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SECOND DIVISION
June 14, 2011

1-10-1312

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> the Marriage of)	Appeal from the
MARK LESERVE,)	Circuit Court of
)	Cook County
)	
Petitioner-Appellant,)	
)	No. 08 D 3842
and)	
)	
CHRISTINE A. LESERVE,)	Honorable
)	John Thomas Carr,
Respondent-Appellee,)	Judge Presiding.
)	

JUSTICE CONNORS delivered the judgment of the court.
Justice Karnezis and Justice Harris concurred in the judgment.

ORDER

Held : In a dissolution of marriage judgment, the trial court did not abuse its discretion in awarding husband \$1,200 a month in permanent maintenance, and 55% of the marital estate, when it properly considered all relevant factors in the Illinois Marriage and Dissolution of Marriage Act.

Petitioner-Appellant Mark LeServe (“Mark”), appeals from the trial court’s judgment for dissolution of marriage. Mark contends that the trial court abused its discretion when it awarded

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him \$1,200 in monthly maintenance and 55% of the marital estate. Christine LeServe (“Christine”), Mark’s former wife, responds that the trial court did not abuse its discretion, and properly considered all relevant factors, in determining the monthly maintenance award and the division of marital property. For the reasons that follow, we affirm the judgment of the trial court.

I. BACKGROUND

Mark filed for dissolution of marriage on April 21, 2008, citing irreconcilable differences with his wife Christine. Mark was 51 years old at the time, while Christine was 54 years old. The parties were married in 1991 and had two daughters, Nicole and Danielle, born in 1991 and 1996, respectively. The following relevant facts were adduced at trial.

Mark was working as a union carpenter in Illinois at the time of the marriage. Mark’s highest level of education is eighth grade. The gross total amount of Mark’s income in 2009 was \$29,683.80.

Christine is a Certified Public Accountant and her highest level of education is a college degree. She has been Chief Financial Officer of Rosenthal Global Securities, LLC (“Rosenthal”), for 25 years. In 2009, she earned a gross income of \$153,700.

The witnesses who testified at trial consisted of the parties, Dr. Barry Arnason, George Baker, and Mark’s mother, Jean LeServe.

Christine testified at trial that she was hired by Rosenthal in 1985, for \$35,000 a year. Her annual salary at the time of trial was \$110,000, plus a \$2,500 bonus. She also received \$40,000 per year as an independent contractor. Her employer allowed her to work from home

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three days a week to care for the parties' children. In 1996, Mark was diagnosed with multiple sclerosis ("MS"). He was diagnosed after he had two "attacks" wherein he experienced numbness in his lower extremities. Subsequent to his diagnosis, Mark went into a severe depression for a year or two, whereupon he and Christine decided it would be best for him to discontinue work and stay home to help raise the children.

Mark did not experience any more attacks after 1996. His main symptoms of MS in the following years were fatigue and irritability. However, he was able to participate in outdoor activities, and he did work as a general contractor. Mark also worked at a desk job for a period of about six months, started an internet business called Great American Rentals, investigated buying a sailboat charter in Maui, and remodeled several friends' houses in exchange for money. Mark did most of the driving on the family's long road trips, and was able to bike, ski, and sail with his family. Christine noted that he hardly ever did the grocery shopping on the days that he was home while she was at work, nor did he do much cooking or cleaning. He did, however, assist in the construction and upkeep of the exterior of the house.

Dr. Arnason, Mark's treating doctor, testified that Mark has relapsing remitting MS, which meant that his neurological functions could improve and stabilize for a number of years. Mark has lesions in his brain and spinal chord that are characteristic of MS. In 1996, he had two episodes of numbness in his lower extremities, but since then he has had no overt episodes. Dr. Arnason sees Mark about once a year, and prescribes medicine for his fatigue and depression. Dr. Arnason admitted that he did not know to what extent Mark could perform activities outside of the doctor's office, and based his knowledge of Mark's physical limitations on what Mark told

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him during office visits. He also averred that there were no specific instances of memory loss that he knew of. Nonetheless, Dr. Arnason claimed that it was “most unlikely” that Mark could be employed.

Mark testified that at the time of trial he lived with his sister. He was depressed for about nine months after his diagnosis due in large part to reading about MS and the potential prognosis. Christine’s mother came to the house often on the days when Mark was home with the children and would cook dinner and read to the kids while Mark rested. Mark was a crew member on sailboats in several races after being diagnosed with MS. After divorce proceedings had been initiated, Mark began a romantic relationship with another woman. Over the course of 17 months, he gave her approximately \$20,000 for rent payments and gifts. At some point, Mark ceased paying the mortgage on the Michigan house because he did not have the money, so Christine had to take over the payments to avoid bad credit. Since 2008, Mark has not paid for any of the children’s food, college supplies, or expenses. The only expenses he has paid for since 2008 have been his own, and his girlfriend’s, expenses.

The parties stipulated to the values of the marital property, other than the values for the real estate, and the values and characterization of the non-marital property. George Baker, MAI, testified regarding his appraisals of the marital residence located in Winnetka, Illinois. Mr. Baker’s appraised value of the marital residence was \$585,000.

Jean LeServe, Mark’s mother, testified that she has paid \$51,831.64 of Mark’s attorney’s fees, and that by written agreement between Mark and Jean, he is obligated to repay her.

The trial court found that based upon the testimony of Dr. Arnason and Mark himself,

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“the Court is not convinced that Mark could not do something that would grace him with some remuneration.” The trial court further stated that it “does not find that Mark is completely disabled.” Specifically, the trial court stated:

“I’m going to suggest that I have had an opportunity to view the Petitioner. I’m convinced that the multiple sclerosis has affected his life. There really hasn’t been an awful lot of testimony about somebody really seeing him doing work. The wife said he’s over there doing work at different places, but his testimony really was that he was kind of organizing things or overseeing things; but that being said, between the testimony of the doctor and the Petitioner himself, I’m not convinced that he couldn’t do something that would - that would grace him with some remuneration, and I’m not suggesting that it would be substantial, but I think he can do something, and, you know, maybe limited, and it may be limited during certain times during the d

The trial court went on to find that each of the three properties owned by the parties were to immediately be listed for sale and the net proceeds divided between the parties with 55% of the proceeds going to Mark and 45% to Christine. The trial court then discussed maintenance, stating:

“In finding maintenance is required in this particular case, and I find that it is required for the reasons obviously that the husband is disabled. I have heard testimony of the parties as far as

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Mr. LeServe indicating his limitations, Mrs. LeServe - you know, I have had an opportunity to observe her and listen to her testimony, and some of the things that her husband said she disagreed with, but I think by and large she agreed that he's disabled. She complained that he didn't do anything when he was at home or didn't do certain things, and Mr. LeServe said, yes, I did until I left the house. And I do believe that Mr. LeServe is disabled. To what extent to be honest with you, I don't think there was testimony that would kind of give me a real good direction as to how much you were disabled. My thought is that you've got some serious disabilities; but as I suggested before, I think you probably can do something. I mean, I honestly don't know what kind of a job you would be able to get, but I think you have the ability to do some things. And the testimony has been that you have some time to do things during the day. I guess - I wasn't truly impressed with your expert. He seemed to be more concerned about saying what a great job he did in discovering the medications. The guy sounded like the kind of doctor you would love to be going to if you had a cold or something like that, but he didn't pinpoint stuff for me. That was the problem. Every question - I don't think there was an exception where a yes or no was given. He started off by saying. 'Well, I have done research

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on that.’ I have no doubt that he’s a good doctor, and he possibly gives you good treatment. *** You have, on the other hand, been diagnosed with multiple sclerosis. *** [H]e’s not saying you are totally disabled. He did say that he felt you were disabled. He felt that you - I think he said that you couldn’t work. But I kind of disagree with him. I think the mere testimony from what I gleaned from that, I think that you probably would be able to earn some income. I’m not saying it’s a great deal of income, but I think you have the ability. And I’m going to order that your wife pay you \$1,200 a month as far as maintenance is concerned , but you are to *** contribute to whatever it costs for your benefits through the Carpenters’ Union.”

For maintenance purposes, the court awarded Mark \$1,200 per month in permanent maintenance. Christine was awarded sole custody of the children, and Mark was not required to pay child support. Each parties’ petition for contribution for attorney fees and costs were denied. Each party was to be held responsible for the payment of his or her own attorney fees and costs without contribution from the other. Mark now appeals.

II. ANALYSIS

On appeal, Mark argues that the trial court abused its discretion in awarding him \$1,200 in monthly maintenance and 55% of the marital estate. We disagree.

A. Maintenance

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As a general rule, a trial court's determination as to the award of maintenance is presumed to be correct. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010) (citing *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 650 (2008)). "The amount of a maintenance award lies within the sound discretion of the trial court, and this court must not reverse that decision unless it was an abuse of discretion." *Nord*, 402 Ill. App. 3d at 292; see also *In re Marriage of Minear*, 181 Ill. 2d 552, 561 (1998). "An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court." *Id.* The party seeking reversal of a maintenance award bears the burden of showing that the trial court abused its discretion. *Id.*; see also *Minear*, 181 Ill. 2d at 561.

Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (the "Act") (750 ILCS 5/504(a) (West 2010)), governs maintenance awards. Section 504(a) states that in a proceeding for dissolution of marriage, the court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, in gross or for fixed or indefinite periods of time, and the maintenance may be paid from the income or property of the other spouse after consideration of all relevant factors. 750 ILCS 5/504(a) (West 2010). Relevant factors that the trial court will consider include: the income of each party, the needs of each party, the present and future earning capacity of each party, any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone education due to the marriage, the time necessary to enable the party seeking maintenance to acquire appropriate employment, and whether that party is able to support himself through

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appropriate employment. 750 ILCS 504(a)(1)-(12) (West 2010). Other factors the trial court will consider include the standard of living established during the marriage, the duration of the marriage, and the age and the physical and emotional condition of both parties. 750 ILCS 504(a)(1)-(12) (West 2010). “No single factor is determinative when considering the duration and amount of a maintenance award, and the trial court is not limited to a review of the factors outlined in section 504 of the Act in setting a maintenance award.” *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 651 (2008) (citing *In re Marriage of Murphy*, 359 Ill. App. 3d 289, 304 (2005)).

1. Employability

Mark’s first maintenance argument is that the trial court erred in finding that he had the potential to be employed in the future. Mark argues that the trial court’s finding that he was potentially employable was against the manifest weight of the evidence and that it improperly disregarded the testimony of Dr. Arnason, Mark’s expert witness. Specially, Mark argues that the trial court “inappropriately substituted its opinion for the expert presented at trial.” Before we address the merits of this issue, however, we note that Christine argues that Mark’s employability argument should be stricken for a failure to comply with Illinois Supreme Court Rule 341(h) (eff. July 1, 2006). Specifically, Christine contends that Mark failed to cite to any authority, in violation of Rule 341(h).

Section 341(h)(7) provides that the argument section of an appellant’s brief “shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities.” Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2006). Mere contentions, without argument or citation of authority, do not merit consideration on appeal. *Elder v. Bryant*, 324 Ill. App. 3d 526, 533 (2001).

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Allegations of trial court error summarily raised without supporting authority are deficient and warrant a finding of waiver. *Bryant*, 324 Ill. App. 3d at 533 (citing *People v. Lantz*, 186 Ill. 2d 243, 261 (1999)). Contentions that are supported by some argument, yet lack citations of authority, do not meet the requirements of Rule 341(h)(7). *Id.* A failure to provide proper argument and citations to authority results in forfeiture of the argument. *Id.*

Mark's contention that the trial court's finding in regards to his employability was against the manifest weight of the evidence is supported by minimal argument, with no citations to authority. Accordingly, his employability argument has been forfeited. However, forfeiture is a limitation on the parties, not the reviewing court. *In re D.F.*, 208 Ill. 2d 223, 239 (2003). Here, we relax the forfeiture rule to reach a just result. *D.F.*, 208 Ill. 2d at 239.

Mark argues that he was completely disabled, as evidenced by Dr. Arnason's testimony, and that therefore he had no employment potential in the future. Mark supports this argument by stating that Christine failed to offer an expert opinion to contradict Dr. Arnason's opinion, and that therefore the trial court "inappropriately substituted its opinion for the expert evidence presented at trial." We do not agree.

The trial court was in the best position to weigh the evidence and judge the credibility of the witnesses. *In re Marriage of Harris*, 178 Ill. App. 3d 282, 287 (1988). "Here, the trial judge, as the trier of fact, had the duty to assess the credibility of all witnesses, both expert or nonexpert, to determine the weight to be given their testimony and to draw all reasonable inferences therefrom." *Matter of Estate of Lukas*, 155 Ill. App. 3d 512, 521 (1987). Accordingly, the trial court in this case was free to give more weight to Christine's testimony than either Mark or his

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expert witness's testimony. Christine was not required to contradict Mark's expert witness with her own expert.

The evidence at trial revealed that while Mark suffers from fatigue, depression, and irritability due to MS, he has been able work on various construction projects for neighbors, start an Internet business, and enjoy many physical activities such as biking, sailing, skiing, and driving. The trial court noted that it was given the opportunity to observe Mark, and that Mark's testimony was that he mostly organized and oversaw projects, but did not do any physical work. The trial court further noted that it heard testimony of the parties indicating Mark's limitations, and that Christine and Mark disagreed on those limitations. The trial court went on to say that there was no testimony presented on the extent of Mark's disability. The trial judge's thoughts, after hearing all the evidence, was that Mark had some serious disabilities, but that he could do something in the way of work. The trial court based this finding on the fact that Mark admitted to partaking in certain activities during the day, and that the trial court was not impressed with Mark's expert witness.

The trial judge further noted that he did not necessarily believe Dr. Arnason's testimony regarding the extent of Mark's disabilities, as Dr. Arnason did not have any first-hand knowledge of Mark's limitations other than what Mark told him during once-a-year office visits. It was entirely proper for the trial judge, as the trier of fact, to give more weight to Christine's and Mark's testimony than Dr. Arnason's testimony, as it was the trial judge's duty to assess the credibility of expert witnesses and to determine the weight to be given their testimony. *Lukas*, 155 Ill. App. 3d at 521.

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Thus, we cannot say that the trial court arbitrarily came to the conclusion that Mark was employable. The trial court properly considered all relevant factors before determining Mark's employability, and therefore did not abuse its discretion. From our review of the record, we find nothing which would require a reversal of the trial court's determination.

2. Amount of Award

Mark's next maintenance-related contention is that the award of permanent maintenance in the amount of \$1,200 a month was insufficient. As discussed above, the amount of an award of maintenance lies within the sound discretion of the trial court, and is presumed to be correct. *Nord*, 402 Ill. App. 3d at 292; *Minear*, 181 Ill. 2d at 561. Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act contains the relevant factors a trial court should consider before awarding maintenance, which we have listed above. 750 ILCS 5/504(a) (West 2010). Mark does not contend that the trial court failed to consider those relevant factors, but instead argues that, based on *In re Marriage of Gable*, 205 Ill. App. 3d 696 (1990), the trial court should have computed his maintenance award amount in relation to Christine's income.

In *Gable*, the trial court ordered the marital residence and surrounding 42 acres, valued at \$49,000, to be sold at public sale with the net proceeds to be awarded 50/50. The court also awarded the wife \$500 a month in maintenance until the sale of the marital residence, at which point the amount would be reduced to \$250 a month for as long as the husband was employed on a regular and continuing basis. At the time of trial, the husband was earning approximately \$24,000 a year. *Gable*, 205 Ill. App. 3d at 698.

The wife, age 56 at the time of trial, had no high school degree or training, and suffered

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from various health problems. She had little in the way of nonmarital property. She claimed to have borrowed \$21,000 from her parents over the years in order to pay expenses. *Id.* The husband, age 60 at the time of trial, also had health concerns, but owned an additional 167 acres of farmland as nonmarital property. The husband was ordered to assume and hold the wife harmless on all debts, except the \$21,000 loan from her parents. *Id.* On appeal, the reviewing court found that the trial court abused its discretion pertaining to the award of maintenance.

The reviewing court found that while the trial court recognized the wife's need for maintenance based on her lack of property, employment skills, age and health, it nevertheless chose to reduce the amount of support after the property was sold. *Gable*, 205 Ill. App. 3d at 699. The reviewing court found that while it was true that once the house sold, the wife would have some capital, she was not required to consume her share of the marital property in order to maintain herself. *Gable*, 205 Ill. App. 3d at 699. The court found that the reduction in amount of maintenance after the sale of the marital residence could only leave the wife without adequate support to meet her needs in the future. *Gable*, 205 Ill. App. 3d at 699.

In this case, Mark contends that the maintenance award contemplated by the reviewing court in *Gable* represented 30% of the husband's income. By our calculation, \$500 a month in maintenance amounts to approximately 25%, not 30%, of the husband's salary of \$24,000. Regardless, Mark argues that in the case at bar, he is getting only nine percent of Christine's income, evidencing an abuse of discretion by the trial court. *Gable* is inapposite to the case at bar. While the wife in *Gable* received no income of her own throughout the 32 years of marriage, Mark LeServe received \$29,683.80 a year from his social security disability income

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and his disability pension from the carpenter's union. In *Gable*, the wife was awarded \$500 a month after the sale of the marital property, for as long as the husband was regularly employed. Here, Mark was awarded \$1,200 a month, and not required to pay the mortgage on any of the properties before sale, not required to pay for any of the children's expenses, and not required to pay child support. We believe that the circumstances in this case are vastly different from those in *Gable*, where no second income or children were involved, and thus the trial court did not abuse its discretion in awarding Mark \$1,200 in monthly maintenance.

Moreover, we note that nowhere in the Act is there a discussion of percentages. Mark cites to several cases where the monthly maintenance award made up a higher percentage of the awarding spouse's income than his monthly maintenance award. See *In re Marriage of Swigers*, 176 Ill. App. 3d 795 (1988); *In re Marriage of Hanson*, 170 Ill. App. 3d 298 (1988); *In re Marriage of Rogers*, 352 Ill. App. 3d 896 (2004); *In re Marriage of Walker*, 368 Ill. App. 3d 1034 (2008); *In re Marriage of Puls*, 268 Ill. App. 3d 882 (1994); and *In re Marriage of Stam*, 260 Ill. App. 3d 754 (1994). However, nowhere in the governing statute does there exist a discussion of a proper ratio between the monthly maintenance award and the spouse's income. Rather, the trial court is directed to consider the relevant factors listed in section 504(a) of the Act, and is given wide latitude to "decide the issue on a case-by-case basis." *In re Marriage of Kennedy*, 214 Ill. App. 3d 849, 858 (1991). A review of the record reveals that the trial court heard extensive arguments on the amount of maintenance to be awarded, and the relevant factors enumerated in section 504(a) of the Act, and decided the issue based on the reasonable needs of both parties. The trial court took into account the fact that, although Christine's net income

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would be higher than Mark's, she was solely responsible for the expenses of the two children. Additionally, the trial court noted that Mark spent close to \$20,000 on his girlfriend, which amounted to approximately \$1,200 a month, on top of his living expenses. Thus, an additional \$1,200 a month is sufficient as a maintenance award. We cannot find that no reasonable person could award the same monthly maintenance in this case, and accordingly we find that the trial court did not abuse its discretion in awarding maintenance.

3. Standard of Living

Mark further argues that the maintenance amount of \$1,200 per month requires him to reduce the standard of living that he enjoyed during the marriage, and thus the award was improper. It is true that in reviewing the propriety of the trial court's permanent maintenance award, we must consider not simply whether Mark is able to support himself, but whether he is able to support himself at the standard of living enjoyed by the parties during the marriage. *Heroy*, 385 Ill. App. 3d at 652. However, as this court stated in *In re Marriage of Simmons*, 87 Ill. App. 3d 651, 661 (1980), "[l]iving apart costs most couples more than living together. The court is unable to provide both parties with the standard of living they enjoyed during marriage; one or both have to take a cut. The court must apportion the deficit."

In this case, the court properly apportioned the deficit. Both parties have taken a reduction in standard of living. While Christine has a higher monthly income, she is solely responsible for the mortgages on all three properties before they sell, she is solely responsible for all the expenses of the parties' two daughters, and she now is responsible for a monthly maintenance payment. The trial court noted that Mark gave \$20,000 to his girlfriend prior to

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trial, which amounted to about \$1,200 a month, while still paying for the rest of his expenses. The trial judge stated that Mark was “doing that by choice. He had the money available. He could have gotten himself an apartment.” After deliberation, the trial judge informed the parties: “I was back and forth on an amount of maintenance. I kept coming back to the figure between \$1,000 and \$1,200 bucks. No matter how I calculated it.” It is clear from a review of the record that the trial court took all the relevant factors into consideration in determining the amount of maintenance to award Mark. Thus, we can see no basis for a finding of an abuse of discretion by the trial court.

B. Distribution of Marital Property

Mark’s next argument on appeal is that the distribution of marital property was an abuse of the trial court’s discretion. Specifically, Mark argues that the trial court should have distributed more than 55% of the marital estate to him. As with maintenance awards, decisions regarding the distribution of the marital property in a dissolution of marriage action lie within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. *In re Marriage of Crook*, 211 Ill. 2d 437, 452 (2004); *In re Marriage of Joynt*, 375 Ill. App. 3d 817, 822 (2007).

Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act governs the distribution of marital property and directs courts to consider various relevant factors and distribute marital property “in just proportions” to the spouses. 750 ILCS 5/503(d) (West 2010). These factors include the value of the property set apart to each spouse, the duration of the marriage, the economic circumstances of each spouse upon division of the property, the

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reasonable opportunity of each spouse for future acquisition of capital assets and income, and each spouse's age, health, employability and sources of income. 750 ILCS 5/503(d) (West 2010).

Courts have repeatedly and consistently held that the "just proportions" requirement does not mandate an equal division of marital property, but rather an equitable division. The Act does not require that the property be distributed with mathematical equality; rather, the touchstone of proper apportionment is whether it is equitable in nature. *In re Marriage of Drury*, 317 Ill. App. 3d 201, 211 (2000). Accordingly, depending on the circumstances of the case, an unequal division of marital property may be appropriate. *Heroy*, 385 Ill. App. 3d at 661.

Mark contends that he should have received 70% of the marital estate instead of 55% due to the following: that he is 100% disabled, has not worked outside of the home for the past 14 years, and only has an eighth grade education. Mark bases his arguments on the fact that "[s]everal Illinois cases have affirmed divisions of the marital estate at a percentage of 60% or greater." While this may be true, we note that division of marital property for each case rests upon its own facts. *In re Marriage of Orlando*, 218 Ill. App. 3d 312, 319 (1991).

In this case, Mark has an annual income, is now receiving a monthly maintenance award, and is not required to pay child support. In addition, he has been awarded a larger percentage of the marital property than Christine. We cannot say that, based on the evidence adduced at trial, that no reasonable person could find the way the trial court found. Mark does not contend that the trial court failed to properly consider the relevant factors of section 503(d) of the Act. Rather, he argues that based on the fact that other courts have allowed a more unequal split, that

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we should as well. We disagree and find that the trial court properly considered all the relevant factors, as set forth in the statute, in dividing the marital property, and thus did not abuse its discretion.

III. CONCLUSION

In conclusion, we find that the trial court did not abuse its discretion in awarding Mark \$1,200 in monthly maintenance, and 55% of the marital estate.

Affirmed.