

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (4th) 170210-U

NO. 4-17-0210

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 13, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: MARRIAGE OF SHERI R. BRACKEN,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
and	)	Woodford County
JEREMY C. BRACKEN,	)	No. 16D22
Respondent-Appellant.	)	
	)	Honorable
	)	Charles M. Feeney III,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Appleton and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the trial court’s judgment denying respondent’s request for (1) maintenance, (2) reimbursement for nonmarital contributions to the marital estate, and (3) an unequal distribution of the marital estate.

¶ 2 In February 2012, petitioner, Sheri R. Bracken, and respondent, Jeremy C. Bracken, were married. In March 2016, Sheri filed a petition for dissolution of marriage. In April 2016, Jeremy filed a petition for temporary relief, requesting, among other things, temporary maintenance. In September 2016, defendant filed a motion seeking reimbursement of approximately \$51,000 in nonmarital assets that Jeremy had contributed to the marital estate by building an outbuilding on the site of the marital home.

¶ 3 Later in September 2016, the trial court conducted an evidentiary hearing on all pending issues. After the hearing, the trial court denied Jeremy’s request for maintenance. In November 2016, the court denied Jeremy’s request for reimbursement of his contribution to the

marital estate, concluding that his contribution was a gift. In December 2016 the court distributed the marital estate according to the parties' agreed proposal.

¶ 4 Jeremy appeals, arguing that the trial court erred by (1) denying Jeremy maintenance; (2) denying Jeremy's request for a \$51,000 reimbursement from the marital estate; and (3) distributing the marital estate without awarding Jeremy an additional \$51,000 in reimbursement. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In February 2012, Sheri and Jeremy were married. The marriage produced no children.

¶ 7 In March 2016, Sheri filed a petition for dissolution of marriage. In April 2016, Jeremy filed a response, which included a request for temporary maintenance.

¶ 8 A bystander's report contained in the record provides that in September 2016, the trial court conducted an evidentiary hearing to determine whether Jeremy was entitled to (1) maintenance and (2) reimbursement of his \$51,000 contribution to the marital estate. In addition to testimony, the court admitted certain exhibits into evidence, including several documents establishing the parties' income, assets, and liabilities.

¶ 9 According to the bystander's report, at the September 2016 hearing, Jeremy testified that in October 2013, he received approximately \$51,000 from the sale of a house in Peoria that he acquired before the marriage. He and Sheri agreed to use that money to build an outbuilding on the site of the marital residence to store equipment for Jeremy's disc-jockey business. Jeremy did not tell Sheri that he expected to be reimbursed for contributing \$51,000 for the outbuilding.

¶ 10 Jeremy testified further that the parties maintained separate bank accounts

throughout the marriage. Jeremy asserted that he recently returned to school, that his disc-jockey business had slowed and that he was unable to support the lifestyle maintained during the marriage without Sheri's income.

¶ 11 Sheri testified that she earned a base salary of \$118,378 in 2016 working for a pharmaceutical company. Other evidence showed that Sheri received an additional \$23,797.56 from bonuses and other sources.

¶ 12 Jeremy introduced an agreed distribution of marital assets. The parties' sole disagreement as to distribution of assets was whether Jeremy should receive an additional \$51,000 for his contribution to the marital estate. Another exhibit showed that Jeremy's gross income from his 2015 tax return was \$45,713. Sheri testified that she refused to file a joint return with Jeremy because "she did not agree with Jeremy's business deductions."

¶ 13 At the conclusion of the hearing, the trial court denied Jeremy's request for maintenance.

¶ 14 In November 2016, the trial court entered a written order, in which it determined that neither party was entitled to a reimbursement for contributions to the marital estate. The court found that the Peoria house was Jeremy's nonmarital property and that the \$51,000 in proceeds he received when he sold that house during the marriage remained nonmarital property under section 503(a)(2) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/503(a)(2) (West 2016)). The court found further that Jeremy later contributed the \$51,000 to improvements of the marital estate, which resulted in a "loss of identity" of those proceeds. Those proceeds therefore became part of the marital estate under section 503(c)(1) of the Dissolution Act (750 ILCS 5/503(c)(1) (West 2016)). The court determined that the \$51,000 contribution to the marital estate was a gift. Therefore, Jeremy was not entitled to reimbursement

under section 503(c)(2) of the Dissolution Act (750 ILCS 5/503(c)(2) (West 2016)).

¶ 15 The trial court found further that during the marriage, the parties maintained separate bank accounts. They divided their bills and each paid “their share” of expenses. The court opined that the parties’ financial relationship “more resembled roommates than a married couple.”

¶ 16 In December 2016, the trial court entered a written judgment of dissolution, incorporating its prior rulings, which denied maintenance and reimbursement. In addition, the court adopted the parties’ agreed distribution of assets.

¶ 17 Under the agreed distribution of assets, Jeremy received approximately \$86,000 in net marital assets, while Sheri received approximately \$63,700. The discrepancy resulted from Sheri’s decision to accept the entirety of her student-loan debt taken on during the marriage. Jeremy received nonmarital assets, including his disc-jockey business, valued at \$46,888.25. Sheri received nonmarital assets of \$6,684.41 and nonmarital student-loan debt of \$38,461.10.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Defendant argues that the trial court erred by (1) denying Jeremy maintenance; (2) denying Jeremy’s request for a \$51,000 reimbursement from the marital estate; and (3) distributing the marital estate without awarding Jeremy an additional \$51,000. We disagree and affirm.

¶ 21 A. Maintenance

¶ 22 1. *Statutory Language and the Standard of Review*

¶ 23 Section 504(a) of the Dissolution Act (750 ILCS 5/504(a) (West 2016)) provides that in a dissolution of marriage proceeding, the trial court “may grant” maintenance in an amount and for a period of time “as the court deems just.” Section 504(a) provides when deter-

mining whether a maintenance award is appropriate, a court shall consider all the relevant factors, including the following:

- (1) the income, property, and financial obligations of each party;
- (2) the needs of each party;
- (3) the present and future earning capacity of each party;
- (4) any impairment to the earning capacity of the party seeking maintenance because that party devoted time to domestic duties or otherwise forewent career opportunities because of the marriage;
- (5) any impairment to the earning capacity of the party against whom maintenance is sought;
- (6) the time necessary for the party seeking maintenance to become self-supporting;
- (7) the standard of living established during the marriage;
- (8) the duration of the marriage;
- (9) the “age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs” of each party (750 ILCS 5/504(a) (West 2016));
- (10) all sources of income;
- (11) the tax consequences of the distribution of marital property;
- (12) contributions of the party seeking maintenance to the education, training, and career of the other party;
- (13) any valid agreement of the parties;
- (14) any other factor that the court expressly finds just and equitable.

When determining whether a maintenance award is appropriate, the court shall state its reasoning and make specific findings of fact referencing each relevant factor from section 504(a). 750 ILCS 5/504(b-2) (West 2016). If the court concludes that maintenance is appropriate, the court shall then determine the duration and amount of maintenance according to section 504(b-1) of the Act (750 ILCS 5/504(b-1) (West 2016)).

¶ 24 We will not disturb a trial court’s maintenance decision unless it is an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005). A court abuses its discretion only when no reasonable person would take the view adopted by the trial court. *Id.*

¶ 25 *2. The Maintenance Decision in This Case*

¶ 26 In this case, the trial court made an oral ruling denying Jeremy’s request for maintenance at the conclusion of the September 2016 hearing. The bystander’s report of that hearing does not describe the court’s reasoning or its findings of fact concerning the section 504(a) factors. The court’s written December 2016 order incorporated its earlier oral decision to deny maintenance. That order does not describe the court’s reasoning but does provide that the court denied maintenance “after consideration of all relevant factors listed under [section 504(a) of the Act].”

¶ 27 Although we are not privy to the trial court’s reasoning, we conclude that the facts in the record establish that the court did not abuse its discretion by denying Jeremy’s request for maintenance.

¶ 28 The evidence in this case established that both parties had steady incomes, but Sheri earned more than Jeremy. Jeremy received a larger share of the marital property, in addition to receiving nearly \$50,000 in nonmarital property. Sheri received nonmarital student-loan

debt of nearly \$40,000. Sheri's needs had increased because her cost of living was higher in New York, where she now lived. The record is unclear about the future earning capacities of Jeremy and Sheri. Jeremy argued that he had recently returned to school to further his education. (It is unclear what Jeremy was studying or what his expected income might be.) Sheri had recently lost her job and moved to New York to accept a similar position at her former employer's headquarters, although her potential for bonuses had decreased. Little evidence in the record shows the parties' lifestyle, other than evidence showing that they honeymooned in Mexico, once took a vacation to Thailand, and lived in a home in Metamora, Illinois, which sold for \$320,000. The duration of the marriage was short—less than 5 years. The parties were in their thirties at the time of dissolution, and nothing in the record suggested that either party suffered from debilitating health problems.

¶ 29 After considering the relevant factors discussed above, we conclude that the trial court did not abuse its discretion by denying Jeremy's request for maintenance. The duration of the marriage was short, Jeremy owned a business that had provided a steady income, Sheri retained significant nonmarital debt, Sheri's earning potential had decreased because of lack of bonuses, and her needs had increased because she moved to New York. Given those circumstances, a reasonable person could take the view adopted by the trial court.

¶ 30 Jeremy is correct that the Dissolution Act contemplates the possibility of awarding maintenance after a short-term marriage. Section 504(b-1)(1)(B) provides that, if a court determines that a maintenance award is appropriate, the duration of that award should be one-fifth the length of the marriage for a marriage lasting five years or less. 750 ILCS 5/504(b-1)(1)(B) (West 2016). But the Act does not *require* a maintenance award after a short-term marriage. In this case, the duration of the marriage was but one factor to be considered among all relevant fac-

tors. The trial court stated that it considered all relevant factors before denying Jeremy's request for maintenance. The court's decision was not an abuse of discretion.

¶ 31                    *3. Jeremy's Claim that the Trial Court's Decision Was the Result of Gender Bias*

¶ 32                    In his brief, Jeremy argues that the trial court's decision to deny him maintenance was "totally gender[-]biased," in that the court denied Jeremy's request for maintenance solely because he was male. He claims that had the parties' situations been reversed, the court would have awarded Sheri maintenance.

¶ 33                    We reject Jeremy's argument. He cites nothing in the record, other than the trial court's ultimate decision denying maintenance, to support his claims that the trial court was biased against Jeremy because he was male. Section 504 of the Act does not distinguish between genders, providing that maintenance may be awarded to "either spouse" based on one set of criteria. 750 ILCS 5/504(a) (West 2016). In this case, the trial court applied section 504(a) and exercised its discretion to determine that Jeremy should not receive maintenance. "A judge's rulings alone almost never constitute a valid basis for a claim of judicial bias or partiality."

*Eychaner v. Gross*, 202 Ill. 2d 228, 280, 779 N.E.2d 1115, 1146 (2002). Lawyers ought to be hesitant about making such arguments, especially when those arguments lack any support in the record.

¶ 34                    B. Distribution of the Marital Estate

¶ 35                    Jeremy argues that the trial court erred by (1) denying Jeremy's request for a \$51,000 reimbursement from the marital estate and (2) distributing the marital estate without awarding Jeremy an additional \$51,000. We determine that these two claims are essentially the same and therefore address them together.

¶ 36                    *1. Statutory Language and the Standard of Review*



¶ 37 When distributing property in a proceeding for dissolution of marriage, a trial court shall assign each spouse’s *nonmarital* property to that spouse. 750 ILCS 5/503(d) (West 2016). In contrast, the court shall divide the *marital* property in “just proportions,” after considering “all relevant factors,” including those enumerated in section 503(d) (750 ILCS 5/503(d)(1) to (d)(12) (West 2016)).

¶ 38 In general, “marital property” means all property, debts, and other obligations acquired during the marriage. 750 ILCS 5/503(a) (West 2016). However, section 503(a) provides several exceptions to the general rule that all property acquired during the marriage is marital property. For example, “property acquired in exchange for property acquired before the marriage” remains “non-marital property.” 750 ILCS 5/503(a)(2) (West 2016).

¶ 39 When a spouse contributes non-marital property to the marital estate, that spouse shall be reimbursed for the contribution. 750 ILCS 5/503(c)(2)(A) (West 2016). However, no such reimbursement shall occur when the contribution was a gift. *Id.*

¶ 40 When determining whether a spouse’s contribution to the marital estate was a gift, a court should presume the contribution was a gift if the spouse placed the nonmarital property in a joint tenancy or some other form of co-ownership. *In re Marriage of Benz*, 165 Ill. App. 3d 273, 280, 518 N.E.2d 1316, 1319 (1988). That presumption may be rebutted only by “ ‘clear, convincing and unmistakable evidence.’ ” *Id.* (quoting *In re Marriage of Rink*, 136 Ill. App. 3d 252, 257, 483 N.E.2d 316, 320 (1985)).

¶ 41 In *In re Marriage of Vondra*, 2016 IL App (1st) 150793, ¶¶ 6-7, 59 N.E.3d 840, the respondent received \$253,000 from inheritances and a gift during the marriage. She used those funds to pay down the mortgage on the parties’ marital home. *Id.* When the parties dissolved their marriage, the respondent requested to be reimbursed for the \$253,000, which she

claimed was nonmarital property. The trial court denied her claim, determining that the \$253,000 was initially nonmarital property that was “transmuted” into marital property when she deposited the funds into a joint checking account and used them to pay down the mortgage on the marital residence. *Id.* ¶ 10.

¶ 42 The appellate court affirmed, agreeing that the respondent’s use of the \$253,000 to pay down the mortgage should be presumed as a gift to the marital estate. *Id.* ¶ 15. The court determined further that the respondent had failed to rebut that presumption:

“The only evidence respondent presented to rebut the presumption of transmutation is that she did not intend for the payments to be gifts. However, although respondent testified that she told petitioner of her payments, she did not state that she informed him at the time that she did not intend for the payments to be gifts to the marital estate. \*\*\* Such evidence is insufficient to overcome the presumption of transmutation.” *Id.* ¶ 16.

¶ 43 *2. Jeremy’s Contributions in This Case*

¶ 44 In this case, Jeremy’s Peoria home was nonmarital property because he acquired it before the marriage. During the marriage, in October 2013, he sold that house for approximately \$51,000. The \$51,000 remained nonmarital property. 750 ILCS 5/503(a)(2) (West 2016) (nonmarital property includes “property acquired in exchange for property acquired before the marriage”).

¶ 45 The trial court found further that Jeremy’s nonmarital estate contributed that \$51,000 to the marital estate by constructing the outbuilding on the site of the marital home. The court further found that Jeremy’s \$51,000 contribution was a gift, meaning that he was not entitled to reimbursement under section 503(c)(2) of the Act. We conclude that the trial court’s find-

ings were not against the manifest weight of the evidence.

¶ 46 As in *Vondra*, Jeremy contributed nonmarital property toward the marital residence. That contribution is presumed to be a gift, such that the contribution was transmuted into marital property. Jeremy has failed to rebut that presumption. Jeremy testified that he assumed he would be reimbursed for his contribution to the marital estate. But Jeremy also testified that he never communicated that assumption to Sheri. As in *Vondra*, an alleged unexpressed intention does not rebut the presumption that the contribution was a gift. The trial court's decision was not against the manifest weight of the evidence.

¶ 47

### III. CONCLUSION

¶ 48 For the foregoing reasons, we affirm the trial court's judgment.

¶ 49 Affirmed.