

NOTICE
Order filed March 19, 2019.
Modified upon denial of
rehearing March 27, 2019.

2019 IL App (5th) 180052-U

NO. 5-18-0052

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under
Supreme Court Rule 23 and
may not be cited as precedent
by any party except in the
limited circumstances allowed
under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
MARY BLAIR,)	Madison County.
)	
Petitioner-Appellant,)	
)	
and)	No. 13-D-616
)	
RICHARD BLAIR,)	Honorable
)	Janet R. Heflin,
Respondent-Appellee.)	Judge, presiding.

PRESIDING JUSTICE OVERSTREET delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court’s finding that the disputed funds in respondent’s business bank accounts were his nonmarital property is reversed; the trial court’s finding that the certificate of deposit that petitioner purchased during the marriage was marital property is affirmed; and the trial court’s finding that the marital estate was not entitled to reimbursement for contributions applied toward the debt on respondent’s lake house is also affirmed.

¶ 2 On appeal from the trial court’s judgment dissolving the parties’ 10-year marriage, the petitioner, Mary Blair, argues that the court misclassified, as nonmarital property, funds that the respondent, Richard Blair, held in his business’s bank accounts when the parties separated and misclassified, as marital property, a certificate of deposit that she

purchased during the marriage with funds from the parties' joint savings account. Mary further contends that the trial court should have ordered Richard to reimburse the marital estate for marital funds that were applied against the premarital debt that he owed on a lake house that he was awarded as his nonmarital property. For the reasons that follow, we affirm the trial court's judgment in part, reverse it in part, and remand the cause so that the court can amend its judgment order accordingly.

¶ 3

BACKGROUND

¶ 4 The parties, Richard and Mary Blair, married in June 2003 and separated in June 2013. In July 2013, citing irreconcilable differences, Mary filed a verified petition for dissolution of marriage pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.* (West 2012)). The petition advised that the parties were willing to waive the statutory two-year separation requirement (*id.* § 401(a)(2)) so that the marriage could be “terminated immediately.”

¶ 5 In October 2013, Richard filed an affidavit of assets and liabilities stating that his gross income from his home-based business, Guaranteed Sewer & Drain, was \$2779 per month, and his personal expenses and expenditures were \$2105 per month. Richard's reported assets included two unencumbered homes: one on Triad Road in St. Jacob, Illinois (the Triad Road house), and one on Lake Shore Drive, in Cuba, Missouri (the Cuba lake house). He reported having four bank accounts with Collinsville Building & Loan Association: two personal accounts with balances totaling \$3315, one business checking account with a balance of approximately \$22,000, and one business savings

account with a balance of approximately \$33,000. We note that Richard's personal bank accounts were formerly the parties' marital accounts.

¶ 6 In December 2013, Mary filed an affidavit of assets and liabilities stating that her gross income was \$2879 per month, and her personal expenses and expenditures were \$2568 per month. She later filed amended statements indicating that her monthly gross income had since decreased. Mary reported having five US Bank checking accounts with balances totaling \$5657 and a US Bank certificate of deposit (CD) valued at \$10,506. She also claimed an interest in a Cessna Cardinal airplane that the parties had purchased during the marriage. As additional assets, Mary and Richard both listed retirement funds and personal property that are not at issue on appeal.

¶ 7 In October 2014, the parties submitted position statements setting forth their respective arguments and proposed divisions of the marital estate. Notably, Mary and Richard each accused the other of dissipating marital cash that had been in a safe in the Triad Road house around the time of the parties' separation.

¶ 8 In his position statement, Richard argued that the Triad Road house, the Cuba lake house, and his business, its assets, and its accounts were all nonmarital property. Richard additionally argued that the US Bank CD that Mary claimed was hers had been purchased with marital funds taken from the parties' joint savings account.

¶ 9 In her position statement, Mary argued that the funds that were in Richard's business accounts when the parties separated were marital property because the money represented income earned during the marriage through Richard's personal effort. Mary argued that the Triad Road house was also marital property, noting that the parties had

obtained a \$75,000 mortgage on the home. Mary conceded that the Cuba lake house was Richard's nonmarital property, but she asked that he be ordered to reimburse her for a \$63,000 contribution she made towards the premarital debt that he previously owed on it.

¶ 10 The cause subsequently proceeded to trial, and the parties presented their testimony and exhibits on October 20, 2014, and January 23, 2015. We note that much of the evidence was undisputed.

¶ 11 Richard testified that he was 65 years old and resided at the Triad Road house, where he had lived for the past 30 years. After Richard and Mary wed in June 2003, they lived together at the Triad Road house until Mary moved out in June 2013. Richard testified that his marriage to Mary was his fourth marriage and that the marriage had started "breaking down" in November 2012. Richard testified that he was self-employed and had been operating his home-based business, Guaranteed Sewer & Drain, as a sole proprietorship for 38 years. Richard estimated that his average gross income from the business was \$2779 per month.

¶ 12 Mary testified that she had been living in an apartment in Collinsville since moving out of the Triad Road house. Mary testified that she worked for Joann Fabrics and earned a gross income of \$2200 per month. She previously worked full-time for US Bank and part-time for Hobby Lobby. Before those jobs, she managed a Dillard's department store, where she worked for 16 years. She stated that her marriage to Richard was her fourth marriage and that it began to deteriorate in January 2013.

¶ 13 After Mary moved into the Triad Road house, the parties purchased a safe, in which fluctuating sums of cash had been kept during the marriage. The cash in the safe

was a combination of cash income from Richard's business and money that he made buying and selling used cars, trucks, motorcycles, boats, and airplanes. Richard indicated that in May 2013, the marital safe had contained \$26,479 in cash and that he was "pretty certain Mary took it" when she moved out in June 2013. Mary testified that she had not taken the money.

¶ 14 Richard indicated that the parties had bought and sold several cars during the marriage and had successively purchased three different airplanes, two Piper Cherokees and one Cessna Cardinal. The first Piper was lost in a fire, and the parties sold the second one in May 2012 for \$24,500. At the time of trial, Richard was still in possession of the Cessna, and he conceded that because "[i]t was something that was purchased during the marriage," Mary was entitled to receive "half the value of it." Richard opined that the Cessna was worth less than \$10,000. Mary presented expert testimony establishing that it was worth approximately \$15,000.

¶ 15 Richard indicated that he operated his sewer and drain business three to five days a week and that it had been his only source of steady income since he retired from Emerson Electric in 2000. Richard stated that his business equipment consisted of tools and two vans and that tool replacement, fuel, vehicle maintenance, and advertising were his primary business expenses. He further stated that his work territory included St. Louis and its surrounding suburbs and that a typical job call involved clearing an obstructed residential drain, which took about an hour and cost the customer around \$150. He testified that he generally received checks for his services but was sometimes paid in cash.

¶ 16 Richard testified that he occasionally hired a subcontractor to assist him but that if he did not “go to work, there really [was] no work.” Richard estimated that he worked with a subcontractor approximately 5% of the time, but he otherwise operated the business by himself. Richard testified that whenever his subcontractor completed an assignment, the subcontractor would deliver the customer’s check to him, and he and the subcontractor would divide the proceeds at the end of the month.

¶ 17 Richard testified that he made all the choices and decisions regarding his business’s banking affairs. Richard testified that he did not keep monthly records of his business activities and did not retain his copies of his customers’ tickets after their checks cleared. He testified that he deposited his earnings into his business accounts and tracked the deposits when determining his gross income at the end of each year. Richard testified that his annual income taxes were based on whatever information he submitted to his tax preparer. Richard identified tax documents showing that his reported gross income from his business was \$51,414 in 2009, \$54,139 in 2010, \$50,799 in 2011, \$51,753 in 2012, and \$38,776 in 2013. Richard testified that his business had recently been in decline due to his deteriorating health.

¶ 18 Richard acknowledged that from January 2012 through June 2013, he had deposited approximately \$104,000 into his business checking account and had withdrawn approximately \$94,000. He testified that \$24,500 of the funds were proceeds from the sale of the parties’ second Piper Cherokee, and he identified exhibits showing that the money from the sale of the plane had been transferred into his business savings account in May 2012. Richard acknowledged that when the parties separated in June 2013, his

business checking account had a balance of approximately \$23,000, and his business savings account had a balance of approximately \$32,500, which included the proceeds from the sale of the Piper. Richard indicated that other than the proceeds from the sale of the plane, all of the funds in his business accounts represented money that he had earned from his business during the parties' marriage.

¶ 19 During the marriage, Richard and Mary kept a joint savings account and a joint checking account, and both contributed money into both accounts. The paychecks Mary received during the marriage were directly deposited into the joint checking account, and Richard deposited funds from his business checking account into the joint checking account when needed.

¶ 20 The parties agreed that Richard managed the parties' expenses and paid their monthly bills with funds from the joint checking account or his business checking account. Richard explained that he preferred paying all expenses with cash and did so whenever he could.

¶ 21 Mary testified that since 1997, she had been receiving maintenance from her third husband pursuant to a marriage settlement agreement. The record indicates that the agreement resulted in a judgment entered in the circuit court of Jefferson County, Missouri, that required Mary's former husband to pay her monthly installments towards a lump-sum spousal support award of \$44,691 until paid in full. Mary testified that during the parties' marriage, she received \$276 per month in maintenance from her former husband and that the payments were made in biweekly installments of \$138.

¶ 22 In August 2003, with a deposit of \$1270, the parties opened their marital savings account as joint tenants with the right of survivorship. From August 2003 through January 2006, nearly \$30,000 in additional funds were deposited into the account and nearly \$29,000 were withdrawn. By January 2006, the balance of the account was approximately \$2400.

¶ 23 From February 2006 through February 2011, Mary's maintenance payments were deposited into the marital savings account, for an estimated total of \$10,780. During the same five-year period, additional funds totaling over \$61,000 were also deposited into the account and approximately \$65,000 in funds were withdrawn. Richard indicated that apart from Mary's maintenance payments, most of the money in the account had come from his business accounts and the marital safe. Richard testified that the parties had withdrawn funds from the marital savings account when needed.

¶ 24 In March 2011, Mary commenced depositing her maintenance payments into an account that she held in her name only. She indicated that she had diverted the payments from the marital savings account because Richard tended to use the funds in the account "for whatever he wanted," and she wanted to protect her money. Mary acknowledged, however, that Richard had also deposited money into the marital savings account and that the account's funds had been marital funds.

¶ 25 In April 2011, after adding up all of the \$138 maintenance payments that had been deposited into the marital savings account, Mary withdrew \$10,731 from the account and used the money to purchase a US Bank CD that she put in her name only. Mary testified that before purchasing the CD, she had advised Richard that she was going to withdraw

the money, and he told her to “[g]o ahead and withdraw it.” Richard, however, testified that he and Mary had not discussed the matter in advance and that he had objected when he learned that she had withdrawn the funds. Mary requested that the trial court award her the US Bank CD as her nonmarital property.

¶ 26 Richard testified that when he and his previous wife, Linda, divorced in February 2002, they owned the Triad Road house “free and clear” of debt. Pursuant to the judgment dissolving their marriage, Richard and Linda were ordered to sell the house and divide the proceeds. Richard testified that he and Mary had decided to “buy Linda out” and had assumed a \$75,000 mortgage on the home to do so. \$58,500 of the mortgage went directly to Linda, and the remainder was used to remodel the home. By October 2008, the parties had paid off the \$75,000 mortgage with funds from Richard’s business accounts and money from the marital safe.

¶ 27 With respect to the Cuba lake house, Richard testified that he and Linda had purchased it as a vacation home during their marriage and were still paying off a mortgage on the property when they separated. When they divorced, Richard refinanced the mortgage for \$80,000 and used \$30,000 of the money to purchase Linda’s interest in the property. After the parties were married, Mary sold her home in Shrewsbury, Missouri, and realized a profit of approximately \$63,000. That money was then applied to Richard’s \$80,000 mortgage on the Cuba lake house. The remaining \$17,000 of the mortgage was subsequently paid off with funds from the marital checking account.

¶ 28 The parties agreed that when Mary sold her house in Shrewsbury, she still owed her father the outstanding balance of a \$55,000 loan that he had given her to use as a

down payment on the home. Per her arrangement with her father, Mary had been paying off the loan in monthly installments of \$320. After the parties were married, the installments were paid using funds from the marital checking account. When Mary's father died in 2007, the remainder of the debt was absolved through Mary's inheritance. The payments paid to Mary's father during the course of the parties' marriage totaled approximately \$15,000. Mary asked the trial court to order Richard to reimburse her for her contributions to the Triad Road house and the Cuba lake house.

¶ 29 In April 2016, the trial court entered a judgment of dissolution of marriage, which it later amended following a hearing on Mary's motion to reconsider. Pursuant to the court's final judgment, Richard was awarded his business, its equipment, and its bank accounts as his nonmarital property. The court noted that Richard had maintained the business accounts before, during, and after the parties' marriage. The trial court also awarded Richard the Triad Road house and the Cuba lake house as his nonmarital property, subject to the following reimbursements for contributions.

¶ 30 With respect to the Triad Road house, Richard was ordered to reimburse the marital estate for the \$75,000 in marital funds that were used to pay off the mortgage that the parties obtained to purchase Linda's interest in the home. Richard was thus ordered to pay Mary \$37,500 for her interest.

¶ 31 With respect to the Cuba lake house, Richard was ordered to reimburse Mary for the \$63,000 from the sale of her Shrewsbury home that was applied toward the \$80,000 mortgage that he had obtained to purchase Linda's interest. The court noted that the other \$17,000 (\$16,993) of Richard's mortgage on the lake house had been paid off with funds

from the marital checking account. The court also noted that Mary had sold her Shrewsbury home still owing her father on a loan for its down payment and that the parties had applied approximately \$15,000 in marital funds toward the balance of the loan. The court therefore offset the \$15,000 and the \$17,000. The court commented that the funds paid to Mary's father were "analogous" to the "payments made from marital funds to buy out Linda Blair's interest in the Triad Road property."

¶ 32 With respect to the \$26,479 in cash that had allegedly gone missing from the marital safe, the court rejected Richard's claim that Mary had taken the money when she moved out of the Triad Road house. The court thereby awarded each party \$13,239.50 of the money. The court determined that the US Bank CD that Mary purchased for \$10,731 was marital property purchased with marital funds. As a setoff against her \$13,239.50 award for the missing cash, however, the trial court awarded Mary the CD and ordered Richard to pay her the difference.

¶ 33 The trial court found that the parties' Cessna Cardinal was worth \$15,000 and that Mary was entitled to \$7500 as half its value. The court determined that Richard's ultimate obligation to Mary was a "total sum of \$100,500." On appeal, however, the parties agree that the court intended to find that the total judgment in Mary's favor was \$110,508.50 ($\$37,500 + \$63,000 + \$13,239.50 - \$10,731 + \7500). In February 2018, following the trial court's amendment of its initial order, Mary filed a timely notice of appeal.

¶ 34

DISCUSSION

¶ 35 On appeal, Mary maintains that the trial court erroneously concluded that (1) the funds in Richard’s business bank accounts were his nonmarital property, (2) the US Bank CD she purchased in April 2011 was marital property, and (3) the marital estate was not entitled to reimbursement for the \$17,000 in marital funds that were applied against Richard’s mortgage on the Cuba lake house. We agree with Mary’s first contention but disagree with her second and third.

¶ 36

A. Property Classification Claims

¶ 37 The trial court’s disposition of property in a dissolution of marriage proceeding is governed by section 503 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503 (West 2012)). Pursuant to section 503(d), after classifying the property as either marital or nonmarital, the court must assign each spouse’s nonmarital property to that spouse and then divide the marital property in just proportions considering all relevant factors. *Id.* § 503(d); see also *In re Marriage of Durante*, 201 Ill. App. 3d 376, 381 (1990).

¶ 38 Generally defined, “ ‘marital property’ means all property acquired by either spouse subsequent to the marriage.” 750 ILCS 5/503(a) (West 2012). There is a rebuttable presumption that all property acquired by either spouse after the marriage and before a judgment of dissolution is marital property regardless of how title is held. *Id.* § 503(b)(1); *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2009). This presumption can only be overcome by a showing of clear and convincing evidence that the property falls within one of the exceptions enumerated in section 503(a). *Id.*

Nonmarital property that is transferred into some form of co-ownership between the spouses is also presumed to be marital property. *Id.* § 503(b)(1).

¶ 39 Pursuant to section 503(c)(1), “[w]hen marital and non-marital property are commingled by contributing one estate of property into another resulting in a loss of identity of the contributed property, the classification of the contributed property is transmuted to the estate receiving the contribution.” 750 ILCS 5/503(c)(1) (West 2012). Additionally, “if marital and non-marital property are commingled into newly acquired property resulting in a loss of identity of the contributing estates, the commingled property shall be deemed transmuted to marital property.” *Id.* Pursuant to section 503(c)(2), however, “notwithstanding any transmutation,” the contributing estate is entitled to reimbursement from the receiving estate unless the contribution is not traceable by clear and convincing evidence or was a gift to the marriage. *Id.* § 503(c)(2); see also *In re Marriage of Thacker*, 185 Ill. App. 3d 465, 469 (1989).

¶ 40 A party claiming that property is nonmarital bears 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. The trial court’s classification of property as marital or nonmarital will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id.*

¶ 41 1. Richard’s Business Accounts

¶ 42 Pursuant to section 503(a)(6), property acquired before the marriage is nonmarital property (750 ILCS 5/503(a)(6) (West 2012)), and Mary concedes that Richard’s business and business equipment were rightfully awarded to him as such. She maintains,

however, that the trial court erred in finding that the funds held in Richard's business bank accounts at the time of the parties' separation were also his nonmarital property. We agree.

¶ 43 We initially note that to the extent that it might have otherwise been relevant, Richard did not attempt to establish the premarital balances of his business accounts. The earliest evidence in the record with respect to the business savings account is from June 2006, when the balance was \$905, and the earliest with respect to the business checking account is from December 2011, when the balance was approximately \$12,600. We also note that during the parties' marriage, Richard used the funds in his business accounts to pay business expenses and marital expenses.

¶ 44 Turning to the merits of Mary's argument that the funds in Richard's business accounts were misclassified as his nonmarital property, the relevant facts were generally undisputed. When the parties separated in June 2013, the funds in the business accounts collectively totaled approximately \$55,500. Richard indicated that \$24,500 of the money was from the sale of the parties' second Piper Cherokee, and the other \$31,000 represented customer payments that his business had received during the marriage.

¶ 45 With respect to the money from the sale of the Piper, Richard testified that the plane had been paid for with cash from the marital safe and that it was the second Cherokee that the parties had purchased during the marriage. Property purchased with marital funds is marital property (*In re Marriage of Lee*, 246 Ill. App. 3d 628, 640 (1993)), and Richard did not attempt to establish that the plane or the money from its sale fell within one of the exceptions enumerated in section 503(a). We also note that Richard

conceded that the Cessna that the parties owned at the time of trial was also marital property. In any event, because Richard failed to overcome the presumption that the \$24,500 from the sale of the parties' second Piper was marital property, it should not have been awarded to him as his nonmarital property.

¶ 46 With respect to the \$31,000 in customer payments to his business, pursuant to section 503(a)(8), income acquired during the marriage from property acquired before the marriage is nonmarital property only if the income is not attributable to the personal effort of the spouse. 750 ILCS 5/503(a)(8) (West 2012); *Schmitt*, 391 Ill. App. 3d at 1017. Section 503(a)(8) is consistent with prior law establishing that earnings from employment during a marriage are marital property (*In re Marriage of Perlmutter*, 225 Ill. App. 3d 362, 373 (1992)) and essentially recognizes the distinction between “passive income” and “active income” (see *Weil v. Seltzer*, 873 F.2d 1453, 1463 (D.C. Cir. 1989) (observing that “active income” includes profits gained from personal work, while “passive income,” which is gained regardless of personal work, includes income derived through investments or “the efforts of others”); Black’s Law Dictionary 1124 (6th ed. 1990) (defining “active income” as salaries, wages, or earnings from a trade or business and “passive income” as income “earned in an activity in which an individual does not materially participate”)).

¶ 47 As previously noted, Richard indicated that \$31,000 of the \$55,500 represented customer payments that his business had received during the parties' marriage. Richard testified that he operated the home-based business as a sole proprietorship and that if he did not “go to work, there really [was] no work.” Although he testified that he sometimes

hired a subcontractor, Richard indicated that he worked alone 95% of the time. Richard further indicated that he always paid his subcontractor at the end of each month that the subcontracted work was completed. Richard did not testify that he owed anyone money for any past work performed or that he otherwise had any outstanding business debt.

¶ 48 To rebut the presumption that the \$31,000 in customer deposits was marital property, Richard was required to show by clear and convincing evidence that the money did not constitute income attributable to his own personal effort. *In re Marriage of Dann*, 2012 IL App (2d) 100343, ¶ 74; *Schmitt*, 391 Ill. App. 3d at 1018. Given the undisputed facts regarding the operation of his business, we can only conclude that he failed to do so.

¶ 49 Because Richard failed to present evidence sufficient to rebut the presumption that the \$55,500 in his business accounts constituted marital property, the trial court's classification of the funds as his nonmarital property was against the manifest weight of the evidence. We accordingly reverse that portion of the trial court's judgment and remand the cause so that the trial court can divide the funds pursuant to section 503(d). See *In re Marriage of Brenner*, 95 Ill. App. 3d 100, 104 (1981).

¶ 50 2. The US Bank CD

¶ 51 Emphasizing that the maintenance payments that she received during the parties' marriage were her nonmarital property because her right to receive them accrued before the marriage (see *In re Marriage of Edwards*, 369 Ill. App. 3d 1035, 1038 (2006)), Mary contends that the trial court erred in finding that the US Bank CD that she bought in April 2011 was a marital asset purchased with marital funds. Mary suggests that the CD should have been awarded to her as her nonmarital property because pursuant to section

503(c)(2), she was entitled to reimbursement for the estimated \$10,780 in maintenance payments that were deposited into the marital savings account from February 2006 through February 2011. “Section 503(c)(2) does not mandate reimbursement for property which was gifted to the marital estate” (*In re Marriage of Flemming*, 143 Ill. App. 3d 592, 597 (1986)), however, and the trial court ostensibly found that Mary had failed to rebut the presumption that the maintenance payments were gifts to the marriage. Moreover, whether viewed as marital property purchased with marital funds or as newly acquired marital property purchased with commingled marital and nonmarital funds, the trial court’s classification of the CD as marital property was not against the manifest weight of the evidence.

¶ 52 It is well established that the placing of nonmarital funds into an account held in joint tenancy with the other spouse raises a presumption that the funds were gifted to the marriage and were thus transmuted into marital property. 750 ILCS 5/503(b)(1) (West 2012); *In re Marriage of Emken*, 86 Ill. 2d 164, 165-66 (1981); *In re Marriage of Benz*, 165 Ill. App. 3d 273, 280 (1988); *Klingberg v. Klingberg*, 68 Ill. App. 3d 513, 516-17 (1979). A spouse seeking reimbursement for such funds is thus required to rebut the presumption with clear, convincing, and unmistakable evidence that no gift was intended. *Benz*, 165 Ill. App. 3d at 280.

¶ 53 Here, Mary testified that she had been receiving maintenance from her third husband since 1997. The parties opened their marital savings account as joint tenants with the right of survivorship in August 2003. In January 2006, the balance of the marital savings account was approximately \$2400. From February 2006 through February 2011,

Mary deposited an estimated total of \$10,780 in maintenance payments into the account. During the same five-year period, over \$61,000 in additional funds were also deposited, and over \$65,000 in funds were withdrawn. Mary did not dispute that most of the \$61,000 in additional funds had come from Richard's business accounts and the marital safe. Mary indicated that in March 2011, she had diverted her maintenance payments from the marital savings account into a nonmarital account because she disapproved of the manner in which Richard had been managing the marital account, and she wanted to protect her money. "It is the intention at the time of the gift that is controlling," however (*Varap v. Varap*, 76 Ill. App. 2d 402, 414 (1966)), and a gift made and delivered cannot be revoked because of the donor's subsequent change of mind (*Houswerth v. Gill*, 40 Ill. App. 2d 281, 285 (1963); see also *In re Estate of Vale*, 55 Ill. App. 3d 712, 715 (1977)). Moreover, the most relevant evidence in determining donative intent is the donor's own testimony (*In re Marriage of Simmons*, 221 Ill. App. 3d 89, 92 (1991)), and Mary did not claim that the maintenance payments she deposited into the marital savings account were not gifts to the marriage. She rather acknowledged that the funds in the marital savings account were marital funds.

¶ 54 Under the circumstances, the trial court could have readily concluded that Mary had deposited the maintenance payments into the marital account with a donative intent that remained until March 2011, when she began segregating the payments into a nonmarital account. Contrary to Mary's intimations on appeal, the evidence did not warrant a finding that she had deposited the payments into the marital account intending to use the account as a mere conduit for her April 2011 purchase of the US Bank CD. *Cf.*,

e.g., *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 673 (2008). The evidence rather supported a finding that the deposited payments had been gifts to the marriage that Mary later attempted to revoke. The trial court's classification of the US Bank CD as a marital asset purchased with marital funds was therefore not against the manifest weight of the evidence. Moreover, even assuming *arguendo* that Mary had successfully rebutted the gift presumption, establishing her right to reimbursement under section 503(c)(2) required her to trace the maintenance payments as being the source of the funds used to purchase the CD, which she was unable to do.

¶ 55 To establish that the deposited maintenance payments were the source of the funds used to purchase the CD, Mary had to show by clear and convincing evidence that the payments retained their identity as nonmarital property, which required her to differentiate the maintenance dollars from the other dollars in the account. See, *e.g.*, *In re Marriage of Demar*, 385 Ill. App. 3d 837, 851 (2008); *In re Marriage of Didier*, 318 Ill. App. 3d 253, 265 (2000); *In re Marriage of Davis*, 215 Ill. App. 3d 763, 770-71 (1991). During the five years that the estimated \$10,780 in payments were deposited, however, over \$61,000 in additional funds were also deposited, and over \$65,000 in funds were withdrawn. Because the maintenance payments were never segregated, they lost their identity as nonmarital property during the five years that they were commingled with the other funds in the account, thus making it impossible to ascertain the precise source of the funds that were used to purchase the US Bank CD in April 2011. *Id.* By merely identifying the maintenance payments that had been deposited into the account from February 2006 through February 2011, Mary merely established that the payments were

among the total funds that had been deposited and withdrawn during that time. Thus, even assuming that Mary had rebutted the presumption that the maintenance payments were gifts, given her inability to trace the payments as the source of the funds used to purchase the CD, the most she established was that the CD was newly acquired marital property purchased with commingled marital and nonmarital funds. See 750 ILCS 5/503(c)(1) (West 2012); *Demar*, 385 Ill. App. 3d at 851; *Davis*, 215 Ill. App. 3d at 770-71.

¶ 56 As previously stated, whether viewed as marital property purchased with marital funds or as newly acquired marital property purchased with commingled marital and nonmarital funds, the trial court's classification of the US Bank CD as marital property was not against the manifest weight of the evidence.

¶ 57 B. The \$17,000 Setoff

¶ 58 The trial court awarded Richard the Triad Road house as his nonmarital property and ordered him to reimburse the marital estate for the \$75,000 in marital funds that were used to pay off the mortgage that the parties obtained to purchase Linda's interest in the home. Richard was thus ordered to pay Mary \$37,500 for her interest in the Triad Road house. The court also awarded Richard the Cuba lake house as his nonmarital property and ordered him to reimburse Mary for the \$63,000 from the sale of her home that she had applied to the \$80,000 mortgage that he had obtained to purchase Linda's interest in the Cuba lake house. The court noted that the other \$17,000 (\$16,993) of Richard's \$80,000 mortgage on the Cuba lake house had been paid with funds from the parties' joint checking account. The court also noted that Mary had sold her home still owing her

father money for its down payment and that the parties had used marital funds to pay off approximately \$15,000 of that loan during the course of the marriage. The court therefore offset the \$15,000 and the \$17,000. The court stated that the funds paid to Mary's father were "analogous" to the "payments made from marital funds to buy out Linda Blair's interest in the Triad Road property."

¶ 59 On appeal, referencing the trial court's statement that the funds paid to Mary's father were "analogous" to the "payments made from marital funds to buy out Linda Blair's interest in the Triad Road property," Mary argues that Richard should have been ordered to reimburse the marital estate the \$17,000 applied toward the debt on the Cuba lake house because "the \$15,000 repaid to Mary's father offset the Triad Road buyout." The \$15,000 repaid to Mary's father was not offset against the Triad Road buyout, however. Richard was ordered to pay Mary \$37,500 with respect to the Triad Road house, which represented her entire interest in the home, *i.e.*, one-half of the \$75,000 mortgage that the parties had obtained and paid off during the marriage. There was no setoff ordered with respect to the Triad Road house. Moreover, the court specifically referenced the \$17,000 and the \$15,000 when discussing the funds that had been used to pay off the mortgage on the Cuba lake house. In context, the court apparently meant to analogize the \$15,000 to the \$17,000 used to buy out Linda's interest in the Cuba lake house. Technically speaking, however, the monies used to purchase Linda's interests in both homes were analogous to the payments to Mary's father in that in all three instances, marital funds had been used to pay off premarital debt. In any event, we discern no error, and we agree with Richard's observation that the court ostensibly cancelled out the

\$15,000 and the \$17,000 to merely simplify matters as opposed to ordering the parties to make the respective reimbursements to the marital estate.

¶ 60

CONCLUSION

¶ 61 For the foregoing reasons, we conclude that the trial court erred in its determination that the funds that were in Richard's business accounts when the parties separated were his nonmarital property. We therefore remand the cause so that the court can divide the \$55,500 pursuant to section 503(d) and amend its final order accordingly. The court's order should also be amended to reflect that Richard's initial obligation to Mary was \$110,508.50 rather than \$100,500. See *supra* ¶ 33. In all other respects, the trial court's judgment is hereby affirmed.

¶ 62 Affirmed in part and reversed in part; cause remanded.