

NOTICE

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FILED

December 22, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160381-U

NO. 4-16-0381

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from
ROBERT DAMBACHER,)	Circuit Court of
Petitioner-Appellant,)	Sangamon County
and)	No. 10D661
CHERYL DAMBACHER,)	
Respondent-Appellee.)	Honorable
)	Esteban F. Sanchez,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court. Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* In a dissolution of marriage action, the circuit court had subject-matter jurisdiction to dissolve a corporation for which the parties were the majority shareholders. Also, the circuit court did not err by awarding the wife the marital residence and ordering the husband to pay a portion of her attorney fees.

¶ 2 In August 2010, petitioner, Robert Dambacher, filed a petition for the dissolution of his marriage to respondent, Cheryl Dambacher. The largest marital asset was 4-D Grain Farms, Ltd. (the Family Corporation), an S corporation, and the parties each held 35.02% of its shares. In the March 2016 dissolution of marriage judgment, the Sangamon County circuit court awarded the parties their respective shares in the Family Corporation. However, based on the facts presented, the court found it prudent to require the parties to “voluntarily” dissolve the Family Corporation, liquidate its assets, pay its debts, and divide the proceeds among the shareholders according to the percentage of stocks owned by each shareholder. The court also

awarded the marital residence to Cheryl and ordered Robert to pay a portion of Cheryl's attorney fees.

¶ 3 Robert appeals, asserting the circuit court (1) lacked jurisdiction to dissolve the Family Corporation, (2) erred by awarding the marital residence to Cheryl, and (3) erred by ordering Robert to pay a portion of Cheryl's attorney fees. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Robert and Cheryl married in June 1965. They had two sons, Scott Dambacher and Arthur Dambacher (Sons). During their marriage, the parties started their own farming operation. Robert primarily worked the fields, and Cheryl kept the books and performed other business-related activities for the farm. At some point after Robert's 1995 diagnosis of Parkinson's disease, the Sons took over Robert's role in the farming operations. In 1997, the parties incorporated their farming business and created the Family Corporation. The parties and the Sons were the only shareholders of the Family Corporation. At the time of the dissolution of marriage, the parties each held 35.02% of the shares, and the Sons each held 14.98% of the shares. The corporation owned three farms, farming equipment and machinery, and grain in storage.

¶ 6 Robert's August 2010 petition for dissolution of the parties' marriage requested a fair and equitable division of the marital assets and assignment of debts. The next month, the circuit court entered a temporary order, requiring, *inter alia*, (1) Robert to reinstate Cheryl as an authorized signer on the Family Corporation's checking account at Illini Bank; (2) the parties to continue running the Family Corporation; (3) the parties to not distribute money from the Family Corporation for personal use, except for the salaries of the shareholders and a monthly \$1800 distribution to Cheryl (later amended to Cheryl and Robert each receiving a monthly \$1000

distribution); (4) Robert to take any actions necessary to return all property to the form of ownership it was in just prior to the dissolution petition; and (5) the parties to keep the Family Corporation and its assets titled in such a manner as to not deprive Cheryl of her marital interest in the Family Corporation. After an October 2010 hearing, the court ordered, *inter alia*, Cheryl to remain an authorized signer on the Family Corporation's account at Illini Bank and the parties to cause a resolution to be approved by the Family Corporation's shareholders and directors that all Family Corporation income must be deposited and all legitimate corporate expenses paid from the account at Illini Bank.

¶ 7 In July 2011, the Sons filed their first petition to intervene in this case, asserting they were owners and shareholders in the Family Corporation, which was part of the marital estate subject to division between the parties. Cheryl filed a response, opposing the motion. At a September 2012 status hearing, the Sons withdrew their first petition to intervene.

¶ 8 On Cheryl's petition for interim relief, the circuit court entered an April 2013 order giving Cheryl the rights and powers of the holder of all shares of the Family Corporation held in Robert's name. The court noted that, if the relief was not granted, Cheryl would suffer irreparable harm, and the relief would preserve the status quo of the marital estate. Robert filed a motion to reconsider, which the court denied.

¶ 9 The Family Corporation continued to be an issue, and Robert filed a December 2013 petition for a temporary restraining order against Cheryl, asserting she was acting in her own self-interest in regard to the Family Corporation and not what was in the corporation's best interests. The record indicates the court never ruled on this petition. In June 2014, Cheryl filed a motion for additional interim relief, which included a motion for an order clarifying her powers as president of the Family Corporation. In the motion for additional interim relief, Cheryl noted

the Sons had filed an action against the parties for claims arising from a trust for which Robert was the trustee (Dambacher v. Dambacher, No. 13-L-255 (Cir. Ct. Sangamon Co.)). In his reply, Robert noted the Sons had also filed a motion for preliminary injunctions and a temporary restraining order in a separate case (Dambacher v. Dambacher, No. 14-CH-252 (Cir. Ct. Sangamon Co.)). Additionally, Robert objected to the motion to clarify because it was directed toward the Sons, and thus the court lacked jurisdiction to grant it. On July 25, 2014, the circuit court entered an order specifying the powers Cheryl could exercise as president of the Family Corporation. Those powers included the ability to take certain actions against the Sons.

¶ 10 In July 2014, Robert sought leave to file an amended petition for dissolution of marriage, which the circuit court allowed. Robert's amended petition for dissolution raised an issue of dissipation. On August 11, 2014, the circuit court commenced the lengthy hearing on Robert's amended petition for dissolution of the parties' marriage, and the parties stipulated to the grounds for dissolution. Over a six-month period, the court heard evidence on 10 days with the last day being in February 2015.

¶ 11 At the hearing, Robert testified on his own behalf, called Cheryl as an adverse witness, and presented the testimony of the following: Eric Hjerpe, the certified public accountant for the Family Corporation; John Leverenz, a client of Cheryl's; Arthur; Robert Patrick Bell, who traveled with Cheryl; Charles Jessup, executive vice president of United Community Bank; and Erica Dambacher, the parties' granddaughter. Robert also presented numerous exhibits. Cheryl testified on her own behalf; called Robert as an adverse witness; and presented the testimony of Arthur, as well as Barry Hines, Cheryl's attorney in a matter involving the Family Corporation. Cheryl also presented numerous exhibits. In February 2015, the parties rested, and the court allowed the parties to file written closing arguments. The

evidence relevant to the issues on appeal is set forth below.

¶ 12 Robert testified he was 69 years old (he turned 70 during the hearing) and had been in a wheelchair since he fell and broke his hip about 1 1/2 years before the hearing. After that fall, he stayed in a nursing home for five to six weeks. The marital residence was constructed in 1995 and designed by Cheryl. He had remained living in the home after the parties' separation. In 2010, the home was appraised at \$161,000. Since then, the condition of the home had deteriorated. A leak developed in the roof, which resulted in water damage to the living room ceiling. The roof was patched. In 2013, the home was appraised at \$141,000. Robert desired to remain living in the marital residence because it was only three or four houses away from Scott and his family. He had been paying the mortgage by himself for the last three to four years. Before then, Cheryl had only made interest payments on the mortgage. Robert had not looked into getting the mortgage on the home refinanced into only his name.

¶ 13 Due to his Parkinson's disease, Robert did not work. He had been a farmer most of his life. Robert's monthly income included \$1937.50 from social security and \$1000 from the Family Corporation. The monthly mortgage payment on the marital home was \$732.62, and Robert's other monthly expenses totaled \$1697.66. In addition to his interest in the marital home and the Family Corporation, Robert had an individual retirement account with a balance of \$13,504.31 and three bank accounts with a combined balance of \$31,642.91. Robert's mother died in 2006, and he inherited a farm from her. In September 2013, Robert gifted his mother's farm to the Sons. The farm had been appraised at \$2,135,500. Robert testified he gave the farm to the Sons due to his failing health. He did not inform Cheryl or her attorney of the transfer.

¶ 14 Cheryl testified she was 67 years old and lived with her mother in a condominium across the street from the marital residence. In addition to helping out with the family farming

operations, Cheryl worked as a real estate agent for Charles Robbins and became an independent real estate agent in 2012. Her monthly income included \$3434 from her real estate job, \$1000 from the Family Corporation, and \$1198 in Social Security. If she was awarded the marital home, her monthly expenses would total \$5340.42. Cheryl's debts as of January 2015 were the following: (1) \$6100 to Bank of America (credit card debt); (2) \$9459 to Charles Robbins Realtors (expenses related to previous employment); (3) \$10,000 to Art Seppi (personal loan from her brother to pay legal fees); (4) \$8128 to American Honda (car loan); (5) \$10,000 to United Community Bank (personal loan); (6) \$66,942 to United Community Bank (mortgage on marital residence); (7) \$102,600 to Cherry Law Office (current attorney in this case); (8) \$13,000 to Segatto Law Office (attorney in the lawsuits brought by the Sons); and (9) \$17,341 to Sorling Law Office (former attorney in this case). In addition to her interests in the marital residence and the Family Corporation, Cheryl owned a car with a value of \$22,000 and had a retirement account with a value of \$78,750. Her real estate checking account had a balance of \$13,728.33, and the parties' savings account had a balance of \$773. Additionally, Cheryl's ownership interest in Wilbach, a subdivision development corporation, had a negative value.

¶ 15 Cheryl designed and built the marital residence in 1997. The second mortgage on the home had been paid off, and the first mortgage had a balance of around \$67,000. Robert had not maintained the home, and it needed work. The furnace, air conditioner and water heater would need to be replaced in the near future. The home's roof and carpeting currently needed to be replaced. Cheryl was unaware of any changes made to the home to accommodate Robert's physical condition. Additionally, Robert had asked Cheryl to pay half of the second installment of real estate taxes for 2013, and she declined, as the court had ordered Robert to pay the expenses related to the home.

¶ 16 In February 2015, the parties rested, and the circuit court allowed the parties to file written closing arguments. In his brief, Robert asserted the circuit court did not have jurisdiction to order the sale of the Family Corporation's assets and argued the dissolution of the corporation was before a different judge in case No. 14-CH-252. Cheryl asserted the Family Corporation needed to be liquidated to provide the parties with adequate money now and in the future, as the parties were each only receiving \$1000 per month from the corporation. She also noted the parties' ages and the conflict and litigation related to the Family Corporation that had gone on during the proceedings. Robert filed a reply brief and again asserted the Family Corporation was before the court in the other case. He further argued Cheryl could sell her shares instead of having the Family Corporation dissolved. Additionally, he argued it would be a due process violation to dissolve the Family Corporation because the Sons did not have an opportunity to be heard and present a defense. In February 2016, Robert filed a motion to vacate the court's April 2013 interim order, which allowed Cheryl to exercise Robert's voting rights in the Family Corporation. Cheryl filed a response objecting to Robert's request. Robert later withdrew his motion to vacate. Both parties requested possession of the marital residence.

¶ 17 On March 2, 2016, the circuit court entered the judgment of dissolution. The court awarded the parties their shares of stock in the Family Corporation. The court further found that, "under the circumstances of the case, it was necessary, reasonable, and prudent to require Robert and Cheryl, as majority shareholders, to voluntarily dissolve the corporation and liquidate the corporate assets, pay the debts of the corporation and divide the proceeds among the shareholders according to the percentage of stock owned by each shareholder." See, *e.g.*, 805 ILCS 5/12.15 (West 2010). The court explained that, during the course of the litigation, Robert and the Sons had engaged in a course of conduct in relation to the operation and management of

the Family Corporation which the court believed was to isolate and remove Cheryl from the business and to diminish her financial stake in the Family Corporation and marital estate. The court also noted Robert and the Sons relationship with Cheryl, both individually and collectively, was hostile and confrontational. Additionally, the court explained how Robert could have avoided the dissolution of the Family Corporation by using his nonmarital farm as collateral for a loan to purchase Cheryl's share, but he gave the farm away to the Sons. The court also ordered all temporary orders previously entered regarding the Family Corporation to remain in effect until the Family Corporation was dissolved.

¶ 18 The dissolution of marriage judgment also awarded the marital residence to Cheryl. The court noted Robert had lived in the home by himself since the parties' separation, and due to his declining health, Robert had not been able to keep up with the maintenance of the property. It also found that Robert would likely need to move into a nursing home or assisted living facility soon, as he was confined to a wheelchair and needed attention 24 hours a day. Additionally, Cheryl did not have a home of her own and was physically able to provide adequate upkeep and maintenance of the home.

¶ 19 Additionally, under the dissolution of marriage judgment, Robert was ordered to pay 40% of Cheryl's legal fees to date. The circuit court found that amount was appropriate because roughly 40% of the total fees charged by Cheryl's attorney were the result of Robert and the Sons' conduct. The court noted the three "have engaged in a course of conduct which has caused unnecessary delays, have interfered with, and at times obstructed, the progress of this litigation by creating a number of side issues requiring additional discovery, research, and litigation for Cheryl." Among other things, the court found Robert had encouraged and endorsed the Sons to file two separate lawsuits against Cheryl that had directly impacted the dissolution of

marriage litigation.

¶ 20 On March 14, 2016, the Sons filed a second petition to intervene. In the petition, the Sons argued the circuit court exceeded its jurisdiction under the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/101 *et seq.* (West 2010)) when it ordered the dissolution of the Family Corporation. They sought to file a motion to vacate the temporary orders and judgment, as well as a memorandum in support of the motion to vacate. Cheryl filed a response to the motion to intervene, arguing the Sons' petition was untimely and the court did have subject-matter jurisdiction. Robert filed a response, asking the court to allow the Sons' petition to intervene. After a March 31, 2016, hearing, the circuit court denied the Sons' motion to intervene, finding it was not timely filed. The court also noted the Sons' assertion the court lacked jurisdiction was not well taken and not supported by the law.

¶ 21 In March 2016, Robert filed a posttrial motion, asserting, *inter alia*, the circuit court did not have the jurisdiction to dissolve and liquidate the Family Corporation and the court's doing so was contrary to fact and law, against the manifest weight of the evidence, and an abuse of discretion. Robert also filed multiple motions to vacate the temporary orders and to restore his voting rights in the Family Corporation. Cheryl also filed a posttrial motion.

¶ 22 After an April 22, 2017, hearing, the circuit court denied Robert's posttrial motions and granted in part and denied in part Cheryl's posttrial motion. The court also filed an amended dissolution judgment on that date. In the amended judgment, the court specifically ordered Robert to pay \$76,800 of Cheryl's attorney fees. In May 2017, the court denied a request to direct the Family Corporation's board of directors and officers to conduct farming operations for 2016. The court noted it was not in a position to direct the day-to-day operations of the corporation. Moreover, the court noted conducting farming operations was contrary to the

court's intent to dissolve the Family Corporation and sell its assets as soon as possible. The record indicates Robert signed the resolution of dissolution for the Family Corporation on May 24, 2016.

¶ 23 On May 18, 2016, Robert timely filed his notice of appeal from the circuit court's April 22, 2016, denial of his postjudgment motion and the amended dissolution judgment in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). Accordingly, this court has jurisdiction of Robert's appeal under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). Cheryl did file a notice of cross-appeal, but this court dismissed her cross-appeal at her request in February 2017. Additionally, the Sons filed a separate appeal from the denial of their second petition to intervene. *In re Marriage of Dambacher*, 2017 IL App (4th) 160558-U. In July 2016, the circuit court denied Robert's request to stay the dissolution of judgment pending the appeal. Last, we note Robert passed away while this appeal was pending.

¶ 24 II. ANALYSIS

¶ 25 A. Jurisdiction

¶ 26 We discern Robert's first argument to be the circuit court lacked jurisdiction to dissolve the Family Corporation because it exceeded its statutory authority under the Dissolution Act. Specifically, he contends the Family Corporation could only be dissolved under section 12.56 of the Business Corporation Act of 1983 (805 ILCS 5/12.56 (West 2010)). An argument challenging the circuit court's subject-matter jurisdiction "presents a question of law that this court reviews *de novo*." *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 294, 948 N.E.2d 1, 10 (2010).

¶ 27 Our supreme court has emphasized a court's failure to comply with a statutory requirement or prerequisite does not negate its subject-matter jurisdiction. *People v.*

Castleberry, 2015 IL 116916, ¶ 15, 43 N.E.3d 932. Our state constitution dictates a circuit court's subject-matter jurisdiction (*Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334, 770 N.E.2d 177, 184 (2002)) and provides that jurisdiction extends to all “justiciable matters” (Ill. Const. 1970, art. VI, § 9). Thus, to invoke a circuit court’s subject-matter jurisdiction, a case must present a justiciable matter. *Belleville Toyota, Inc.*, 199 Ill. 2d at 334, 770 N.E.2d at 184. “Generally, a ‘justiciable matter’ is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.” *Belleville Toyota, Inc.*, 199 Ill. 2d at 335, 770 N.E.2d at 184. Here, the dissolution of the parties’ marriage was a justiciable matter and any alleged statutory violation did not deprive the circuit court of subject-matter jurisdiction.

¶ 28

B. Circuit Court’s Authority

¶ 29 Robert also argues the circuit court lacked the legal authority to dissolve the Family Corporation. Cheryl disagrees. Whether the circuit court had the legal authority to dissolve the Family Corporation is a question of law, which we review *de novo*. See *In re Marriage of Osborne*, 327 Ill. App. 3d 249, 251, 763 N.E.2d 855, 857 (2002).

¶ 30 The Dissolution Act grants the circuit court’s broad powers in allocating marital property. *In re Marriage of Panozzo*, 93 Ill. App. 3d 1085, 1090, 418 N.E.2d 16, 20 (1981); see also *In re Marriage of McNeeley*, 117 Ill. App. 3d 320, 326, 453 N.E.2d 748, 752 (1983) (noting the circuit court has broad discretion under the Dissolution Act to apportion the marital property). Section 503(i) of the Dissolution Act (750 ILCS 5/503(i) (West 2010) (text of section effective until July 1, 2011)) specifically provides “[t]he court may make such judgments affecting the marital property as may be just and may enforce such judgments by ordering a sale of marital property, with proceeds therefrom to be applied as determined by the court.” This

court has recognized section 503 of the Dissolution Act does not limit circuit courts to distributing marital assets and debts (750 ILCS 5/503(d) (West 1998)) and ordering that the assets be sold (750 ILCS 5/503(i) (West 1998)) because, “[t]o hold otherwise, would render the phrase in section 503(i), ‘such judgments affecting the marital property as may be just,’ mere surplusage.” *In re Marriage of Carter*, 317 Ill. App. 3d 546, 553, 740 N.E.2d 82, 87 (2000). Moreover, section 503(i)’s next phrase, “ ‘and may enforce such judgments by ordering a sale of marital property,’ ” gives more details on the circuit court's powers and does not limit them. *Carter*, 317 Ill. App. 3d at 553, 740 N.E.2d at 87 (quoting 750 ILCS 5/503(i) (West 1998)). Thus, the Dissolution Act grants the circuit courts broad discretion in accomplishing the allocation of marital property.

¶ 31 Additionally, Illinois courts have recognized one of the goals to be achieved in the allocation and division of property is “[f]inality, both to avoid future court intervention and to allow the parties to plan their futures with some certainty.” *In re Marriage of Moll*, 232 Ill. App. 3d 746, 757, 597 N.E.2d 1230, 1237 (1992). Specifically, “[a]n ongoing business association between former spouses, such as would have been required in the management of the farm property, is disadvantageous.” *Moll*, 232 Ill. App. 3d at 757, 597 N.E.2d at 1237. Additionally, it has been found the “[d]ivision of small businesses or closely held corporations is particularly disadvantageous where it would require ongoing business association between the parties and the record reflects animosity between the parties.” *In re Marriage of Sales*, 106 Ill. App. 3d 378, 381, 436 N.E.2d 23, 25 (1982). Given the broad discretion the Dissolution Act grants the circuit courts in allocating marital property and the Dissolution Act’s goal of finality that favors ending business associations between former spouses who cannot work together, we find the circuit court had the legal authority to require the parties, as majority shareholders, to voluntarily

dissolve the Family Corporation. We find the court’s use of the term “voluntarily” in requiring the dissolution to be insignificant in the analysis of whether the court had the legal authority to dissolve the corporation.

¶ 32 Moreover, to the extent Robert is arguing the circuit abused its discretion in dissolving the Family Corporation in allocating the marital property (see *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 700, 843 N.E.2d 478, 483 (2006) (finding the circuit court’s ultimate division of marital property is reviewed under the abuse-of-discretion standard of review), we do not find the circuit court abused its discretion by ordering the dissolution of the Family Corporation. The evidence clearly showed the parties could not cooperate in managing the Family Corporation, and they had no other significant assets that would have allowed one of them to buy the other one out.

¶ 33 C. Marital Residence

¶ 34 Robert next argued the circuit court erred by awarding the marital residence to Cheryl because he had Parkinson’s disease and had lived in the home since it was built. After Robert’s death, his estate waived this argument.

¶ 35 D. Attorney Fees

¶ 36 Robert last contends the circuit court erred by ordering him to pay a portion of Cheryl’s attorney fees. This court will not disturb the circuit court’s decision to award attorney fees absent an abuse of discretion. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 13.

Additionally, we review any factual finding by the circuit court under the manifest weight standard of review. See *In re Marriage of Saracco*, 2014 IL App (3d) 130741, ¶ 16, 22 N.E.3d 489. A finding is “against the manifest weight of the evidence when the opposite conclusion is apparent or when the ruling is unreasonably arbitrary or not based on the evidence.” *In re*

Marriage of Kendra, 351 Ill. App. 3d 826, 829, 815 N.E.2d 22, 24 (2004).

¶ 37 In awarding attorney fees under section 508(a) of the Dissolution Act, the circuit court “must (1) ‘consider[] the financial resources of the parties’ and (2) make its decision on a petition for contribution ‘in accordance with subsection (j) of Section 503.’ ” *In re Marriage of Heroy*, 2017 IL 120205, ¶ 19 (quoting 750 ILCS 5/508(a) (West 2014)). Section 503(j)(2) of the Dissolution Act (750 ILCS 5/503(j)(2) (West 2010) (text of section effective until July 1, 2011)) requires the court to consider the criteria for the division of marital property set forth in section 503(d) (750 ILCS 5/503(d) (West 2010) (text of section effective until July 1, 2011)). This court has found a party’s unnecessary increase in the cost of litigation is a relevant factor in the division of property under section 503(d). *In re Marriage of Haken*, 394 Ill. App. 3d 155, 161, 914 N.E.2d 739, 744 (2009).

¶ 38 Here, the circuit court ordered Robert to pay \$76,800 of Cheryl’s attorney fees, which was approximately 40% of Cheryl’s attorney fees. The court explained that was the percentage of Cheryl’s attorney fees that resulted from Robert’s and the Sons’ conduct which unnecessarily delayed and interfered with the proceedings. Without citation to the record, Robert contends the court’s aforementioned finding was not true and the only delays he caused were due to his Parkinson’s disease. Cheryl cites numerous, specific instances in the record where Robert was responsible for unnecessary delays. We have reviewed the record and find the circuit court’s conclusion was not against the manifest weight of the evidence.

¶ 39 Robert also argues the attorney fee award will destroy his financial stability. However, he does not explain his assertion and does not provide any citations to the appellate record in support of the argument. In its dissolution of marriage judgment, the circuit court noted that, during the dissolution of marriage proceedings, Robert had given his Sons farmland

