

2017 IL App (2d) 160839-U
No. 2-16-0839
Order filed May 10, 2017

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

JONIE FLINT-DEMPSEY,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff-Appellant,)	
)	
v.)	Nos. 13-L-13
)	09-D-2024
)	
JAY DEMPSEY, Individually and as Executor)	
of the Estate of Joseph E. Dempsey, Jr.,)	Honorable
)	Charles D. Johnson,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Hudson and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying Jonie attorney fees. Also, its determination of the value of Jonie’s personal property was not against the manifest weight of the evidence. Therefore, we affirmed.

¶ 2 Plaintiff, Jonie Flint-Dempsey, filed suit against Jay Dempsey, individually and as executor of the estate of Joseph E. Dempsey, Jr., to enforce the marital settlement agreement (MSA) between Jonie and Joseph. Jonie sought the value of personal property contained within three residences where she and Joseph resided during their marriage. She also sought attorney fees against Jay for his alleged unreasonable refusal to engage in mediation about the property

dispute as required by the MSA. The trial court awarded Jonie \$38,155.51 for the value of her personal property. The trial court declined to award Jonie attorney fees, stating that it could not conclude that Jay was without legal justification in declining mediation. On appeal, Jonie challenges the trial court's ruling on attorney fees and its decision to subtract \$110,000 from its initial determination of the value of her personal property to account for money supplied by Joseph. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Jonie and Joseph were married on May 5, 2005, and their marriage was dissolved on October 1, 2010. The dissolution judgment incorporated the couple's MSA. The MSA included mutual maintenance waivers and awarded Jonie \$3 million as an equitable division of the marital property. In the MSA, Jonie acknowledged that the payment was, in part, in consideration of her waiving any interest in real estate held jointly or individually by the parties, specifically three condominiums. A condominium in Coeur D'Alene, Idaho (Black Rock Condominium), was jointly-owned. A Lake Forest, Illinois, condominium (Lake Forest Condominium) was held by two trusts, with Joseph being the beneficiary of one of the trusts. Through another trust, Joseph had a one-half interest in a condominium in Kihei, Hawaii (Wailea Pointe Condominium). The MSA contained provisions allowing for Jonie's removal of personal property located at the three residences, which became the subject of the instant litigation.

¶ 5 Regarding the Lake Forest Condominium, Jonie was to vacate the residence within six days. Within 14 days, she was to remove all of her personal belongings and furnishings, "the nature and extent of which [was to] be agreed upon by the parties." "The bulk of the items of personal property that exist[ed] in the condo consisting of furniture and the like belong[ed] to Joseph." If the parties disagreed about what items constituted Jonie's personal belongings, they

were to submit the matter to mediation, and if that failed, then to the court for resolution.

¶ 6 As for the Wailea Pointe Condominium, the MSA stated that “a portion of the items that had been located” there had been boxed up and were stored at the Lake Forest Condominium. The items in the boxes were awarded to Jonie. If she determined that the boxes did not contain all of her personal property, she was to have an opportunity to access the Wailea Pointe Condominium to make a list of her remaining belongings. If the parties did not agree on her claimed property, they were to first attempt mediation before bringing the issue to court. The parties acknowledged that the condominium was going to be listed for sale and that Jonie should make arrangements to enter it within 90 days.

¶ 7 Similarly, Jonie was to have the opportunity to access the Black Rock Condominium within 90 days to make a list of her personal property. If the parties did not agree on the property that Jonie claimed as hers, they were to submit the matter to mediation before involving the court. Upon the effective date of the MSA, Jonie was to “convey, by quitclaim deed, all of her right, title and interest in the Black Rock [Condominium] to Joseph.” A separate provision stated the following regarding the execution of documents:

“If either party hereto for any reason shall fail or refuse to execute any such documents, then this Agreement shall, and it is hereby expressly declared to, constitute a full and present transfer, assignment and conveyance of all rights hereinabove designated to be transferred, assigned and conveyed ***. In the event after thirty (30) days from the effective date of this Agreement, there are necessary documents which either party has failed to execute or deliver, both parties hereby authorize and direct that a Judicial Officer of the Circuit Court of Lake County shall be authorized to make, execute and deliver any and all necessary documents on behalf of either party. This authorization

includes, but shall not be limited to, any and all realty, personal property, or beneficial interests in land trusts.”

¶ 8 On January 9, 2013, Jonie filed a two-count complaint against Jay, individually and as executor of Joseph’s estate, claiming conversion and replevin. She alleged as follows. Pursuant to the MSA, she had made a list of her possessions at the three properties, but Joseph unreasonably refused to allow her to remove her personal property. Joseph died in January 2011, and Jay became executor of his father’s estate. However, Jay also unreasonably refused to allow her to remove her property. Upon information and belief, he had converted and disposed of some or all of her personal property, which had an approximate value of \$273,435.86. Jonie attached to the complaint lists of the possessions that she claimed.

¶ 9 Jay filed a motion to dismiss on March 25, 2013, and the trial court denied it on July 24, 2013. Jay filed an answer on August 13, 2013, alleging that Jonie failed to seek mediation until after Joseph’s death.

¶ 10 On November 1, 2013, the trial court ordered the parties to submit to mediation, and an order of referral to a specific mediator was filed on April 7, 2014.

¶ 11 On June 17, 2014, Jonie filed an amended petition to enforce the dissolution judgment, which also contained counts claiming replevin and conversion. Count I sought to enforce the MSA regarding the Lake Forest Property, and it alleged as follows. Jonie and Joseph began dating in 2001. She was living in California and working as a realtor, and she owned an interior design company called Quantum Space Designs. Joseph was 73 years old and retired after having earned a substantial income as the owner of an investment firm. On July 3, 2003, Joseph executed an amendment to a trust document indicating an intent to name Jonie the successor beneficiary of the Lake Forest Condominium. In reliance upon this amendment, Jonie spent a

substantial amount of her own savings to redesign the Lake Forest Condominium's interior. She and Joseph married in May 2005. However, Joseph's health deteriorated during the marriage, resulting in the marriage's break down and dissolution. On October 14, 2010, Jonie's attorney sent Joseph's counsel a list of the property that Jonie claimed as hers and a list of dates on which she could remove the items. Her counsel sent another correspondence on November 2, 2010. The following day, Joseph's counsel e-mailed a response stating that they believed that Joseph had purchased all the property in the condos. It further stated: "We look forward to [Jonie's] proof that she paid for the items with her own money and therefore owns the items as opposed to [Joseph's] money being used to purchase the articles." Jonie and Joseph continued to privately discuss her claim to the property, but he passed away on January 14, 2011, before the issue was settled.

¶ 12 Jay was then named as an executor of the estate. On January 28, 2011, Jonie's attorney sent an e-mail to Jay to schedule mediation. Jonie's attorney demanded that Jay not distribute Joseph's estate until the property was divided pursuant to the MSA. Jay ignored the demand and presided over the liquidation and distribution of Joseph's estate. Over the next few months, Jonie repeatedly attempted to schedule mediation with Jay. On March 15, 2015, her counsel e-mailed Jay's counsel that they would be scheduling mediation for April 4, 2011. Jay immediately responded by e-mail stating that there would be no mediation until Jonie signed the warranty deed to the Black Rock Condominium. However, the MSA did not make Jonie's execution of a warranty deed a condition precedent to the parties' obligation to mediate the issue of Jonie's personal belongings. Jonie estimated that the value of her personal property at the Lake Forest residence to be \$95,436.88. Jonie further sought attorney fees and costs as a result of Jay's failure to comply with the MSA.

¶ 13 Count II of Jonie’s amended petition sought to enforce the MSA as to the Wailea Pointe Condominium. Jonie alleged that although the MSA referenced boxes of her property from that condominium that were stored in the Lake Forest Condominium, the boxes contained a “tiny fraction” of her personal property from the Wailea Pointe Condominium, and much of it was damaged. On October 26, 2010, she and her attorney traveled to Hawaii to inventory her property. On November 2, 2010, her counsel sent a correspondence to Joseph’s counsel asking that she be allowed to remove the property on her list. The November 3, 2010, email from Joseph’s counsel denied her interest in any property within all three of the condominiums and refused mediation. Jonie estimated that her personal property from the Wailea Pointe Condominium was worth \$153,149.17, and she further sought attorney fees and costs.

¶ 14 Count III sought to enforce the MSA’s provisions regarding the Black Rock Condominium. Jonie alleged the following. She and Joseph became engaged in May 2004. Instead of giving her an engagement ring, Joseph purchased the Black Rock Condominium, which was titled in both parties’ names. They chose to pay an additional \$100,000 to purchase the residence fully furnished. In accordance with the MSA, on October 21, 2010, Jonie traveled to the residence with her attorney to inventory her property. However, in the subsequent aforementioned correspondences, Joseph’s counsel refused to allow her to remove the property, and Jay refused to participate in mediation. She estimated that her possessions at the Black Rock Condominium were worth \$100,000, and she sought attorney fees and costs.

¶ 15 Last, the amended petition contained counts alleging conversion and replevin.

¶ 16 In Jay’s response to the amended petition, he denied that Jonie invested substantial funds from her own savings to decorate the interior of the Lake Forest Condominium or purchase furnishings. He also noted that although the MSA stated that the bulk of the personal property at

that residence belonged to Joseph, Jonie claimed 53 items as hers. He denied that she had any personal property at the other two residences. Jay admitted that he demanded a warranty deed to the Black Rock Condominium before he would participate in mediation, even though the MSA did not state that Jonie had to do so as a condition precedent to her claims for personal property. However, Jay affirmatively stated that her claim to property at the Black Rock Condominium was false and frivolous, as the furnishings were acquired in conjunction with the residence's purchase. He stated that Jonie knew that an estate had been opened in Joseph's name, and that Jonie had filed a claim in probate court which she later withdrew. Jay stated as the executor of Joseph's estate, he presided over the liquidation and distribution of the estate, which included all three condominiums and the personal property contained within. Jay denied any liability for attorney fees and costs.

¶ 17 A trial took place on dates in May and September 2015. At the close of the proceedings, Jay moved for a directed finding. On September 23, 2015, the trial court granted Jay's motion for a directed finding on counts IV and V alleging conversion and replevin.

¶ 18 Jonie was later given leave to file a second amended petition, and she did so on January 27, 2016. The central allegations remained unchanged, including the alleged value of her personal possessions.

¶ 19 The trial court issued its memorandum order on April 29, 2016, and we summarize its contents. Jonie had repleaded the conversion and replevin counts in her second amended petition, and the trial court reaffirmed its prior ruling dismissing these counts.

¶ 20 The MSA's language describing the personal property to which Jonie was entitled was extremely vague. Since no agreement had been reached, the trial court was left to apply a pre-decree analysis in determining whether the claimed items were marital or non-marital. The

Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/101 *et seq.* (West 2014)) created a presumption that all property in a marriage was marital unless it fell within specified categories, specifically by gift, legacy, or descent, or property acquired before the marriage. Jonie had the burden to show by clear and convincing evidence that the property fell within one of the exceptions. It found Jonie's credibility to be lacking, and therefore her testimony to be suspect, because it was unusual or suspicious for someone to have photographs of all of their personal property. Also, Jonie's manner while testifying seemed "evasive."

¶ 21 Since all of the property was disposed of subsequent to Joseph's death, the trial court also had to determine the value to be placed on the personal property to be awarded to Jonie. Jonie's expert testified that his company viewed photographs of the property claimed by Jonie and documentation of the items' purchases. Based on this information, the expert opined as to the value of each item. The trial court had serious concerns about the expert testimony. Primarily, it was not persuaded that the expert could value the property based only on photographs, which were not entered into evidence. Also, there was no way to determine the property's condition at the time of the dissolution, or even whether the items still existed at that time. The expert purportedly allowed for standard wear and tear in arriving at his valuations, but he valued a two-year-old printer at the same price it was purchased, and he value a six-year-old paper shredder purchased for \$80 to have a current value of \$200. The trial court also had trouble accepting that the expert gave a specific value for each item rather than a range of values. Still, the trial court had to accept the valuation testimony because there was no alternative evidence to rely on, although it would do so with a "jaundiced eye."

¶ 22 Regarding the Black Rock Condominium, the testimony showed that Joseph purchased the property fully furnished as an engagement gift for Jonie, instead of giving her an engagement

ring. It was thereafter held in joint tenancy by the parties, until Jonie quit-claimed her interest in it back to Joseph pursuant to the MSA. There was no testimony that she added any more personal property to the residence, using her own funds. Even if she could show that she may be entitled to some of the personal property there, her claim for all of the personal property contained therein was without any support in the record. Therefore, the trial court declined to award Jonie the value of any property from the Black Rock Condominium.

¶ 23 As for the other two residences, there was clear and convincing evidence that \$27,352.53 of property was acquired by Jonie by gift. She also provided competent testimony that \$120,802.98 of property was non-marital. However:

“[t]here [was] also competent testimony in the record that [Joseph] deposited at least \$10,000 into Jonie’s Quantum Space account in late 2003 *** and on another occasion deposited \$100,000 in the same account ***. Although both of these dates were prior to the marriage, this refutes Jonie’s testimony that the personal property in question was purchased exclusively by *her* prior to the marriage, or after the marriage with exclusively her own money. Since it is impossible for the Court to determine which specific items were paid for with these funds, the Court will deduct \$110,000 from the total amount awarded to Jonie for her non-marital property, to reflect this amount which would logically be categorized as [Joseph’s] non-marital property.” (Emphasis in original.)

The trial court awarded Jonie a total of \$38,155.51 for her personal property, after the \$110,000 deduction.

¶ 24 Jonie also claimed that she was entitled to attorney fees under section 508(b) of the Marriage Act (750 ILCS 5/508(b) (West 2014)), arguing that Joseph and Jay failed to submit to

mediation to resolve the issue of her personal property, without legal justification. The trial court heard testimony that Jonie had not complied with her obligations under the MSA to sign the quitclaim deed for the Black Rock Condominium as of the date she demanded mediation. The trial court had originally barred such testimony pursuant to a motion *in limine*, but it then reversed its ruling for the specific purpose of determining whether there was any legal justification for not mediating. Pursuant to the MSA, Jonie was obligated to transfer ownership of the Black Rock Condominium upon the effective date of the agreement, and other obligations relating to her personal property were to occur at some date thereafter. “Based on these facts, the Court cannot conclude that [Joseph] and/or Jay were without legal justification in declining mediation, since it reasonably appeared that Jonie was not going to comply with her pre-existing obligations.” It was possible that she had executed the deed, but it was not transmitted until long after the date by which the obligation was due. There was no evidence that either Joseph or Jay knew whether Jonie had done so at the relevant times, so the trial court declined to award any attorney fees.

¶ 25 Both parties filed motions to reconsider, and the trial court denied them on September 12, 2016. Jonie timely appealed.

¶ 26 II. ANALYSIS

¶ 27 A. Attorney Fees

¶ 28 Jonie first argues that the trial court erred in declining to award her attorney fees under section 508(b) of the Marriage Act. That section states, in relevant part:

“In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to

pay promptly the costs and reasonable attorney's fees of the prevailing party." 750 ILCS 5/508(b) (West 2014).

Under section 508(b), if the trial court finds that a party's failure to comply with an order was without compelling cause or justification, it is required to award attorney fees to the other party. *In re Marriage of Patel & Sines-Patel*, 2013 IL App (1st) 112571, ¶ 143. We will not disturb a trial court's decision to deny attorney fees under section 508(b) unless the ruling was an abuse of discretion. *In re Marriage of Schurtz*, 382 Ill. App. 3d 1123, 1127 (2008); see also *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 37 ("the court has no discretion under section 508(b) except to determine if the failure to comply with an order was without compelling cause or justification; if it so finds, attorney fees must be imposed"). An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court. *Id.* ¶ 28.

¶ 29 Jonie argues that the statute's plain language requires a compelling reason for the failure to act, but there was no overwhelming reason presented for Jay's failure to engage in mediation. Jonie asserts that with regards to the Black Rock Condominium deed, the MSA did not place any affirmative obligations on her because the MSA provided a mechanism and procedure for substitute performance, namely that a judicial officer would act in her stead. See *supra* ¶ 7. Jonie argues that rather than refuse to participate in mediation, Jay should have petitioned the court for execution of the deed. She maintains that in failing to do so and exhaust his available remedies, Jay did not pursue a reasonable course of action and therefore his conduct, by definition, was not "compelling."

¶ 30 Jonie alternatively argues that if there was a basis for section 508(b) fees against both parties, the trial court should have entered awards against both of them. She cites *In re Marriage of Aleshire*, 273 Ill. App. 3d 81, 84 (1995), in which the court stated, "Where a trial court finds

that both parties have failed to comply with an order or judgment, we think it is appropriate under section 508(b) for the court to apportion attorney fees in a manner that reflects the parties' relative culpability." Jonie maintains that if one party's non-compliance excused the other party from attorney fee liability, section 508(b) would be rendered meaningless. Jonie contends that if her failure to execute and deliver the deed to Black Rock was noncompliant with the MSA, the trial court could have entertained a section 508(b) petition, but that conduct should not have precluded the trial court from granting her section 508(b) request for attorney fees for Jay's failure to participate in mediation.

¶ 31 Jay argues that he is not liable for attorney fees under section 508(b) as a matter of law because he was not a party to the dissolution judgment and was not the subject of the order allegedly violated. See *Smithberg v. Illinois Municipal Retirement Fund*, 192 Ill. 2d 291, 298-99 (2000) (the husband's death rendered the trial court's contempt power useless, though it should have invoked its equitable powers to enforce the marital settlement agreement). Jay further argues that the trial court acted within its discretion in denying Jonie's claim for attorney fees because: Jonie had not complied with her obligation under the MSA to timely convey a deed to the Black Rock Condominium; there was no evidence Jonie made a mediation request before Joseph's death; as executor of Joseph's estate, Jay had a fiduciary duty to dispose of and distribute the estate's assets; Jonie had no established right to any property under the MSA; Jonie's claim to all of the property at the Black Rock condominium and her failure to turn over the deed should be regarded as misconduct and bad faith; and the trial clearly revealed that mediation would have been useless because Jonie lied about the non-marital character of numerous items she had on her lists.

¶ 32 Even assuming, *arguendo*, that Jay could be held liable for attorney fees under section 508(b) and that he could be found to have violated the MSA, we find no abuse of discretion in the trial court's determination that the violation was due to compelling cause or justification. Most significantly, as the trial court pointed out, Jonie was attempting to hold Jay to the terms of an order that she herself had glaringly not fulfilled. As noted by the trial court, the MSA contemplated that Jonie would convey the quitclaim deed on the MSA's effective date, before obtaining her personal property. Although there was an alternative mechanism to obtain the quitclaim deed, it did not eliminate Jonie's affirmative obligation to act.

¶ 33 Jonie alternatively advocates the trial court awarding attorney fees against both parties if the situation demanded as much, but there would have been no basis to grant section 508(b) fees against Jonie where Jay had not sought them. Also, in the context of section 508(a) (750 ILCS 5/508(a) (West 2014)), which allows for attorney fees where one party lacks the ability to pay and the other party has the necessary financial resources, the court has upheld the denial of such fees where, among other things, both party were equally unreasonable and litigious. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174-75 (2000). We are not saying that either or both parties were overly litigious here, but rather that this precedent supports the conclusion that a trial court can consider the moving party's conduct in determining whether to award attorney fees. This is especially true here, as Jonie's actions needed to be considered in determining whether Jay's refusal to mediate was without compelling cause or justification. Moreover, as Jay discusses, Jonie did not demand mediation until after Joseph passed away; Jay had an independent obligation as executor of Joseph's estate to dispose of and distribute its assets; and Jonie had not established a right to any particular personal property at the time Jay allegedly violated the MSA. Based on all of these considerations, the trial court did not abuse its

discretion in declining to award Jonie attorney fees under section 508(b). See also *In re Marriage of Schurtz*, 382 Ill. App. 3d 1123, 1127 (2008) (the trial court did not abuse its discretion in denying attorney fees where a party's interpretation of a marital settlement agreement was incorrect but not unreasonable).

¶ 34 B. Value of Non-marital Property

¶ 35 Jonie next argues that the trial court erred in deducting \$110,000 from the value of personal property awarded to her. A trial court's determination of whether property is marital or non-marital will not be disturbed unless it is against the manifest weight of the evidence. *In re Marriage of Faber*, 2016 IL App (2d) 131083, ¶ 3. A determination is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent or where the trial court's findings are unreasonable, arbitrary, or not based upon the evidence. *Id.* To the extent that this issue involves an interpretation of the Marriage Act, statutory interpretation is a question of law that we review *de novo*. *In re Estate of Opalinska*, 2015 IL App (1st) 143407, ¶ 16.

¶ 36 The trial court found that there was "clear and convincing testimony" that items worth a total of \$27,352.53 were acquired by Jonie by gift and were therefore "categorized as Jonie's non-marital property." It further found that property worth \$132,434.71 had "been adequately proved by [Jonie] to be her non-marital property," but that "certain items from this broad category have not been adequately proved," totaling \$11,631.73, due to inadequate documentation. It subtracted this amount from the \$132,434.71, leaving a total of \$120,802.98. The trial court then referenced evidence of Joseph's deposits of a total of \$110,000 in the Quantum Space account, which "refut[ed] Jonie's testimony that the personal property in question was purchased exclusively by *her* prior to the marriage, or after the marriage with exclusively her own money." (Emphasis in original.) The trial court continued, "Since it is

impossible for the Court to determine which specific items were paid for with these funds, the Court will deduct \$110,000 from the total amount awarded to Jonie for her non-marital property, to reflect this amount which would logically be categorized as [Joseph's] non-marital property.”

¶ 37 Jonie argues that a traditional division of property and assets entails: (1) classifying the property as marital or personal; (2) determining if reimbursement from one estate to another is appropriate; (3) valuing the item to determine the amount of reimbursement; and (4) calculating the division, as adjusted for reimbursements, and assigning the property accordingly. See *In re Marriage of Patrick*, 233 Ill. App. 3d 561, 568-69 (1992). Jonie argues that the MSA did not require a division or distribution of property, but only a determination of whether certain items could be classified as her non-marital property, and therefore the trial court should have stopped at that stage and not gone on to determine whether a reimbursement to Joseph's estate was warranted.

¶ 38 Jonie argues that even if the trial court could properly address reimbursement, it should have done so pursuant to 503(c)(2)(A) of the Marriage Act (750 ILCS 5/503(c)(2)(A) (West 2014)). Jonie maintains that if the trial court found that Joseph's non-marital funds lost their identity upon being commingled in her account, it should have classified the money as being transmuted to Jonie's non-marital property, and then applied section 503(c)(2)(A) to determine whether reimbursement was appropriate. Jonie contends that reimbursement was not warranted because there was not clear and convincing evidence tracing Joseph's contribution.

¶ 39 Section 503(c)(2)(A) states:

“When one estate of property makes a contribution to another estate of property, the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation. No such reimbursement shall be made with respect

to a contribution that is not traceable by clear and convincing evidence or that was a gift. The court may provide for reimbursement out of the marital property to be divided or by imposing a lien against the non-marital property that received the contribution.” *Id.*

An example of reimbursement under this section is if a home is the non-marital property of one spouse, but another spouse is reimbursed for non-marital funds used to pay off the mortgage on that home. See *McBride v. McBride*, 2013 IL App (1st) 112255, ¶¶ 31, 39.

¶ 40 The structure of the trial court’s order shows that it was not intending to reimburse Joseph’s estate, but rather was determining how much property Jonie had adequately proven was non-marital. The trial court specifically referenced section 503(a)(1) and (a)(6) (750 ILCS 5/503(a)(1), (a)(6) (West 2014)), which pertain to whether property is non-marital in the first place. It broadly stated that Jonie had proven a category of items to be non-marital property and then more specifically stated that she had not met her burden of proof as to some of the items within that category. In particular, the trial court stated that \$132,434.71 had “been adequately proved by [Jonie] to be her non-marital property,” but that “certain items from this broad category have not been adequately proved,” totaling \$11,631.73, due to inadequate documentation. In the same manner, the trial court then subtracted another \$110,000 from the \$132,434.71 due to evidence that Joseph had deposited \$110,000 into the Quantum Space account, as it was “impossible for the Court to determine which specific items were paid for with these funds.” Thus, the trial court essentially found that Jonie had only met her burden of proving that \$10,802.98 of personal property could be categorized as her non-marital property, along with \$27,352.53 of property that was gifted to her.

¶ 41 We find no error with the lack of application of section 503(c)(2)(A), as the issue was whether Jonie adequately proved that certain items of her personal property were her non-marital

property. “[T]he legislature intended property acquired exclusively with non-marital property to remain non-marital property, so long as the source of funds can be traced to the initial non-marital asset without affirmative proof of an intention to ‘transmute,’ as the cases say, the non-marital property into marital property.” *In re Marriage of Preston*, 81 Ill. App. 3d 672, 676 (1980). Here, there was evidence that much of the money for the furnishings did not come from Jonie’s non-marital funds, but rather from money that Joseph had provided to buy the furnishings. *Cf. In re Marriage of Stuhr*, 2016 IL App (1st) 152370, ¶ 57 (in order to prove that accounts were non-marital, party had the burden of proving by clear and convincing evidence that the source of the funds was non-marital). Moreover, any doubts as to the nature of property are resolved in favor of finding that the property is marital (*In re Marriage of Didier*, 318 Ill. App. 3d 253, 258 (2000)), and Jonie would not be entitled to the value of marital property.

¶ 42 Jonie argues that there was no competent testimony or document evidence of a \$100,000 deposit or that such a deposit was made by Joseph. Jonie admits that the documentary evidence showed that from July 31, 2004, to October 1, 2004, the Quantum Space account increased by \$100,877.63. She points to her testimony that she thought that \$30,000 of that amount was from her referral fee from the purchase of the Black Rock Condominium. Jonie argues that without a proper foundation, the trial court erred in finding that a \$100,000 deposit by Joseph was supported by competent evidence or testimony.

¶ 43 We note that Jonie does not directly contest evidence of the \$10,000 deposit; she admitted at trial that there was evidence that Joseph deposited \$10,000 into her account in December 2003. As for the \$100,000 deposit, Jonie initially testified that Joseph never deposited any money into the Quantum Space account. Later, on cross-examination, she testified that Joseph gave her “some money” for “all the work for Quantum Space and everything on the

property.” She then testified that the money was “gifts for my working for Quantum Space doing all the decorations for that.” In Joseph’s pre-dissolution deposition, which was admitted into evidence, he stated that he had written Jonie a check to purchase furniture. He also said that he did not think that he ever gifted Jonie any money.

¶ 44 Jonie had the burden to prove that the personal property was purchased with her non-marital property, but she did not provide complete bank records or other documentary evidence as to the source of the funds in the Quantum Space account. Rather, after first denying that Joseph deposited any money in the account prior to their marriage, she characterized his deposits as money for her work of decorating the properties or gifts. Accordingly, it was not against the manifest weight of the evidence for the trial court to determine that Joseph was the source of the \$100,000 deposit and that he did not intend the money to be a gift.

¶ 45 Jonie additionally argues that the trial court’s deductions of \$10,000 and \$100,000 were against the manifest weight of the evidence because it failed to consider the timing of the deposits as compared to when the items were purchased. She maintains that 31 items were proven as purchased prior to the December 23, 2003, \$10,000 deposit, and that these items had a total value of \$53,558.49. She argues that another ten items were proven purchased between December 23, 2003, and September 30, 2004, having a value of \$11,927.75, before the \$100,000 deposit. She argues that after subtracting the \$10,000 deposit, she should have minimally received \$55,486.24 as the value of her non-gift personal property.

¶ 46 Jonie’s argument is not persuasive, as based on the timing of the purchases, the money deposited from Joseph could be also be viewed a reimbursement for furnishings that Jonie had already bought. In other words, after reviewing the dates of the purchases and considering the timing of the alleged deposits by Joseph, we cannot say that they render the trial court’s

determination of the value of Jonie's non-marital property to be against the manifest weight of the evidence.

¶ 47

III. CONCLUSION

¶ 48 For the reasons stated, we affirm the judgment of the Lake County circuit court.

¶ 49 Affirmed.