

DISSIPATION

TIME NOTICE?
How Late is Too Late
To File A Notice
of Dissipation?

FRONT RUNNING POTENTIAL DISSIPATION?

In re Marriage of GABRYS

Somehow we've made it to issue #4!

This month's updates embrace the concept of brevity - insofar that we have only 11 cases - and just 1 published opinion.

As with all "cheat sheets", please treat the roundups as previews of the decision - they are not a substitute to reading same. Since I can only produce these on my free time, you dear reader, are my best resource to ensure accuracy.

So if you spot an error, please don't hesitate to bring it to my attention. That said, on with the show...

The challenges of "front-running" potential dissipation.

At first glance, the *Gabrys'* case seems more about 750 ILCS 5/501 than dissipation. The parties were separated, but the divorce had not been finalized. The wife flew to Poland, the court file suggests this was for medical reasons, but regardless of the motive, the opinion indicates she was not participating in discovery. Nor was she appearing in court, which by the way, appear to be almost exclusively virtual.

A review of the file includes an assertion by the husband that he pays \$15,000 a year in upkeep (mortgage/taxes/et al.) on the vacant property, and sought its liquidation. The opinion suggests it was to avoid potential dissipation. And this reason isn't without merit, as "[t]he concept of dissipation is premised upon waste." *In re Marriage of Miller*, 342 Ill. App. 3d 988, 994 (2003). Had a squatter taken root in the residence, no doubt it would have come at the expense of the marital estate.

However, potential is not the same as actual. Although the trial court felt it made sense to sell, the soon to be ex-wife and Appellate Court disagreed.

Notably, the Appellate Court reversed, holding that "[t]o be sure, section 501 authorizes the sale of an asset prior to final dissolution, but that is appropriate only in extraordinary circumstances, where such a sale is required to otherwise maintain the status quo prior to final dissolution. *In re Gabrys*, 2023 IL App (1st) 221763, ¶ 12



Rule 23

Roundup

From Attorney Fees to Family Loans, here are 10 Decisions You May Find Useful:

Attorney Fees For Dissipation: *In Re Marriage of Rozdolsky*, 2024 IL App (2d) 220423-U

The husband made some effort to hide his dissipation, much to the chagrin of the wife and court. In response to both his efforts at hiding and engaging in said dissipation, the court ordered contribution to attorney fees per section 508(a).

The husband's argument on appeal that no rule to show cause was ever issued against him didn't go far with the 2nd District, who noted: "[t]he trial court may consider a party's misconduct when determining whether to award attorney fees." *In re Marriage of Hale*, 278 Ill.App.3d 53, 58 (1996)." Id. at ¶ 73

Failing to "Rent" and Sua Sponte Dissipation: *In Re Marriage of Tarbouche*, 2023 IL App (1st) 211145-U

Although there were facts to indicate a rental unit was deliberately left vacant, the court's sua sponte finding of dissipation was insufficient to save her untimely notice on appeal. Although the Appellate Court agreed that leaving a property "vacant" could be

a basis for dissipation (dissipation may be found where a party misappropriates rental proceeds. See *In re Marriage of Schuster*, 224 Ill. App. 3d 958, 979-80 (1992)), a sua sponte finding by the trial court of said dissipation isn't a substitute for a timely notice. Id. At ¶ 140

The Limits of Credibility in Rebutting Dissipation *In Re Marriage of Reed*, 2023 IL App (1st) 220949-U

Being super credible (by itself) isn't enough to rebut a prima facie case of dissipation. Based on the opinion, the husband's good word convinced the court nothing was amiss. The wife appealed, and the appellate court reversed, noting once a prima facie case has been made – it's up to the other side to bring in the paperwork. In support of their reversal, they reference the following:

In Re Marriage of Hamilton, 2019 IL App (5th) 170295, ¶ 78 A party must demonstrate through clear and specific evidence how the suspect funds were spent.

In re Marriage of Carter, 317 Ill. App.

3d 546, 552-53 (2000) Finding dissipation when the husband's explanation of how he spent the rest of the money for "household expenses" and "repairs" was too general and vague to satisfy his burden;

In re Marriage of Rai, 189 Ill. App. 3d 559, 569-70 (1989) Finding the circuit court abused its discretion when it concluded that the husband did not dissipate assets when he gave vague statements that the funds were spent on certain items and admitted that he was unsure of where the money went or how the funds were spent, because this inconsistent, vague testimony was unsupported by any credible documentation.

Hiring your Kids Generally isn't Dissipation. *In re Marriage of Schiffbauer*, 2023 IL App (3d) 220393-U

The husband employed his son to work on the family farm, and one of the issues before the court was whether this constituted dissipation. The wife's claim was predicated that said son should not have been working on the farm, let alone be paid for it - however the opinion does not do much to

explain why she took such a position. What is known is that the son had an agriculture background, was paid a wage commensurate for his work, and even took over for a period when the husband was unable to farm.

That was enough for the trial court to say there was no dissipation as to that claim. On appeal, the Appellate court affirmed, noting that “[i]ntent is one factor that a court may consider when determining whether dissipation has occurred.” *In re Marriage of Schneeweis*, 2016 IL App (2d) 140147, ¶ 40

Key to this decision was the lack of evidence to suggest the son was paid an inflated wage, and marital debt was paid down through the son’s farming efforts. *Id.* at ¶ 42

Can’t Double-Count Dissipation
Barclay v. Barclay,
2023 IL App (1st) 210780-U

A husband pays his son \$10k for a motorcycle, it gets totaled, the insurance pays him \$8,500. The court holds the husband accountable for both the \$8,500 insurance payout and the motorcycle – an inadvertent error that the Appellate Court corrects on appeal. See Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967) (reviewing court may modify judgment from which appeal is taken); *Id.* at ¶ 47

Pay Stupid Games...
In re Marriage of Qureshi,
2023 IL App (1st) 230737-U

We had a saying in the Marines; play stupid games, win stupid prizes. Applied here, the appealing party elected not to appear at trial, and on appeal, accused the trial judge of taking bribes. The motive likely stemmed from the trial court’s determination that the husband dissipated approximately 2.2 million dollars. No, that’s not a typo.

The husband’s pro se argument plays out about as well as expected, as the decision notes you can’t use the Appellate Court as an alternative forum; “[s]ince he chose to forgo that opportunity, “he is not now entitled to a do-over.” *Id.* at ¶ 24, citing *Gabriel & Shamoun*, 2020 IL App (1st) 182710, ¶ 72

The purpose of this rule is to encourage parties to raise issues in the trial court, thus ensuring that: (1) the trial court is given an opportunity to correct any errors prior to appeal and (2) a party does not obtain a reversal through his or her own inaction. See *1010 Lake Shore Ass’n v. Deutsche Bank Nat’l Trust Co.*, 2015 IL 118372, ¶ 14.

Spending Money on a Child that Might Be Yours.
In re Marriage of Yearman,
2023 IL App (3d) 221026-U





The most recent string of Appellate Rulings on dissipation have focused a lot on the timeliness of notices. 750 ILCS 5/503(d)(2)(i) holds that “ a notice of intent to claim dissipation shall be given no later than 60 days before trial or 30 days after discovery closes, whichever is later. So far, every Appellate Decision has declined to expand this strict timeframe.

In *Yearman*, the husband/father yo-yo’ed between claiming parentage and denying it. During the divorce, he sought dissipation from his ex for monies spent on the minor (that might, or might not, be his). Because there were times when the husband wanted to be dad, and other times he did not, the trial court held there was no dissipation as to this claim.

The Appellate Court affirmed; “we agree with the trial court that those expenses [by husband on the minor] did not constitute dissipation of the marital assets. As the trial court correctly noted, the expenses were incurred at a time when Keith was enjoying a parent-child relationship with A.Y. and was fulfilling what he believed to be his parental obligations toward the child.” *Id.* at ¶ 87

Denial Of Temporary Support in Lieu of Dissipation *Bedford v. Bedford*, 2023 IL App (1st) 220081-U

In *Bedford*, the husband was entitled to maintenance, but elected to spend \$771k of marital funds during the pendency of the divorce.

This expenditure of marital funds, which the wife sought reimbursement for, was the reason why the trial court denied the husbands request for temporary maintenance.

On appeal, the Appellate Court affirmed the application of spent marital funds towards any right to temporary support. *Id.* at ¶ 42.

Doubts About When Discovery Closed Undoes an Otherwise Timely Notice *In re Marriage of Majewski*, 2023 IL App (2d) 220050-U

According to a case management order, discovery was to close on January 14, 2021. But, an order was entered in August of 2021 that states “[t]he deadline to conduct depositions [was] hereby extended to August 23, 2021, by agreement of the parties.”

Within 30 days of this latest order, but two days before trial, the wife served a dissipation notice. The trial judge held it was untimely, and that the August 2021 order did not extend discovery. The wife appeals.

The Appellate Court affirms for two reasons. One, the wife failed to provide transcripts of the August 2021 order to give the Appellate Court context. And it’s well settled that in absence of a record, the reviewing Court will presume the trial court’s characterization of an order was in conformity with the law. See *Foutch v. O’Bryant*, 99 Ill. 2d 389, 392 (1984).

Two, serving a dissipation notice two days before trial goes against fundamental rules of fairness, as it did not provide the husband “with enough time to meaningfully respond to [the wife’s] claims of dissipation.” *In re Marriage of Majewski*, 2023 IL App (2d) 220050-U, ¶ 74.

Bad Accounting = Dissipation. But a Facially Valid Loan Agreement, Absent More, Can Defeat a Dissipation Claim. *In re Marriage of Lach*, 2024 IL App (2d) 220230-U

The Appellate Court affirmed the trial court’s finding that the husbands use of a \$600,000 loan proceed constituted dissipation. The opinion indicates the husband used those proceeds on his new paramour and their child - and there was a dearth of accounting to demonstrate otherwise.

The Court held that “[T]he failure to explain specifically how marital funds are expended requires a finding of dissipation.” *In re Marriage of Lach*, 2024 IL App (2d) 220230-U, ¶ 103, citing *In re Marriage of Los*, 136 Ill. App. 3d 26, 33 (1985)

However, a separate claim of dissipation, secured by a promissory note signed by the husband and his parents, was reversed on appeal.

In support of reversing, the Court noted that the husband, prior to divorce, had secured other loans from his parents in a nearly identical manner. *Id.* at ¶ 108.

Additionally, there was a dearth of facts in the opinion to suggest it was a sham loan - although one has to wonder how far the parents would ever go to enforce the agreement if their son were to default...