

NOTICE
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2017 IL App (5th) 160233-U

NO. 5-16-0233

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
EVELINE GHATAN,)	St. Clair County.
)	
Petitioner-Appellee,)	
)	
and)	No. 08-D-366
)	
SINA GHATAN,)	Honorable
)	Randall W. Kelley,
Respondent-Appellant.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Moore and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's amended supplemental judgment of dissolution of marriage order is affirmed where there was no abuse of discretion regarding the court's denial of the parties' motions to reopen proofs and where the husband's evidence lacked credibility throughout the proceedings.

¶ 2 Respondent, Sina Ghatan, who is the former husband of petitioner, Eveline Ghatan, appeals from the trial court's entry of an amended supplemental judgment of dissolution of marriage order. Respondent raises several arguments on appeal: (1) the trial court erred by failing to reopen proofs to allow respondent to present evidence his trial counsel failed to present at trial; (2) the trial court erred by finding two parcels of

real estate were nonmarital property; (3) the trial court erred in determining the value of certain real estate; (4) the trial court erred in failing to consider the disparity in income in dividing the parties' retirement accounts; and (5) the trial court erred in failing to compel petitioner to produce documents requested by respondent. We affirm.

¶ 3

FACTS

¶ 4 We initially observe that although the procedural history and record in this case are lengthy, we will limit our discussion to those facts necessary to reach our decision.

¶ 5 Petitioner and respondent were married on June 29, 1980. Petitioner separated from respondent in September 2006 and commenced a dissolution of marriage proceeding on May 7, 2008. Two children were born as a result of the marriage, both of whom were emancipated at the time of trial. At the time of the dissolution proceeding, petitioner was employed by Coldwell Banker Brown as a realtor. Respondent was self-employed and managed rental properties which were purchased by the parties during their marriage.

¶ 6 A two-day hearing on all remaining issues was held on January 27 and January 28, 2010. Respondent's counsel withdrew from representation on April 27, 2010. Thereafter, two days of posttrial hearings were held on June 1 and June 22, 2010, where respondent represented himself. Prior to the posttrial hearings, both parties filed posttrial motions which were in the nature of motions to reopen proofs. These motions were heard at the June 22 hearing.

¶ 7 On December 21, 2010, the trial court entered a supplemental judgment of dissolution of marriage order, wherein it determined the value of the parties' marital real

estate in its division of property. The parties owned 10 parcels of real estate. The court noted both parties testified regarding their opinions of the value of their marital real estate. The court concluded that petitioner, a real estate agent for 20 years, provided adequate sales on all of the properties at issue. The court found petitioner's evidence regarding the valuation of real estate was credible, while the opinion evidence provided by respondent was speculative and not based on any objective criteria.

¶ 8 Petitioner claimed two properties were her nonmarital property: 3704 Little Flower Lane in Belleville, Illinois, and 214 South Second Street in Shiloh, Illinois. The court concluded petitioner met her burden in establishing the two properties were her nonmarital property. Regarding the parties' investment and retirement accounts, the court stated as follows:

"To equalize the distribution [petitioner] should be awarded \$58,417.95 of [respondent's] investments (1/2 of \$116,835.90 which is the difference between the total investments of Petitioner and Respondent). However, the Court takes into consideration the disparity of income of the parties and awards only \$20,000.00 to [petitioner] of [respondent's] IRA or other investments."

¶ 9 Thereafter, respondent filed a motion to reconsider. Following a hearing on May 25, 2011, the trial court denied respondent's motion to reconsider. Respondent subsequently filed a notice of appeal. In his appeal, respondent argued, *inter alia*, that the trial court erred in failing to reopen proofs to allow respondent to present evidence his former attorney possessed but failed to present at trial.

¶ 10 This court vacated the trial court's supplemental judgment of dissolution of marriage order and remanded the matter to the trial court with directions to (1) clarify its ruling on the parties' motions to reopen proofs; (2) clarify what exhibits, if any, were admitted into evidence and relied upon by the trial court in its supplemental judgment; and (3) conduct such further proceedings as may be necessary to determine the issues in the case.

¶ 11 After hearing arguments, the trial court entered an amended supplemental judgment of dissolution of marriage order on May 4, 2016. Specifically, the court denied the parties' motions to reopen proofs, removed certain property items from its award, and altered its distribution of assets. Regarding its distribution, the court awarded petitioner half of respondent's investment total of \$89,718, resulting in respondent owing petitioner \$44,859 as opposed to the \$20,000 awarded in the original supplemental judgment of dissolution of marriage order entered on December 21, 2010.

¶ 12 This appeal followed.

¶ 13 ANALYSIS

¶ 14 I

¶ 15 Respondent first contends the trial court erred in denying the parties' motions to reopen proofs. Initially, we note that the denial of a motion to reopen proofs is within the trial court's sound discretion and will not be disturbed absent a clear abuse of that discretion. *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1077, 872 N.E.2d 91, 102 (2007).

¶ 16 A court's decision to grant or deny a motion to reopen proofs rests upon the consideration of the following factors: (1) whether the moving party has provided a reasonable excuse for failing to submit the additional evidence during trial, (2) whether granting the motion would result in surprise or unfair prejudice to the opposing party, (3) whether the evidence is of the utmost importance to the movant's case, and (4) whether there are cogent reasons for denying the motion. *Stoval*, 374 Ill. App. 3d at 1077, 872 N.E.2d at 102; *In re Marriage of Lakin*, 278 Ill. App. 3d 135, 143, 662 N.E.2d 617, 622-23 (1996). Further, if evidence offered for the first time in a posttrial motion could have been produced at an earlier time, the court may deny its introduction into evidence on that basis. *Stoval*, 374 Ill. App. 3d at 1077, 872 N.E.2d at 102.

¶ 17 Applying these factors to the instant case, we cannot conclude the trial court abused its discretion in denying the parties' motions to reopen proofs. In May 2010, nearly four months after the original hearing, respondent sought to reopen proofs to include evidence that an approximate \$70,000 reduction in the value of his principal 401k account was due to market changes and not dissipation. Respondent further sought to submit documents to invalidate petitioner's claims that two parcels of real estate were nonmarital property as opposed to marital property. Petitioner also filed a motion to reopen proofs to include certain evidence.

¶ 18 As the trial court found, there was no substance to the parties' posttrial motions because both parties sought to include evidence that was available at the time of the original hearing in January 2010. Specifically, the court stated "[a]ll of the documents sought to be admitted were available at the time of the original hearing." The court

further noted respondent was aware of all the information on the documents he sought to have admitted. The court found it was merely a disagreement between respondent and his trial counsel as to the admissibility of the purported evidence.

¶ 19 Our supreme court has found that following a decision dissolving a marriage and distributing property, an ex-spouse's motion to reopen proofs is properly denied where the evidence sought to be introduced was available to the ex-spouse at the time of the hearing. *In re Marriage of Rogers*, 85 Ill. 2d 217, 225, 422 N.E.2d 635, 640 (1981). Similar to our supreme court's decision in *Rogers*, we find the trial court properly denied the parties' motions to reopen proofs since the evidence the parties were seeking to include was available at the time of the original hearing in January 2010. The trial court had cogent reasons to deny the parties' motions to reopen proofs, and the decision to do so was well within the sound discretion of the trial court. For these reasons, we reject respondent's argument.

¶ 20

II

¶ 21 Respondent's second argument on appeal contends the trial court erred in finding two parcels of real estate were nonmarital property.

¶ 22 Before the trial court may distribute property in a dissolution of marriage proceeding, the court must first classify the property as either marital or nonmarital. *In re Marriage of Dann*, 2012 IL App (2d) 100343, ¶ 63, 973 N.E.2d 498. A trial court's property classification will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re Marriage of Henke*, 313 Ill. App. 3d 159, 166, 728 N.E.2d 1137, 1143 (2000). This principle is based on the presumption that determining whether

an asset is marital involves weighing the credibility of witnesses. *In re Marriage of Abrell*, 386 Ill. App. 3d 718, 724, 898 N.E.2d 1163, 1169 (2008).

¶ 23 Similarly, the trial court's finding regarding the tracing of marital or nonmarital funds also will not be disturbed on review unless it is against the manifest weight of the evidence. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 641, 616 N.E.2d 1379, 1383 (1993). In determining whether a judgment is contrary to the manifest weight of the evidence, the reviewing court must view the evidence in the light most favorable to the appellee, which in this case is petitioner. *In re Marriage of Divelbiss*, 308 Ill. App. 3d 198, 206, 719 N.E.2d 375, 381 (1999).

¶ 24 Section 503(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) establishes a rebuttable presumption that "all property, including debts and other obligations, acquired by either spouse subsequent to the marriage" is marital property. 750 ILCS 5/503(a) (West Supp. 2015). Regarding the distribution of property, all property acquired by either spouse after the marriage and before a judgment of dissolution of marriage or declaration of invalidity of marriage is presumed marital property. 750 ILCS 5/503(b)(1) (West Supp. 2015). This presumption may be overcome only by a showing of clear and convincing evidence establishing otherwise. *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 658, 698 N.E.2d 1084, 1089 (1998). Specifically, section 503(b)(1) of the Act provides that the presumption may be overcome by clear and convincing evidence that the property was acquired by a method listed under subsection (a). 750 ILCS 5/503(b)(1) (West Supp. 2015). One of the nonmarital property exceptions under subsection (a) is "property acquired by gift, legacy or descent or

property acquired in exchange for such property." 750 ILCS 5/503(a)(1) (West Supp. 2015). The party claiming the property is nonmarital bears the burden of proof, and any doubts as to the nature of the property are resolved in favor of finding the property is marital. *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017, 909 N.E.2d 221, 228 (2009).

¶ 25 In the instant case, the trial court concluded petitioner owned two separate nonmarital parcels of real estate: (1) 3704 Little Flower Lane, Belleville, Illinois; and (2) 214 S. 2nd St., Shiloh, Illinois. It is undisputed these two properties were acquired during petitioner and respondent's marriage. The court awarded these properties to petitioner after hearing testimony from both parties.

¶ 26 In relevant part, petitioner testified the two properties were her nonmarital property because they were purchased with funds given to her by her father. The parties stipulated that petitioner received gifts of money from her father during the marriage, and these amounts were deposited into petitioner's bank account. Petitioner testified she purchased the Belleville property on April 23, 2003, for \$31,610 with money from a bank account in her sole name. Petitioner testified the Belleville property was placed in her sole name. Regarding the Shiloh real estate, petitioner testified she purchased the property on June 20, 2002, for \$43,000 with money from the same account she used to purchase the Belleville property. Petitioner testified the Shiloh property was also placed in her sole name.

¶ 27 As previously stated, respondent managed the rental properties purchased by the parties during their marriage. Respondent's responsibilities included collecting rents and

paying bills for the rental properties. Although respondent paid the property taxes on all of the other properties owned by petitioner and respondent, respondent conceded he did not pay the property taxes on the Belleville and Shiloh properties. The record shows that when petitioner discovered the taxes had not been paid on these properties, she redeemed two years of back taxes in order to avoid a tax sale of the Belleville property.

¶ 28 In its amended supplemental judgment of dissolution of marriage order, the trial court cited credibility issues in support of its finding that the Belleville and Shiloh properties were petitioner's nonmarital property. Specifically, the court stated:

"It is the Court's opinion that the credibility of Respondent was lacking throughout the proceedings. To the contrary, Petitioner was found to be a very credible witness."

¶ 29 After careful consideration, we cannot conclude the trial court's property classification was against the manifest weight of the evidence. As previously stated, the trial court is afforded broad discretion in the valuation and subsequent distribution of marital assets. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1115, 806 N.E.2d 701, 708 (2004). Further, the determination of whether an asset is a marital or nonmarital rests largely in the determination of the credibility of the witnesses. *In re Marriage of Werries*, 247 Ill. App. 3d at 641, 616 N.E.2d at 1383. The determination of all issues concerning the credibility of the parties and their witnesses or the weight to give the evidence lies with the trier of fact. *In re Marriage of Werries*, 247 Ill. App. 3d at 642, 616 N.E.2d at 1384.

¶ 30 Here, the trial court was presented sufficient evidence and was in a superior position to observe the witnesses in making a classification determination. *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641, 686 N.E.2d 670, 675 (1997). The record on appeal does not present an adequate basis for this court to reject the trial court's assessment of the parties' credibility. Moreover, it is not the province of this court to retry cases that come before us. *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985). Accordingly, we conclude the trial court's property classification was not against the manifest weight of the evidence.

¶ 31

III

¶ 32 Respondent next contends the trial court erred in determining the values of real estate. The valuation of assets in an action for dissolution of marriage is a question of fact, and the trial court's findings will not be disturbed on review unless they are against the manifest weight of the evidence. *In re Marriage of Simmons*, 221 Ill. App. 3d 89, 92, 581 N.E.2d 716, 719 (1991). The trial court has broad discretion in the valuation and distribution of marital assets. *In re Marriage of Sawicki*, 346 Ill. App. 3d at 1115, 806 N.E.2d at 708. A reviewing court will reverse a trial court's judgment of the valuation of marital assets only where no reasonable person could adopt the trial court's position. *In re Marriage of Sawicki*, 346 Ill. App. 3d at 1115, 806 N.E.2d at 708. As previously stated, a reviewing court views the evidence in the light most favorable to the appellee, in this case petitioner, when determining whether a judgment is against the manifest weight of the evidence. *In re Marriage of Bates*, 212 Ill. 2d 489, 516, 819 N.E.2d 714, 728 (2004).

¶ 33 In order to accurately evaluate marital assets for purposes of property division, the trial court must have competent evidence of value. *In re Marriage of Stone*, 155 Ill. App. 3d 62, 70, 507 N.E.2d 900, 905 (1987). Any conflicts in testimony regarding the valuation of assets in an action for dissolution are matters to be resolved by the trier of fact. *In re Marriage of Stone*, 155 Ill. App. 3d at 70-71, 507 N.E.2d at 905.

¶ 34 In this case, both petitioner and respondent presented evidence of value concerning the parcels of real estate. The record indicates the trial court valued the various parcels of real estate by weighing the testimony of petitioner and respondent, the only witnesses who presented evidence of value regarding the properties at issue.

¶ 35 After careful consideration, we cannot conclude the trial court's valuation of the subject parcels of real estate was against the manifest weight of the evidence. It is well settled that the trial court stands in the best position to review the evidence and to weigh the credibility of the witnesses. *In re Marriage of Bates*, 212 Ill. 2d at 515, 819 N.E.2d at 728. Moreover, a trial court's ruling is given great deference and will not be found to be manifestly erroneous unless the error is clearly evident, plain, and indisputable. *In re Christopher P.*, 342 Ill. App. 3d 336, 341, 795 N.E.2d 323, 327 (2003). This is not the case here. The valuation of the trial court was well within its discretion and was supported by the evidence presented. Accordingly, there was no abuse of discretion.

¶ 36

IV

¶ 37 Respondent's next contention alleges the trial court erred in failing to consider the disparity of income in dividing respondent and petitioner's retirement accounts.

¶ 38 Respondent indicates that in its supplemental judgment of dissolution of marriage order entered December 21, 2010, the trial court awarded petitioner \$58,417.95 of respondent's investments in order to equalize the distribution between the parties. However, the court reduced that figure to \$20,000 after considering the disparity of income of the parties. In its amended supplemental judgment of dissolution of marriage order entered May 4, 2016, the trial court awarded petitioner \$44,859 of respondent's investments in order to equalize the distribution between the parties. As respondent points out, the trial court makes no indication that it considered the disparity of income of the parties in its amended supplemental judgment of dissolution of marriage order. Respondent contends that because the trial court provides no reason for the differentiation between the two orders, namely consideration of the parties' disparity of income, it was erroneous for the trial court to award petitioner \$44,859 from respondent's retirement and investment accounts.

¶ 39 In this case, the trial court provided the following reasoning regarding its division of the parties' investment and retirement accounts in its amended supplemental judgment of dissolution of marriage order:

"To equalize the distribution, [petitioner] should be awarded \$44,859.00 of [respondent's] investments (1/2 of \$89,718.00 which is the difference between the total investments of Petitioner and Respondent). [Petitioner] shall rollover said amount from an investment of the [respondent's] to an investment of her choice pursuant to a Qualified Relations Domestic Order to be entered herein."

¶ 40 We note the trial court's amended supplemental judgment of dissolution of marriage order does not mention the disparity of income of the parties, and respondent cites no authority to demonstrate any error by the trial court in this regard. Supreme Court Rule 341(h)(7) requires the appellant to cite authority in support of its argument. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). The failure to cite relevant authority results in a forfeiture of the argument. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56, 4 N.E.3d 1.

¶ 41

V

¶ 42 Finally, respondent alleges the trial court erred in failing to compel petitioner to produce certain documents requested by respondent. Specifically, respondent argues his posttrial request seeking documentation of transactions from petitioner's bank accounts is necessary to determine the truth of petitioner's assertions that the Belleville and Shiloh properties were nonmarital and to support respondent's position that those bank accounts consisted of marital funds as opposed to nonmarital funds.

¶ 43 Control of the discovery process is vested in the discretion of the trial court. *Wilson v. Norfolk & Western Ry. Co.*, 109 Ill. App. 3d 79, 84, 440 N.E.2d 238, 244 (1982). The trial court's ruling on discovery matters will not be disturbed on review absent a manifest abuse of discretion affirmatively and clearly shown by the appellant. *United Nuclear Corp. v. Energy Conversion Devices, Inc.*, 110 Ill. App. 3d 88, 105, 441 N.E.2d 1163, 1174 (1982); *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 658, 784 N.E.2d 258, 279 (2002). A trial court's bar of discovery will be found to be an abuse of

discretion if such ruling prevents the ascertainment of truth or substantially affects a critical issue in the case. *United Nuclear Corp.*, 110 Ill. App. 3d at 105, 441 N.E.2d at 1174.

¶ 44 Here, respondent filed a request for proof of facts on May 21, 2010, approximately four months after the two-day trial took place. The various posttrial motions filed by the parties which were in the nature of motions to reopen proofs, including respondent's request for proof of facts, were all heard on June 22, 2010. As previously stated, the trial court concluded there was no substance to the posttrial motions because the parties sought to include evidence that was available at the time of the original hearing in January 2010. Specifically, the court concluded "[a]ll of the documents sought to be admitted were available at the time of the original hearing." Since the documents were available to respondent at the time of the original hearing, we cannot conclude the trial court abused its discretion by failing to compel petitioner to produce said documents nearly four months after the original hearing took place.

¶ 45 In light of the foregoing, we do not find any abuse of discretion in the trial court's discovery rulings. Accordingly, we reject respondent's argument.

¶ 46 **CONCLUSION**

¶ 47 For the aforementioned reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 48 Affirmed.