2018 IL App (2d) 160423-U
No. 2-16-0423
Order entered February 2, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF SANDRA BASGALL, Petitioner-Appellee, and JOEL C. BASGALL, Respondent-Appellant.	)))))))))	Appeal from the Circuit Court of Du Page County. No. 14-D-696 Honorable Linda E. Davenport, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Hudson and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Because the evidence showed that a contract for the acquisition of a portion of a business entity had not been executed until after the marriage, the trial court's finding that that portion of the entity was marital property was not against the manifest weight of the evidence; the trial court properly found that the wife did not dissipate the marital assets where the wife presented sufficient evidence that the funds at issue went toward attorney's fees and living expenses after the husband stopped paying temporary maintenance; the trial court did not abuse its discretion by awarding the wife maintenance after considering all the relevant factors including the parties' incomes and lifestyle during the marriage; trial court affirmed.

¶ 2 Respondent, Joel C. Basgall, appeals from the Du Page County circuit court's judgment for dissolution of his marriage to petitioner, Sandra Basgall. Joel argues that the trial court erred

(1) by classifying 68.724% of a business entity, LightSwitch LLC, as marital, (2) by failing to find that Sandra dissipated marital assets, and (3) by awarding Sandra spousal support. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 27, 2004, the parties were married in Florida. No children were born to or adopted by the parties. On August 19, 2014, Sandra filed a petition for dissolution of marriage in the trial court. A hearing was held on February 23 and 24, 2016. The parties stipulated to the introduction of numerous exhibits into evidence. Sandra's attorney called to the stand Sandra, Joel, and John Coffey, a certified public accountant, and an expert in business valuations. Joel's counsel cross examined these witnesses. After these three witnesses testified, Sandra rested her case, and Joel stated that he would be calling no witnesses.

¶ 5 On March 2, 2016, the trial court entered its judgment of dissolution of marriage incorporating its "Letter Opinion" of the same date, which contained a summation of the evidence, the court's findings of fact, and its rulings regarding, *inter alia*, the classification and distribution of assets and the duration and amount of maintenance awarded to Sandra.

¶ 6 Regarding LightSwitch, the trial court found that the 31.276% interest that Joel owned at the time of the marriage was Joel's non-marital property. However, Joel failed to rebut the presumption that the additional ownership in LightSwitch and new businesses he acquired after the marriage were marital. The trial court found that Joel's current percentage of ownership of LightSwitch was 100%; the marital portion being 68.724%. The trial court found the overall value of LightSwitch to be $4,771,241, valued the marital portion of LightSwitch at $3,278,987.66, and found that the marital portion was subject to the remaining marital debt of

$2.4 million to a former co-owner of the business, leaving a value of $878.987. The trial court awarded Sandra $300,000 of the marital portion of LightSwitch and $578,987 to Joel.

¶ 7 Regarding Joel's claim that Sandra dissipated proceeds of the sale of the parties' "Lamon" properties, the trial court found that Sandra met her burden and there was no dissipation because she identified the use and purposes of the money. The trial court found that Sandra used the money for living expenses because Joel had stopped paying her monthly living expenses at that time.

¶ 8 Regarding maintenance, the trial court considered the relevant factors provided in section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act). 750 ILCS 5/504(a) (West 2016). The trial court found that the parties' incomes exceed $250,000 and, therefore, the new statute was not applicable. See 750 ILCS 5/504(b-1)(1) (West 2016) (new statute now applies to incomes of less than $500,000, as amended by P.A. 100-520, § 15, eff. Jan. 1, 2018). Further, the trial court stated, "[t]he Court believes Sandra is a candidate for maintenance and Joel clearly has the ability to pay modifiable," reviewable and terminable maintenance of $6,000.00 per month for 72 months.

¶ 9 On March 2, 2016, the trial court entered the judgment dissolving the parties' marriage and attached its letter opinion. On April 1, 2016, Joel filed a motion to reconsider and modify judgment. On May 17, 2016, the trial court denied Joel's motion. Joel filed a notice of appeal on June 6, 2016.

¶ 10 II. ANALYSIS

¶ 11 A. Classification of Property

¶ 12 Joel argues that the trial court erred by classifying 68.724% of LightSwitch as marital property. Sandra argues that the classification was not erroneous.

¶ 13 Initially, we address Joel's contention that the facts are undisputed and, thus, our review should be *de novo.* See *In re Marriage of Wendt,* 2013 IL App (1st) 123261, ¶ 15 (noting the classification of an asset is reviewed *de novo* when the facts are undisputed and the credibility of witnesses is not at issue). However, in this case certain facts were in dispute and the credibility of the witnesses was at issue regarding, in part, when Joel's interest in LightSwitch increased. Therefore, we will not disturb the trial court's classification of an asset as marital or nonmarital property unless it is against the manifest weight of the evidence. *In re Marriage of Faber,* 2016 IL App (2d) 131083, ¶ 9. "[A] decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or when the court's findings appear to be unreasonable, arbitrary, or not based upon the evidence." *Id.*, ¶ 3.

¶ 14 Before distributing property as part of the dissolution of a marriage, the trial court must first determine whether that property is marital or nonmarital. *In re Marriage of Asta & Pappas,* 2016 IL App (2d) 150160, ¶ 16. There is a rebuttable presumption that property acquired during the marriage is marital property. *Id*. A party may overcome that presumption by producing clear and convincing evidence that one of the exceptions listed in section 503(a) of the Act applies. *Id*. The burden of proof is on the party claiming that the property is nonmarital. *In re Marriage of Schmitt,* 391 Ill. App. 3d 1010, 1017 (2009). Section 503(a)(6) of the Act provides that nonmarital property includes property acquired before the marriage. 750 ILCS 5/503(a)(6) (West 2014).

¶ 15 Joel argues that the manifest weight of the evidence demonstrated that he owned 45.51 % of LightSwitch before the marriage and not 31.276% as the trial court found. Joel acknowledges that in the beginning of 2004 he owned 31.276% of LightSwitch, but that his interest increased to

45.51% prior to the parties' marriage. Joel supports his argument with LightSwitch's 2004 federal tax return and his testimony at the hearing.

¶ 16 The 2004 LightSwitch tax return lists Joel's ownership interest as 31.276% at the beginning of 2004 and as 45.51% at the end of 2004. However, without more, the trial court was not required to accept the representation contained in the tax return reporting the percentage of interest Joel owned in LightSwitch. See *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 82. Further, the 2004 LightSwitch tax return did not establish that Joel acquired the additional ownership interest prior to the parties' marriage. The parties married on June 27, 2004, but the LightSwitch tax return did not provide a date for Joel's alleged acquisition. Without a date the tax return provides no information regarding whether Joel acquired the additional interest before or after the parties' marriage. Therefore, we cannot say the 2004 LightSwitch tax return renders the trial court's decision against the manifest weight of the evidence.

¶ 17 Joel also supports his argument by citing certain portions of the transcript of the hearing wherein he testified as follows. Before the parties' marriage, Tim Wightman became involved with LightSwitch "through [Wightman's] company WighTech." At that time, WighTech owned the same percentage of LightSwitch as Joel and Mark Hattas. Before the parties married, Wightman left LightSwitch, but Joel's ownership interest in LightSwitch increased "[w]hen the paperwork was finalized," which Joel believed occurred after the parties married. Thus, Joel's own testimony belies his argument that his interest in LightSwitch increased prior to the parties' marriage.

¶ 18 Further, Joel's exhibit 31, a "Settlement Agreement" dated July 15, 2011, shows that the "paperwork was finalized" well after the parties married. The settlement agreement provided the following. On March 5, 2004, Wightman resigned from LightSwitch. Between March and

"November 2004 the Parties agreed on certain terms, but were not able to agree on the final written settlement agreement." Litigation began in 2009. "Accordingly, a dispute has arisen among the Parties regarding whether Mr. Wightman and/or WighTech still possess an ownership interest in LightSwitch ***." In July 2011, the parties participated in mediation and reached an agreement. The agreement provided that "LightSwitch shall pay Mr. Wightman and Wigh[T]ech $325,000 on or before July 15, 2011[,] [and] [t]he ownership interest(s) that Mr. Wightman and/or Wigh[T]ech now owns or has ever owned in LightSwitch *** is hereby terminated." The settlement agreement was signed on July 15, 2011, by Wightman, as an individual and as an agent for WighTech; Joel, as an individual and as an agent for LightSwitch; MJ Management Group; Geneca; and Hattas. Thus, the July 2015 settlement agreement supports the trial court's finding that Joel's premarital interest in LightSwitch was 31.276% and did not increase until after the marriage.

¶ 19 In addition, Joel argues that "the trial court specifically found that in March 2004, three (3) months prior to the parties' marriage, 'Wightech (Tim Wightman) resigned and [Joel] and Hattas absorbed his shares, resulting in [Joel] and Hattas each having 45.410% of the shares.'"

¶ 20 This quote is incomplete, taken out of context from the "History" section of the trial court's "Letter Opinion," and mischaracterizes the trial court's findings. Where Joel left off, the trial court continued as follows. "Although the parties acknowledged WighTech was out, no formal settlement of his claims was resolved at this time and litigation ensued. Thereafter, there was a minor redemption which increased Joel and Hattas' shares to 46.176%. *** [O]n July 15, 2011, LightSwitch paid WighTech $325,000.00 (Resp. Ex.31)." The trial court then found that "Joel's 31.276% interest in Lightswitch which he owned at the time of the marriage is clearly his non-marital asset." The trial court's finding is supported by Joel's exhibit 31, the July 2011

settlement agreement. Thus, Joel's partial quote of the trial court's Letter Opinion does not establish that the trial court's finding regarding his nonmarital share of LightSwitch is against the manifest weight of the evidence.

¶ 21 Next, Joel argues that the manifest weight of the evidence demonstrates that he never acquired an ownership interest in the remaining 7.65% of LightSwitch. Joel argues that the evidence shows that 7.65% of LightSwitch was retained by minority owners.

¶ 22 However, the evidence provides ample support for the trial court's finding. Joel's exhibit 33, a "Memorandum of Action by Unanimous Written Consent of the Managers and All the Members of LightSwitch ***," dated August 2015, indicated that Joel paid the minority shareholders $365,557.29. In exchange, "the Minority Members shall thereafter no longer have the right to participate in the ownership of, or receive allocations or distributions for, LightSwitch, except in the event of a sale of all of the equity or assets of LightSwitch." Michael Chapski stated in his letter of opinion that "[a]fter this [August 2015] transaction, [Joel] became the 100% equity holder [of LightSwitch]." Thus, the trial court's finding that "Joel now had complete control of the business [LightSwitch]" is not against the manifest weight of the evidence.

¶ 23 Joel cites *In re Marriage of Zwart*, 245 Ill. App. 3d 567 (1993), to support his argument. In *Zwart*, the appellate court held that a bank account into which the husband's father had transferred money was not an asset of the husband because the money in the bank account belonged to and was controlled by the father; the husband could not access the money until his father died, and there was no evidence regarding the value of the account or that the father would continue to contribute to the account. *Id*. at 574. In this case, Joel had control of the 7.65% of LightSwitch at issue. Thus, *Zwart* is distinguishable from this case.

¶ 24 Joel also argues that the trial court's order to pay Sandra $300,000 is reversible error because it is based on an erroneous classification of marital and nonmarital assets. Joel essentially repeats his previous argument by contending that the evidence showed the following ownership of LightSwitch: acquired by Joel before the marriage, 46.176%; acquired by Joel after the marriage, 46.176%; owned by other parties, 7.65%.

¶ 25 Joel contends that because the trial court determined that the overall value of LightSwitch was $4,771,241, the marital value would be $2,234,849.28, and it would be subject to the $2,400,000 debt to Hattas, which the parties stipulated was marital in nature. Joel concludes that the marital portion of LightSwitch is actually -$165,150.72. Joel, therefore, urges this court to order the trial court to recalculate its division of marital property. We have discussed and rejected the arguments Joel raises to reach the figures used to support these conclusions. The trial court properly valued the marital portion of LightSwitch at $3,278,987.66 based on the trial court's proper determination that Joel's nonmarital share was 31.276%. The trial court then deducted $2,400,000 in marital debt to Hattas and found that the marital value of LightSwitch was $878,987. The trial court awarded $300,000 of the marital value of LightSwitch to Sandra and $578,987 to Joel. Joel cites nothing in the record indicating that the trial court's findings were against the manifest weight of the evidence regarding the classification, valuation, and allocation of LightSwitch.

¶ 26 B. Dissipation

¶ 27 Next, Joel argues that the trial court erred by failing to find that Sandra dissipated marital assets in the amount of $83,515.15. Dissipation is the "use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown." *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497

(1990). The spouse charged with dissipation has the burden of proving, through clear and specific evidence, how the marital funds were spent, and vague and general testimony that the funds were used for marital expenses is inadequate to meet this burden. *In re Marriage of Schneeweis*, 2016 IL App (2d) 140147, ¶ 37. Whether dissipation occurred is a question of fact determined by the trial court, and such a determination will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id*. at ¶ 34.

¶ 28 There is ample support for the trial court's finding that Sandra did not dissipate marital assets. Sandra testified and provided documentation that she paid $37,500 to her attorneys, $10,000 to joint credit cards, $13,000 to Sandra's Discover credit card, $14,000 for mortgage payments on the parties' property, and $9015.15 on living expenses for three months, totaling $83,515.15. The record shows and the trial court found that at the time Sandra made these payments, Joel had stopped paying Sandra temporary maintenance of $6200 per month. For the reasons stated, we determine that the trial court did not abuse its discretion by finding that Sandra did not dissipate marital assets.

¶ 29 C. Maintenance

¶ 30 Joel argues that the trial court's award of spousal support to Sandra was an abuse of discretion. Joel argues that Sandra is capable of earning and had the opportunity to earn $60,000 a year rather than the $43,000 a year she earned at the time of the hearing. Joel argues that the trial court erred by failing to consider Sandra's elective underemployment.

¶ 31 Generally, a trial court's award of maintenance is presumed to be correct. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010). The amount of a maintenance award lies within the sound discretion of the trial court, and this court must not reverse that decision unless it is an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). A court abuses its

discretion where its findings are arbitrary or fanciful (*Blum v. Koster*, 235 Ill. 2d 21, 36 (2009)), or where no reasonable person would agree with its position (*Schneider*, 214 Ill. 2d at 173).

¶ 32 Section 504(a) of the Act provides that, in a proceeding for dissolution of marriage, a trial court "may grant a maintenance award for either spouse in amounts and for periods of time as the court deems just." 750 ILCS 5/504(a) (West 2016). Section 504(a) lists several factors that a trial court must consider, where relevant, when determining a maintenance award: (1) the income and property of each party, including the marital property apportioned and the nonmarital property assigned to the party seeking maintenance; (2) the needs of each party; (3) the present and future earning capacity of each party; (4) any impairment of the realistic present and future earning capacity of the party seeking maintenance due to that party's devoting time to domestic duties or having forgone or delayed education or training, employment, or career opportunities due to the marriage; (5) any impairment of the realistic present or future earning capacity of the party against whom maintenance is sought; (6) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment; (7) the standard of living established during the marriage; (8) the duration of the marriage; (9) the age, health, occupation, amount and sources of income, employability, and liabilities of each party; (10) all sources of public and private income, including, without limitation, disability and retirement income; (11) the tax consequences of the property division; (12) the contributions and services by the party seeking maintenance to the education, training, or career potential of the other party; (13) any valid agreement between the parties; and (14) any other factor that the trial court finds just and equitable. *Id.*

¶ 33 Trial courts have wide latitude in considering which factors should be used in determining reasonable needs, and the court is not limited to the factors listed in the statute. *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10. No single factor is determinative of the propriety of a maintenance award once it has been determined that an award is appropriate. *Id.*

¶ 34 Joel asserts that Sandra is capable and had the opportunity to earn $60,000 a year. Joel notes that at the time the parties married in 2004 Sandra worked as an office manager for a chiropractic office and earned approximately $63,000 a year. However, the record does not support Joel's assertion. Sandra testified that her social security statement, which was admitted into evidence, indicated that she earned $48,000 when the parties married and that she received trips and other items from her boss. Sandra also testified that she believed her boss was committing social security fraud and that she reported it. Sandra also testified that the most she ever made was $48,000 a year. Joel also notes that Sandra testified that at some time during the marriage she had the opportunity to work for another doctor, Dr. Zuelke, for $25 to $30 per hour. Joel then calculates that if Sandra worked 40 hours each week for 50 weeks she would have earned $60,000. However, nothing in the record indicates that Dr. Zuelke offered Sandra a full-time position or that this position was available at the time of the hearing. Thus, Joel failed to establish that Sandra was capable of and had the opportunity to earn $60,000 a year.

¶ 35 Finally, Joel argues that the trial court's maintenance award results in a significantly disproportionate share of the parties' net income to Sandra's benefit and to Joel's detriment. Joel argues that the trial court erred by finding that Joel had the ability to earn $250,000 a year.

¶ 36 Actually, the trial court stated the following:

> "Joel, as the 100% owner of LightSwitch can completely control his income. He testified he currently has 40 employees and he pays half of them over $100,000.00 per year, yet he

> now only makes $96,000.00 per year. In August 2015, when he had already defaulted on the quarterly payments to Hattas and had just paid $365,000.00 to acquire all of the LightSwitch shares, he cut his salary. The Court believes Joel will change his employment income immediately upon the conclusion of this case and [the Court] will use $250,000 as his income for purposes of maintenance."

¶ 37 The trial court also found and the record shows that for most of the parties' marriage Joel's annual salary was over $200,000 and sometimes much more. The record shows that in 2013 Joel reported to the Internal Revenue Service $345,000 in income, which included $221,773 in wages and $123,102 in additional income. After the parties separated Joel unilaterally reduced his income to $96,000 a year. However, Joel testified that when he applied for an apartment lease, he stated his income as more than $200,000. Accordingly, we cannot say that the trial court's finding regarding Joel's income was against the manifest weight of the evidence. See *Nord,* 402 Ill. App. 3d at 294 (a trial court's factual findings regarding maintenance will not be reversed unless they are against the manifest weight of the evidence).

¶ 38 Based on the relative incomes of the parties, the lifestyle enjoyed during the marriage, the ten-year length of the marriage, and the remaining relevant factors the trial court considered, we cannot say that the trial court abused its discretion by awarding Sandra maintenance of $6,000 per month for 72 months.

¶ 39 III. CONCLUSION

¶ 40 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 41 Affirmed.