

2018 IL App (2d) 170315-U
No. 2-17-0315
Order filed July 9, 2018

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
|---|---|-------------------------------|
| <i>In re</i> MARRIAGE OF |) | Appeal from the Circuit Court |
| DEVIN ARKIN (Karen Arkin as the |) | of Lake County. |
| Administrator of the Estate of Devin Arkin, |) | |
| Deceased) |) | |
| |) | |
| Petitioner-Appellant, |) | No. 14-D-1458 |
| |) | |
| and |) | |
| |) | |
| ALICIA ARKIN, |) | Honorable |
| |) | Elizabeth M. Rochford, |
| Respondent-Appellee. |) | Judge, Presiding. |

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's allocation of \$1,042,940 in dissipation was not against the manifest weight of the evidence. The trial court acted within its discretion in ordering petitioner to establish a trust for the benefit of the parties' minor children pursuant to section 503(g) of the Illinois Marriage and Dissolution of Marriage Act. The allocation of \$161,000 in medical debt to petitioner was not an abuse of discretion.

¶ 2 Petitioner, Devin Arkin (Devin), appeals from the trial court's judgment for dissolution of marriage. Devin contends that the trial court erred in: (1) finding and allocating to him \$1,042,940 in dissipation based on improperly valuing a life insurance policy sold during the

dissolution proceedings and labeling an investment purchased during the marriage as marital property; (2) requiring him to place \$750,000 into a trust for the benefit of the parties' minor children pursuant to section 5/503(g) of the Illinois Marriage and Dissolution of Marriage Act (the Act); and (3) allocating to him \$161,000 in debt accrued through medical procedures after having been diagnosed with terminal brain cancer. We affirm.

¶ 3

I. BACKGROUND

¶ 4 The parties were married on October 12, 2003. The marriage produced two children, P.A., born August 2005, and E.A., born March 2008. On August 4, 2014, Devin filed his petition for dissolution of marriage. Throughout the nearly three years of the dissolution proceedings, a great number of petitions were filed by both parties producing a great number of trial court orders. We will limit our recitation of the facts to those petitions and orders relevant to the issues raised in this appeal.

¶ 5 During the marriage, respondent Alicia Arkin (Alicia), stayed home to raise the couple's minor children while Devin was the primary breadwinner. Devin was co-owner and Chief Creative Officer for a company called Huckleberry Pie, Inc. Additionally, he jointly owned with his siblings a one-third interest in a company called Arkin Family Associates, LLC (AFA).

¶ 6 On November 3, 2014, the trial court entered an order employing a 50/50 split in parenting time between the parties. Each party had exclusive possession of the marital residence during their respective parenting time.

¶ 7 On July 17, 2015, Alicia filed an emergency petition to maintain status quo, for temporary maintenance, for temporary child support, and for other relief. At the time of Alicia's emergency petition, there was no order in place for temporary maintenance, child support, or payment of household expenses. The petition alleged that Devin had exerted power and control

of the parties' assets during the dissolution proceedings in a manner calculated to deprive Alicia and the children of access to funds. Alicia alleged that: (1) Devin had lowered the monthly limit on the parties' joint credit card from \$19,5000 to \$5,000; (2) restricted Alicia's use of that card by placing a hold which could only be removed with Devin's approval; Devin ultimately closed the joint credit card altogether on July 6, 2015; (3) Devin overdrew the couple's joint checking account; (4) Devin loaned his brother \$100,000; (5) Devin loaned a friend \$25,000. Alicia stated that due to no access to the joint credit card and insufficient funds in the joint checking account, she could not afford to pay for the household expenses. Additionally, Alicia alleged that Devin had removed Alicia as the beneficiary on his life insurance policy. On July 17, 2015, the trial court ordered Devin to maintain health and auto insurance coverage but continued the remaining issues in Alicia's petition.

¶ 8 Devin was ordered on September 10, 2015, to pay \$2,500 to Alicia within five days. The trial court set a date of October 2, 2015, for hearing on Alicia's amended petition for temporary maintenance, child support and other relief. On September 30, 2015, Devin filed an emergency motion to continue the October 2 hearing due to being hospitalized and undergoing surgery on September 28, 2015. The trial court reset the hearing for October 21, 2015, and ordered Devin to pay Alicia \$3,000 in temporary support.

¶ 9 On October 13, 2015, Devin filed a petition seeking to end the parties' exclusive possession of the marital home during their respective parenting time. Devin sought sole possession of the marital residence due to his having been diagnosed with late-stage terminal brain cancer. Devin informed the trial court that he would be undergoing chemotherapy and radiation and, thus, needed to remain in familiar surroundings with his own bed, bath, and office. The trial court granted Devin's request for sole possession of the martial residence on October

21, 2015. The order also required Devin to pay Alicia \$1,000 per week for the support of the parties' children.

¶ 10 On November 9, 2015, Alicia filed another emergency motion to maintain status quo regarding life insurance, financial assets, and for other relief. The petition renewed Alicia's allegation in Count I that Devin had removed her as the beneficiary to his \$600,000 Banner Life Insurance policy following the filing of Devin's original petition for dissolution. Alicia requested that the court immediately restore her as the sole beneficiary to the life insurance policy and enjoin Devin from removing her as sole beneficiary. The petition also alleged in Count II that Devin's distributions from his one-third interest in AFA, which was purchased with a promissory note in April 2012, had ceased shortly before the start of the dissolution proceedings, but Devin's siblings continued to receive their respective distributions. Alicia alleged that Devin's share of distributions continued to accrue monthly. Alicia maintained that Devin's interest in AFA constituted marital property and that the promissory note used to purchase Devin's interest was forgiven on December 13, 2012. The petition requested that Devin immediately cease transferring any assets acquired by either party during the marriage. The trial court granted Devin's motion to strike and dismiss Count I because the life insurance policy was an expectancy. Devin's motion to strike and dismiss Count II was also granted by the trial court as it related to alleged unknown or future transfers.

¶ 11 On November 14, 2015, Alicia filed a petition for rule to show cause, for finding of indirect civil contempt, for sanctions and other relief against Devin. Alicia alleged, and Devin admitted, that Devin failed to make a single payment pursuant to the October 21, 2015, order requiring Devin to pay Alicia \$1,000 per week in child support. On December 16, 2015, the trial court adjudicated Devin in indirect civil contempt for failure to make the child support payments.

His incarceration was stayed until January 22, 2016. Devin purged the contempt finding by paying Alicia \$15,000 on January 27, 2016. The trial court's order requiring Devin to pay Alicia \$1,000 in weekly child support remained in effect.

¶ 12 Devin filed an emergency motion to appoint a guardian *ad litem* (GAL) on February 29, 2016. Attached to Devin's motion was the affidavit of a clinical neuropsychologist who, after interviewing and testing Devin, opined that he would be unable to participate in the litigation due to limited mental stamina, as well as a lack of ability to answer questions when under pressure for more than brief periods of time. In Alicia's response to Devin's emergency petition, she listed a flurry of activity in which Devin had participated in the month leading up to his emergency motion. She cited Devin's creation of the Devin Arkin Revocable Trust in which Devin had attempted to deed an interest in the marital home on January 29, 2016. Alicia alleged that Devin had funneled other marital assets into his revocable trust as well. She noted that Devin had the capacity to sign and attest to a Supreme Court Rule 214 affidavit on February 18, 2016. She included a list of other activities that Devin had engaged in since the beginning of 2016 including extensive traveling, skiing, snow tubing, attendance at the children's various extracurricular activities, singing with his band, and going to restaurants and bars with friends. Alicia prayed for the court to deny Devin's request for the appointment of a GAL as there was nothing new in his condition to warrant such an appointment. The trial court denied Devin's motion for appointment of GAL but granted him leave to file a petition for guardianship in the probate court within five days of the order. The trial court agreed to continue the proceedings for a March 11, 2016, status date.

¶ 13 On March 10, 2016, Alicia filed a petition for rule to show cause, for finding of indirect civil contempt, alleging that Devin had not paid any of the \$1,000 weekly child support since he

paid her \$15,000 on January 27, 2016, to purge the trial court's prior adjudication of indirect civil contempt for the same failure to pay. Also on March 10, 2016, Alicia petitioned the court to establish a trust for the benefit of the parties' children pursuant to section 503(g) of the Act. Alicia noted Devin's continued failure to pay child support, his significant assets, and his terminal illness compels the creation of a trust for the children for no less than \$1,000,000. In his response, Devin admitted that he had not paid Alicia the ordered support as well as having transferred assets into trust.

¶ 14 On April 13, 2016, Marc Schwartz was appointed as Devin's limited guardian for purposes of representing him in the trial court. After June 2, 2016, Devin's pleadings were brought and signed by Schwartz as Devin's limited guardian.

¶ 15 On June 7, 2016, Alicia filed an amended petition for rule to show cause, for finding of indirect civil contempt. She alleged that Devin's failure to pay the requisite \$1,000 per week in child support had continued and that Devin was at that time \$18,000 in arrears. On June 24, 2016, Devin was adjudicated in indirect civil contempt. The trial court found that he had failed to make weekly \$1,000 child support payments for 21 consecutive weeks. The trial court found Devin's nonpayment to be willful and without compelling cause or justification. Devin was ordered to be incarcerated for 90 days in the Lake County Jail but the trial court stayed his incarceration until July 14, 2016, in order to give him time to purge his contempt. After continuing the matter until July 19, 2016, Devin failed to purge his contempt and was sentenced to 90 days of imprisonment. The trial court allowed Devin the option to purge the sentence by paying \$20,000 in child support. Devin elected to serve incarceration and house arrest before paying \$20,000 and purging his contempt on July 28, 2016. On that same date, the case

proceeded to trial where opening statements were given by both parties and Marc Fisher, the GAL for the parties' children, gave testimony not relevant to the issues in the present appeal.

¶ 16 On August 3, 2016, Alicia filed an amended notice of intent to claim dissipation. She claimed that Devin had dissipated approximately \$2,963,910.71 of marital monies. This figure included Devin's transfer of his ownership interest in AFA to his brother for \$3,680,000 pursuant to a promissory note and collateral pledge and security agreement to the Devin Arkin Revocable Trust. Alicia claimed half of that total was marital property. She further cited Devin's March 16, 2016, sale of his \$600,000 Banner life insurance policy for \$450,000. Alicia claimed that the proceeds Devin received from that sale were also transferred to the Devin Arkin Revocable Trust. Alicia also claimed that on February 11, 2014, Devin invested marital funds into a Rothschild Cornerstone Fund. The funds used to make this investment were transferred out of the parties' joint checking account. Alicia alleged that Devin withdrew \$92,802 of marital funds from the Rothschild Cornerstone investment in 2015 and had never tendered any account or statement as to where the funds were being held or what they were spent on.

¶ 17 The trial resumed and concentrated almost exclusively on the parties' financial issues. Alicia testified that she and Devin had agreed that she would stay at home and raise the children instead of pursuing her career in clinical psychology. As such, she had never worked as a clinical psychologist during the marriage. At the time of trial, she was working part-time as a clinical psychologist earning an \$18,000 salary while continuing to raise the parties' two children. Since the pendency of the dissolution proceedings, Alicia said that Devin had left her and the children without financial support. She testified that Devin had reduced the credit limit on the parties' joint credit card from \$19,500 to \$5,000 before ultimately closing the card entirely. Devin, who had paid the balance on this credit card throughout the marriage, stopped

paying the amounts due before closing it. Devin closed the parties' joint checking account. He had consistently and willfully failed to pay court-ordered child support and was more than \$10,000 in arrears for that support at the time of her testimony. She was able to open a credit card in her own name during the litigation but had only a \$5,000 credit limit, which she was unable to pay following its use as Devin had closed all of the parties' joint accounts.

¶ 18 Mark Schwartz testified on behalf of Devin as his limited guardian regarding financial matters as follows. In 2014, Devin earned \$341,963. He claimed that as of May 2015, his gross monthly income was only \$2,498 but he paid \$8,280 per month in federal and state taxes. Schwartz could not say how this was possible but testified that it reflected what was included in Devin's financial affidavit.

¶ 19 He acknowledged that Devin, during the course of the dissolution proceedings, had transferred, and attempted to transfer, vast amounts of assets into the Devin Arkin Revocable Trust. Among these assets included his interest in AFA, a \$404,000 receivable due to Devin from AFA, and his half interest in the parties' marital residence which was held as tenants by the entirety.

¶ 20 Devin dissolved Huckleberry Pie, Inc., a company of which he was a 49% owner, in 2015. In that year Devin received \$175,476 in distributions from the company as well as \$98,565 in ordinary business income. Schwartz did not know what became of those funds.

¶ 21 Devin purchased a life insurance policy from Banner Life Insurance Company in August 2005. Alicia was listed as the primary beneficiary of the \$600,000 policy and the children were listed as contingent beneficiaries. The monthly premiums for the policy were paid from the parties' joint bank account. On August 4, 2014, the day Devin filed his petition for dissolution of marriage, Devin executed a beneficiary change form, removing Alicia as the primary

beneficiary in favor of the parties' children. Devin's brother was listed as the new contingent beneficiary. In October 2015, Devin transferred the life insurance policy to the Devin Arkin Revocable Trust. This occurred shortly after Devin learned of his stage four brain cancer diagnosis. Then, on March 9, 2016, Devin sold the Banner life insurance policy to a company called Magna Life Settlement, Inc. (Magna) for \$450,000. The sale proceeds were paid to the Devin Arkin Revocable Trust. Devin signed or initialed each page of the sale agreement with Magna. In the sale agreement, Devin represented to Magna that Alicia consented to the agreement, that Devin was not a party to any dissolution proceedings, and was not in "violation of any obligations concerning child care, paternity, alimony, or support for any children, or guardian thereof, or former spouse."

¶ 22 Devin had the \$450,000 proceeds of his Banner life insurance policy sale transferred into a bank account in the name of the Devin Arkin Revocable Trust. Devin was the only trustee of this account and exercised unilateral control. Schwartz stated that Devin used the \$450,000 to pay the broker of the sale between Devin and Magna, pay his divorce attorneys, loan his nephew \$100,000, pay for customary living expenses, and pay attorney fees for litigation in a Maryland initiated by Devin against himself and Alicia.

¶ 23 Regarding the Maryland litigation alluded to above, at some point during the marriage Devin and Alicia were given \$1,000,000 from the Michael Arkin Revocable Trust in exchange for a promissory note in order to purchase their marital residence. Devin and his father, Michael, were the trustees of the Michael Arkin Revocable Trust. Michael's father provided a letter explaining that the loan had been forgiven. Devin, acting as trustee, initiated a lawsuit in Maryland against himself and Alicia seeking the collection of the \$1,000,000 promissory note plus more than \$2,000,000 in interest. Devin attempted to enter a consent judgment to settle the

case against himself and continue the litigation against Alicia. Ultimately, the Maryland court declared the note was a gift to the parties and not an enforceable loan. The litigation cost Devin \$80,000 in attorney fees and \$347,000 in attorney fees for Alicia. Schwartz testified that he could not identify any benefit provided to the marriage from the payment of those fees.

¶ 24 Schwartz testified that Devin invested \$1,500,000 into the Rothschild Cornerstone Fund in February 2014. Between March and May 2014, Devin funded the initial commitment to the fund with checks drawn from the parties' joint bank account in an amount totaling \$72,000. Devin represented in the fund's subscription agreement, under penalty of perjury, that he had a net worth with assets jointly held with his spouse of over \$2,000,000. Devin conceded, and Schwartz reiterated, that he intentionally perjured himself in order to invest in the Rothschild Cornerstone Fund.

¶ 25 Devin executed a second subscription agreement with Rothschild Cornerstone Fund in May 2014. He funded this investment by withdrawing his initial investment and reinvesting \$90,000 from a bank account in Devin's name only. At the time of trial, Devin had withdrawn all of his interest in the Rothschild Cornerstone Funds and had received a distribution of \$92,802. Those funds were transferred into a bank account held in Devin's name and were used for various expenses.

¶ 26 Schwartz acknowledged awareness of the court's October 21, 2015, order requiring Devin to pay \$1000 per week in child support to Alicia. He also acknowledged that Devin consistently failed to pay the ordered support and was twice adjudicated in indirect civil contempt. Schwartz also agreed that Devin had not complied with the trial court's support order for the nine weeks leading up to trial. Since the October 21, 2015, child support order, Devin had amassed at least \$854,000 through the \$450,000 sale of the Banner life insurance policy and

the \$404,000 receivable from AFA. There were also distributions made from Devin's interest in Huckleberry Pie, Inc., but Schwartz could not testify to his knowledge that Devin had received them during the timeframe in question.

¶ 27 The trial court closed proofs on August 31, 2016. On September 30, 2016, Devin filed a motion to reopen proofs. In his motion, Devin stated that his insurer would not cover certain medical expenses related to the treatment of his brain cancer and that the resulting debt should be considered marital. The trial court granted his motion and heard Schwartz testify on behalf of Devin on October 27, 2016. The parties stipulated that the uncovered medical expenses totaled \$161,000. The trial court took the matter under advisement.

¶ 28 On October 27, 2016, the trial court issued its judgment for dissolution of marriage. In making its credibility findings, the trial court found Alicia's testimony to be credible. The trial court did not find Devin to be credible. The trial court did not have the opportunity to observe Devin's demeanor at trial as his testimony was presented through his limited guardian, but the court noted that it could not ignore Devin's actions throughout the course of the proceedings as they "reflected significantly on his credibility" The trial court found Devin not credible based on the following:

"a. On November 24, 2015, Devin was found to be in indirect civil contempt of court for his defiant refusal to pay court ordered support for the benefit of his wife and children in the amount of \$1,000 per week. On January 15, 2016 Devin paid the \$9,000 purge, and brought child support current, to avoid a sentence of incarceration.

b. On June 24, 2016, Devin was found in indirect civil contempt a second time for non-payment of family support. After being given additional time to pay the purge, Devin persisted in his willful refusal to pay support. Devin was remanded to the Lake County

Jail, a sentence that was shortly thereafter, converted to house arrest, due to his medical conditions. Devin paid the \$20,000 purge to confirm his release from home confinement, so he could travel on a vacation. Devin has continued to defy the court's order of family support, and has not made a payment pursuant to the temporary support order since payment of the purge on July 28, 2016. The current support arrearage is \$21,000 through the date of this judgment.

c. While this case was pending, Devin attempted to unilaterally sever the parties Tenancy by the Entirety ownership interest in the marital residence, by executing and recording a deed, transferring ownership of the real estate to Devin's living trust, established in October, 2015.

d. Devin, while acting as trustee of his father's trust, namely The Michael Arkin Revocable Trust, initiated a lawsuit in Maryland, against himself and Alicia seeking collection of an alleged promissory note in the sum of \$1 million, and more than \$2 million in interest. Devin then attempted to enter a consent judgment in the litigation. The Maryland court determined the note to be a gift, and the promissory note was deemed invalid. The Maryland judgment is currently being appealed by the Michael Arkin Revocable Trust.

e. During the pendency of this case, Devin transferred his interest in AFA, LLC in its entirety, while the marital status of the asset was subject to the court's determination, and while he remained subject to an order of court to pay family support. The transfer was termed a "sale" to his brother, Jed Arkin for a \$3,680,000 value, (including \$404,000 in cash), under terms which require no payment by the purchaser for 15 years.

- f. Devin unilaterally dissolved the *** 49% interest in the business, Huckleberry Pie, Inc. and disposed of all of the proceeds and assets of the business, while the marital status of the asset was subject to the court's determination.
- g. Devin admitted through the testimony of his court appointed guardian, that in applying for acceptance into the Rothschild Cornerstone Fund, he intentionally misrepresented and inflated his net worth in a sworn statement, to achieve his own purposes.
- h. Devin unilaterally *** liquidated a Rothschild Cornerstone Funds account, and disposed of its proceeds, while its marital status was subject to the court's determination.
- i. Devin unilaterally sold a Banner life insurance policy while the marital status of the asset was subject to this court's determination. In the contract for sale to Magna Life Insurance Settlements, Devin attested falsely, that he was not involved in a divorce action, that he was not in violation of an order of support, and that there was no pending litigation concerning the policy."

¶ 29 The trial court articulated its finding regarding the Rothschild Cornerstone Fund as follows:

"Devin executed a Rothschild Cornerstone Fund Subscription Agreement on February 18, 2014. The \$74,000 used to purchase the investment came from the parties' jointly held *** account ***. In May and June, 2014 Devin transferred the Rothschild Cornerstone investment to his *** account. Devin then executed and funded a new Rothschild Subscription Agreement in May 2014.

Devin argues that the money used to make the original Cornerstone Subscription purchase was nonmarital money from AFA, LLC distributions, deposited in a marital account as a transferring agent only, and therefore maintained its nonmarital identity.

This court disagrees. The Subscription purchase was made from a source that had accumulated over a period of months in the parties' jointly held *** account ***. The purchase was made during the marriage, with marital assets, accordingly, it is a marital asset, and its value was \$92,802.

Devin later liquidated the asset in its entirety, the location of the proceeds are not known.”

¶ 30 Regarding Alicia's claims of dissipation against Devin, the trial court found as follows:

“The court finds that after the marriage began undergoing an irretrievable breakdown, Devin dissipated \$1,042,940 of marital assets and that the assets were not used for purposes related to the marriage.

A review of the record in its entirety sadly, leads this court to the conclusion that Devin charted a path with singular focus on the intentional, financial asphyxiation of his wife, Alicia, and consequently, of his two daughters. ***.

a. Banner Life Insurance Policy. Devin's unilateral sale of [the Banner life insurance policy] for \$450,000, and distribution of the \$100,000 of the proceeds to his nephew ***, and disposal of the balance of the case for nonmarital purposes, was a knowing and intentional diversion of a marital asset valued at \$600,000. ***.

c. Rothschild Cornerstone Fund. Devin's unilateral liquidation and disposal of the full balance of the investment in the amount of \$92,802 was a knowing, and intentional diversion, of a martial asset for non-martial purposes. ***.”

¶ 31 In its finding that a 503(g) trust should be imposed for the benefit of the parties' children, the court list its reasons as to why the establishment of such a trust was necessary:

“*** The court finds that in this case there are at least three reasons for the establishment of a trust: (1) Devin’s history of non-payment of court ordered family support resulted in two separate findings of indirect civil contempt, in addition the court’s determination of a substantial accrued arrearage at the time of this Judgment. Devin’s defiant refusal to pay child support, in spite of his well-documented ability to pay, has been consistently demonstrated throughout the course of this litigation; (2) Devin’s diagnosis of terminal brain cancer. The term of Devin’s life is not known with certainty, but due to his diagnosis of terminal brain cancer, and based on best evidence provided by his treating physicians, is projected to be limited. Devin’s death will result in an inability of the children to secure the support they are entitled to receive; and (3) Devin has established himself as untrustworthy and not credible in matters related to his personal finances, and obligations of his family. For the foregoing reasons, this court finds that it is necessary to establish a trust pursuant to 503(g) to promote and protect the best interests of the children.”

¶ 32 The trial court found as follows regarding \$161,000 in medical costs for Devin’s cancer treatment:

“Devin requests that the outstanding medical expense be allocated between the parties. The court has carefully considered this issue of medical fees. It must be noted that during the course of this litigation, Devin was extremely guarded and protective of any and all information related to his illness and treatment, providing only the most minimum details, and only when absolutely necessary. *** Devin has made all of his medical treatment decisions without notice, consult, or consideration of Alicia. *** Alicia has had no access to any billings, and she has had no ability to investigate, initiate,

or participate in the negotiation or appeal process in regard to the allowance or denial of benefits. ***.

[T]his court concludes that the imposition of any portion of *** medical liability against Alicia would be unjust. This court finds that Devin shall be solely responsible for any resulting, uncovered medical liability related to the pending bill for \$160,000.”

¶ 33 On November 18, 2016, Devin filed a motion for reconsideration of the trial court’s judgment for dissolution. Devin argued that the trial court erroneously valued the Banner life insurance policy and misclassified the Rothschild Cornerstone investment as marital property. On November 23, 2016, Devin passed away. On March 27, 2017, Karen Arkin was named Independent Administrator of Devin’s Estate. The trial court denied the motion for reconsideration on May 2, 2017. Devin then filed a notice of appeal on May 4, 2017, and recorded a *lis pendens* notice against the marital residence the same day. Following Alicia’s motion to expunge the *lis pendens*, Karen Arkin re-recorded *lis pendens* notice on May 10, 2017. The trial court held this appeal in abeyance pending the resolution of the *lis pendens* litigation. Both *lis pendens* notices were quashed on June 15, 2017.

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 Devin raises several contentions in this appeal. First, he contends that the trial court’s finding that he dissipated \$1,042,940 was error by misclassification of the Rothschild Cornerstone Funds as marital property and placing a value of \$600,000 on the Banner life insurance policy when Devin only received \$450,000 from its sale. Second, Devin contends that the trial court abused its discretion in imposing a \$750,000 trust pursuant to section 503(g) of the

Act for the benefit of his children. And, third, he contends that the trial court erred by allocating \$161,000 in medical debt to Devin. We will address each of Devin's contentions in turn.

¶ 37 We begin with Devin's contention that the trial court erred in classifying the Rothschild Cornerstone Fund as marital property. Devin argues that the funds deposited into the parties' joint bank account, which was used to pay for the investment into the Cornerstone Fund, originated from nonmarital AFA distributions to Devin acquired by a nonmarital gift.

¶ 38 All the property of the parties to a marriage belongs to one of three estates, namely, the estate of the husband, the estate of the wife, or the marital estate. *In re Marriage of Werries*, 247 Ill. App 639, 641–42 (1993). Section 503 of the Act requires the trial court to classify property as either marital or nonmarital in order to assign or divide it upon a marriage dissolution. 750 ILCS 5/503 (West 2016). The trial court's classification of property as marital or nonmarital will not be disturbed on appeal unless it is contrary to the manifest weight of the evidence. *In re Marriage of Demar*, 385 Ill. App. 3d 837, 850 (2008).

¶ 39 As a general rule under the statute, property acquired by either spouse after the marriage, but prior to a judgment of dissolution, is presumed to be marital property regardless of how title is actually held. 750 ILCS 5/503(b) (West 2012); *In re Marriage of Davis*, 215 Ill. App. 3d 763, 768 (1991). This includes property held solely in one party's name. 750 ILCS 5/503(b) (West 2016). Subsection (a) provides exceptions to this rule including "property acquired by gift, legacy or descent" or "income from property acquired by a method listed in paragraphs (1) through (7) of this subsection." 750 ILCS 5/503(a)(1), (8) (West 2016). Thus, property acquired during the marriage is presumed to be marital property unless it is shown by clear and convincing evidence that the property falls within one of the statutory exceptions listed in subsection (a). 750 ILCS 5/503(a), (b) (West 2016).

¶ 40 Devin funded his initial investment into the Rothschild Cornerstone Fund with money he withdrew from the parties' joint bank account. The money initially deposited into that bank account came from distributions to Devin from AFA several months before the withdrawal. The trial court in its findings on this issue noted that the "Subscription purchase was made from a source that had accumulated over a period of months in the parties' jointly held [bank] account." The trial court outwardly rejected Devin's argument "that the money used to make the original Cornerstone Subscription purchase was nonmarital money from AFA, LLC distributions, deposited in marital account as a transferring agent only, and therefore maintained its nonmarital identity." We agree.

¶ 41 "[C]ourts will presume a spouse who placed nonmarital property in [a joint account] with the other spouse intended to make a gift to the marital estate." *Berger v. Berger*, 357, Ill. App. 3d 651, 660 (2005). The burden of rebutting the presumption of a gift requires "evidence that is not only clear and convincing, but also unmistakable." *Id.* "Any doubts as to the nature of the property are resolved in favor of finding that the property is marital." *In re Marriage of Hegge*, 285 Ill. App. 3d 138, 141 (1996). Just because the funds that were deposited into the joint account originated from a nonmarital source does not rebut the presumption that a gift was intended to the marriage. See *In re Marriage of Emken*, 86 Ill. 2d 164, 166 (1981).

¶ 42 Devin argues that *In re Marriage of Heroy*, 385 Ill. App. 3d 640 (2008), supports his contention that the trial court erred in classifying the Rothschild Cornerstone Fund as marital property. In *Heroy*, the trial court found that certain funds deposited by David (former husband) into various accounts during the marriage were nonmarital property. *Heroy*, 385 Ill. App. 3d 640, 673-74. David had received life insurance proceeds following his father's death and used those proceeds to open a Northern Trust account. *Id.* He then transferred those proceeds into a

separate account. David then began depositing nonmarital stock distributions into the Northern Trust account, followed by a transfer of an amount equal to the stock distributions into another separate account. *Id.* at 674. He repeated this process with respect to nonmarital proceeds received from another nonmarital real estate source. *Id.* Later, David deposited \$800 per month that he received as a director's honorarium into the Northern Trust Account, then later transferred the honorarium funds to another account. *Id.* The trial court found the funds related to the director's honorarium to be marital property as their source could clearly be traced. *Id.* Additionally, a \$25,000 executor fee that David received from his father's estate was found to be marital property. *Id.*

¶ 43 On appeal, Donna (former wife) argued that because the director's honorarium fees, which were found to be marital property, were deposited into David's Northern Trust account before being transferred to another account, the director's honorarium fees (marital property) were commingled with David's nonmarital life insurance proceeds and nonmarital stock distributions and real estate proceeds. *Id.* The court disagreed by articulating that:

“[M]arital and nonmarital property were not commingled to acquire new assets resulting in a loss of identity of the contributing estates. Instead, David opened the [Northern Trust) Account with nonmarital assets. He deposited nonmarital income that he received from other sources into that account before segregating the funds into their own accounts. Although the \$800 per month director's honorarium, which the court did find to be marital property, was also deposited into the [Northern Trust] account for 10 months before being transferred to its own account, the trial court was able to clearly trace the proceeds and distribute the marital estate accordingly. The funds did not lose their identity and no improper commingling occurred.” *Id.*

¶ 44 Here, unlike in *Heroy*, Devin offers no evidence, let alone clear and convincing evidence, to rebut the presumption that the money from AFA, LLC distributions, deposited into the couple's marital account was a gift to the marital estate. The Subscription purchase was made from the funds in the parties' joint account that had accumulated over months. The purchase was made during the marriage, with marital assets. When asked whether the parties' joint bank account had enough money to cover the cost of the Subscription purchase before Devin deposited funds from AFA, Schwartz responded that "it does not appear so." The Rothschild Cornerstone Fund was purchased with a combination of funds from the parties' joint bank account and funds deposited from Devin's AFA distributions. Once marital and nonmarital funds are commingled and lose their identity through acquisition of a newly-created asset during the marriage, the asset is marital. See 750 ILCS 5/503(c)(1) (West 2016); *In re Marriage of Davis*, 215 Ill. App. 3d 763 (1991).

¶ 45 Accordingly, the trial court's finding that the Rothschild Cornerstone Fund was a marital asset with a value of \$92,802 was not against the manifest weight of the evidence. Further, since the court's finding was not against the manifest weight of the evidence, Devin's liquidation of the asset in its entirety for nonmarital purposes, made the trial court's finding that Devin dissipated \$92,802 in marital funds a proper finding as well. With this in mind, we move on to Devin's contention that the trial court erred in its valuation of the Banner life insurance policy in its finding of \$600,000 of dissipation regarding that marital asset.

¶ 46 Devin does not argue that the trial court erred in finding that the sale of the Banner life insurance policy to Magna constitutes dissipation. Rather he argues that the value of dissipation should have been \$450,000 instead of \$600,000 because Alicia had only an expectancy in the value of the policy. While we agree with Devin, that Alicia's interest in the Banner life

insurance policy was an expectancy, we disagree that the trial court's finding of \$600,000 in dissipation was error.

¶ 47 There is no doubt that the Banner policy was a marital asset. See 750 ILCS 5/503(a) (West 2016). It was acquired during the parties' marriage and paid for with funds from the parties' joint bank account. On the very day he filed his petition for dissolution, he removed Alicia as the primary beneficiary on the policy in favor of the parties' children. This action evidences that the policy, a marital asset, still maintained a clear marital purpose, which was to provide \$600,000 to the children in the event of Devin's death. But in October 2015 Devin transferred the policy to his living trust and then, in March 2016, unilaterally sold the policy to Magna for \$450,000 after falsely representing that he had spousal consent to do so, was not a party to any dissolution proceedings, and was not in violation of support for his children. The record contains no evidence that Devin performed this action or used the funds he gained from the sale of the policy for any purpose that would have benefitted the marriage or his children. In actuality, the arguably fraudulent sale of the policy did nothing but deprive his children of \$600,000 since the sale was made after Devin had learned of his terminal brain cancer diagnosis and unfortunate impending death. Devin's unilateral sale of the life insurance policy was a knowing and intentional diversion of a \$600,000 marital asset. The trial court's finding of such was not against the manifest weight of the evidence.

¶ 48 Devin's next contention is that the trial court abused its discretion in imposing on him a \$750,000 trust for the benefit of his children pursuant to section 503(g) of the Act. Devin's argument in support of this contention is that he individually had no assets because all of his assets were transferred to the Devin Arkin Revocable trust and, therefore, as trustee he had access to the funds but not in his individual capacity. Again, we disagree with Devin.

¶ 49 Section 503(g) of the Act states as follows:

“The court if necessary to protect and promote the best interests of the children may set aside a portion of the jointly or separately held estates of the parties in a separate fund or trust for the support, maintenance, education, physical and mental health, and general welfare of any minor, dependent, or incompetent child of the parties. ***.” 750 ILCS 5/503(g) (West 2016).

¶ 50 In deciding whether to create a section 503(g) trust or fund, the circuit court must initially determine whether the fund is necessary to promote and protect the best interests of the children. *In re Marriage of Pickholtz*, 178 Ill. App. 3d 415, 419 (1990). Application of section 503(g) also demands evidence of a demonstrated unwillingness or inability by a parent to make direct payments of child support. *Id.* An order requiring the creation of a 503(g) trust is reviewed for an abuse of discretion. *Melamed v. Melamed*, 2016 IL App (1st) 141453, ¶ 41. An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court. *In re Marriage of Moore*, 307 Ill.App.3d 1041, 1043 (1999).

¶ 51 Devin’s behavior with regard to child support orders and marital assets have been well documented here. Indeed the trial court goes to great lengths in explaining the history of Devin’s actions necessitating the creation of the 503(g) trust. See *supra*, ¶ 31. The court went even further to explain its finding that a \$750,000 trust should be created when it noted:

“In setting the dollar amount of the trust, this court carefully considered all of the relevant factors including Devin’s marital and nonmarital estate assets which he intentionally disposed of with the specific intention of avoiding his obligations to his family, his short life expectancy, the amount of court ordered child support, the age and needs of the children, along with reasonable expectation of increases to educational, health care,

religious, and living expenses. The court also considered Alicia's reasonable contribution to the children's expenses, her current and anticipated income and financial resources, in addition to the costs associated with the administration of the trust. Based on the foregoing, the court finds that the trust should be established in the amount of \$750,000 within 21 days."

¶ 52 It would be difficult, if not impossible, for this court to find any reason as to why the trial court's order for the imposition of this 503(g) trust for the benefit of these children, based on the particular behaviors of this petitioner, could be deemed an abuse of discretion. Devin's argument that he individually had no assets because all of his assets were transferred to the Devin Arkin Revocable trust and, therefore, as trustee he had access to the funds but not in his individual capacity is disingenuous and not supported by the facts of this case. Furthermore, this court has been unable to find any existing case law that supports this contention. The trial court did not abuse its discretion in imposing a \$750,000 pursuant to section 503(g) of the Act for the benefit of his children.

¶ 53 Finally, we address Devin's contention that the trial court improperly allocated \$161,000 in medical debt for cancer treatments to him. Devin argues that his medical bills constitute marital debt of which Alicia bears some responsibility.

¶ 54 The touchstone of apportionment of marital property is whether the distribution is equitable. *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 979 (1992). The division need not be mathematically equal to be equitable. *Id.* at 979. The distribution of marital property is within the court's sound discretion and will not be disturbed on appeal absent an abuse of discretion. *Id.* at 979. An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court. *In re Marriage of Moore*, 307 Ill. App. 3d 1041, 1043 (1999).

¶ 55 Devin made all of his medical decisions without notice, consult, or consideration of Alicia. Alicia had no access to any bills generated from Devin's treatments. She had no way to investigate what treatments he had agreed to undergo. She participated in no way in the decision-making process regarding these medical procedures. She did not participate in any way with Devin's insurance company following the denial of the claims that lead to the accumulation of medical debt. She was kept completely in the dark about Devin's charted course of treatment. Where one spouse has sole access to funds or incurs debt without the knowledge of the other, that spouse can be held responsible for the entire debt. *Szesny v. Szesny*, 197 Ill. App. 3d 966 (1990) (citing *In re Marriage of Ryan*, 138 Ill. App. 3d 1077, 1081 (1985); *In re Marriage of Kaplan*, 149 Ill. App. 3d 23, 32 (1986)).

¶ 56 We agree with the trial court that it would be inequitable to make Alicia responsible for Devin's medical bills when Devin incurred the totality of the debt without Alicia's knowledge. Such a finding is certainly not an abuse of discretion. As the trial court points out in its judgment, and we wholeheartedly agree, "Devin has demonstrated repeatedly that he is not credible, and he has shown a strong propensity to make every effort to disadvantage Alicia financially, even when it also results in a detriment to himself."

¶ 57 III.CONCLUSION

¶ 51 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 52 Affirmed.