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2017 IL App (3d) 150432-U

Order filed October 26, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
MICHAEL H. STAKER,)	Mercer County, Illinois.
)	
Petitioner-Appellant,)	Appeal No. 3-15-0432
)	Circuit No. 11-D-34
and)	
)	
RHODA R. STAKER,)	Honorable
)	Jeffrey W. O'Connor,
Respondent-Appellee.)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justice Wright concurred in the judgment.
Presiding Justice Holdridge concurred in part and dissented in part.

ORDER

¶ 1 *Held:* The trial court's finding that the marital estate was entitled to reimbursements for the husband's substantial personal efforts towards the growth in value of non-marital property and for the below market rent paid for the parties' farmland by the husband's family corporation, in which he held a non-marital property interest, was not against the manifest weight of the evidence. However, the amount the trial court reimbursed the marital estate for the husband's personal efforts was against the manifest weight of the evidence.

¶ 2 After almost 30 years of marriage, the parties, Michael and Rhoda Staker, divorced. On appeal from the dissolution of marriage judgment, Michael argues that the trial court erred by: (1) reimbursing the marital estate \$450,962 for his undercompensated personal efforts toward his nonmarital asset of shares in his family's farm corporation, Staker's Acres, Inc.; and (2) reimbursing the marital estate \$133,776 for underpayment of rent from Staker's Acres for the rental of the farmland owned by Michael and Rhoda. We reverse the trial court's finding of the amount of reimbursement for Michael's personal efforts as against the manifest weight of the evidence and affirm all other matters.

¶ 3 **FACTS**

¶ 4 The parties were married on March 26, 1983, and had three children (born in 1986, 1989, and 1995). On September 9, 2011, Michael filed a petition for dissolution of marriage.

¶ 5 Prior to the marriage, and for the 28 years during the marriage, Michael worked as a farmhand for his family's farm corporation, Staker's Acres, Inc., with his father, Bill Staker, and his brother, Stephen Staker. Staker's Acres farming operations grew over the years to the farming of approximately 1500 acres of farmland. Michael, Stephen, and Bill owned equal one-third shares of the Staker's Acres stock. There is no dispute that Michael's ownership interest in Staker's Acres was nonmarital property.

¶ 6 There was no dispute that Michael worked long hours whenever necessary in support of Staker's Acres. There was no dispute that in the 28 years Michael worked for Staker's Acres he earned net monthly wages of \$1329 per month (\$15,948 in net annual wages) plus fringe benefits of health insurance, out of pocket medical expenses, a vehicle, housing, utilities, and gasoline for the family's vehicles. His pay never increased.

¶ 7 The parties dispute the value of Michael's fringe benefits. Michael claims that Staker's Acres paid him a total of \$45,739, consisting of annual wages (\$15,600) and fringe benefits (\$30,139) that included \$9379 of health insurance premiums paid for the parties' family of five. Rhoda claims the value of the fringe benefits was not as high, valuing the fringe benefits at \$18,940 at the time the parties separated in 2011 and would attribute progressively less value to the fringe benefits for each year further back in time due to inflation.

¶ 8 In 1998, Michael and Rhoda purchased farm property, Inglett Farm, which they rented to Staker's Acres. Initially, Staker's Acres made the parties' mortgage payments on Inglett Farm in lieu of paying rent. After the Inglett Farm mortgage was paid off, Staker's Acres paid the parties \$12,000 per year in rent. Staker's Acres also paid the property taxes on Inglett farm from 2000 to 2012 (and half of 2013), which totaled \$28,565.

¶ 9 On July 23 and 24, 2014, the parties' dissolution case proceeded to trial for a resolution of outstanding issues. The parties disputed whether the marital estate should be reimbursed for: (1) Michael's personal efforts toward increasing the value of Staker's Acres (his nonmarital property); and (2) the below market rent value paid by Staker's Acres for the use of the parties' farmland.

¶ 10 A. Testimony of Bill Staker

¶ 11 Bill testified that he, Stephen, and Michael each own 200 shares of Staker's Acres. Bill had gifted Stephen and Michael their shares of the corporation. Bill, Stephen, and Michael also each personally owned farmland outside of the corporation with their respective wives, which they rented to Staker's Acres. Bill rented his personal farmland to Staker's Acres for \$70 per acre. According to Bill, Staker's Acres had no other employees besides Michael, Steve, and Bill, who were paid monthly net wages of \$15,600 and "fringe benefits," which included, among

other items, gasoline for Michael and Rhoda's vehicles, payment of health insurance premiums, orthodontics expenses for the parties' daughter, a medical procedure for Rhoda that was not covered by medical insurance, housing expenses, utility bills (gas and electric bills), and property tax payments on the Inglett farm. Bill claimed that the annual gross amount paid for Michael's wages and fringe benefits was approximately \$58,874, and the annual net amount was approximately \$47,527. Michael was a farm "laborer" with the duties of maintaining equipment, chemical spraying, taking care of general farm operations, and feeding and watering cattle when it was Michael's turn to do so.

¶ 12 Bill testified that the most he had ever paid for renting prime farmland was \$220 per acre. He most likely paid below market value for the rental of Inglett farm. Family members were paid less for the rental of their property in order to build value in the corporation. The family paid themselves less money so that everyone could benefit in the long run by the growth and development of the corporation.

¶ 13 B. Testimony of Michael Staker

¶ 14 Michael testified that he had a high school education. He farmed for Staker's Acres since he was in high school. He and Stephen each earned \$1329 per month in net income (\$15,948 annually). Michael's salary had never increased. He also received fringe benefits as a way to save money on income taxes. During their marriage, he and Rhoda never had to pay for their housing, gasoline for their personal vehicles, Michael's cellular phone, home repairs, automotive repairs, hay for the children's horses, or butchered meat (pork and beef). Staker's Acres also paid for the family's insurance—health and dental insurance premiums or out of pocket expenses for their family of five.

¶ 15 Michael's farming duties included raking hay, bailing hay, picking up hay, and hauling corn. He also did equipment repairs, drove the semi-trucks and tractor trailers, drove the combine, fed and watered the cattle, cared for the cattle, fixed fences, and cut firewood.

¶ 16 From 2001 to 2011, Michael also worked part-time for 3D Concrete, for a total of 9844 hours. He started at \$12.00 per hour and was making \$19.50 per hour by 2011. During his employment with 3D Concrete, Michael reduced his hours on the farm. He testified that he maintained his employment on the farm to justify the continued payment of his fringe benefits. Michael would deposit his 3D Concrete earnings into an account and only pay himself the \$1329 monthly salary that Staker's Acres would have paid him. He testified, "I took my paycheck out of [the 3D Concrete wages] instead of taking it from the corporation." If the amount of money he made from 3D Concrete was not enough to pay his monthly \$1329 net wages, then Staker's Acres would make up the difference. He did that in an effort to help Staker's Acres because the corporation was having problems and had to get through "the low prices of the hogs."

¶ 17 In 1998, Michael and Rhoda had purchased the Inglett farm for \$80,000 with a \$64,000 loan from Staker's Acres, which they have since had repaid. Inglett Farm was 140 acres, which had 92.7 tillable acres and a pasture. Initially, Staker's Acres made the loan and property tax payments on the Inglett farm in lieu of making rent payments for its use of the farmland. In 2010 the Inglett Farm mortgage was paid off, at which time Staker's Acres began paying \$12,000 per year in rent to Michael and Rhoda. Michael testified that Staker's Acres was paying \$180 to \$200 per acre to rent other farmland, and \$250 per acre "was around" the price paid to rent farmland in Mercer County and it could be more than that amount.

¶ 18 The value of Inglett Farm at the time of trial was \$1,045,000. Michael agreed that upon the dissolution of their marriage he would make a cash payment to Rhoda in the amount of \$522,950 to buy out her one-half interest in the Inglett Farm.

¶ 19 C. Valuation of Staker's Acres and Michael's Compensation

¶ 20 Terry Kilburg, a financial consultant hired by Michael, valued Staker's Acres at \$2,028,000. In valuing Michael's 33% interest of Staker's Acres, he discounted for the fact that Michael owned a minority interest in the corporation and for the fact that there was not an active market to the sell the corporation. Kilburg testified that the net market value of Michael's interest in the corporation was \$378,000. Rhoda's attorney objected to the discounts used in Kilburg's valuation of the corporation, arguing that the value of Michael's interest was \$1,074,370 as indicated in Rhoda's pretrial memorandum.

¶ 21 Monty Meyer, an accountant, was hired by Rhoda to provide an estimate of what Michael should have been paid from Staker's Acres. From information received from Rhoda, Meyer estimated that Michael usually worked 50 to 60 hours per week in the off season and 62 to 72 hours per week in the spring and fall—2592 to 3072 hours per year. According to Meyer, the 2011 federal minimum wage was \$7.25 per hour, the 2010 median pay for farm managers was \$29.21, and the 2012 median pay for farm laborers was \$9.09. Meyer determined Michael started out earning \$5.56 per hour in 1987 and earned up to \$12.79 per hour throughout the course of his 28 years with Staker's Acres. Estimating fair wages for Michael (\$10-\$20 per hour) and considering his fringe benefits, Meyer determined that Michael was undercompensated for his work toward the growth of Staker's Acres.

¶ 22 Specifically, deducting for the hours Michael worked at 3D Concrete and considering Michaels's fringe benefits, Meyer determined that over the 25 years Michael had worked for

Staker's Acres, Michael was overcompensated by \$116,508 if Michael had only worked 2592 hours per year at a pay rate of \$10 per hour, but was undercompensated by \$8292 if Michael worked 3072 hours per year at pay rate \$10 per hour. If he were paid at a \$15 per hour pay rate for 2592 to 3072 hours of work per year, Michael was undercompensated between \$167,227 to \$354,427. If he were paid \$20 per hour for 2592 to 3072 hours of work per year, Michael was undercompensated between \$450,962 to \$700,562.

¶ 23 Meyer also determined that the parties had been paid below market value in rent for Inglett farm and were underpaid approximately \$133,000 over the course of the 15 years that Staker's Acres rented Inglett Farm. The \$133,000 figure did not consider the amount of income taxes that they would have paid on the extra rent income.

¶ 24 Each party submitted exhibits. Balance sheets showed a fair market value of Staker's Acres of \$1,541,128 as of May 31, 2007, and that it steadily grew in value to \$3,404,959 by the end of 2013.

¶ 25 D. Testimony of Rhoda Staker

¶ 26 Rhoda testified that Michael worked and she took care of the kids during the marriage. Rhoda did most of the household chores, cooking, cleaning and laundry. In 2002, Rhoda began working fulltime outside the home.

¶ 27 Rhoda testified that Michael was involved in all aspects of the farming—"whatever it takes." Rhoda testified that Michael worked an average of 60 hours per week during the off season and 72 hours per week during four months of year (two months of the spring and two months of the fall). It was not unusual for him to leave at 7 a.m. or 8 a.m. and return after 6 p.m., six days per week. She described Michael as "a hard working man." Michael did not

receive more than \$1329 per month plus fringe benefits from Staker's Acres. Rhoda testified that the plan was to build Staker's Acres "so that later on in life it would pay off."

¶ 28 In 2002, Michael made more than \$1329 from 3D Concrete so she and Michael paid part of the mortgage for Inglett Farm and Staker's Acres made the remaining mortgage payments as its rent payments for use of the farm that year. In 2005, Michael made enough from 3D Concrete to pay the entire mortgage for the year so that Staker's Acres did not have to make any payments.

¶ 29 Evidence offered by Rhoda indicated that Staker's Acres paid a total of \$137,372 to rent Inglett Farm from 1998 to 2013, which included \$12,000 per year after the mortgage was paid off in 2010. Staker's Acres also paid the property taxes (\$28,565) during that time. Rhoda testified that \$250 per acre would have been fair rent for farmland in the area.

¶ 30

E. Trial Court's Ruling

¶ 31

At trial, Rhoda argued the marital estate should be reimbursed for Michael's personal efforts on Staker's Acres and for the underpayment of rent for Inglett Farm. Michael argued that Rhoda failed to prove her reimbursement claims. The trial court's order indicated that Michael's personal efforts were under compensated by \$450,962 and that the parties had been undercompensated by \$133,776 for rent from Staker's Acres for the its use of Inglett Farm. After considering that Rhoda was retaining her 401(k) plan of \$86,085.32, Michael was retaining his life insurance policies with a total cash value of \$45,496, and Michael was to pay Rhoda \$522,950 for her one-half interest in the Inglett Farm, the trial court ordered that Michael pay Rhoda an equalization payment of \$272,074.34.

¶ 32

Michael appealed.

¶ 33

ANALYSIS

¶ 34 On appeal, Michael contests the portion of the trial court’s judgment regarding the reimbursement to the marital estate for the under compensation of his personal efforts that enhanced the value of his non-marital property (his share of Staker’s Acres) and the reimbursement for the below market rent paid by Staker’s Acres for the parties’ farmland (Inglett Farm). Rhoda argues that the trial court’s rulings regarding reimbursements to the marital estate should be affirmed.

¶ 35 Under the Illinois Marriage and Dissolution of Marriage Act, marital property means all property, including debts and obligations, acquired by either spouse subsequent to the marriage, except for non-marital property—non-marital property includes property acquired by gift. 735 ILCS 5/503(a) (West 2014). All property acquired by either spouse after the marriage and prior to a judgment of dissolution of marriage is presumed to be marital property. 735 ILCS 5/503(b)(1) (West 2014). When one spouse contributes personal efforts to non-marital property, it shall be deemed a contribution from the marital estate, which shall be reimbursed for those personal efforts if the efforts were significant and result in substantial appreciation to the non-marital property. 735 ILCS 5/503(c)(2) (West 2014).

¶ 36 A trial court’s factual findings in a dissolution of marriage proceedings—such as the classification of property as marital or marital, the fair market value of property, whether reimbursement is appropriate, or whether dissipation has occurred—will not be reversed unless the findings are against the manifest weight of the evidence. *In re Marriage of Dhillon*, 2014 IL App (3d) 130653, ¶¶ 29, 46. A finding is against the manifest weight of the evidence only if it is clear from the record that the trial court should have reached the opposite conclusion or if the finding is arbitrary, unreasonable, or not based upon the evidence presented. *Id.* ¶ 29 (citing *Best*

v. Best, 223 Ill. 2d 342, 350 (2006)). The burden of proof to establish that reimbursement is appropriate is on the party seeking reimbursement. *Id.* ¶ 46.

¶ 37 In this case, Michael first argues that Rhoda failed to prove that his personal efforts resulted in substantial appreciation of his share of Staker’s Acres or that he had received unreasonably low compensation for those personal efforts. The evidence showed that while Michael was compensated for some of his personal efforts with a \$1329 monthly salary and fringe benefits, he was not fully compensated for a significant portion of those efforts that resulted in a substantial growth in value of Staker’s Acres. The evidence indicated that Michael worked for another company for over a decade so that he could earn extra income for the benefit of Staker’s Acres while it was experiencing hard times. Michael worked for the other company while continuing to do “whatever it t[ook]” for Staker’s Acres to accomplish its farming operations and grow in value. There was no dispute that Michael worked long hours—approximately 2592 to 3072 hours per year. The fair market value of Staker’s Acres in 2013 at over \$3,000,000 was undoubtedly due to the concerted substantial efforts of Michael, Stephen, and Bill to leave portions of their reasonable compensation in the company so that the company could grow in value. Thus, the trial court’s finding that the Michael’s personal efforts were significant and resulted in a substantial appreciation to the value of Staker’s Acres, and thereby Michael’s share, so as to entitle the marital estate to reimbursement, was not against the manifest weight of the evidence.

¶ 38 However, we find the trial court did err in determining the amount of the reimbursement for Michael’s personal efforts. Rhoda’s expert provided the value of Michael’s undercompensated efforts based on various rates of pay (\$10, \$15 or \$20 per hour) and a range of hours that Michael likely worked in a given year (from 2592 to 3072 hours per year).

According to Rhoda's expert, if Michael had been paid \$20 per hour for 2592 hours of work per year (the most conservative estimate of hours worked per year), then Michael's efforts were undercompensated by \$450,962. It appears that most of Michael's work was that of a farmhand, not of a farm manager. Rhoda's expert indicated farmhands typically earned a median rate of pay of \$9 per hour as of 2012 and farm managers earned a median rate of pay of close to \$30 per hour. Thus, the under compensation figure of \$450,962 is high in light of the \$9 per hour median pay rate for a farmhand, even though the figure was computed at the low end of the estimated hours that Michael worked per year. The reimbursement figure of \$450,962 is against the manifest weight of the evidence for the reimbursement of personal efforts over the past 25 years for work as a farmhand. Given the evidence presented, the trial court's finding that Michael's personal efforts were undercompensated by \$450,962 was against the manifest weight of the evidence. Therefore, we remand for the trial court to recalculate the amount of reimbursement for Michael's personal efforts.

¶ 39 Michael next contends that Rhoda failed to prove the marital estate was entitled to reimbursement of \$133,776 for the below market rent that Staker's Acres paid to the parties' to rent Inglett Farm. There is no dispute that Staker's Acres paid less than fair market value for renting the parties' Inglett Farm in an effort to grow value in Staker's Acres. Staker's Acres had paid approximately \$137,372 in rent and an additional \$28,565 in property taxes for the rental of Inglett Farm. Thus, in total, with the trial court's ordered reimbursement payment of \$133,776, Staker's Acres will have paid \$299,713 to rent the 92.7 tillable acres and the pasture on Inglett Farm for 15 years, which is approximately \$212 per tillable acre plus the use of a pasture. Michael testified that the corporation paid \$180 to \$200 per acre for the rental of other farmland and that farmland in Mercer County could be rented for \$250 per acre. Rhoda testified that \$250

per acre would be more than fair for farmland rent in the area. Therefore, the trial court's finding that the amount of reimbursement to the marital estate in the amount of \$133,776 for the Inglett Farm rental was not against the manifest weight of the evidence.

¶ 40 Accordingly, we reverse and remand for the recalculation of the reimbursement amount for Michael's personal efforts and affirm the other matters.

¶ 41 CONCLUSION

¶ 42 The judgment of the circuit court of Mercer County is reversed in part and affirmed in part, and this cause is remanded with directions.

¶ 43 Affirmed in part and reversed in part; cause remanded with directions.

¶ 44 PRESIDING JUSTICE HOLDRIDGE, concurring in part and dissenting in part.

¶ 45 I join that portion of the majority's judgment holding that the marital estate was entitled to reimbursement of \$133,776 for the below market rent that Staker's Acres paid to the parties to rent Inglett Farm. However, I dissent from the majority's conclusion that the marital estate was entitled to reimbursement for Michael's personal efforts toward increasing the value of his non-marital property (*i.e.*, his share of Staker's Acres). To obtain reimbursement for the marital estate on that basis, Rhoda bore the burden of proving that the value of Staker's Acres had "substantially appreciated" as a result of Michael's significant personal efforts. *In re Marriage of Eddy*, 210 Ill. App. 3d 450, 458 (1991); 735 ILCS 5/503(c) (West 2014). Only the appreciation resulting from Michael's significant personal efforts would entitle the marital estate to reimbursement, "not the appreciation which results from inflation or other factors external to the marriage." *In re Marriage of Jelinek*, 244 Ill. App. 3d 496, 507 (1993); see also *Eddy*, 210 Ill. App. 3d at 458; *In re Marriage of Morse*, 143 Ill. App. 3d 849 (1986).

¶ 46 In this case, Rhoda presented no evidence suggesting that Michael's personal efforts or contributions resulted in a substantial appreciation of Staker's Acres. The evidence shows that Michael worked long hours at the farm, that he left some of his compensation in the company, and that the company increased in value during the parties' marriage. However, this does not prove that the appreciation of Michael's stock in the company (or any specific portion of that appreciation) was due to Michael's personal efforts as opposed to other factors external to the marriage, such as inflation, an appreciation in the value of farmland in the region, or the efforts of Michael's father and brother. In his expert appraiser's report, Mr. Young stated that farmland values have increased 800% since 1987 due to low interest rates and high demand. Moreover, as the majority notes, Michael was merely a farmhand, not a farm manager. It seems safe to assume that the efforts of Michael's father and brother, who managed the farm and presumably retained a greater amount of earnings in the company, played a far greater role in the appreciation of the company than did Michael's efforts.

¶ 47 In my view, the record evidence does not support a reasonable inference that any substantial increase in the company's value was due to Michael's personal efforts.¹ I would therefore reverse.

¹ Rhoda notes that the company's 2013 corporate balance sheet indicates that only \$376,207.00 of the approximately \$2 million in appreciation since 2007 may have been attributable to an appreciation in land values. However, even assuming the truth of that statement, Rhoda presented no evidence suggesting that the remainder of the appreciation (or any portion thereof) was due to Michael's efforts, as opposed to his brother's and father's efforts. Rhoda therefore failed to carry her burden of proof on this issue.