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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
KIMBERLY KOCCMOUD,	)	of Kane County
	)	
Petitioner/Counter-Respondent-	)	
Appellee,	)	
	)	
and	)	No. 14-D-1535
	)	
PHILLIP KOCCMOUD,	)	
	)	Honorable
Respondent/Counter-Petitioner-	)	Kevin T. Busch,
Appellant.	)	Judge, Presiding.

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

**ORDER**

- ¶ 1 *Held:* The trial court's distribution of marital assets was inconsistent with its finding as to the value of an airplane hangar, and the court's valuation of the parties' business did not comport with the evidence. Vacated in part and remanded.
- ¶ 2 Following a bench trial, the court entered judgment for dissolution of marriage between Kimberly and Phillip Kocmoud and distributed the marital assets. On appeal, Phillip challenges the trial court's valuations of a business owned by the parties and a building owned by Phillip

and the impact of those valuations on the court's distribution of the marital assets. For the reasons that follow, we vacate in part and remand.

¶ 3 I. BACKGROUND

¶ 4 Hyper-iT Services

¶ 5 Hyper-iT Services (Hyper-iT) is a small business, founded by Phillip during the marriage and run out of the home. It works on technology or computer-related jobs and on websites. At the time of the trial, the business employed one computer technician. Phillip has primarily worked as an employee of a different business since 2010.

¶ 6 At trial, expert testimony as to Hyper-iT's market value was provided by a single witness, James Godbout. Godbout had been retained by Kimberly to determine both the market value of Hyper-iT and Phillip's income. After Godbout told Kimberly the company had no value, she retained the services of two alternate experts and sought leave and time to substitute them for Godbout. The court denied this motion and also denied Kimberley's motion to quash Phillip's subpoena of Godbout for a deposition.

¶ 7 At trial, Godbout was called as Phillip's witness and testified that he reviewed Hyper-iT's business records for company revenue, debt, profitability, and profit margins. He stated that the company's average gross revenue was approximately \$500,000, that it had \$150,000 of debt, and that its highest net annual profit was about \$33,000. He noted that there was no officer compensation. Having found insufficient comparables for a company with only \$500,000 in gross revenue, he looked to companies with one to two million dollar gross revenues. Because the purchase price of such larger companies was about 40 per cent of revenues, he valued Hyper-iT at \$200,000, before subtraction of the debt. Godbout further testified that due to the lack of

officer compensation, the company had minimal equity value, and if owner compensation were added in, the market value would be zero, as the company would “in essence lose money.”

¶ 8 The trial court accepted Godbout’s \$200,000 valuation of Hyper-iT but not his finding of company debt. With respect to the “outstanding liabilities [Hyper-iT] allegedly carried,” the court noted: “one such liability is the marital home equity line. Others include loans to an individual that may or may not be repaid. Otherwise the debt consists of revolving charge loans that are offset by receivables in excess of \$50,000. Accordingly, the court finds that the business has a total value of \$200,000.”

¶ 9 In reaching this conclusion, the court misstated that the referenced loans, which totaled \$100,000, were “to an individual” and did not mention that the loans were secured by an executed agreement providing that repayment to the lender would be due on demand. Elsewhere in its judgment order, the court acknowledged that “to the extent” the loans became due, they would be “the liability of Hyper-iT.” The order also did not mention Godbout’s alternative basis for finding the company had no value, namely, the lack of officer or owner compensation.

¶ 10 Airplane Hangar

¶ 11 In 2011, Phillip purchased a half interest in an airplane hangar for \$120,000. At trial, Kimberly testified to her belief that the fair market value of Phillip’s interest in the hangar was \$120,000. In his financial statement for 2015, Phillip valued the property at \$160,000, leaving his half interest at \$80,000, with, at that time, a \$60,000 mortgage. His subsequent financial statement, for September 2016, listed the value at \$100,000, with a mortgage of \$20,610.

¶ 12 In its judgment order, the trial court found that the fair market value of Phillip’s interest in the hangar was \$100,000, and the mortgage balance, as of January 30, 2017, was \$20,610. After subtracting the mortgage amount, the court found that Phillip’s total equity in the hangar

was \$79,390. When calculating the distribution of marital assets, however, the court listed \$130,000 as the value of Phillip's interest. The court then subtracted the \$20,610 mortgage from \$130,000, leaving a balance value of \$109,390.

¶ 13 Phillip filed a posttrial motion, in which he pointed out the inconsistency between the court's finding of fact that the hangar's fair market value was \$100,000 and the \$130,000 amount the court used in calculating the distribution of the assets. Without explanation, the court modified its calculation of the distribution by reducing the amount used for the hangar's value to \$120,000. Subtraction of the \$20,610 mortgage left a marital equity value of \$99,390. The order left in place the court's finding that the fair market value of the hangar was \$100,000.

¶ 14

## II. ANALYSIS

¶ 15 The valuation of marital assets in a dissolution of marriage proceeding is a question of fact that will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 203 (2005). 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. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 44.

¶ 16

### Value of Hyper-iT Services

¶ 17 Phillip contends that the trial court's valuation of Hyper-iT erroneously disregarded the company's debts and Godbout's "unrebutted testimony that Hyper-iT in reality had no market value." We agree.

¶ 18 In finding that Hyper-iT's value was \$200,000, the trial court rejected the testimony of the expert, Godbout, that the company's \$150,000 debt would substantially reduce its market value. Even if we were to accept the court's position that some \$50,000 of the debt was offset by

receivables, the company's largest liability, \$100,000 in outstanding loans, would remain. The trial court mischaracterized this liability as "loans to an individual that may or may not be repaid". In doing so, the court ignored the executed loan agreement between Raymond E. Feeney, the lender, and Phillip, the borrower. The agreement covers two \$50,000 loans and provides: "[r]epayment is due on demand in writing within sixty (60) days advance notice of due date."

¶ 19 The executed loan agreement was the only evidence before the court regarding these loans, and nothing in the record suggests that Feeney would not demand their repayment. Furthermore, the court acknowledged that "[t]o the extent [the loans] will come due, they are found to be the liability of Hyper-iT Services." Accordingly, the court's finding that the loan debt could be disregarded in determining the market value of Hyper-iT was contrary to the manifest weight of the evidence.

¶ 20 Additionally, the trial court ignored Godbout's undisputed testimony that due to the lack of officer compensation, the company had minimal equity value, and if owner compensation were added in, the market value would be zero. "A fact finder may not discount witness testimony unless it was impeached, contradicted by positive testimony or by circumstances, or found to be inherently improbable." *Sweilem v. Illinois Dept. of Revenue*, 372 Ill. App. 3d 475, 485 (2007). Since Godbout's unchallenged testimony was the only evidence presented to the court regarding the effect of lack of officer compensation on Hyper-iT's marketability, the court erred in discounting it.

¶ 21 Accordingly, we vacate the valuation of Hyper-iT and remand for consideration of the evidence consistent with this disposition.

¶ 22 Value of the Airplane Hangar

¶ 23 Phillip also argues that the trial court's distribution of assets should be recalculated using the \$100,000 fair market value of the airplane hangar set out in the court's findings of fact. We agree.

¶ 24 In its judgment order, the trial court made an evidentiary finding that the fair market value of the airplane hangar was \$100,000. This figure accorded with Phillip's second financial statement. Later in the judgment order, in calculating the distribution of assets, the court used a \$130,000 valuation figure, which it modified to \$120,000 following Phillip's posttrial motion. The court left unchanged its finding that the fair market value of the hangar was \$100,000.

¶ 25 In a bench trial, it is the court's function to weigh the evidence and make findings of fact. *Resolution Trust Corp. v. Hardisty*, 269 Ill. App. 3d 613, 618 (1995). The trial court presumably weighed the evidence before finding that the value of the hangar was \$100,000. When the court subsequently calculated the hangar's equity for distribution purposes, it used a value amount that was inconsistent with its finding of fact. The court's calculation, therefore, was not based on the evidence it had found to be credible.

¶ 26 Accordingly, we vacate the court's distribution judgment pertaining to the hangar's value. On remand, the court is directed to recalculate the distribution of the hangar asset in accordance with its finding of fact as to the hangar's value.

¶ 27 **III. CONCLUSION**

¶ 28 For these reasons, we vacate the judgment in part and remand the case to the circuit court of Kane County for further proceedings. On remand, the trial court may consider reapportionment of the distribution of property upon the recalculation of value of the two items of property at issue.

¶ 29 Vacated in part and remanded.