2017 IL App (2d) 160999-U
No. 2-16-0999
Order filed December 22, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF JAMES R. WHITE, Petitioner-Appellant and Cross-Appellee, and NICOLE CIPRIANI, Respondent-Appellee and Cross-Appellant.	)))))))))))	Appeal from the Circuit Court of Du Page County. No. 14-D-2068 Honorable Robert E. Douglas, Judge, Presiding.

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

ORDER

¶ 1 *Held*: Petitioner's contentions on appeal were all forfeited except for his challenge to the trial court's classification of a bank account as respondent's nonmarital property. This contention lacked merit. In respondent's cross-appeal, the trial court did not err in determining that education payments made for respondent by her parents were gifts and not loans to her, and in requiring respondent to reimburse the marital estate for transfers she made to her parents as alleged loan repayments.

¶ 2 Petitioner, James White, and respondent, Nicole Cipriani, each appeal aspects of the trial court's judgment dissolving their marriage. Petitioner raises four contentions on appeal, three of which are forfeited for lack of development. The fourth contention challenges the trial court's

classification of a bank account as respondent's nonmarital property. We hold that the trial court did not err in the classification. Respondent's lone contention in her cross-appeal is that the trial court erred in its finding that her payments on an alleged loan from her parents constituted a "pre-distribution" of marital assets, for which she was required to reimburse the marital estate. We reject her contention and affirm.

¶ 3 I. BACKGROUND

¶ 4 We begin with a brief overview of the proceedings and will provide additional facts as we address each issue on appeal.

¶ 5 The parties were married in December 2011. They physically separated in August 2014, and petitioner filed his dissolution petition in October 2014. The trial court issued its dissolution judgment in August 2016 following a brief trial. As part of its division of marital property, the trial court directed each party to reimburse the marital estate for "pre-distribution" of marital assets (the court was careful to note that it was not characterizing the parties' actions as dissipation, as neither party provided proper notice of dissipation (see 750 ILCS 5/503(d)(2)(i) (West 2014)). Petitioner's pre-distribution consisted of payments he made toward a non-marital asset, namely a condominium that he jointly owned with his brother. The court ordered petitioner to reimburse the marital estate for half the payments made from the date of the marriage to September 1, 2014.

¶ 6 Respondent's pre-distribution consisted of payments she made toward alleged personal loans she received from her parents for her higher-education expenses. The court specifically found "incredible" the testimony of respondent and her mother as to the existence of the loans, and also held that the written instrument purportedly memorializing the loans "[did] not meet the

legal criteria necessary for it to be valid." The court directed respondent to reimburse the marital estate for half the payments she made from the date of the marriage through January 2016.

¶ 7 Regarding the parties' bank accounts, the trial court awarded each party the accounts held in that party's name and directed that joint accounts be split evenly. The trial court divided the marital estate unequally, awarding respondent the greater share.

¶ 8 Respondent filed a motion to reconsider, which the trial court granted in part and denied in part. First, the trial court agreed that with respondent that the same cutoff date should be used for both parties for purposes of reimbursement. The court set September 1, 2014, as the common cutoff date. Second, the court agreed with respondent that she should be awarded, as her nonmarital property, the sum of $88,607.12, which was the balance of her Citibank account prior to the marriage. Third, the court rejected respondent's challenge to its findings regarding the alleged loans from her parents.

¶ 9 Both parties timely appeal.

¶ 10 II. ANALYSIS

¶ 11 A. Petitioner's Appeal

¶ 12 Petitioner's four contentions on appeal are: (1) the trial court's calculation of the reimbursement owed by petitioner for the condominium expenses failed to account for the partial reimbursement that petitioner received from his brother toward those expenses; (2) the court abused its discretion in distributing the marital estate; (3) the court erred in holding that respondent was not required to reimburse the marital estate for payments made after September 1, 2014, on the alleged loans from her parents; and (4) the court erred in classifying respondent's Citibank account as her nonmarital property.

¶ 13 Respondent asserts that contentions (1), (2), and (3) are forfeited for failure to cite authority. We agree. Under Supreme Court Rule 341(h)(7) (eff. Jan 1, 2016), the appellant's opening brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." "A court of review is entitled to have the issues clearly defined with pertinent authority cited and cohesive arguments presented." *In re M.M.*, 2016 IL 119932, ¶ 30. An appellant may not foist onto the reviewing court the burden of research. *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37. Points not properly developed in the appellant's opening brief "are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill S. Ct. R. 341(h)(7) (eff. Jan. 1. 2017). For contentions (1), (2), and (3), petitioner articulates the standards of review and cites supporting authorities, but omits any mention of the underlying substantive law. Consequently, all three contentions are forfeited.

¶ 14 Petitioner supports contention (4) with some substantive law, but the claim nonetheless fails, as we explain. Respondent testified that she held the Citibank account prior to the marriage. She introduced bank statements showing that the account's balance as of November 30, 2011 (the parties were married the next month) was $88,607.12. Respondent testified that, during the marriage, she continued to utilize the account for salary deposits and bill payment. Petitioner asserts to us that the trial court erred in classifying the account as respondent's nonmarital property. What follows is the entirety of his argument:

> "The evidence demonstrates all marital income for [respondent] was deposited into [her Citibank] personal account, and significant amounts remained commingled for significant periods of time with the prior pre-marital funds in the account. R.C. 257-302. The pre-marital funds cannot maintain their non-marital status when commingled in such

> a fashion. The lengthy commingling of the marital and non-marital funds in the account effectively transmute[d] the funds into property of the marital estate. When marital and non-marital assets are commingled into newly-acquired property, resulting in loss of identity of the separate estates, the commingled property is transmuted to marital property. 750 ILCS 5/503(c)(1) (West 2006)."

¶ 15 Petitioner cites appropriate authority, namely section 503(c)(1) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 503(c)(1) (West 2014)), but oversimplifies the issue. "[T]here is no presumption that commingled property is always transmuted into marital property." *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 75. Factors to consider include the relative amounts of the marital and nonmarital funds (*In re Marriage of Henke*, 313 Ill. App. 3d 159, 168 (2000)) and the "specific history" of the funds (*In re Marriage of Steel*, 2011 IL App (2d) 080974, ¶ 72). Petitioner cites a 50-page span of the record without providing specific facts to support his assertions that "significant" marital funds were commingled for a "significant" time with nonmarital funds, transmuting the entire account into marital property. Accordingly, we reject his claim.

¶ 16 B. Respondent's Cross-Appeal

¶ 17 Respondent contends that the trial court erred in its adverse findings regarding alleged loans from her parents for education expenses. We note that, though the court found that no such loans existed, the court ordered reimbursement not for all of the purported loan payments, but only for half of them. We do not ponder the consistency of the court's judgment because petitioner does not question it on appeal.

¶ 18 We affirm the trial court's findings as to the alleged loan, and explain by first setting forth the relevant facts.

¶ 19 1. Background

¶ 20 Petitioner is an accountant with his father's accounting firm. Respondent is a pathologist at the University of Chicago Hospital. After the parties were married in December 2011, they resided in a Chicago condominium owned by respondent's parents, Flavio and Renee Cipriani. In July 2012, petitioner moved to Boston for a medical fellowship. Upon her return from Boston in June 2013, the parties resided again in the Chicago condominium until late August 2014 when the parties separated with petitioner moving out of the residence.

¶ 21 Respondent testified that her postsecondary education consists of an undergraduate degree in "science and visual art" from the University of Chicago, a graduate degree in medical illustration from the University of Illinois at Chicago, and a medical degree from the University of Chicago. Her parents funded her undergraduate and graduate education in exchange for her oral promise to repay them. When respondent informed them that she wanted to pursue a medical degree, her parents also agreed to lend her funds for that education, but wanted a written promissory note to memorialize the loan. Her parents also wanted the agreement to memorialize their loans toward her previous two degrees.

¶ 22 Respondent introduced a copy of the promissory note (the Note), which read:

> "June 16, 2004
>
> I, Nicole Cipriani, residing at 5473 S. Ingleside, 1E, Chicago, Illinois, hereby promise to pay back, in full, the borrowed amount of $300,000, interest free, to my parents, Flavio and Renee Cipriani. $120,000 for tuition and fees paid by my parents to the University of Chicago during the 1998-2002 academic years, $10,000 for tuition and fees paid by my parents to the University of Illinois during the 2002-2004 academic years and $20,000 in rent paid by my parents for the apartment at 1312 E. 53rd Street #309,

Chicago, Illinois. $150,000 to be used for payment to the University of Chicago Pritzer School of Medicine for tuition and fees for medical school studies during the 2004-2008 academic years.

Payments shall commence one year after acquiring a full time position in the medical field of my choice.

Payments may take the form of one or more lump sum payments, or monthly installments of at least $2000.

Missed or late payments will not accrue interest or penalty if the reason for the missed or late payment is acceptable to the lenders, Flavio and Renee Cipriani. If the reason for the missed or late payment is not acceptable[,] a $50.00 fee will be added for each month that is delinquent.

Repayment of the entire balance of the loan shall be paid within 15 years after a full time position is obtained by the borrower, Nicole Cipriani."

The Note bears the signatures of respondent, Renee, and Flavio. Respondent acknowledged that she did not inform petitioner of the existence of this $300,000 debt until after he filed for divorce.

¶ 23 Respondent described how the parties maintained their finances during the marriage. When the parties married, they retained their personal bank accounts and credit cards. They deposited their salaries into their own personal accounts. Expenses that the parties agreed were personal were paid from their personal accounts. Expenses deemed joint were paid from a joint account using funds transferred from their personal accounts. Neither sought the other's permission for, or shared details about, expenditures from personal accounts. For instance, petitioner co-owned with his brother a Downers Grove condominium. Petitioner paid expenses

related to that condominium from his personal accounts without seeking permission from respondent or discussing it with her.

¶ 24 According to respondent, the parties never had detailed discussions about their finances. Respondent was aware during the marriage that petitioner had student debt but did not know the amount. Petitioner, however, was unaware during the marriage that respondent even had outstanding loans of her own from her parents.

¶ 25 Respondent was asked about two particular occasions when the parties discussed their finances yet respondent did not disclose the loans from her parents. First, for several months during the marriage, the parties looked for a home to purchase. During this process, the parties discussed their finances, but not in detail since their search was not "concrete" and they did not seek preapproval for a mortgage. They "never sat down with [their] account statements and said this is what I have, this is what you have."

¶ 26 Second, at one point during the marriage, petitioner wanted respondent to co-sign for the refinancing of the Downers Grove condominium. Respondent "remember[ed] the process" of filling out a loan application, but did not "exactly remember what the details of it were because [petitioner] was responsible for it[.]"

¶ 27 Respondent testified that, during the marriage, her aunt gifted her $100,000 to repay in full the medical school loans that respondent obtained from federal agencies and the medical school itself. These loans were in addition to the loans from respondent's parents.

¶ 28 Respondent stated that, in August 2014, she began to repay the loans from her parents. Her first payment was a lump sum of $100,000 on August 5. She made several subsequent payments in amounts ranging from $6,000 to $20,000. As of trial, she had paid a total of $277,707.

¶ 29 Respondent was asked to approximate when, in her estimation, the marriage broke down. She testified that the marriage became irretrievably broken when she was served with the dissolution petition in February 2015, but had been failing slowly over time. Petitioner's moving out in late August 2014 was a "significant step," but for months beforehand the parties had discussed the marriage and respondent had asked petitioner if he was happy. In mid-August 2014, respondent offered to move out. Asked why she began to repay her parents only days before offering to move out of the residence, respondent testified that she was following the terms of the Note, which required her to begin repayment one year after finding full-time work within the medical specialty of her choice. Respondent noted that her full-time employment as a physician began in July 2013.

¶ 30 Respondent testified that, when the parties resided together in the Chicago condominium, they paid only their utility bills and the condominium association dues. Flavio and Renee did not charge the parties rent because they did not intend to reside there long-term but were looking for a home to purchase. When the parties separated in late August 2014 and it appeared petitioner would remain in the condominium for the foreseeable future, her parents began to charge her rent.

¶ 31 Petitioner testified, consistent with respondent, that the parties maintained their personal accounts after the marriage. The parties also opened a joint account during the marriage, which they used for "living expenses" and "spending." Petitioner agreed with respondent that he did not seek her permission for payment of expenses associated with the Downers Grove condominium.

¶ 32 Petitioner testified that, between August 2013 and July 2014, the parties searched for a home to purchase. They stopped the search when respondent remarked that their marriage was a

mistake. During the search, the parties discussed their financial situation and ability to pay for a home. In these discussions, respondent did not disclose that she owed her parents for education expenses. Petitioner testified that, at a party in summer 2008 celebrating respondent's medical school graduation, Flavio stated that respondent's aunt had given her "a check to pay off her loans."

¶ 33 Also during their marriage, petitioner asked respondent to co-sign for the refinancing of the Downers Grove condominium. Petitioner was having difficulty obtaining the loan because of his law school debt. On the loan application they filled out, respondent did not indicate any student loans.

¶ 34 Renee testified that that she is employed with the Sisters of Saint Francis and earns $55,000 per year. Flavio, who is retired, had worked in the plastics industry as an operations manager. Between 2004 and 2014, their average combined income was $73,000 per year. Their only monetary inheritance since 1997 was a $100,000 sum from Renee's father.

¶ 35 Renee and Flavio used their savings and Renee's inheritance to pay for respondent's undergraduate and graduate degrees. Respondent promised at the time that she would repay them. After obtaining these degrees, respondent expressed a desire to attend medical school. Renee and Flavio had already "used up a lot" of their retirement savings, but agreed to loan respondent the funds for medical school. Renee prepared the Note in order to memorialize both the prior education loans and the total amount they expected to loan respondent for medical school.

¶ 36 Renee stated that, for all three of respondent's postsecondary degrees, Renee and Flavio paid respondent's school expenses directly to the institutions. For several years, she and Flavio claimed education credits for the tuition they paid on respondent's behalf. Renee did not know

whether she was disallowed from claiming the credits because the amounts were loans. Renee and Flavio did not declare interest for the loans on their tax returns because they were not charging respondent interest. Renee was unaware of an IRS requirement that interest be declared on existing loans. According to Renee, respondent received medical school loans not only from her and Flavio but also from the medical school itself and the government. Renee's sister gifted respondent $100,000 toward these additional loans.

¶ 37 Renee acknowledged that she and Flavio began charging respondent rent when petitioner moved out of the Chicago condominium in August 2014. At that time, it was unclear that the marriage had broken down irretrievably; it only became clear in February 2015 when respondent was served with the dissolution petition. Renee and Flavio had not charged the parties rent prior to August 2014 because the parties were looking for a home to purchase and Renee and Flavio wanted to ensure they had funds for a down payment. After petitioner moved out and respondent remained, respondent "felt bad" because her parents were not able to sell the condominium or rent it to another. Renee and Flavio began charging respondent rent to make her feel better.

¶ 38 Renee testified that she and Flavio had offered to use their home equity line of credit to help petitioner's parents make a down payment on a home.

¶ 39 Vicky White, petitioner's mother, testified that she and her husband, Alan White, have been friends with Renee and Flavio for many years. Vicky recalled that, in the summer of 2004, she, Alan, and respondent had dinner with Renee, Flavio, and respondent. At that dinner, the parents discussed education expenses for their children. Renee commented that she and Flavio were able to pay for respondent's graduate and undergraduate education but would be unable to pay for her upcoming medical education. The cost for that education would be respondent's responsibility.

¶ 40 Alan White, petitioner's father, also recalled a dinner party with the Cipriani family in 2004. Respondent had just received her graduate degree from the University of Illinois and was considering a medical degree. Renee expressed her happiness that respondent's "graduate and previous undergraduate schooling had been paid for," but Renee "didn't know how she was going to pay for medical school." She "kind of drew the line."

¶ 41 Alan also testified that, at another dinner with the in-laws in the spring of 2014, Renee and Flavio remarked that they had a $200,000 home equity line of credit available to the parties. Alan could not recall Renee and Flavio ever mentioning that respondent owed them for education expenses.

¶ 42 The trial court made the following findings regarding the alleged loans to respondent for education expenses:

> "The Court finds [respondent's] testimony with regard to loans from her father and mother, as well as the testimony of [respondent's mother] to be incredible. The Court agrees with [petitioner], that the note upon which the loan is purportedly based, does not meet the legal criteria necessary for it to be valid. There is no specific framework for repayment, the note purports to cover future amounts to be loaned and there is no fixed rate of interest. The parents never listed the loan on any of their tax documents and in fact, claimed education credits for monies purportedly covered by the loan."

Later, in denying respondent's motion to reconsider, the trial court stated that it would "stand on its ruling that [the Note] was not a valid note."

¶ 43 2. Analysis

¶ 44 The trial court did not consider respondent's alleged loan payments to be dissipation, since neither party gave notice of intent to claim dissipation. See 750 ILCS 5/503(d)(2)(i) (West

2014) ("a notice of intent to claim dissipation shall be given no later than 60 days before trial or 30 days after discovery closes, whichever is later"). Nonetheless, the court ordered reimbursement to the marital estate, apparently on the basis that the payments were contributions of the marital estate to respondent's personal estate. See 750 ILCS 5/503(c)(2) (West 2014) (right of reimbursement for contributions of one estate to another estate).

¶ 45 As we construe its remarks, the trial court made two independent findings: first, there were no education loans as alleged by respondent and Renee in their "incredible" testimony; second, the Note allegedly memorializing the loans was deficient in its terms and therefore invalid.

¶ 46 Related to the first finding, we note that respondent produced no documentation of the transfers that she and Renee testified were made on respondent's behalf. Indeed, some of the testimony appeared to call into question the financial ability of Renee and Flavio to muster such sums, whether as loans *or* gifts. Moreover, we cannot discern from the court's findings whether it believed respondent's parents actually made the transfers. However, on appeal (as below), the parties assume the existence of such transfers and argue over their character, namely whether they were loans or gifts. We also will proceed on that assumption. Also, the parties agree—as do we—that if the transfers were not loans, respondent must reimburse the marital estate for payments made in alleged repayment.

¶ 47 We uphold the trial court's finding that the education payments made on respondent's behalf were not loans. Two specific principles apply here. First, transfers from parent to child are presumed to be gifts. *In re Marriage of Patel & Sines-Patel*, 2013 IL App (1st) 112571, ¶ 76. This presumption can be overcome only by clear and convincing evidence. *Id.* Evidence is clear and convincing if it leaves no reasonable doubt in the mind of the fact finder as to the

veracity of the proposition in question. *In re Commitment of Rendon*, 2014 IL App (1st) 123090, ¶ 32.

¶ 48 Second, pertaining to the $277,000 in payments from respondent to her parents, such transfers between a spouse and her parents during the marriage are viewed with great skepticism because of the incentive for the spouse and her parents to collude by conforming their testimony to the disadvantage of the other spouse. *In re Marriage of Awan*, 388 Ill. App. 3d 204, 213 (2009) (citing *In re Marriage of Blazis*, 261 Ill. App. 3d 855, 868 (1994)).

¶ 49 The trial court specifically found respondent and Renee to lack credibility in claiming that the education payments made on respondent's behalf were loans. "[T]he circuit court is in a superior position to observe the demeanor of the witnesses, determine and weigh their credibility, and resolve conflicts in their testimony." *In re Marriage of Baumgartner*, 237 Ill. 2d 468, 486-87 (2010). Therefore, "[a] reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006).

¶ 50 The trial court did not identify which specific aspects of respondent's and Renee's testimony underlay its credibility finding. We can safely presume what most damaged their credibility in the court's eyes. First, while claiming to owe her parents $300,000 in education loans, respondent admitted that she never told petitioner before or during the marriage that she owed her parents for her education. Respondent claimed that the occasion for the disclosure never arose because the parties did not discuss their finances in detail, even when contemplating the purchase of a home or preparing financial disclosures for the refinancing of the Chicago condominium. Yet respondent admitted that she was aware during the marriage that petitioner had student loans.

¶ 51 Second, respondent's first payment toward the alleged loans was made earlier in the same month, August 2014, as the parties' separation. Respondent admitted that the marriage had been failing slowly over time and that her first payment preceded by days both her offer to move out of the marital home and the parties' actual separation. She claimed that the initiation of her repayment was keyed not to the decline of her marriage but to the Note's requirement that she commence repayment within a year after she secured full-time employment, which was in July 2013. While courts have stressed the importance of documentary support for an alleged parental loan (see *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 702 (2006), *In re Marriage of Marcello*, 247 Ill. App. 3d 304, 315 (1993)), the trier of fact naturally is not bound to accept such support when it has reason to believe it is a sham and the fruit of collusion. The trial court rejected Renee's testimony that the Note prepared by her memorialized a genuine loan. Central to that rejection was the trial court's assessment of her and respondent's credibility. "A reviewing court, which has only a cold record before it, will not presume to substitute its own independent evaluation of witness credibility unless the trial court's evaluation is found to be manifestly erroneous." *In re Marriage of Lewis*, 188 Ill. App. 3d 142, 146 (1989). "So much is revealed by the tone of voice, facial expressions and general demeanor of a witness." *People v. Williams*, 22 Ill. 2d 498, 502 (1961). However, we stress that this is not a case where the fact finder's rejection of testimony had to have been based solely on its observations of the witnesses' demeanor. Rather, as we have noted, there were also "earmarks of falsity" (*id.*) discernible from the cold record.

¶ 52 Having affirmed the trial court's rejection of respondent's and Renee's testimony that the education payments were loans and not gifts, we need not review the trial court's independent finding as to the legal sufficiency of the Note.

¶ 53 For these reasons, we hold that respondent failed to establish by clear and convincing evidence that that the education payments made on her behalf were loans. Consequently, the court appropriately ordered respondent to reimburse the marital estate for transfers she made to her parents as alleged repayment.

¶ 54 IIII. CONCLUSION

¶ 55 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 56 Affirmed.