2016 IL App (2d) 150891-U
No. 2-15-0891
Order filed August 16, 2016



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| *In re* MARRIAGE OF<br>NADIA V. RINGSBY,<br><br>Petitioner-Appellee,<br><br>v.<br><br>FRED M. RINGSBY,<br><br>Respondent-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court<br>of Kane County.<br><br><br><br>No. 13-D-249<br><br>Honorable<br>Rene Cruz,<br>Judge, Presiding. |

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court correctly found that: (1) $495,000 given to the parties by petitioner's mother was a loan and currently exists as marital debt of $309,192; (2) all gains subsequent to the parties' marriage attributable to respondent's retirement accounts are marital property and are to be divided equally; (3) both parties presented clear and convincing evidence tracing and rebutting allegations of dissipation; and (4) stock acquired by respondent during the marriage is marital property and should be divided equally between the parties.

¶ 2 Respondent, Fred Ringsby, appeals the trial court's findings that: (1) petitioner rebutted, by clear and convincing evidence, that $495,000 given to the parties during the marriage by petitioner's mother was a gift; (2) respondent's retirement accounts were marital assets to be

divided between the parties; (3) petitioner provided clear and convincing evidence rebutting respondent's claim of dissipation; and (4) respondent's stock awards were 100% marital property. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent and petitioner, Nadia Ringsby, were married on November 11, 1996. Petitioner filed a petition for dissolution of marriage on February 25, 2013. Respondent worked as a pilot for American Airlines and petitioner as a flight attendant. Prior to the parties' marriage, respondent obtained interests in several retirement accounts. Specifically, a 401(k), an "A Plan", and a "B Plan." Respondent acquired an interest in these retirement accounts prior to the parties' marriage. Respondent made contributions to the 401(k) plan for several years before the marriage and contributions continued to be made during the marriage. The "A Plan" operated like a pension. Contributions were made throughout the marriage to the "A Plan." At the time of the parties' divorce, the "A Plan" was frozen as no contributions were being made. The "A Plan" contained a total of $206,511.31 at the time of the divorce. Additionally, at some time during the marriage, the "B Plan" had been rolled over into a UBS IRA which had a balance of $754,361.41. Interest accrued to both the "A Plan" and "B Plan" before and during the parties' marriage.

¶ 5 Respondent also received an interest in American Airlines stock during the marriage as a result of his employment. In anticipation of damages due to American Airlines' bankruptcy, respondent was awarded 2,800 shares of American Airlines stock. The stock award was paid to respondent between December 2013 and June 2014.

¶ 6 Earlier in the parties' marriage, July 7, 1999, they purchased Lot 75 in Saint Charles, Il, to build what would become their Bristol Court home. Lot 75 was purchased for $160,000.

Ingrid Hartl ("Mrs. Hartl"), petitioner's mother, gave the couple $150,000 towards the purchase of Lot 75. No promissory note or other documentation was executed in connection with this money.

¶ 7 In July 2000 the construction of the Bristol Court home on Lot 75 was completed and the couple moved in. The parties took a $195,000 mortgage secured by the Bristol Court property in October 2002. Mrs. Hartl provided the couple with $195,000 at some time subsequent to the acquisition of the mortgage. The parties then satisfied the mortgage obligation in full on October 19, 2002. No promissory note or other documentation was executed in connection with this second distribution. Following that distribution from Mrs. Hartl, the couple had received $345,000 from Mrs. Hartl.

¶ 8 On October 24, 2002, petitioner secured a life insurance policy with a coverage amount of $250,000. The policy listed Mrs. Hartl as 100% beneficiary. The premiums were paid from the couple's joint checking account. Sometime thereafter, respondent secured a life insurance policy with a death benefit of $500,000. Mrs. Hartl was named on the policy as a 19% beneficiary, giving her an award of $95,000 in the event of respondent's death. This gave Mrs. Hartl a $345,000 interest in the couples' life insurance policies, the same amount she had distributed to the couple as of October 2002.

¶ 9 Between July 2000 and October 2002, the couple was paying Mrs. Hartl $625 per month from their joint checking account. In October 2002, the couple increased their payments to Mrs. Hartl to $1437 per month. The couple sold the Bristol Court home in June of 2003 and began paying rent at a different residence. As a result, the $1437 monthly payment to Mrs. Hartl ceased.

¶ 10 Following the sale of the Bristol Court home, in October 2003 the parties purchased another property at 682 Waters Edge Drive in South Elgin, Illinois ("Waters Edge home"). At that time the couple resumed monthly payments to Mrs. Hartl in the amount of $1000 per month, paid from their joint checking account. These payments continued until June 2011. Petitioner introduced evidence of many of these payments from their joint checking account. Two of these checks contained "L-75" written on the checks. Respondent testified that he had written "L-75" on at least one of these checks.

¶ 11 In November 2007, the couple took out a home equity line mortgage secured by the Waters Edge home. On June 14, 2011, Mrs. Hartl gave the parties an additional $150,000 which was deposited into the couple's joint bank account. This money was used to pay down the home equity line mortgage as well as debt associated with vehicles owned by the couple. By this time Mrs. Hartl had given the couple $495,000 dating back to July 1999. In July 2011 the couple increased their monthly payments to Mrs. Hartl to $1,500 per month. Payments to Mrs. Hartl continued in amounts at or near $1500 per month with the "L-75" notation on many of the checks. Respondent signed many of these checks himself. In July and August of 2013 respondent wrote checks for $1,500 to Mrs. Hartl from his personal account with "L-75" written on one them.

¶ 12 In September 2013, respondent sent a text message to petitioner. The text stated "FYI. I am from now on only paying my part of our commitment to your mom. The rest is up to you." From then until December 2013, respondent wrote monthly checks to Mrs. Hartl in the amount of $750 from his personal account. One of these checks had "L-75" written on it.

¶ 13 Petitioner maintained a number of accounts. Relevant to this appeal are an American Airlines Credit Union account ending in 1655 ("AA 1655"), a Capital One account ending in

3555 ("Capital One 3555"), and various Edward Jones accounts ("81-1-4", "07-1-4", "28-1-5", "69-1-4", "33-1-4", "72-1-3"). Between December 2012 and the parties' dissolution, petitioner removed money from each of these accounts. Other than the Edward Jones account 07-1-4, each account was maintained jointly by petitioner and either Mrs. Hartl or her father, Ralph ("Mr. Hartl"). Each of the accounts, other than 07-1-4, contained funds belonging solely to petitioner's parents or funds contributed by petitioner's parents. Account 07-1-4 contained funds that were supposed to be used for the parties' daughter's college expenses. Respondent withdrew $6,139.46 from this account, leading petitioner to remove his name from account 07-1-4. The remaining funds were moved to a new Edward Jones account ("33-1-4").

¶ 14 On August 10, 2015, the trial court issued a written order following a trial of the issues raised by the parties. Among its findings, the trial court found that the $495,000 the parties' had received through the years from Mrs. Hartl was a loan, and a marital debt of $309,192.00 remained. Respondent's 401(k) account, "A Plan", "B Plan," and stock acquired during the marriage, were deemed marital property. The gains to the 401(k) plan that accrued subsequent to the parties' marriage would be divided equally. Similarly, all gains to the "A Plan" and "B Plan" subsequent to the parties' marriage would be divided equally. Respondent's stock, the trial court found, was acquired during the marriage and was marital property to be divided equally between the parties. Finally, the trial court found that petitioner had presented clear and convincing evidence tracing and rebutting the allegations of dissipation against her. Respondent timely filed this appeal.

¶ 15 II. ANALYSIS

¶ 16 Respondent first contends that the trial court erred in finding that the money the parties' received from Mrs. Hartl during their marriage was a loan to be repaid and not a gift.

¶ 17 When a court reviews the parties' marital assets and liabilities, transfers of money during the marriage from the parents of one of the parties are viewed with great skepticism because of the incentive for the parents and that spouse to conform their testimony at the dissolution proceeding so as to disadvantage the other spouse. *In re Marriage of Blazis*, 261 Ill. App. 3d 855, 869 (1994). Classifying the transfers as marital debt provides an advantage to the spouse whose parents made the transfer and would likely reduce the amount of marital assets awarded to the other spouse. *Id.* Generally, property acquired by a child from a parent is considered a gift and non-marital in nature. *In re Marriage of Blunda*, 299 Ill. App. 3d 855, 866 (1998). Donative intent is presumed where the transfer of property is from a parent to a child. *Blunda*, at 866. It is the burden of the party challenging the gift to present evidence that the parent making the transfer lacked donative intent. *Id.* A court of review should not second-guess the trial court's factual findings on the validity of a debt when that finding is based upon the trial court's assessment of the credibility of witnesses and the weight it gives to their testimony unless the trial court's findings are against the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence "if a review of the record 'clearly demonstrates that the proper result is the one opposite that reached by the trial court.' *In re Brianna B.*, 334 Ill. App. 3d 651, 655 (2002).

¶ 18 Respondent here argues that petitioner failed to overcome the presumption of donative intent concerning Mrs. Hartl's transfer of $495,000 to the parties during their marriage pursuant to this court's holding in *Blunda*. In *Blunda*, the husband contended that stock transferred to wife from her father during their marriage was not a gift but compensation in connection with her employment. *Id.* at 867. The wife testified that the stock was a gift from her father and, indeed, her father filed a gift tax return for the year in which the gift was given. *Id.* The husband

failed to present any evidence to rebut the presumption of a gift, and the only testimony in the record stated that the stock was a gift, not compensation. *Id*.

¶ 19 The record from the present case is distinguishable from that of *Blunda*. Here, petitioner testified that she understood her mother's transfers of money to be loans requiring repayment. Numerous payments were made to Mrs. Hartl, supported by copies of bank statements and checks from the parties' joint accounts. Respondent personally signed many of the checks himself and wrote "L-75" to evidence that the payments were related to the lot the parties purchased with Mrs. Hartl's disbursement. Respondent secured a life insurance policy naming Mrs. Hartl a 19% beneficiary. An amount, when coupled with petitioner's life insurance policy naming Mrs. Hartl 100% beneficiary, equaled the exact amount given to the parties over time. Respondent sent petitioner a text message stating "FYI. I am now only paying my part of our commitment to your mom. The rest is up to you." A gift is not a "commitment" requiring repayment. Petitioner's testimony and the check records put her in an advantageous position to allow the trial court to classify the loans as marital debts, to reduce respondent's award of marital assets, and should be viewed with great skepticism. See *In re Marriage of Awan*, 388 Ill. App. 3d 204, 213 (2009). However, respondent does nothing to rebut petitioner's testimony aside from claiming that he never intended to be bound to repay the sums received from Mrs. Hartl and offering his explanation that the payments to Mrs. Hartl were to help support her. The trial court's finding that the payments from Mrs. Hartl to the parties was a loan was not against the manifest weight of the evidence as petitioner's testimony established that the monthly payments to Mrs. Hartl were consistent with a loan repayment. We will not disturb the trial court's findings on this issue.

¶ 20 Respondent next contends that the trial court erred in finding that his retirement accounts were marital property to be divided equally among the parties. Respondent argues that he established by clear and convincing evidence his interest in his retirement accounts prior to the parties' marriage.

¶ 21 Before the court may dispose of property upon dissolution of marriage, it must be classified as either marital or nonmarital. *In re Marriage of Phillips*, 229 Ill. App. 3d 809, 817 (1992). The classification will not be disturbed unless contrary to the manifest weight of the evidence. *Id*. After classification, the court assigns each spouse's nonmarital property to that spouse and divides the marital property between the parties in just proportions. 750 ILCS 5/503(d) (West 2012). Section 503(b) of the Illinois Marriage and Dissolution of Marriage Act ("the Marriage Act") provides that all property acquired after the marriage is presumed to be marital property regardless of how title is held, and the presumption is rebutted by showing that property was acquired by a method listed in section 503(a) of the Act. 750 ILCS 5/503(b) (West 2012). Clear and convincing evidence is needed to rebut the presumption that property acquired after the marriage is marital property. *Phillips*, at 817.

¶ 22 Respondent argues that this court's holding in *Phillips* presents identical facts to the present case and mandates the outcome of this case. In *Phillips*, the wife maintained a savings plan through her employer which had a value of $58,339.61 before she was married. *Id*. at 816. She focused her right to reimbursement for this value under the Marriage Act section 503(c)(1), which states:

> "(1) When marital and non-marital property are commingled by contributing one estate of property into another resulting in a loss of identity of the contributed property, the classification of the contributed property is transmuted to the estate receiving the

> contribution, subject to the provisions of paragraph (2) of this subsection; provided that if marital and non-marital property are commingled into newly acquired property resulting in a loss of identity of the contributing estates, the commingled property shall be deemed transmuted to marital property, subject to the provisions of paragraph (2) of this subsection." *Id*. at 817.

Husband argued that the savings plan was marital because marital contributions, those contributions made to the plan after marriage, were commingled with non-marital contributions to create a marital asset. *Id*. This court disagreed, finding that section 503(c)(1) states that when marital and non-marital assets are commingled resulting in the loss of the identity of the *contributed* property, the resulting asset retains the classification of the property *receiving* the contribution, subject to reimbursement to the contributing estate. *Id*. at 817-18. Thus, wife's savings plan retained its original classification as non-marital property but the contributions made to the savings plan during the marriage were marital property because remuneration to a spouse during the marriage is considered marital property. *Id*. at 818.

¶ 23 We agree with respondent that this court's holding and interpretation of section 503(c)(1) in *Phillips* mandates the outcome in this case. In fact, the *Phillips* holding only further elucidates the accuracy of the trial court's holding in the present case. While it is true that respondent acquired his interests in his retirement accounts prior to the parties' marriage, contributions were made to all of his retirement accounts subsequent to the marriage. Respondent did not produce any documentation of the value of his retirement accounts at the time of the parties' marriage, unlike wife in *Phillips*, who presented expert testimony illustrating the value of her savings plan prior to the marriage and amounts contributed subsequent. *Id*. Respondent was only able to establish that he owned interests in retirement accounts prior to the marriage.

¶ 24 Respondent's retirement accounts were acquired before the marriage and could arguably be considered nonmarital within the language of section 503(a)(6). 750 ILCS 5/503(a)(6) (West 2012). However, "[a] mere receptacle ***, owned by a party before the marriage, into which he places marital property, is not sufficient to invoke the rule that 'contributing one estate of property into another resulting in a loss of identity of the contributed property' transmutes the classification of the contributed property to that of the estate receiving the contribution." (750 ILCS 5/503(c)(1) (West 2012)). *In re Marriage of Mouschovias*, 359 Ill. App. 3d 348, 354 (2005).

¶ 25 Here, respondent acquired his retirement accounts before the date of the parties' marriage. Petitioner acknowledged the prior existence of these accounts. The commingling of the parties' marital property (respondent's contributions to his retirement accounts from salary and employer retirement contributions) with respondent's non-marital property did not result in a loss of identity or transmute the identity of the non-marital property to that of marital property. Thus, respondent's retirement accounts remained non-marital property. Furthermore, all contributions to these accounts subsequent to the marriage were made with marital property which is capable of being traced and identified separate and apart from the amounts in the account before the marriage. Therefore, the accounts of the receiving estate (respondent's accounts) maintain the non-marital classification but will reimburse appropriate amounts to the contributing estate (marital estate). In other words, the trial court should have found that respondent's retirement accounts remained non-marital in classification. Then, the trial court should have found that all gains to these accounts subsequent to the parties' marriage and coming as a result of respondent's personal efforts during the marriage (i.e., his employment) should have been reimbursed to the marital estate. Finally the trial court should have divided

those marital funds between the parties. The trial court ultimately divided these funds in a just and reasonable proportion, and that division was not contrary to the manifest weight of the evidence even though the trial court's language about non-martial and marital property was not always precise.

¶ 26 Respondent next contends that the trial court erred in finding that his American Airlines stock awards were 100% marital. Respondent argues that he presented unrebutted testimony that the stock awards were for forward looking damages and were received subsequent to petitioner's filing for dissolution of marriage.

¶ 27 Property acquired after marriage is presumed to be marital property. 750 ILCS 5/503 (West 2012). The presumption can only be overcome by clear and convincing evidence. *In re Marriage of Landfield*, 209 Ill. App. 3d 678, 692 (1991). Again, a trial court's classification of property as marital or nonmarital will not be disturbed unless it is contrary to the manifest weight of the evidence. *Blunda*, at 861.

¶ 28 Respondent testified at trial that he had received his American Airlines stocks during the marriage, although it was his belief that he received the stock award for damages he was to incur forward looking from January 1, 2013. Section 503(b)(3) of the the Marriage Act states:

> "(3) For purposes of distribution of property under this Section, all stock options and restricted stock or similar form of benefit granted to either spouse after the marriage and before a judgment of dissolution of marriage or legal separation or declaration of invalidity of marriage, whether vested or non-vested or whether their value is ascertainable, are presumed to be marital property *** The court shall allocate stock options and restricted stock or similar form of benefit between the parties at the time of the judgment of dissolution of marriage or declaration of invalidity of marriage

> recognizing that the value of the stock options and restricted stock or similar form of benefit may not be then determinable and that the actual division of the options may not occur until a future date. In making the allocation between the parties, the court shall consider, in addition to the factors set forth in subsection (d) of this Section, the following:
>
> (i) All circumstances underlying the grant of the stock option *** including but not limited to *** whether the grant was for past, present, or future efforts ***."
>
> 750 ILCS 5/503(b)(3) (West 2014).

Respondent argues that the stock awards were for future efforts not considered by the trial court in its finding that the value of the stock be divided equally among the parties. However, the stock awards received by respondent were due to forward looking damages related to American Airlines' bankruptcy. The stock was nonetheless acquired by respondent during the marriage. Respondent has not provided any clear and convincing evidence to overcome the presumption that the stock was anything but marital property. American Airlines' payment for forward looking damages related to their bankruptcy hardly amounts to the future efforts of respondents. Therefore, the trial court's finding that the stock acquired by respondent during the parties' marriage was marital property to be divided equally was not against the manifest weight of the evidence.

¶ 29 Finally, respondent contends that the trial court erred in finding that petitioner provided clear and convincing evidence to rebut the claim of dissipation. Respondent argues that petitioner withdrew large sums of money from various accounts for her sole benefit, significantly dissipating marital assets. Specifically, respondent claims that petitioner dissipated the following accounts of the amounts listed:

1. AA 1655 ($135,000.00)
2. Bank of America #1927 ("BOA 1927") ($21,340.00)
3. Capital One 3555 ($15,195.55)
4. 81-1-4 ($144,747.60)
5. 07-1-4 ($111,111.68)
6. 28-1-5 ($68,258.09)
7. 69-1-4 ($66,854.10)
8. 33-1-4 ($6,059.44)
9. 72-1-3 ($9,156.18)

Dissipation is defined as the use of marital property for the sole benefit of one spouse for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown. *In re Marriage of O'Neill*, 138 Ill. 2d 487, 491 (1990). A party charged with dissipating marital assets is obligated to establish by clear and convincing evidence how the funds were spent. *In re Marriage of Bush*, 209 Ill. App. 3d 671, 676 (1991). "General and vague statements that the funds were spent on marital expenses or to pay bills are inadequate to avoid a finding of dissipation." *In re Marriage of Smith*, 128 Ill. App. 3d 1017, 1022 (1984). A finding concerning dissipation will not be disturbed unless against the manifest weight of the evidence. *In re Marriage of Rai*, 189 Ill. App. 3d 559, 565 (1989). Furthermore, for the most part, the accounts identified were non-marital property.

¶ 30 The trial court found that petitioner rebutted respondent's charge of dissipation by clear and convincing evidence. Based on the trial testimony and evidence in the record, we agree. AA 1655 belonged to Mrs. Hartl. Petitioner was added to this account because Mrs. Hartl had become blind and needed help managing her accounts. No evidence was introduced showing

petitioner or respondent had deposited any of their personal funds into AA 1655. BOA 1927 was an account maintained by petitioner. Petitioner testified that she made no withdrawal in the amount alleged by respondent and closed the account with $120 in it. Those funds were used for petitioner and the parties' daughter to dine out. Petitioner's Capital One 3555 account was titled in petitioner's name and funded with a Bank of America CD gifted to petitioner by her father, Mr. Hartl. Respondent did not rebut this presumption of a gift. Petitioner also credibly established that the remaining accounts listed were funded solely with monies gifted from petitioner's parents. No evidence of the parties' marital assets deposited into these accounts was offered by respondent. Again, pursuant to *Blunda*, donative intent is presumed where the transfer of property is from a parent to a child. *Blunda*, at 866. It is the burden of the party challenging the gift to present evidence that the parent making the transfer lacked donative intent. *Id*. Respondent offered no evidence to rebut petitioner's credible claims that the accounts in question were not marital property and funded solely by gifts from her parents. Therefore, the trial court's finding that petitioner presented clear and convincing evidence to rebut respondent's claims of dissipation was not against the manifest weight of the evidence.

¶ 31 III.CONCLUSION

¶ 32 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 33 Affirmed.