2018 IL App (4th) 170741-U

NO. 4-17-0741

FILED
June 5, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF DEBORAH L. RADKE, Petitioner-Appellee, and ROSS B. RADKE, Respondent-Appellant.	))))))))	Appeal from the Circuit Court of Livingston County No. 15D77 Honorable Robert M. Travers, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding respondent was not entitled to relief in this dissolution proceeding.

¶ 2 In July 2017, the trial court entered a judgment for dissolution of marriage between petitioner, Deborah L. Radke, and respondent, Ross B. Radke, and distributed certain marital and nonmarital property.

¶ 3 In his *pro se* appeal, Ross argues the trial court erred in (1) not requiring the guardian *ad litem* to provide a written report, (2) refusing to admit his exhibit, (3) treating a witness as adversarial, (4) distributing marital property, and (5) allocating firearms without the proper requisites for transfer. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2001, Deborah and Ross were married in Ottawa, Illinois. Two

children were born during the marriage, namely A.R. and Z.R., both born in October 2006. In August 2015, Deborah filed a petition for dissolution of marriage. At that time, Deborah was 47 years old and employed at Woodland High School. Ross was 58 years old and employed at a nursing home. Ross later answered the petition and stated he was unemployed.

¶ 6 In March 2016, Ross filed a *pro se* petition to appoint a guardian *ad litem* for the minors. The petition alleged Deborah was suffering from post-traumatic stress disorder and the minors were suffering from depression and anxiety. The trial court allowed the petition.

¶ 7 Ross also filed a motion to accept his exhibit B into evidence. He alleged the exhibit comprised a copy of a civil case filed by Deborah and contained evidence, including her deposition, that would impeach her testimony in the dissolution proceeding. The trial court refused to admit the exhibit.

¶ 8 Following several hearings on financial issues, the parties submitted written arguments. Thereafter, Deborah filed a petition to reopen the evidence, claiming she discovered a substantial amount of ammunition, worth approximately $20,000, was hidden in a shed at the marital residence. Deborah believed the ammunition constituted marital property and asked the trial court to reopen the proof on the limited issue of its value.

¶ 9 In July 2017, the trial court issued the judgment for dissolution of marriage. The court found the title to the marital home in Manville was held by First National Bank of Ottawa in land trust No. 2550. The terms of the land trust indicated the real estate was held in joint tenancy by Ross and Deborah, and the real estate was marital property. The court found the land trust had been funded by the sale of property in Ottawa, which was also marital property as it was held in a land trust with Deborah and Ross as joint tenants. The court stated Ross failed to trace any inheritance money he used to pay off a small portion of the unpaid loan and failed to

overcome the presumption of marital property or gift to the marital estate. The court also awarded Ross multiple firearms and assorted ammunition.

¶ 10 Ross filed a motion to vacate the judgment, arguing he did not have a proper firearm owner's identification (FOID) card and was under the constraint of an order of protection, both of which prohibited him from possessing or transferring the property awarded to him. Ross argued the trial court lacked the proper jurisdiction to award the firearms and ammunition to him. Ross later filed a motion to withdraw his motion. This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 At the outset, we note this case has been designated as "accelerated" pursuant to Illinois Supreme Court Rule 311 (eff. July 1, 2017). Rule 311 states in relevant part that "[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2017).

¶ 13 In this case, Ross, acting *pro se*, filed his notice of appeal on October 3, 2017, and an amended notice of appeal on October 19, 2017. This court granted Ross's motion for extension of time to file the record until December 20, 2017. The record was filed on February 9, 2018. On March 1, 2018, Ross filed a motion for extension of time to file a brief, which this court allowed to March 26, 2018. Ross filed his brief on that date, and Deborah filed her brief on May 2, 1018.

¶ 14 Thus, this appeal was not ready for disposition until May 17, 2018. In light of these circumstances, there is good cause to issue this decision after the 150-day deadline.

¶ 15 A. Guardian *ad Litem*'s Report

¶ 16 Ross argues the trial court erred in not requiring the guardian *ad litem* to file a written report 60 days prior to anticipated hearings on the allocation of parenting responsibilities.

We find this issue forfeited.

¶ 17 "[*P*]ro *se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys." *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067, 916 N.E.2d 45, 47 (2009). "Bare contentions in the absence of argument or citation of authority do not merit consideration on appeal and are deemed waived. [Citation.] A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented (134 Ill. 2d R. 341(e)(7)), and it is not a repository into which an appellant may foist the burden of argument and research." *Obert v. Saville*, 253 Ill. App. 3d 677, 682, 624 N.E.2d 928, 931 (1993).

¶ 18 In the case *sub judice*, Ross has not provided references to the pages of the record relied on in his statement of facts. Ill. S. Ct. R. 341(h)(6) (eff. Nov. 1, 2017). Moreover, he has not cited case law to support his claim of error on this issue. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (stating an appellant's brief must include "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relief on"). Instead, Ross offers only a conclusory claim that a written report from the guardian *ad litem* "would have given [him] several issues in questioning [Deborah] that he was unaware of at the time of the trial." Without more, we find Ross has forfeited this issue.

¶ 19 B. Exhibit B

¶ 20 Ross argues the trial court erred in refusing to admit exhibit B, which was a copy of a lawsuit filed by Deborah in LaSalle County. Ross claims the exhibit contained Deborah's deposition and would have demonstrated the need for a mental-health examination of her. We find this issue forfeited.

¶ 21 Ross has not cited any case law to support his argument. Moreover, he offers little more than conclusory statements that Deborah's deposition would have indicated she had counseling and a diagnosis of post-traumatic stress syndrome, her previous testimony at the hearing on the order of protection would have been impeachable, and he would have asked the trial court to order a psychological evaluation of her before proceeding into issues involving the children. Ross offers nothing to indicate the court erred in refusing to admit the exhibit.

¶ 22 C. Adversarial Witness

¶ 23 Ross argues the trial court erred in treating Dr. Judy Osgood as an adversarial witness during her direct testimony in support of her psychological evaluation of him. We find this issue forfeited.

¶ 24 Again, Ross has not cited any case law to support his argument. Ross contends he engaged the services of Dr. Osgood and her testimony showed he was not a risk to his children. He then claims the trial court questioned Osgood to impeach her credibility and only accepted her report and testimony as an offer of proof. On appeal, however, Ross has not indicated what relief he is seeking for the court's alleged error.

¶ 25 D. Marital Property

¶ 26 Ross argues the trial court erred in deciding facts concerning premarital and marital property and in the equal distribution of the property. We disagree.

¶ 27 "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 Johns*, 311 Ill. App. 3d 699, 702, 724 N.E.2d 1045, 1048 (2000). Prior to making a property distribution, the trial court must classify property as marital or nonmarital. *In re Marriage of Henke*, 313 Ill. App. 3d 159, 166, 728 N.E.2d 1137, 1143 (2000). The court's classification of

property will not be overturned on appeal unless it is against the manifest weight of the evidence. *Johns*, 311 Ill. App. 3d at 702, 724 N.E.2d at 1048.

¶ 28 Section 503(a) of the Illinois Marriage and Dissolution of Marriage 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 2016). "A party can overcome this presumption only by a showing of clear and convincing evidence that the property falls within one of the exceptions listed in section 503(a) ***." *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017, 909 N.E.2d 221, 228 (2009). Property acquired before the marriage constitutes one of those exceptions. 750 ILCS 5/503(a)(6) (West 2016). "The party claiming that the property is nonmarital has the burden of proof, and any doubts as to the nature of the property are resolved in favor of finding that the property is marital." *Schmitt*, 391 Ill. App. 3d at 1017, 909 N.E.2d at 228. The "placement of nonmarital property in joint tenancy or some form of co-ownership raises the presumption that a gift was made to the marital estate, and this presumption of gift transforming the property into marital property may be rebutted only by clear and convincing evidence that no gift was intended." *In re Marriage of Veile*, 2015 IL App (5th) 130499, ¶ 12, 43 N.E.3d 1196.

¶ 29 Ross contends land trust No. 2550 was funded solely by his premarital personal property, including 75% from his solely owned corporation and his premarital property, with the remaining amount from the money he inherited from his mother.

¶ 30 At the hearing on financial issues, Deborah testified the home in Manville was purchased in 2014 and put into a land trust. She was listed as a 50% beneficiary. A sheriff's deed and report indicates the Manville property was purchased for $83,000 and conveyed to the land trust. The parties had once owned joint property in Ottawa, and Ross operated his

businesses in that building. A land trust agreement relating to the Ottawa property and dated September 26, 2007, lists Ross and Deborah as joint tenants. Deborah testified Ross received an inheritance from his mother in 2007 and they "paid off the last part of the building" in Ottawa. They sold the building for $120,000 and put the proceeds in a trust.

¶ 31 Ross testified the land trust owns the marital property and he and Deborah are joint tenants. He stated the proceeds from the sale of the Ottawa property were transferred into a revocable trust, which was used to purchase the Manville property. Ross stated he incorporated his business, Hydrus, Inc., in 1983, and he "inherited" 100% ownership of the business after his first divorce. He stated he purchased a building in 2001 to house his other businesses, including a martial arts school and a private detective agency. He paid off the contract for the Ottawa property in 2007 using his inheritance from his mother's estate. He testified land trust No. 2550 "was formed in 2007 and was designed to protect [his] premarital business and personal assets." The parties sold the Ottawa property and the proceeds went into a revocable trust. The parties then purchased the Manville property "through the revocable trust and placed it directly in the Land Trust 2550." The Manville property was purchased in 2014 for $83,000.

¶ 32 The land trust has owned two properties, and both were held jointly in the names of Ross and Deborah. When the Ottawa property was purchased, the original loan balance was $95,000. It is unclear if any money from Ross's corporation was marital income or a nonmarital asset. By 2007, most of the debt on the Ottawa property had been paid. Ross contends he received an inheritance to pay off the balance of the loan, but he failed to show documents tracing the inheritance money to the land trust. When the Ottawa property was sold, the proceeds were placed into a revocable trust for the benefit of both parties. If a portion of the Ottawa sale constituted nonmarital property, it is presumed Ross gifted the proceeds to the

revocable trust unless he set forth his desire to keep it separate. See *Veile*, 2015 IL App (5th) 130499, ¶ 12, 43 N.E.3d 1196. Nothing indicates he did so. The account was then used to purchase the marital residence in Manville, which was again held in joint tenancy. Based on the testimony and the evidence presented, we find the trial court did not err in finding the Manville property constituted marital property.

¶ 33 E. Firearms and Ammunition

¶ 34 Ross argues the trial court erred in allocating firearms and ammunition to him without the proper requisites for transfer. He claims there was no evidence he had a valid FOID card and he would face criminal charges if he attempted to pick up the seized guns and ammunition from the sheriff's department. Ross argues the allocation of firearms and ammunition rendered the dissolution judgment void for lack of jurisdiction.

¶ 35 Ross has not cited any case law to support his argument. His citation to section 3 of the Firearms Owners Identification Card Act (430 ILCS 65/3(a) (West 2016)) only requires a transferee to have a valid FOID card in a private sale, and he has not shown an actual or legal inability to convey his ownership in the firearms or ammunition. Moreover, as the ownership of the firearms and ammunition presented a justiciable matter in this dissolution proceeding, the trial court was not without subject-matter jurisdiction. See *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335, 770 N.E.2d 177, 184 (2002) ("Generally, a 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests."). Accordingly, Ross has not shown he is entitled to relief on this issue.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm the trial court's judgment.

¶ 38 Affirmed.