

No. 1-10-0238

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FIFTH DIVISION
May 20, 2011

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> Marriage of:)	Appeal from the
)	Circuit Court of
MAUREEN PULLEN,)	Cook County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 07 D2 30434
)	
JOHN PULLEN,)	The Honorable
)	Elizabeth Loredó-Rivera,
Respondent-Appellant.)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Joseph Gordon and Howse concurred in the judgment.

ORDER

HELD: Where the trial court assessed a value to the husband's business and charged this value against his distributive share of the marital estate while the business comprised an estate in bankruptcy, that portion of the trial court's judgment was void *ab initio* in light of automatic stay provision of Bankruptcy Code and must be vacated for lack of subject matter jurisdiction; however, the remainder of the trial court's judgment dealing with the parties' dissipation of other marital assets and its imposition of discovery sanctions was proper and could stand.

No. 1-10-0238

Respondent-appellant John Pullen (John) appeals from the trial court's judgment for dissolution of marriage. Primarily, he contends that the trial court made determinations regarding the value of his business in direct violation of an automatic stay order. In addition, he contends that the trial court abused its discretion when it failed to charge petitioner-appellee Maureen Pullen (Maureen) with dissipation of assets, that it abused its discretion when it barred him from presenting evidence at trial, and that its finding that he dissipated monies was against the manifest weight of the evidence. John asks that we reverse the trial court's judgment and remand the cause for further proceedings.

Maureen, for her part, submitted a letter to this court stating that she would not be filing a brief in this matter; she, in fact, has not filed a brief on appeal. Therefore, we consider the instant appeal on John's brief only, pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

For the following reasons, we affirm in part, and vacate in part.

BACKGROUND

The parties were married in September 1993 and have three minor children. In February 2003, during the course of the marriage, John, an electrical subcontractor, established Ripec, Inc. (Ripec), an electrical subcontracting business. John was the president and sole shareholder of Ripec, which consisted of a clerical staff, a sales staff, and working electricians. In August 2007, Maureen filed a petition for dissolution of marriage. A lengthy and somewhat contentious divorce ensued, with various hearings and orders entered by different trial courts regarding several issues, including child support, visitation, the sale of the parties' multiple homes, the

No. 1-10-0238

removal of funds from the sale of stocks, the return of funds to the estate, the payment of attorney fees, etcetera.

In January 2009, the trial court entered an order setting the briefing schedule for the parties. In this order, the trial court directed the parties to, among other things, disclose the names of their Illinois Supreme Court Rule 213 witnesses by February 5, 2009, and to exchange any of these witnesses' reports by March 5, 2009. Also, this order stated that "[d]iscovery will close on March 31, 2009." One day before the February 5, 2009 deadline to disclose the names of Rule 213 witnesses, John's attorney filed a motion to withdraw as his counsel. The trial court granted this motion and, pursuant to the trial court's subsequent orders, John's new counsel filed his appearance in the matter on March 17, 2009. On April 2, 2009, John's counsel sent Rule 213 disclosures to Maureen's counsel via e-mail and, on April 3, 2009, John's counsel filed a motion in the trial court for an extension of time to file Rule 213 disclosures. The court denied his motion, thereby barring the presentation of John's Rule 213 witnesses at trial. John filed a motion to reconsider, which was also denied by the trial court.

Meanwhile, on April 24, 2009, a child custody agreement was entered in the cause, awarding Maureen sole custody of the parties' children. On April 27, 2009, Ripec filed amended tax returns. Then, on April 28, 2009, the day the trial court had set as the date on which all trial exhibits were due, Ripec filed for chapter 7 bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois.

Trial began in the divorce proceedings in June 2009, during which several witnesses

No. 1-10-0238

testified.¹ Most relevant to the instant appeal, Maureen presented the testimony of Michael Goldman, a business valuation expert. Goldman had examined Ripec and its bankruptcy, and prepared a report regarding the business' value. He testified at length about the methods he used to value Ripec, the company's revenues and receipts, the goodwill involved, its record-keeping practices, and the bankruptcy. Ultimately, the crux of Goldman's testimony was his conclusion that the bankruptcy was fraudulent and that Ripec was worth \$822,500 as of December 31, 2007.

Regarding Ripec's bankruptcy, John testified that, in order to outbid competitors, he had to cut expenses, and that cutting labor costs was his only option. He admitted that, accordingly, he began paying his employees in cash in order to avoid paying union dues. Shortly before filing for bankruptcy, John received an audit letter from union creditors and he knew that this, along with the coming divorce proceedings, would require him to disclose his cash payments and would subject him to union liability. John also testified that his customers began receiving subpoenas, his driver's license was revoked, and that the recession made it difficult for him to obtain jobs for Ripec. John stated that the reason he filed Ripec's bankruptcy was to avoid an audit and the payment of union benefits, which he could not afford.

John further testified regarding his personal credit card. He stated that in November 2008, he charged \$1,000 on the card for legal fees used to defend his father in an unrelated matter. In December 2008, he purchased \$258.46 in bedding for himself and \$208.58 in

¹We note for the record that the testimony presented during this divorce proceeding, including that of the witnesses highlighted herein, was lengthy and extremely detailed. However, because the instant appeal is narrow and its issues specific in scope, we include in our order only that testimony which is pertinent to those issues.

No. 1-10-0238

Christmas gifts for the parties' children. He averred that in January 2009, he charged \$174.23 for a damaged truck rack, \$329.70 for furniture for his house, \$142.95 for sunglasses for himself, \$174.16 for clothes for the children, and another \$406.02 for clothes for the children and himself. Then, in February 2009, he used the card to purchase luggage for himself valued at \$632.19, and in March 2009, he bought \$386.04 in jeans. He stated that the charges on his March 2009 statement totaled \$2,424.76, and the charges on his April 2009 statement totaled \$1,748.44.

Maureen testified regarding certain assets at issue. She stated that in 2008, she overpaid \$20,593 to the Internal Revenue Service when she filed her taxes; she admitted that she did not receive a refund for that amount but, instead, the overpayment was applied to her 2009 taxes. Maureen further testified that, before she filed for divorce, and upon the advice of her attorney, she withdrew \$14,940 from a line of credit on the parties' marital home and, later, conducted two more withdrawals, one for \$8,000 and another for \$4,000, which she transferred into her own personal bank account. Maureen conceded that the amount she removed immediately before she filed for divorce totaled approximately \$27,000.

The trial court entered a judgment for dissolution of marriage on December 22, 2009. In its order, the court began by making multiple findings of fact, including that Maureen was credible in her testimony before the court and John was not. With respect to Ripec, the court repeatedly found that John blatantly and willfully forced the company into bankruptcy in order to avoid the payment of support to Maureen and to dissipate its value so it could not be considered as a distributable asset during the divorce. Then, turning to the details provided by Goldman during his testimony, the court set the value of Ripec at \$822,500, declared that John had

No. 1-10-0238

dissipated the marital estate of this value due to the bankruptcy, and charged this entire amount to his distributive share of the estate. The court also found that Ripec had no personal goodwill.

The court made several other holdings with respect to the parties and the marital estate. For example, it divided the parties' retirement and bank accounts, their multiple residences, a personal injury settlement John had received, and possession of a sea doo, snow mobile, boat lift and trailer. The court also "considered the dissipation by each party of the marital or non-marital property." Among other things, the court found that John had dissipated "both personal credit cards and corporate credit cards for his personal use" in the amount of at least \$10,000, but did not assign any dissipation to Maureen. The court further ordered that each party would keep his/her current automobile and personal property, and that each would be solely responsible for his/her own debts. The court also dealt with custody of the children and child support, adopting the initial order awarding sole custody to Maureen, establishing a trust, and addressing medical and insurance concerns. Finally, the court ordered that neither party would receive maintenance from the other and that John should pay both Maureen's and his own attorney fees and costs.

ANALYSIS

John makes a total of seven contentions on appeal. We address the first four together, and the last three separately.

John's first four contentions all deal with the trial court's findings regarding Ripec and its effect on the division of the marital estate. He asserts that the trial court erred in including his personal goodwill in the valuation and distribution of Ripec as a divisible marital asset, that this inclusion of his goodwill resulted in the improper distribution of the marital assets in a one-sided

No. 1-10-0238

manner, that the court's valuation of Ripec was against the manifest weight of the evidence, and that the court's finding that John intentionally bankrupted Ripec and was voluntarily underemployed was against the manifest weight of the evidence. As an additional, and perhaps overarching, argument, John contends that, regardless of all this, the trial court violated the automatic stay in bankruptcy and exceeded its jurisdiction in considering and ruling on issues involving the valuation and distribution of Ripec in the judgment for dissolution.

We must agree with John's overarching argument here, and find that the judgment for dissolution is void with regard to the portions relating to the valuation and division of Ripec and its assets due to a lack of subject matter jurisdiction on the part of the trial court.

We begin by noting that we, as a reviewing court, are obligated to examine our own jurisdiction, as well as the jurisdiction of the trial court, over a cause of action. See *Cohen v. Salata*, 303 Ill. App. 3d 1060, 1063 (1999); accord *Little Texas, Inc. v. Buchen*, 319 Ill. App. 3d 78, 81 (2001); *In re County Treasurer and Ex Officio County Collector of Cook County*, 308 Ill. App. 3d 33, 39 (1999). Subject matter jurisdiction refers to a court's ability to hear and determine a general question presented to it; usually, as long as a cause of action states a claim belonging to a general class over which the court has authority, that court's jurisdiction attaches. See *Cohen*, 303 Ill. App. 3d at 1063. However, this is not always true. See *Cohen*, 303 Ill. App. 3d at 1063. There are several federal statutes that divest state courts of subject matter jurisdiction they otherwise would have over causes of action. See *Cohen*, 303 Ill. App. 3d at 1063. One of these federal statutes is the United States Bankruptcy Code. See *Cohen*, 303 Ill. App. 3d at 1064; see also *County Treasurer*, 308 Ill. App. 3d at 39-40. Pursuant to the

No. 1-10-0238

supremacy clause of the United States Constitution, where a state law conflicts with a federal law, the federal law controls. See *Cohen*, 303 Ill. App. 3d at 1063-64 (citing U.S. Const., art. VI, cl. 2). Therefore, "even a court of general jurisdiction lacks subject matter jurisdiction when its power to act in a particular matter has been divest by a [f]ederal statute." *Cohen*, 303 Ill. App. 3d at 1064. When this occurs, we must dismiss the cause of action. See *County Treasurer*, 308 Ill. App. 3d at 39; see also *Cohen*, 303 Ill. App. 3d at 1066 ("[a]bsent subject matter jurisdiction, the court's only function is to announce the fact that it lacks jurisdiction and dismiss the cause").

The filing of a bankruptcy petition creates an estate which includes all the property in which the debtor has a legal or equitable interest. See 11 U.S.C. §541(a) (1994); see also *Western States Insurance Co. v. Louis E. Olivero & Associates*, 283 Ill. App. 3d 307, 311 (1996). Under section 362(a) of the Bankruptcy Code, the debtor's filing of a bankruptcy petition "operates as a stay, applicable to all entities, of –

"(1) the commencement or continuation *** of a judicial *** action or proceeding against that debtor that was or could have been commenced before the commencement of the case under this title ***;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate." 11 U.S.C. §362(a)(1), (a)(3), (a)(4) (1994).

The stay takes effect immediately and automatically the moment the debtor files his petition in

No. 1-10-0238

bankruptcy and without regard as to whether a party to the stay, or even a state court, has notice of the bankruptcy filing. See *Cohen*, 303 Ill. App. 3d at 1064; accord *County Treasurer*, 308 Ill. App. 3d at 40; *In re Application of County Collector for Delinquent Taxes*, 291 Ill. App. 3d 588, 592 (1997) (a section 362(a) stay binds all state courts and relevant parties, regardless of notice). And, unless a party requests a lift of the stay, the stay lasts with respect to acts against the property of the bankruptcy estate until the property is no longer part of that estate, or, with respect to any other act, until the case is closed, the case is dismissed or the bankruptcy court grants or denies a discharge, whichever occurs earliest. See *County Treasurer*, 308 Ill. App. 3d at 40. Most significantly, any action taken against the bankruptcy estate when an automatic stay under section 362(a) is in effect is void *ab initio*. See *Cohen*, 303 Ill. App. 3d at 1065 ("actions taken in violation of the automatic stay provisions of section 362 are void"); *County Collector*, 291 Ill. App. 3d at 591; see also *Hood v. Hall*, 321 Ill. App. 3d 452, 454 (2001); *Little Texas*, 319 Ill. App. 3d at 81-82.

As it relates to the instant cause, there is one exception to the section 362(a) automatic stay rule. That is, the filing of a bankruptcy petition does not operate as a stay of the commencement or continuation of a civil action for the dissolution of marriage. 11 U.S.C. §362(b)(2)(A)(iv) (1994). In other words, even if a debtor files a bankruptcy petition, a cause of action for the dissolution of his marriage is not stayed and may proceed in state court. 11 U.S.C. §362(b)(2)(A)(iv) (1994). However, to the extent that the dissolution of his marriage seeks to determine the division of property that is property of the bankruptcy estate, then the section 362(a) stay remains in effect. 11 U.S.C. §362(b)(2)(A)(iv) (1994). Accordingly, while a state

No. 1-10-0238

court may grant a divorce and deal with divorce-related matters such as child custody, pension benefits and insurance concerns, it cannot deal with any matters that affect the division of property that is part of the bankruptcy estate.

In the instant cause, John filed a petition for bankruptcy for Ripec on April 28, 2009, long before the trial court entered its judgment in this state-court divorce case. At that moment, an automatic section 362(a) stay came into effect over Ripec--the bankruptcy estate--preventing the continuation of Maureen's divorce action against John inasmuch as it sought to obtain possession or control over Ripec or its assets. As the exception to section 362(a) makes clear, this is not to say that the dissolution proceeding against John could not continue. To the contrary, the trial court had every right to legally dissolve the parties' marriage and to deal with a wide array of matters, including child custody and visitation, the sale of the marital homes, the division of various assets (*i.e.*, the sea doo, dock, cars, furniture, proceeds from John's personal injury settlement, etc.), attorney fees and costs, and medical and other insurance. What the court could not touch, however, was Ripec. Pursuant to the stay, the trial court had no authority to make a determination of the value of Ripec or to distribute this value between the parties. Ripec comprised the bankruptcy estate and, thus, only the bankruptcy court could deal with it. Therefore, those portions of the trial court's judgment dealing with Ripec violated the automatic stay provision of section 362(a) and did not invoke the subject matter jurisdiction of the trial court. Accordingly, they are void. See *County Treasurer*, 308 Ill. App. 3d at 40-41 (where cause of action involved property of bankruptcy estate and an attempt to gain control over such property subject to ongoing bankruptcy, cause of action violated automatic stay provision of

No. 1-10-0238

section 362(a) and was void); *Cohen*, 303 Ill. App. 3d at 1065-66 (trial court's order vacated where complaint was filed in violation of automatic stay provision of section 362(a), rendering complaint void and outside subject matter jurisdiction of trial court); *County Collector*, 291 Ill. App. 3d at 594 (tax sale held to be void as violative of automatic stay, where no final order had been entered and bankruptcy case was still pending); see also *Little Texas*, 319 Ill. App. 3d at 81-82.

An argument could perhaps be made that the validity of John's bankruptcy petition was questionable. Indeed, the trial court here, not so subtly, mentioned this repeatedly in its judgment, asserting that John left some facts out of his petition and did not complete it properly. Also, we note a potential issue with the timing of the closing of the bankruptcy case. That is, John states in his brief on appeal that the case closed on January 19, 2010, which would have been after the trial court's December 22, 2009 judgment; however, he does not provide a record citation for this, he does not provide us with any documentation reflecting this, and we have found nothing in the record regarding this. Yet, all of this is irrelevant. The record is clear that John filed the petition for Ripec's bankruptcy on April 28, 2009, again, long before trial had even begun, and that both Maureen and the trial court had notice that Ripec's bankruptcy was pending during the dissolution proceedings. Moreover, Maureen does not dispute that the bankruptcy closed on the date John represents to us, and there is no indication that the bankruptcy was somehow invalid. Ultimately, the key, and only relevant, fact is that John filed bankruptcy for Ripec and, the moment he did so, section 362(a)'s automatic stay provision was immediately invoked to remove Ripec and its valuation from any consideration by the trial court when

No. 1-10-0238

dividing the parties' marital estate. See *Little Texas*, 319 Ill. App. 3d at 81-82 (trial court lacked jurisdiction even though the court had no notice of the bankruptcy filing, the debtor did not plead the stay in court and the debtor's bankruptcy petition was later dismissed; the section 362(a) automatic stay provision trumped all these facts, thereby rendering the trial court's order void).

While the Illinois state cases we have highlighted herein do not specifically involve divorces, the precedent they provide is directly on point and in line with bankruptcy cases that do. For example, in *Schock v. Schock*, 37 B.R. 399 (1984), the husband-debtor, while in the midst of divorce proceedings, filed a petition for bankruptcy in federal court. He, along with his wife, then sought to lift the section 362(a) automatic stay provision that had come into effect over the bankruptcy estate so that their divorce could continue in state court while the bankruptcy was pending. After reviewing section 362, the bankruptcy court denied the couple's request. See *Schock*, 37 B.R. at 400. It noted that since, as provided in the exceptions, divorces themselves are not stayed by section 362, it could not prevent the divorce proceedings from continuing between the parties. See *Schock*, 37 B.R. at 400. However, the *Schock* court made clear that once the husband-debtor had filed the bankruptcy petition, an estate was created consisting of all the interest he held in the property subject to that bankruptcy and, accordingly, that property came under the auspices of the bankruptcy court and its administration. See *Schock*, 37 B.R. at 400. To facilitate that administration, the section 362(a) stay prohibited any action to obtain possession of the estate's property or to create or perfect any interest or claim in that property—by him, his wife or the state court. See 37 B.R. at 400. Accordingly, the *Schock* court concluded that, while the state court had the right to dissolve the parties' marriage, it did not have the right

No. 1-10-0238

to make a determination or disposition of the property which was contained in the bankruptcy estate. See *Schock*, 37 B.R. at 400 (“the Bankruptcy Court cannot release its jurisdiction over property which is apparently property of the estate”).

Similarly, in *In re Briglevich*, 147 B.R. 1015 (1992), the husband-debtor filed for bankruptcy in 1985; pursuant to his petition, he listed three parcels of property he owned, thereby including them as part of the bankruptcy estate. Later, in 1987, his wife filed for divorce; she did not seek relief from the section 362(a) stay which was still in effect, as the bankruptcy remained pending. The divorce proceeded in state court, where a final judgment and decree of divorce was entered. Part of the decree awarded the wife title and possession of two of the three parcels at issue, and awarded the husband-debtor title and possession of the third parcel. Then, in 1988, quitclaim deeds were prepared on the first two properties transferring all of the husband-debtor’s interest in these to the wife, and a quitclaim deed was prepared on the third property transferring all of the husband-debtor’s interest in this to his mother-in-law and his children. Again, no one had ever sought relief from the automatic stay, nor had the husband-debtor given notice of the divorce, its property divisions or the quitclaim deeds to the bankruptcy court. See *Briglevich*, 147 B.R. at 1017-18.

Eventually, the husband-debtor’s creditors in bankruptcy discovered the transfers and brought suit against the husband, his wife, his mother-in-law and his children to set aside the conveyances. Among other things, these latter defendants argued that the conveyances were proper as per the divorce decree and its distribution of the couple’s property. The *Briglevich* court wholly disagreed, citing the automatic stay provision of section 362(a) of the Bankruptcy

No. 1-10-0238

Code. See *Briglevich*, 147 B.R. at 1019. First, it noted that those portions of the state court’s divorce decree dissolving the marriage and dealing with non-economic issues did not violate the statutory stay provision; accordingly, those remained valid. See *Briglevich*, 147 B.R. at 1019 fn. 2. However, it then made clear that those portions of the state court’s divorce decree affecting and directing any transfer of property of the bankruptcy estate, which included the three parcels of land, “clearly violate[d] the automatic stay and [were] void.” *Briglevich*, 147 B.R. at 1019. The federal court explained that the automatic stay provision of section 362(a) was in effect at the time of the state’s issuance of its divorce decree—a state judgment that created rights and interests in property that was simultaneously part of the pending bankruptcy estate. See *Briglevich*, 147 B.R. at 1019. Because the state court’s divisions of the property (and the resulting transfers) were made after the commencement of the bankruptcy case, and because they were not authorized by the bankruptcy court, they violated the automatic stay. See *Briglevich*, 147 B.R. at 1019-20. Therefore, regardless of the failure to give notice to any court involved, and because none of the parties had obtained relief from the stay, those portions of the divorce decree that distributed the property between the husband and the wife in the first instance, along with the subsequent transfers to their relatives, were null and void. See *Briglevich*, 147 B.R. at 1019-20 (“[t]he bankruptcy laws do not permit debtor’s wife or any other entity to simply take possession of debtor’s real estate” that is the property of the bankruptcy estate).

For these reasons, and based on the federal cases of *Schock* and *Briglevich*, along with the several state court decisions we have cited, we find that those portions of the trial court’s judgment valuating and distributing Ripec between John and Maureen, in relation to the other

No. 1-10-0238

assets of their marital estate, made after the commencement of Ripec's bankruptcy case and without the authorization of the bankruptcy court, were in violation of the automatic stay provision of section 362(a) of the Bankruptcy Code and, thus, are null and void and must be vacated.²

We turn now to John's last three contentions on appeal, which challenge the trial court's findings with respect to his and Maureen's dissipation of the marital property and its refusal to allow him to present certain witnesses at trial. While we agreed with John regarding his first four contentions involving Ripec, we do not agree with him regarding these remaining issues.

First, John asserts that the trial court abused its discretion when it failed to charge Maureen's dissipation to her share of the marital property. Specifically, he cites Maureen's testimony at trial that she applied an overpayment of \$20,593 to her future taxes instead of receiving a refund that could have been distributed between the parties, as well as her testimony that she withdrew \$26,940 from the marital estate by the day she filed for divorce. He states that "[n]o mention of this significant level of dissipation appears anywhere in the judgment for dissolution of marriage" and, accordingly, that judgment should be reversed and remanded with instructions to charge \$47,533 as dissipation against Maureen's share of the marital property.

²As noted in *Cohen*, once an automatic stay is no longer in effect by, for example, reason of a discharge order entered in the bankruptcy proceeding, "there appears to be no impediment to the circuit court's ability to acquire subject matter jurisdiction" following the filing of a complaint and the completion of service of process. See *Cohen*, 303 Ill. App. 3d 1066. Thus, should Maureen present a discharge order issued by the bankruptcy court (which John has stated to us now exists subsequent to the conclusion of their divorce), and should she file a complaint and complete service, we find no reason that the trial court would not then, at that time, finally have the legal power to conduct a valuation and distribution of Ripec between the parties as part of their marital estate.

No. 1-10-0238

John is correct that, in allocating property during divorce proceedings, the trial court must consider dissipation by each party involved, *i.e.*, a spouse's use of marital property for his/her sole benefit for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown. See *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 652-53 (2009). However, John misses the mark concerning the standard of review regarding a trial court's decision on dissipation, as well as several other principles relevant to such a determination.

Whether a spouse has dissipated marital assets depends on the facts of each case. See *In re Marriage of Tabassum and Younis*, 377 Ill. App. 3d 761, 779 (2007); accord *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 700 (2006). Once a *prima facie* case of dissipation is made, the charged spouse must show by clear and convincing evidence how the marital funds were spent. See *Tabassum*, 377 Ill. App. 3d at 779. If the spouse fails to do so, the trial court must find dissipation. See *Tabassum*, 377 Ill. App. 3d at 779; *Hubbs*, 363 Ill. App. 3d 701-02. Contrary to John's contention, while we review a trial court's final property distribution under an abuse of discretion standard, we review its findings regarding dissipation under a manifest weight of the evidence standard. See *Tabassum*, 377 Ill. App. 3d at 779 (citing *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 205 (2005)). Moreover, a trial court is not required to state an exact amount of dissipation. See *Tabassum*, 377 Ill. App. 3d at 780. Nor is it required to list what conduct constituted dissipation, to explain how it arrived at a dollar amount, to award the other spouse money equaling half the dissipated amount, or to directly charge the dissipated amount against the charged party's share of the marital estate. See *Tabassum*, 377 Ill. App. 3d at 779-80

No. 1-10-0238

(and cases cited therein). Instead, the trial court is only required to “consider the value of the property distributed to each spouse and that there is sufficient evidence of value in the record to allow for review of the trial court’s distribution.” *Tabassum*, 377 Ill. App. 3d at 780.

Based on the facts of the instant cause, we do not find fault with the trial court’s decision not to charge any dissipation against Maureen. As John admits, Maureen testified with specificity before the trial court regarding the amounts he insisted she had dissipated from the marital estate. These included her tax overpayment and multiple withdrawals she made from the certain accounts. She admitted that this totaled approximately \$47,000, and, in a effort to refute John’s claims of dissipation, attempted to explain to the court how this money was spent. Moreover, the record is clear that the trial court undeniably considered all this in making its determination regarding dissipation, as well as its ultimate decision regarding its final property distribution. At the outset of its decision, the court acknowledged that the cause had been “litigated extensively,” particularly with regard to the parties’ assets, and stated that, while it considered both parties’ testimony, it found Maureen’s testimony regarding these issues to have been “responsive, consistent, and persuasive,” while John’s was “evasive” and “sorely lacking in credibility.” The court then specifically held that, on those issues where the parties’ testimony conflicted, it accepted Maureen’s. Next, the court stated for the record that, “[i]n determining an equitable division of the marital estate between the parties,” it considered all the factors it was legally required to and, “[i]n particular, *** took note of Maureen’s preservation of the marital property.” Finally, the court plainly declared that it “considered the dissipation by each party of the marital or non-marital property.” It went on to conclude that, based on the evidence before it,

No. 1-10-0238

Maureen had not dissipated the marital estate, as John alleged.

The record clearly demonstrates that Maureen explained her conduct to the trial court and that the trial court considered both sides of the argument. Contrary to John's insistence, the trial court was not required to go beyond this. See, *e.g.*, *Tabassum*, 377 Ill. App. 3d at 779-80 (and cases cited therein). It sufficiently stated its considerations and, quite simply, found Maureen, rather than John, credible in her claim that she did not dissipate the marital estate. Accordingly, we find that the trial court's decision not to assess any dissipation against Maureen was not against the manifest weight of the evidence.

Along these same lines, John makes a second contention regarding dissipation, this time, about himself. He asserts that the trial court's finding that he dissipated \$10,000 in credit card charges was against the manifest weight of the evidence. He claims that, at trial, opposing counsel questioned him only about his personal credit card charges for the months of March 2009 and April 2009, which totaled only \$4,173.20. Thus, he insists that while there was some dissipation on his part, Maureen did not make a *prima facie* showing of a \$10,000 dissipation and that the trial court's finding in this amount was "arbitrary."

We have outlined John's testimony at trial regarding his personal credit card, along with the specific charges he revealed to the court were for purchases for his sole benefit for a purpose unrelated to the marriage, *i.e.*, his dissipation of the marital estate. And, as he states in his brief on appeal, these charges did, indeed, total \$4,173.20. However, John neglects to mention in his brief the full basis of the trial court's finding regarding his dissipation.

As part of her *prima facie* case regarding John's dissipation, Maureen provided the court

No. 1-10-0238

with six lengthy exhibits. These revealed a wide collection of statements and charges from John's corporate credit card he maintained via Ripecc. In its written judgment, the trial court made clear that, in assessing John \$10,000 in dissipation, it considered not just his personal credit card containing the expenditures to which he testified, but also his corporate credit card based on the exhibits presented by Maureen. The court found that John had committed "extensive use" of "both" of these "for his personal use for expenses that were not reasonable, necessary, nor for marital purposes." In addition to finding that his testimony regarding these was "most unpersuasive," the court noted that John "did not challenge most of the charges identified" in Maureen's exhibits and, "[b]ased on its specific review of" the credit card usage, that Maureen had "persuasively argue[d]" that John had dissipated \$10,000. Pursuant to all this, and from our review of the record, we find that the trial court's decision to assess \$10,000 in dissipation against John for his personal and corporate credit card usage was not against the manifest weight of the evidence.

Finally, John's last contention on appeal focuses on his Rule 213 witnesses. John asserts that the trial court abused its discretion when it barred him from presenting evidence as a discovery sanction where he was late in disclosing these witnesses but was unrepresented by counsel, where he had nonetheless made the necessary disclosures before trial, and where the trial court had previously allowed Maureen to tender late discovery without incident.

As the record reveals, in January 2009, the trial court entered a briefing schedule for the parties. With respect to Rule 213 witnesses, this order mandated that the parties disclose their names by February 5, 2009, and exchange any of these witnesses' reports by March 5, 2009.

Ultimately, the court declared that all discovery was to close by March 31, 2009. On February 4, 2009, John's attorney filed a motion to withdraw as his counsel. The trial court granted this motion and, pursuant to the court's subsequent orders, John's new counsel filed his appearance in the matter on March 17, 2009. Then, on April 1, 2009, after discovery had officially closed pursuant to the trial court's order, Maureen tendered a copy of an appraisal to be introduced at trial.³ On April 2, 2009, John's counsel sent Rule 213 disclosures to Maureen's counsel via e-mail and, on April 3, 2009, John's counsel filed a motion in the trial court for an extension of time to file Rule 213 disclosures. The court denied his motion. John filed a motion to reconsider, pointing out the fact that his violation occurred while he was unrepresented and noting that Maureen's late disclosure had been allowed. The trial court denied this motion as well.

Citing the general proposition that sanctions are meant to coerce compliance with discovery orders and not to punish the remiss party, John asserts that the trial court's actions here amounted to "a gross inequity." While the general proposition John cites is true, we note that a trial court has absolute discretion in its decision whether to impose a particular discovery sanction, and its decision will not be reversed absent a clear abuse of that discretion. See *In re Marriage of Daebel*, 404 Ill. App. 3d 473, 486 (2010); *In re Marriage of Booher*, 313 Ill. App. 3d 356, 359 (2000). To determine whether an abuse occurred, we are to look at the criteria upon

³We note that John represents this statement that Maureen tendered a copy of an appraisal after the close of discovery to be "fact;" however, he does not provide any concrete record support for his assertion. Rather, his citation to the record in support of his statement is to his own motion to reconsider and the assertions made therein regarding the timeline of events. Regardless of whether we accept this assertion as truth, it is irrelevant to our ultimate holding.

No. 1-10-0238

which the trial court based its decision. See *Daebel*, 404 Ill. App. 3d at 486. Some factors to consider are the surprise to the adverse party, the prejudicial effect of the proffered testimony or evidence, the nature of the testimony or evidence, the diligence of the adverse party in seeking the discovery, the timeliness of the adverse party's objection to the testimony or evidence, and the good faith of the party offering the testimony or evidence. See *Daebel*, 404 Ill. App. 3d at 486-87.

We understand John's point of view with respect to what happened; namely, that his counsel withdrew on February 4, the day before the parties were to disclose the names of their Rule 213 witnesses, and that his new counsel did not file his appearance until March 17. We also understand, though are more leery to accept under the circumstances, his assertion that Maureen was able to file an appraisal on April 1, the day after the trial court ordered discovery to close. However, none of this is of any moment. Regarding the change in attorneys, we note that while John may have acceptably blown the February 5 deadline, his new attorney admittedly appeared as of record by March 17. Pursuant to the trial court's order, discovery was not to close until March 31. Therefore, John and his new counsel had two full weeks to present the names of his Rule 213 witnesses, or at the very least to ask for an extension of time to do so. They, for whatever reason, chose not to do either, but instead waited until April 3--well after the close of discovery--to ask for an extension. Moreover, from what we can glean from the record, the Rule 213 witnesses John sought to introduce would have only testified regarding the valuation of Ripec. Having already concluded that this was not a subject properly before the trial court, we do not find reversible error in the court's decision not to allow such testimony. Furthermore, even

No. 1-10-0238

were Ripec's valuation properly at issue, Maureen had already, and timely, disclosed that Goldman would testify on this subject. The trial court expressly found Goldman to be "qualified *without objection* as an expert in : 1.) business valuation; 2.) fraud examination; and 3.) bankruptcy insolvency services." (Emphasis in original.) And, the court noted that, during trial, Goldman "was questioned extensively" regarding Ripec. Thus, any additional expert testimony that would have come from John's witnesses would have been superfluous and unnecessary. From all this, then, we find no abuse of discretion on the part of the trial court in prohibiting John's Rule 213 witnesses from testifying at trial due to his untimely disclosure of them.

CONCLUSION

Accordingly, for all the foregoing reasons, we vacate the trial court's order in part regarding any valuation and distribution of Ripec and its assets as void *ab initio* in violation of the automatic stay provision of section 362(a) of the Bankruptcy Code, and we affirm the trial court's order in part regarding its determinations of dissipation against Maureen and John and its decision to bar John's Rule 213 witnesses from testifying at trial.

Affirmed in part, vacated in part.