d at 324.

¶ 33 Having reviewed the entirety of the trial court's order, we find that the trial court's separate treatment of the Hutsonville house did not amount to an oversight or an error in not granting Robert credit for one-half of its value. We find that the trial court purposefully chose not to give Robert a credit for one-half of the value of the house. Furthermore, the trial court is not legally mandated to provide these credits. Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act requires marital property division in just proportions. 750 ILCS 5/503(d) (West 2010). Just proportions does not require an equal split of all assets. The award of the house to Mary Lou without credit to Robert was not an abuse of the trial court's discretion.

¶ 34 Valuation of Other Properties Purchased During the Marriage. Robert takes issue with the methods employed by the trial court. Robert had one property appraised, and he submitted that expert opinion to the court. Mary Lou presented real estate appraisals for all of the properties. The appraisals were the main evidence available to the court upon which the valuations were made. With respect to the one property appraised by both parties, the trial court averaged the values. The trial court accepted the only appraisal–by Mary Lou's expert–on four of the five categories of properties. The trial court found that one of the properties had been sold in February 2005, but seemingly disregarded the sales prices in lieu of an appraised value that was submitted by Mary Lou's expert with respect to only one of the two properties included in this category of real estate.

¶ 35 The valuation of marital property is a factual question that is subject to the manifest weight of the evidence standard on review. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700, 843 N.E.2d 478, 482-83 (2006). 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) (citing *Bazydlo v. Volant*, 164 Ill. 2d 207, 647 N.E.2d 273 (1995)). Any conflicts in testimony regarding the valuation of marital assets are matters to be resolved by the trier of fact. *In re Marriage of Lee*, 246 Ill. App. 3d 628, 637, 615 N.E.2d 1314, 1321 (1993). The trial court must value marital assets as they exist on the date of the dissolution. See *In re Marriage of Mathis*, 2012 IL 113496, __ N.E. 2d __; *In re Marriage of Claydon*, 306 Ill. App. 3d 895, 900, 715 N.E.2d 1201, 1204 (1999).

¶ 36 The following properties are at issue on appeal:

1. 17.3 acres in Crawford County, purchased in 1983 and appraised by Mary Lou's expert at $60,550–trial court awarded Mary Lou $30,225;
2. 58.8 acres in Crawford County, purchased in 1987 and appraised by Mary Lou's expert at $205,800, and by Robert's expert at $165,000–trial court averaged the two amounts and awarded Mary Lou $92,700;
3. 80 acres located in Crawford County, purchased in 1987, and appraised by Mary Lou's expert at $280,000–trial court awarded Mary Lou $140,000;
4. Two parcels located in Crawford County, purchased in 1997. One parcel containing 73.9 acres was appraised in February 2009 by Mary Lou's expert at $118,240. The second parcel contained 40 acres and there was no appraisal submitted to the court. Both parcels were sold in February 2005. The first parcel sold for $44,340, and the second parcel sold for $24,000. The trial court awarded Mary Lou $59,120 which represented one-half of the appraised value of the 73.9-acre tract;
5. Two parcels located in Crawford County, purchased in 2004. One parcel was 17.5 acres, and the other was 45.6 acres, for a total of 63.1 acres. Mary Lou's

expert appraised the properties at $225,850–trial court awarded Mary Lou $112,925.

¶ 37 Robert argues that the trial court's method of valuation was incorrect, stating that the court was required to assign values to the properties as of the date of dissolution–not when the properties were appraised. *In re Marriage of Mathis*, 2012 IL No. 113496, __ N.E. 2d __; *In re Marriage of Claydon*, 306 Ill. App. 3d at 900, 715 N.E.2d at 1204. We agree with this basic legal tenet, but find that Robert's argument is flawed. We will address the court's averaging of two appraisals separately. Otherwise, there is no evidence supporting Robert's claim that the values assessed by Mary Lou's expert were not, in fact, the values of the properties at the time of dissolution. We do not find that the trial court's approach with respect to the acceptance of the only appraisals in categories 1, 3, and 5 was contrary to the manifest weight of the evidence. The trial court's determinations had an evidentiary basis. *In re Marriage of Lundahl*, 396 Ill. App. 3d 495, 506, 919 N.E.2d 480, 490 (2009).

¶ 38 Robert only had an appraisal prepared on the 58.8-acre tract listed in category 2. Each appraiser had a different opinion on the value of that acreage and the methodology to reach that valuation. The trial court did not accept either appraisal but averaged the two. Having reviewed the court's decision and the two appraisals, we find that there was no evidentiary foundation for the valuation reached by the court. There was no evidence that the value of the 58.8-acre tract was $185,400. The trial court was presented with two expert opinions. Mary Lou's expert opined that the property was worth $205,800. Robert's expert provided a lesser valuation amount of $165,000. Those were the only two expert opinions before the court. The trial court must have an evidentiary basis for establishing a property value. See *In re Marriage of Lundahl*, 396 Ill. App. 3d at 506, 919 N.E.2d at 490; *In re Marriage of Cutler*, 334 Ill. App. 3d 731, 737, 778 N.E.2d 762, 767 (2002). We hold that the trial court's determination that the value was $185,400 (of which Mary Lou was awarded $92,700) was

arbitrary, without foundation, and contrary to the manifest weight of the evidence. We reverse and remand the judgment on this issue.

¶ 39 We further find that the trial court's decision about the two properties in category 4 was improper. From the order, the trial court appeared to be of the belief that the appraisal submitted by Mary Lou was for both properties. That assumption was invalid. Having reviewed the appraisal in the record, the valuation was completed four years after the parcel was sold, and was only for the larger of the two properties. Mary Lou does not allege, and we found no evidence in the record, that the sales of the properties in 2005 were improper–that the sale prices were artificially low. Additionally, neither party cites authority for the propriety of using the present value of real estate–as opposed to the sales price. No one cites authority for appraising and awarding the value of real estate not owned by either party at the time of the divorce. From the record on appeal, we are not able to determine the money trail from the sale of the properties. In other words, after those properties were sold in 2005, was the money reinvested in a marital account, or used to purchase another property? We find that because the record does not include this information, and because the trial court erroneously assumed that the appraisal was for both properties, the trial court's judgment awarding Mary Lou $59,120 was contrary to the manifest weight of the evidence and must be reversed and remanded.

¶ 40 Award of Interest in Property Held by the Robert W. Tuttle Trust

¶ 41 Robert alleges that the trial court should not have awarded Mary Lou any amount of money for properties that were held in his trust at the time that the marriage dissolved. He does not provide any detail about which properties are involved, but from the record, we are able to determine that he is referencing the real estate about which he disputed the trial court's valuations.

¶ 42 More than 22 years after the parties married, and approximately 4 years before the

marriage broke down, Robert created his trust. Title to six properties, that were purchased during the marriage, were transferred into the trust. As alleged in Mary Lou's brief on appeal, the terms of the trust exclude Mary Lou as a beneficiary. At trial, there was no evidence about why the trust was created and why Mary Lou was not made a beneficiary. From the record on appeal, the trust documents were not entered into evidence and the court was not otherwise presented with evidence about the trust.

¶ 43 On appeal, Mary Lou responds to Robert's argument that the trial court must have determined that Robert's transfer of the properties amounted to dissipation of marital assets or a fraud upon the marriage. Nothing in the court's judgment references either possibility with respect to these properties. Having reviewed the court record, we find no support for Mary Lou's contention that the court based its decision upon either dissipation of assets or fraud. From the record, it does not appear that the trust factored into the court's property division.

¶ 44 The court's judgment specifically states that it considered the statutory factors for property division–section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(d) (West 2010)). With no legal support or citations to the record, we have no basis to conclude that the trial court's order was contrary to the manifest weight of the evidence.

¶ 45 Dissipation of Marital Assets

¶ 46 The trial court found that Robert had dissipated marital assets in the sum of $100,000 in order to purchase a house in Yuma, Arizona, for Robert's ex-wife, Colleen Kay Pye. Three checks were written totaling that amount. Two were written out of the Tuttle Grain account and were identified as being for the purchase of equipment. A third check was written from the Tuttle Farms account which listed the expense as being connected to a semitrailer. All three checks were written in early 2008. As Robert and Mary Lou separated in 2007, the trial

court made a finding that the funds expended constituted a dissipation of marital assets, and Mary Lou was awarded $50,000, representing one-half of the total.

¶ 47 Robert argues that the trial court overlooked the fact that the money was considered as a loan to Colleen Kay Pye–not as a gift, and as such, the transactions should not have been construed as dissipation.

¶ 48 One of the factors to be considered by the trial court in the distribution of marital property is dissipation of marital assets. 750 ILCS 5/503(d) (West 2010). Dissipation of marital assets has been defined as the "use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown." (Internal quotation marks omitted.) *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 374, 899 N.E.2d 355, 361-62 (2008) (quoting *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497, 563 N.E.2d 494, 498-99 (1990)).

¶ 49 The records support no legitimate business or marital reason for either Tuttle Farms or Tuttle Grain to purchase a home in Yuma, Arizona. Robert filed for divorce from Mary Lou before buying the Arizona property, and as such the timing was during the irreconcilable breakdown of their marriage. Robert cites no legal authority for his contention that a loan constitutes an exception to a finding of dissipation of a marital asset. Additionally, the evidence at trial established that in the three years since the "loan" had been made, no amount of money had been paid by Colleen Kay Pye to reimburse Robert. We find that the trial court's order of dissipation was correct and was not contrary to the manifest weight of the evidence. *In re Marriage of Hubbs*, 363 Ill. App. 3d at 699-700, 843 N.E.2d at 482-83 (citing *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 825 N.E.2d 345 (2005)).

¶ 50 Award of Rent From Tuttle Farms

¶ 51 Tuttle Farms is a separate legal entity that was formed in 2002 and is engaged in the farm business. It does not own the land that it farms. The land farmed by Tuttle Farms was

included in Robert's trust formed in 2003. Before these events, the farmland was mortgaged after Robert's divorce from Colleen, and Mary Lou and Robert both signed these loans. Payments on the loans were made with marital income. A certified public accountant hired by Mary Lou as an expert, Wayne Houchin, examined the records and testified at trial that Tuttle Farms farmed but never paid rent for the ground it farmed. Testifying that $100 per acre was considered to be a reasonable rent, he calculated that the amount of unpaid rent for years 2002 until 2010 was $442,020. Based on that figure, the trial court concluded that Mary Lou was entitled to one-half of that rental income–$221,000.

¶ 52 Robert argues that the land that was farmed was nonmarital property and thus income derived from that land would also be nonmarital. He also argues that because Mary Lou did not have much farm-related knowledge and did no more than run farm-related errands, she was not entitled to any income.

¶ 53 Mary Lou argued at trial that because she became legally obligated to pay debt on the farmlands in question, the property was transmuted into marital property. While the trial court did not determine that the property was transmuted into marital property, it found that because Robert asked Mary Lou to sign related mortgages through the years of their marriage, he had treated her as a partner in the familial business. Furthermore, even if property is considered to be nonmarital in nature, any income derived from the property during the marriage is considered marital income. *In re Marriage of Reed*, 100 Ill. App. 3d 873, 877, 427 N.E.2d 282, 285 (1981).

¶ 54 Based upon the timeline of events in this case, along with the fact that Mary Lou was, at times, legally obligated for debt on the farmland at issue, we conclude that the trial court was correct that she was entitled to one-half of the unpaid rent on the acreage farmed by Tuttle Farms for the years 2002 through 2010. Whether or not the real estate was construed as a nonmarital asset, the income was marital. Therefore, the trial court did not abuse its

discretion.

¶ 55 Spousal Maintenance

¶ 56 By an earlier court order, Mary Lou received $1,000 per month since the date of the couple's separation. At trial, she asked the court to increase the monthly amount to $3,500 and to make the order retroactive to the date of separation. The trial court declined to do so but continued the maintenance at $1,000 per month for five years subject to statutory termination–in the event of death, remarriage, or cohabitation. On appeal, Robert contests the spousal maintenance award on the basis that Mary Lou was awarded adequate property in the judgment to provide for her needs and that she presented no additional evidence of need.

¶ 57 The propriety, amount, and duration of a maintenance award are matters which lie within the trial court's discretion and will not be overturned on review absent an abuse of that discretion. *In re Marriage of Hart*, 194 Ill. App. 3d 839, 851, 551 N.E.2d 737, 744 (1990).

¶ 58 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504(a) (West 2010)) provides that the court may award temporary or permanent maintenance and that the amount of maintenance and the time period during which maintenance is to be paid shall be determined after the court has considered all relevant factors. Those factors include the income and property of each party including marital and nonmarital properties, each party's needs, the present and future earning capacity of each party, any impairment of future earning capacity due to one party devoting time to domestic duties or otherwise having foregone or delayed educational or employment opportunities, the time necessary to enable the party seeking maintenance to acquire appropriate education and training, the standard of living established during the marriage, the duration of the marriage, the age and physical and emotional condition of the parties, the tax consequences of the property division upon each party's economic circumstances, contributions and services by

a party to the other party's education, training, or career, any agreement between the parties, and any other factor that the court finds to be just and equitable. 750 ILCS 5/504(a) (West 2010). No one statutory factor is dispositive in a maintenance determination. *In re Marriage of Harlow*, 251 Ill. App. 3d 152, 157, 621 N.E.2d 929, 934 (1993).

¶ 59 Looking at the statutory factors, we conclude that there is no one factor that dominates in this case. The trial court limited the amount of maintenance to the original amount of $1,000 and further limited its duration to five years. Both parties were in their seventies when the maintenance order was entered. At the time Robert filed his petition for dissolution, Mary Lou had a part-time job. Robert was awarded all of the income-producing property in the judgment. While Mary Lou was awarded a total of $774,970 in property and money, she does not have to sell or impair assets awarded in order to provide for her own support. *In re Marriage of Cheger*, 213 Ill. App. 3d 371, 378-79, 571 N.E.2d 1135, 1140 (1991).

¶ 60 We do not find that the trial court abused its discretion in entering the limited order of maintenance in this case.

¶ 61 CONCLUSION

¶ 62 For the foregoing reasons, the judgment of the circuit court of Crawford County is hereby affirmed in part and reversed in part, and the cause is remanded.

¶ 63 Affirmed in part and reversed in part; cause remanded.