

NOTICE

Decision filed 08/14/13. 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.

2013 IL App (5th) 120454-U  
NO. 5-12-0454  
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).

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<i>In re</i> MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
CHRISTINA HOWELL,	)	Williamson County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 10-D-323
	)	
JERRY R. HOWELL,	)	Honorable
	)	Brian D. Lewis,
Respondent-Appellant.	)	Judge, presiding.

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PRESIDING JUSTICE SPOMER delivered the judgment of the court.  
Justices Welch and Goldenhersh concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The circuit court's award of 60% of the marital portion of husband's pension to wife is vacated and remanded for clarification where award stated that wife should receive an additional 10% of the pension, or 60% of the total, in the form of maintenance but never explicitly divided the marital portion of the pension as part of the property division and it is questionable whether future pension benefits can serve as maintenance. The circuit court's valuation of the marital residence was not against the manifest weight of the evidence where the only evidence presented was the value given in a 2008 bankruptcy proceeding. The circuit court's ruling on dissipation of assets was not against the manifest weight of the evidence where the court made a credibility judgment regarding the parties involved.
- ¶ 2 The respondent, Jerry R. Howell, appeals the July 17, 2012, order of the circuit court of Williamson County on the issues of maintenance, marital residence valuation, dissipation of marital assets, and the valuation of the marital portion of his pension, all originating from the dissolution of his marriage to the petitioner, Christina Howell. For the reasons that follow, we affirm in part, vacate in part, and remand for clarification of the division of Jerry's

pension.

¶ 3

### FACTS

¶ 4 Christina filed a petition for dissolution of marriage on August 25, 2010. Christina and Jerry had three children at the time of the petition and were going through chapter 13 bankruptcy. The case was bifurcated, separating the dissolution of marriage from the property settlement. A judgment was entered on the dissolution of marriage and custody of the children on December 14, 2011. The hearing on the issues concerning property settlement took place on June 13, 2012, and a judgment was filed on July 19, 2012. Jerry filed a motion to reconsider on August 10, 2012, asking the court to reconsider the issues of the valuation of the marital portion of Jerry's pension, maintenance, and the marital residence valuation. The circuit court denied Jerry's motion to reconsider on September 4, 2012. Jerry appeals from the judgment and from the denial of the motion to reconsider. The remaining pertinent facts will be set forth in the analysis as needed.

¶ 5

### ANALYSIS

¶ 6 An appellee brief was not filed in this case. However, "if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal." *First Capitol Mortgage Corporation v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 7 "The propriety, amount and duration of a maintenance award are matters within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion." *In re Marriage of Eidson*, 235 Ill. App. 3d 907, 913 (1992). "Abuse of discretion occurs where no reasonable [person] would take the view adopted by the trial court." *Id.* "Furthermore, the burden is on the party seeking reversal of the maintenance award to show an abuse of discretion." *Id.*

¶ 8 "[R]eview of a circuit court's determinations on dissipation and the valuation of

marital property should be conducted under a manifest-weight-of-the-evidence standard of review and \*\*\* review of the circuit court's determination on the ultimate division of marital property should be conducted under an abuse-of-discretion standard of review." *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700 (2006).

¶ 9

1. *Maintenance and Division of Pension*

¶ 10 Under the heading "Maintenance," the circuit court, pointing to the statutory factors listed in section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/504(a) (West 2012)), stated that maintenance was appropriate in this case. However, because Jerry had a significant child support arrearage and owed other money to Christina due to the dissipation-of-assets award and his obligation to replace money he removed from the children's life insurance policies, the court found that Jerry did not have sufficient assets from which to pay maintenance. The circuit court then stated as follows:

"Therefore, for her maintenance award, Christina Howell shall receive an additional 10% of Jerry Howell's SERS, or 60% of the total of the retirement account as of the date of hearing—June 13, 2012. A QDRO shall issue and defense counsel shall prepare the same."

¶ 11 Jerry filed a motion to reconsider, arguing that such an award of maintenance was improper because it was not modifiable as required by section 510(a-5) of the Act (750 ILCS 5/510(a-5) (West 2012)). In addition, Jerry argued that the marital portion of the pension should be calculated as of the date of dissolution, rather than the date of the hearing regarding division of the property. In denying Jerry's motion to reconsider, the circuit court stated that "the maintenance awarded was maintenance in gross, which is a set amount of non-modifiable maintenance." In addition, the circuit court conceded that the proper end date should be the date of dissolution of marriage, saying that Jerry's correction was well-taken. In its docket entry to that effect, the circuit court wrote, "Therefore, the value of

[Jerry's] pension deemed to be marital property is the value on December 14, 2011."

¶ 12 We find that the circuit court's judgment regarding maintenance and the division of the marital portion of Jerry's pension is vague and in need of clarification. The circuit court did not explicitly divide the marital portion of Jerry's pension as part of the property settlement anywhere in the judgment, but stated under the heading "Maintenance" that Christina should receive an "additional" 10% as maintenance, or 60% of the total value as of the date of dissolution, as was clarified on rehearing. In addition, although the circuit court clarified that it meant to award an additional 10% of the pension as "maintenance in gross," which is considered to be in the nature of a property settlement (see *In re Marriage of Blum*, 377 Ill. App. 3d 509, 525 (2007), *rev'd on other grounds*, 235 Ill. 2d 21 (2009)), it is questionable whether future pension benefits, not set to begin for many years, could serve the purpose of maintenance. At the same time, the circuit court has broad discretion to divide marital property in "just proportions" under section 503 of the Act (750 ILCS 5/503 (West 2012)), which does not require mathematical equality, but rather equitable division based on surrounding circumstances. *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 658 (1998). As such, there is nothing that would prohibit the circuit court from dividing the marital portion of the pension, so that Christina receives 60%, as part of the property settlement. For these reasons, we vacate section 4 of the judgment, entitled "Maintenance," and remand for the circuit court to clarify its division of the marital portion of Jerry's pension.

¶ 13 *2. Valuation of the Marital Residence*

¶ 14 On the issue of the valuation of the residence, Jerry requested an appraisal of the residence and asked the court to compel each party to pay half the cost of the appraisal. Jerry testified that he could acquire an appraisal for \$75. Christina filed a response, saying she could not afford to incur any more costs at that time and would not agree to pay half the cost of an appraisal. Jerry then sent a letter to Christina and her counsel, offering to pay for the

appraisal up front, but notifying Christina that he would ask the court to compel Christina to reimburse him for half the cost. Christina's attorney declined the offer. The court did not order an appraisal, and an appraisal was never conducted. The valuation of the marital residence used in the property settlement was taken from a 2008 bankruptcy proceeding. In that proceeding, both Jerry and Christina had agreed that the value of the home was \$68,000. Jerry asks this court to reverse and remand on this issue with instructions to have the marital property appraised. However, Jerry had the opportunity to have the marital property appraised but declined to do so, despite the fact that his own testimony established that he could have acquired an appraisal for \$75. Having declined the opportunity to do so, even if he had been forced to pay the entire \$75 himself, Jerry cannot now be heard to complain that the trial judge considered the only relevant valuation before him. The circuit court's judgment as to the valuation of the marital property was not against the manifest weight of the evidence, and we affirm the ruling.

¶ 15

### 3. *Dissipation of Marital Assets*

¶ 16 As noted above, "review of a circuit court's determinations on dissipation and the valuation of marital property should be conducted under a manifest-weight-of-the-evidence standard of review and \*\*\* review of the circuit court's determination on the ultimate division of marital property should be conducted under an abuse-of-discretion standard of review." *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700 (2006). Regarding the dissipation of marital assets, the assets in question are two workers' compensation settlements Jerry received that amounted to approximately \$53,000. Jerry received these settlements in July and August 2010. At the time of the settlements, Jerry gave Christina \$8,500 of the total amount by writing her a check. Jerry bought himself a car, a scooter, a camper, a \$1,000 bicycle, and a rabbit hutch with the settlement funds. Jerry contends that he wrote multiple checks for cash and gave the cash to Christina for child support and other marital-related

uses. Christina contends that she received only the \$8,500 check from Jerry and nothing else. The circuit court found Christina more credible than Jerry on the issue and ordered Jerry to pay Christina half of the settlements, less the \$8,500 she already received, which meant that Jerry was obliged to pay an additional \$18,051.44 to Christina. "The explanation given by the spouse charged with dissipation as to how funds were spent requires the trial court to determine his or her credibility." *In re Marriage of Rai*, 189 Ill. App. 3d 559, 565 (1989). "It is well established that determinations by the trier of fact as to the credibility of parties are given great deference." *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641 (1997). Given our standard of review, and the deference we afford to credibility determinations made by the trier of fact, we do not conclude the trial judge's ruling that Jerry dissipated marital assets is against the manifest weight of the evidence, and we therefore affirm the trial judge's ruling.

¶ 17 Jerry also contends the court erred when it delayed the payments on the dissipation award until the child support arrearage is paid in full. Jerry points out that payment of the arrearage will take approximately 23 months, and during that time the dissipation award will be accruing interest at the statutory rate of 9%. Thus, Jerry posits that the trial judge abused his discretion in delaying the payments, because the delay will cost him approximately \$3,000 in statutory interest, and he contends he should not "be punished because he does not have the liquid assets to pay both the child support arrearage and the [dissipated asset] award." Although the order allows Jerry to wait until he has satisfied his child support arrearage before he must begin repaying the assets he dissipated, it does not require him to do so. In fact, Jerry could begin to repay those assets at any time. Accordingly, we find no error on the part of the trial judge.

¶ 18 Jerry's final contention on appeal is that the trial judge abused his discretion when he ordered Jerry to sell property purchased with the dissipated assets—the scooter, the camper,

the bicycle, and the hutch—and to use the proceeds from the sale of those items to pay taxes owed on the marital home. Jerry cites no authority for his argument that the circuit court erred. The failure to cite authority to support a legal argument results in waiver of the argument. *In re Dontrale E.*, 358 Ill. App. 3d 136, 139 (2005). Accordingly, we find this issue waived.

¶ 19

#### CONCLUSION

¶ 20 For the foregoing reasons, we affirm the circuit court's judgment in part, but vacate section 4 of the judgment, entitled "Maintenance," and remand for the circuit court to clarify its division of the marital portion of Jerry's pension.

¶ 21 Affirmed in part and vacated in part; cause remanded with directions.