

NOTICE
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2016 IL App (5th) 140114-U

NO. 5-14-0114

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
MARY C. SOMMER,)	St. Clair County.
)	
Petitioner-Appellant,)	
)	
and)	No. 11-D-962
)	
MICHAEL J. SOMMER,)	Honorable
)	Stephen R. Rice,
Respondent-Appellee.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Where an agreed order entered by the trial court contemplated resolution of the entire farm estate at the next hearing, and the farm estate included a combine, the failure to separately list the combine in the agreed order did not invalidate the subsequent order that included the combine as part of the farm estate. Where the parties stipulated to the value of the farm estate debts as of February 22, 2013, the court's acceptance of that value at the later date when the final dissolution judgment was entered was correct. Where the court indirectly awarded attorney fees to the husband because an attorney fees loan was included in the total farm debts that were equally divided in determining equity, we reverse that portion of the court's order with directions to modify the judgment on remand.

¶ 2 Mary C. Sommer appeals from the trial court's November 5, 2013, order that resolved remaining asset and liability division issues in this dissolution of marriage case. On appeal she argues that the trial court's order included a debt that should not have been included; that the valuation of marital debts was not based upon the date of the marital dissolution; and that the trial court erroneously included a \$9,500 loan that resulted in Mary's responsibility for some of Michael J. Sommer's attorney fees. We affirm in part, reverse in part, and remand. Mary's motion to supplement the record with certain exhibits which were entered into the record at trial but omitted from the record on appeal is granted.

¶ 3 **FACTS**

¶ 4 **Background**

¶ 5 Michael and Mary Sommer were married in February 1973. They had three children during the marriage, all of whom were emancipated when Mary filed her petition for dissolution of marriage in December 2011. During the marriage, Michael and Mary had a farming business including land, machinery, equipment, and livestock.

¶ 6 Resolution of marital assets and liabilities became contentious and complicated after Ryan Sommer, one of their three children, intervened in this case to claim ownership interest in several pieces of machinery and equipment. Of particular interest to Ryan was a John Deere 9650 combine. Neither party disputes that the intended owner of this combine was Ryan. Ryan was unable to finance the combine, and so Michael did so. The original loan on the combine was in Michael's name. Neither the loan documents nor the title to the combine are in the record, but we presume that since Michael was on the

loan, he was also on the title. As of February 22, 2013, the combine loan was in foreclosure because Ryan had not been able to secure financing in order to take over the loan from his father. On that date, the trial court entered an order that allowed Michael to get the combine out of the foreclosure action and terminated Ryan's rights to the combine. The court stated that its purpose in doing so was to prevent costs from continuing to mount on the combine loan. Michael was able to stop the foreclosure action, and thus the debt that had always been in his name remained in his name. Therefore, Michael was responsible for the combine loan, and the court added the combine loan amount of \$106,000 to the list of farm debts. Similarly, the combine, then valued at \$70,000, was added to the list of marital assets. On April 8, 2013, Michael and Ryan reached an accord on the issue of the combine. Ryan obtained his own loan to "buy" the combine from Michael, and thus Michael was no longer responsible for the combine debt. The trial court entered its judgment of dissolution on April 10, 2013, reserving issues of marital assets and liabilities. The court entered its final judgment in this case on November 5, 2013.

¶ 7 Detail of the Court's Hearings and Orders

¶ 8 The hearings and subsequent orders from January 17, 2013, February 22, 2013, April 8, 2013, April 10, 2013, and November 5, 2013, as well as the closing on the sale of the farm estate on March 22, 2013, are all relevant to the issues Mary raises in this appeal.

¶ 9 Following the January 17, 2013, hearing, Mary, Michael, and Ryan all agreed to an order entered by the court that same date. The order addressed specific issues about

money that Ryan owed Michael, as well as assets in Michael's possession that belonged to Ryan. The ownership and debt associated with the combine were not referenced in the order, but the parties agree that the combine was discussed. The sixth paragraph of this order stated that all other issues between Ryan and Michael were reserved. No record was created of the January 17, 2013, hearing and so we have no way to deduce the content of the combine discussions between the parties' attorneys and the trial judge.

¶ 10 Based upon the content of the written order, the primary issue addressed at this January 17, 2013, hearing involved a possible purchase of the farm estate. Mary had found a man named Paul Patton, who wanted to buy some, but not all, of the farm estate. In paragraph 10 of the court's order, the court stated that "[i]n the event neither party matches said bid, and a non-contingent contract is tendered, court to address issue of acceptance of said contract ***." Paragraph 11 further stated that "[i]n the event that no contract *** is received by 2/08/13 the parties, in the event they are interested in purchasing all of the real estate, equipment, livestock and other assets and assuming all liabilities of the farm[,] shall appear on 2/15/13 with proof of non-contingent financing for their best and highest offer." In paragraph 12, the court contemplated the possibility that Mary or Michael could submit insufficient bids for the farm estate based upon property appraisals, in which case the court would order the property to be sold at auction.

¶ 11 At the February 22, 2013, hearing, the court initially dealt with the issue of the combine. In the order, the court noted that the combine was in foreclosure and that Ryan had not refinanced the combine as earlier ordered by the court. The court terminated

Ryan's rights to the combine and awarded Michael the combine subject to the debt with the further order that Michael had to secure financing for the combine within 30 days. Also at this hearing, the attorneys and the court discussed the fact that Mary was not financially able to make an offer for the farm estate; that Michael was able to obtain financial backing and that his bid exceeded Paul Patton's bid; and that Michael offered to purchase the entire farm estate for \$1,243,000. The court found that Mary and Michael had entered into a "binding agreed order" to dispose of the farm estate. The court noted that Michael offered Mary \$450,000 (her one-half share of the asset value) free of farm debts of \$343,000, which he would assume. The court ordered Michael to finalize this deal within 30 days and reserved the issues of maintenance, division of other marital debts, and attorney fees for the next hearing on April 8, 2013.

¶ 12 On March 22, 2013, the farm estate issue was resolved with a real estate closing.

¶ 13 On April 8, 2013, Michael and Ryan reached a settlement agreement. The stipulated order entered that date addressed all issues regarding the disputed farm equipment and other assets, including the John Deere 9650 combine. Paragraph 5 of the order provided that upon Ryan's payment of \$108,000 to Michael, he would receive sole and exclusive possession and ownership of the combine plus three concaves for the combine.

¶ 14 The trial court held a hearing on all remaining issues on April 8, 2013, and entered its order on April 10, 2013. Prior to the hearing, Mary's attorney filed a motion seeking to challenge Michael's purchase of the farm estate. The trial court noted that Mary signed all closing documents, including the deeds, and accepted payment of \$450,000 from Michael

on March 22, 2013. On that basis, the court found that there was no legal basis to alter the terms of the court's January 17, 2013, and/or February 22, 2013, orders, and denied Mary's motion. The order dissolved the marriage and continued the final hearing until later in 2013, reserving the issues of any additional debts allocation, personal property division, and attorney fees.

¶ 15 In the court's November 5, 2013, judgment of dissolution, the court noted that Mary received a payment of \$450,000 for her share of all farm real estate, inventory, and equipment. In addition to that payment, Michael assumed farm debts of \$343,000. Mary contended that there were other pieces of farm equipment not included in that payment and that she was entitled to an additional payment representing her share of these pieces of equipment. The court denied Mary's request and noted that the language of the offer she accepted was inclusive of "all" equipment. Mary also challenged the amount of farm debts. The list of debts outstanding on January 14, 2013, and on February 22, 2013, totaled \$345,868.31. The court noted that the balances could vary from day to day and found that the debts estimate of \$343,000 was reasonably accurate. Mary additionally disputed the combine debt arguing that the debt was not the parties' debt, but properly belonged to their son, Ryan. The court noted that the loan was in Michael's name; that the loan was delinquent; that Michael had been sued for the unpaid debt; that Ryan had been given the opportunity to refinance the combine, but had not been successful; and that to avoid foreclosure and the loss of the combine, the court allowed Michael to pay the debt. By Michael refinancing the combine, that debt remained marital debt. The trial court noted: "The debt was a farm debt properly included in the resolution of this matter at the

time the offer and acceptance occurred. The fact that [Michael] later sold the combine to [Ryan], pursuant to the Court's order of April 8, 2013, does not eliminate the fact that the debt was in existence on February 22, 2013, and had to be paid." Mary finally contested inclusion of a bank loan for \$9,500, which Michael used to pay his attorneys and expert witnesses. Mary contended that the loan should have been excluded from the calculation of farm debts even though the loan was secured by the farm. The trial court denied Mary's claim about the \$9,500 loan and stated that inclusion of this debt was not unconscionable in light of the magnitude of the total debts Michael assumed.

¶ 16 Mary filed a motion for rehearing on December 5, 2013. On February 11, 2014, the trial court denied the motion. Mary appeals.

¶ 17 LAW AND ANALYSIS

¶ 18 On appeal, Mary raises three issues regarding the trial court's conclusion that marital debts totaled \$343,000.

¶ 19 Section 503(a) of the Illinois Marriage and Dissolution of Marriage Act defines "marital property" to include all property and debts acquired by either spouse subsequent to the marriage. Marital property and debts must be divided proportionately. 750 ILCS 5/503(d) (West 2012). Proportional division does not require mathematical equality. *In re Marriage of Doty*, 255 Ill. App. 3d 1087, 1097-98, 629 N.E.2d 679, 686 (1994). The trial court may award an unequal distribution of property if it properly applied the section 503(d) guidelines. 750 ILCS 5/503(d) (West 2012); *Marriage of Doty*, 255 Ill. App. 3d at 1097-98, 629 N.E.2d at 686.

¶ 20 In reviewing a trial court's distribution of marital property and debts on appeal, we must determine if the trial court's decision constitutes an abuse of 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 division of assets and/or debts, but whether the trial court acted arbitrarily without conscientious judgment, or if in view of all circumstances of the case, the trial court exceeded reason in that no reasonable person would follow the trial court's position. *Id.*

¶ 21 John Deere 9650 Combine Debt

¶ 22 Mary initially contends that the John Deere 9650 combine debt is a matter of contract in that the earlier January 17, 2013, agreed order controls. Specifically, Mary argues that the trial court could not have taken up the issue of the combine at the February 22, 2013, hearing, because nothing in the January 17, 2013, order specifically addressed the combine and otherwise "informed" Mary that the combine would be dealt with at the next hearing.

¶ 23 In support of her argument, Mary contends that the January 17, 2013, order was an agreed order and thus is subject to the rules of contractual interpretation. *In re Marriage of Tutor*, 2011 IL App (2d) 100187, ¶ 13, 956 N.E.2d 588. In keeping with contractual interpretation, the court must give effect to the parties' intent. *Id.* The best indication of the parties' intent can be deduced from the language of the agreed order. *Id.*

¶ 24 As stated earlier in this order, from the content of the January 17, 2013, order, the primary purpose was to obtain a purchaser of the farm estate. Pursuant to paragraph 6 of

the January 17, 2013, order, any issues between Michael and Ryan, other than removal of Ryan's grain from farm silos, were reserved. Paragraph 13 reserved "all other issues," and paragraph 14 set the case for hearing in February 2013 for resolution of the sale of the farm estate.

¶ 25 While Mary is correct that the agreed order contains no language regarding settlement of the combine ownership and its associated debt, basic tenets of contract law mandate consideration of the entirety of the "contract provisions." *Shubert v. Federal Express Corp.*, 306 Ill. App. 3d 1056, 1059, 715 N.E.2d 659, 662 (1999) (citing *United Airlines, Inc. v. City of Chicago*, 116 Ill. 2d 311, 318, 507 N.E.2d 858, 861 (1987)). As we have noted, the main topic of the January 2013 order was resolution of the farm estate. From a plain reading of the order, the January 2013 order contemplated the sale of the farm estate—either by purchase from Paul Patton; purchase by one of the parties; or by court-ordered auction. In January 2013, the combine was marital property because the debt was in Michael's name. Therefore, the farm estate included the combine.

¶ 26 We also note that on February 22, 2013, when the court took up the matter of the entirety of the farm estate and addressed the impending foreclosure on the combine loan, Mary's attorney made no objection to the handling of the combine debt. However, Ryan's attorney objected. The trial court overruled the objection because the January 2013 order involved the entire farm estate, including the combine. As the combine debt remained in Michael's name, unless Ryan could obtain his own financing for the combine, the combine had to remain in the farm estate. We agree with the trial court's conclusion that the combine was part of the farm estate and that the purpose of the February 22, 2013,

hearing was to attempt to resolve the entirety of the farm estate issue. Therefore, we find that Mary's argument, that the court could not address the combine issue and/or should have given her specific notice about the combine before the February 22, 2013, hearing, lacks merit.

¶ 27 We briefly address Mary's alternate concern that the combine debt was included in the total debts. First, we note that while the combine debt increased the farm debts, the value of the combine correspondingly increased the farm assets. The debt was \$106,000, while the asset was valued only at \$70,000. Mary takes issue with Ryan's subsequent success in obtaining a loan. By obtaining a loan, Ryan was able to relieve Michael of responsibility for the combine debt. She argues that in arriving at her \$450,000 share of the farm estate equity, she should not have been required to share in the \$106,000 combine debt which was part of the \$343,000 debt total used to determine the resulting equity. Given the trial court's past order that Ryan had to obtain financing and his inability to do so, coupled with the fact that the combine was in foreclosure, we fail to find that there was ever a certainty that Ryan would obtain financing. The combine and the loan were both in Michael's name and were legitimately part of the farm estate. The debts and the equity were evenly divided between Michael and Mary, but Michael assumed full responsibility for the entirety of the farm debts. Accordingly, we find that the trial court's order of November 5, 2013, proportionately and equitably divided the assets and liability. We find that the trial court did not abuse its discretion.

¶ 28

Valuation Date of Debts

¶ 29 Mary next contends that the trial court's use of \$343,000 as the total of the farm debts in the court's February 22, 2013, and November 5, 2013, orders was erroneous because it was not based upon the value of the debts on April 10, 2013, the date of the dissolution of marriage.

¶ 30 The trial court must value marital assets and debts as they exist on the date of the dissolution, even when the trial is bifurcated. See *In re Marriage of Mathis*, 2012 IL 113496, ¶ 30, 986 N.E.2d 1139; *In re Marriage of Claydon*, 306 Ill. App. 3d 895, 900, 715 N.E.2d 1201, 1204 (1999).

¶ 31 Here, the trial court dissolved the marriage by order dated April 10, 2013. The final judgment of dissolution was not entered until November 5, 2013. However, in the court's February 22, 2013, order, upon acceptance of Michael's offer to purchase the farm estate, Michael was ordered to assume marital debts of \$343,000 and to provide Mary with her one-half share of the resulting "equity" in the farm estate after the debts were subtracted from the \$1,243,000 total—\$450,000. In the November 5, 2013, order, the court notes that the documents totaling the marital debts provided by the parties in early 2013 ranged from \$342,845.87 to \$345,000, before concluding that the \$343,000 value utilized in determining Mary's share of the farm estate was "reasonably accurate." In that order, the trial court reserved the issue of the precise marital debts for the final hearing.

¶ 32 Mary directs us to review the documents in her appendix regarding the marital debts as evidence of the errors in the trial court's conclusion. After reviewing these documents, we find that the dates range from late 2012 through March 2013—about one

month before the April 2013 dissolution of the marriage, and are therefore consistent with valuation at the approximate time that the marriage was dissolved. Furthermore, even if the debts were valued at a different time, on April 8, 2013, Michael's attorney advised the courts that the parties had stipulated to reserve the issue of the farm debts for a future hearing and to relate the future debts' resolution back to the February 22, 2013, valuation. Mary did not object to this stipulation. Finally, to the extent that Mary presented different values for the debts, we find that the trial court's judgment was partially based upon witness credibility. The trial court noted that there was significant contention between the parties. In light of that fact, the court stated that it based its numbers on the most credible witness at the hearing, Wendy Curry, a tax preparer. Because the trial judge was able to assess each witness's credibility, we will not overturn a trial court's judgment in a bench trial setting unless the judgment is clearly contrary to the manifest weight of the evidence. *Jackson v. Bowers*, 314 Ill. App. 3d 813, 818, 731 N.E.2d 1252, 1257 (2000). A judgment is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly evident. *Comm v. Goodman*, 6 Ill. App. 3d 847, 853, 286 N.E.2d 758, 763 (1972).

¶ 33 We conclude that the trial court's acceptance of the \$343,000 in debts is reasonably accurate. The documents used by the court for debts' analysis in finalizing Mary's share of the farm estate on February 22, 2013, are dated reasonably close in time to the April 2013 dissolution. Furthermore, given the parties' stipulation, the court was constrained to value the debts as of February 22, 2013. Any fluctuation in value with interest or principal payments was to be expected and was negligible in light of the

magnitude of the total debts involved. We find no basis in the record, the briefs, or argument on appeal to conclude that the trial court abused its discretion.

¶ 34 Michael's Bank Loan for \$9,500

¶ 35 Mary finally argues that the trial court's conclusion that marital debts totaled \$343,000 was erroneous because it included a bank loan for \$9,500. Michael used the loan proceeds to pay his attorneys and experts. Generally, a court's award or denial of attorney fees will not be disturbed absent an abuse of discretion. *In re Marriage of Uehlein*, 265 Ill. App. 3d 1080, 1090, 638 N.E.2d 706, 715 (1994). While the court can award attorney fees, there is a presumption that each party will pay his or her own fees. *In re Marriage of Sanborn*, 78 Ill. App. 3d 146, 152, 396 N.E.2d 1192, 1197 (1979). In this case, the trial court did not directly order Mary to pay a share of Michael's attorney fees. However, by including the \$9,500 loan in the total farm estate debts, the court indirectly mandated that Mary pay one-half of Michael's fees.

¶ 36 At a hearing held on August 14, 2013, Michael testified that the \$9,500 loan was obtained in order to pay his attorneys and his experts. That loan was included in the farm debts, and thus the loan documents were provided to Mary and to the court, but as Michael's attorney pointed out, the loan was not a farm debt. Noting that the farm was the security for that note, the court stated that "[i]n light of the magnitude of debt assumed by [Michael] and the payment to [Mary], the inclusion of the debt is not unconscionable and the request for that specific relief is denied."

¶ 37 We disagree with this aspect of the court's order confirming marital debts at \$343,000. The fact that the note was secured by the farm does not transmute the character

of the debt from a personal debt to a farm debt. Furthermore, the court made no findings that Michael was unable to pay his attorney fees and correspondingly that Mary could afford to do so as required before entering an attorney fees order. *In re Marriage of Westcott*, 163 Ill. App. 3d 168, 179, 516 N.E.2d 566, 572 (1987). Accordingly, we find that the trial court's order indirectly awarded Michael his \$9,500 in fees by including the \$9,500 loan in the farm estate debt. We reverse that portion of the court's November 5, 2013, order and hold that Mary is entitled to one-half of the \$9,500 award which was previously subtracted from her total share of this estate—\$4,750. We remand this case and direct the trial court to modify the court's November 5, 2013, judgment in keeping with this order.

¶ 38

CONCLUSION

¶ 39 For the foregoing reasons, Mary's motion to supplement the record is granted and the judgment of the circuit court of St. Clair County is hereby affirmed in part, reversed in part, and remanded with directions.

¶ 40 Motion to supplement the record is granted; judgment affirmed in part, reversed in part, and remanded.