

discretion in finding that the marital estate was entitled to \$1.3 million reimbursement as the result of the 2006 real estate transfer from respondent to GAFF, (3) whether the trial court's finding that "Due to/from Shareholder Account" was not a genuine debt is contrary to the manifest weight of the evidence, and (4) whether the trial court's finding that respondent dissipated \$252,555.86 in marital assets is contrary to the manifest weight of the evidence. We reverse in part, vacate in part, and remand with directions.

¶ 3

BACKGROUND

¶ 4 The parties were married on February 18, 1984. Two children were born during the marriage, Lorin, born on July 29, 1984, and Garrett, born on August 27, 1986. In 1990, respondent also fathered a son outside of the marriage. The son eventually came to live with the parties and respondent cared for him. The parties separated in November 2005, and on December 6, 2005, petitioner filed a petition for dissolution.

¶ 5 The parties met while they were both working for Burlington Northern Air Freight. Around 1980, respondent left Burlington and started K&K Air Freight. Petitioner went to work there. Eventually, K&K Air Freight turned into GAFF. Respondent was the sole shareholder in GAFF, which turned into a multimillion-dollar corporation. GAFF owned its corporate office and shipping docks in St. Louis and Mt. Vernon. GAFF also leased facilities in Chicago, Los Angeles, New York, Milwaukee, and Dyersburg. GAFF was extremely successful until approximately 2005. During 2002-2005, respondent took a substantial salary from GAFF. Thereafter, respondent took less money. GAFF's hub was located in Mt. Vernon until 2007. GAFF moved its hub after Anheuser-Busch stopped using GAFF's services.

¶ 6 After the parties had children, petitioner stayed home and raised the children. During the marriage, most of the parties' household bills were paid directly by GAFF. Expenses were charged on credit cards, and the bills were sent directly to GAFF, which

paid them. No limit was placed on credit card bills. GAFF also paid the parties' mortgage on their home and purchased country club memberships, new vehicles, and season tickets to professional sporting events. The personal charges were not tracked during the marriage and only became an issue after petitioner filed for dissolution.

¶ 7 At the time of trial, GAFF had nearly \$5 million in outstanding loans issued by Peoples National Bank. Four million dollars of this was the result of a loan made in July 2006, which was backed by respondent's individually owned real estate. Respondent conveyed over 2000 acres of farmland in Fayette County to GAFF to be used as collateral for the loan. Respondent did not claim any income from the July 2006 real estate transaction on his 2006 taxes. Almost all of the money loaned by Peoples National Bank went to pay off loans at another bank, which was demanding payment. Peoples National Bank charged a lower interest rate than the previous bank, and GAFF saved on forbearance charges by getting a new loan through Peoples National Bank. The president of Peoples National Bank testified that all the outstanding loans are delinquent.

¶ 8 In 2007, respondent claimed an income of \$99,000 from GAFF; however, respondent's records reveal personal deposits of \$562,000, most of which respondent could not explain. The record reveals that respondent's finances are complex and varied. For example, Jon Keck, respondent's son, testified that he is in charge of taking care of respondent's personal finances, including respondent's interest in Keck's Marsh, Inc., which is a commercial waterfowl hunting club with approximately 50 members. Keck's Marsh, Inc., leases 2650 acres from GAFF on which its members hunt. Respondent frequently loaned money to Keck's Marsh, Inc. Respondent also gave Jon \$34,000 to purchase a home in September 2006. Jon told respondent he would repay the money, but he signed a gift certification with the bank, verifying the money was a gift.

¶ 9 Petitioner started Our Sorrowful Mother's Ministry in 1997, which has since turned

into a nationwide ministry. Respondent was initially on the board of directors but is no longer involved in the ministry. The ministry's finances are, to put it mildly, sketchy. Ministry records show that petitioner received thousands of dollars from the ministry, but petitioner insists she does not take a salary. Petitioner testified that this money was actually paying her back for loans she made to the ministry, but petitioner did not keep any records of the loans. The ministry pays for petitioner's extensive travels, her cell phone and gas bills, and her credit card bills.

¶ 10 The parties jointly owned 990 acres known as Lower Grandiosa. The land was deeded to trust and became known as Land Trust 173. When the parties separated, respondent owned 58% of Land Trust 173. In March 2006, respondent sold four units of 8.3% each for \$92,737 each and used the proceeds to pay bills. Respondent sold more of the land from Land Trust 173 in October 2006, reducing his interest in the trust to 16.6%.

¶ 11 Each party presented expert testimony concerning the value of GAFF. Frank Reedy, petitioner's expert, is a certified public accountant. He testified that the value of GAFF was \$7.406 million. Reedy used the "market approach" in making this determination. The market approach relies on comparable businesses in making a valuation. Reedy found that GAFF consisted of two types of businesses: (1) trucking, which composed 60% of the business, and (2) freight forwarding, which composed the other 40%. Reedy valued GAFF's trucking business at \$3.085 million and freight forwarding at \$4.577 million. GAFF's annual revenue over the previous six years was \$16.586 million.

¶ 12 On cross-examination, Reedy admitted that he was never on GAFF's premises, did not speak with members of GAFF's management team, did not take into account GAFF's \$300,000 loss through the end of 2006, did not take into account GAFF's loss of the Anheuser-Busch account, and was not aware GAFF lost its truck fleet because it got

behind in payments.

¶ 13 David Wood, respondent's expert, is a certified public accountant, forensic accountant, and certified valuation analyst. He performs business valuations for potential buyers, estate planning, tax purposes, and divorces. Mr. Wood testified the value of GAFF was \$591,000 based upon GAFF's tangible net assets. According to Wood, GAFF's goodwill was zero because GAFF had insufficient earnings beginning in 2001 and onward to establish goodwill. Wood testified that if a company is not generating earnings, it is impossible to have goodwill.

¶ 14 GAFF's owner's equity, which consists of total assets less liabilities, was \$656,476. Wood then subtracted 10% of that price due to nonmarketability because there is no ready market for shares of a closely held corporation such as GAFF to arrive at the \$591,000. Wood testified that GAFF was losing money and its accounts payable were a disaster. GAFF owed \$1.679 million on invoices and was six months past due on many, and \$486,000 was more than 120 days past due. In 2006, GAFF was behind on truck lease payments and had to turn in all of its trucks and find another lease company.

¶ 15 Wood found the St. Louis front office well maintained and ordered but the rest of the operation to be disheveled and understaffed. The Chicago office recently went from 13 to 7 employees, and 3 of the lost employees had over 20 years' experience. Wood testified that GAFF's software and accounting system were outdated.

¶ 16 Wood testified there were many events that caused the downturn in GAFF, including the events of September 11, 2001. After that, the air freight and trucking industries were burdened with added costs, regulations, and tracking. GAFF's outdated computer systems were not sophisticated enough for tracking to allow GAFF to compete for customers that required on-time delivery. Higher fuel prices were causing trouble, as was the slowing national economy. Overall, Wood painted a bleak picture for GAFF and

doubted whether GAFF could even survive.

¶ 17 Wood was highly critical of petitioner's expert opinion and prepared a report in rebuttal to Mr. Reedy's report. According to Wood, Reedy failed to perform the analysis and overview of the company that was required. He found it illogical for Reedy to maintain that a buyer would buy GAFF in light of its financial condition. Wood also criticized Reedy's failure to take into consideration geographical locations and dates of transactions. For example, Reedy used transactions prior to September 11, 2001, which, according to Wood, should not have been used due to changes in the industry after that date, including higher fuel prices. Wood said that Reedy's biggest mistake was failing to perform a "justification of purchase price," also known as a "sanity check," on his \$7.4 million evaluation. Reedy failed to consider whether a purchaser could get a loan to cover 75 or 80% of the purchase price, which is the typical amount borrowed, to purchase a company with the problems GAFF was experiencing, including negative cash flow and being 180 days behind in its payments. On cross-examination, Wood admitted that personal expenses can be included in an owner's compensation and reflected on the books. However, Wood did not think there would be enough positive income even if personal expenses were included, so he did not do an analysis using any numbers that included the extensive personal expenses paid by GAFF.

¶ 18 After hearing all the evidence, the trial court found that GAFF is the nonmarital property of respondent because he created it prior to the parties' marriage and he has continued to be the sole shareholder of the corporation throughout the parties' marriage. The trial court did recognize petitioner's contributions to GAFF even after the marriage in that she became a stay-at-home mother, which allowed respondent to focus on GAFF. The trial court further recognized that there was "a commingling of marital and non-marital estates throughout the duration of the marriage" but found that GAFF was not

transmuted into marital property. Even though GAFF was found to be a nonmarital asset of respondent, the trial court found it "necessary to assign a value to the same for consideration of collateral issues of marital property and debt division, maintenance and attorney's fees, etc." The trial court noted the "widest possible divergent opinions or calculations of value of GAFF" presented by the two experts, and it rejected both Mr. Reedy's "calculation of value" and Mr. Wood's "opinion of value." With regard to the two different valuations, the trial court specifically stated as follows:

"To simply split the difference would result in a GAFF valuation of \$4,000,000 which the court declines to do under the circumstances. The court determines, in consideration of conflicting valuations, all factors and variables presented in respect to the same and all evidence and testimony with regard to the 20+ year history and nature of this multi-million dollar annual revenue business, the real estate equity, the business assets and the considerable extrinsic capabilities and value of Fred Keck as the CEO of GAFF, in spite of the apparent economic crisis and recent business downturn including issues presented by the loss of the Anheuser-Busch account (currently experiencing their own difficulties) that the value of GAFF is \$3,500,000."

The trial court, while not convinced that respondent had intentionally sabotaged or neglected GAFF in order to get a more favorable result in the dissolution proceedings, nevertheless found that respondent painted the most negative picture of GAFF in order to achieve that goal. The trial court stated that if this was a sales pitch to a potential buyer, respondent's arguments and evidence would have been quite different.

¶ 19 After valuing GAFF at \$3.5 million, the trial court ordered respondent to reimburse the marital estate \$1,357,025 on the basis that the marital estate was divested of that amount of equity as a result of respondent's 2006 conveyance of real estate to GAFF.

The trial court also found that the \$670,837.92 debt from GAFF to respondent paid in the 2006 real estate transaction was not a valid debt and that the due to/from shareholder account was simply a receptacle for funds transferred between GAFF and the marital estate, specifically respondent. While petitioner claimed respondent dissipated \$732,427 in marital assets, the trial court found that respondent adequately explained \$479,582.14 of that amount. Thus, the trial court subtracted that amount from the amount claimed dissipated by petitioner, leaving \$252,555.86, which is the amount the trial court found respondent dissipated from the marital estate.

¶ 20 The trial court assigned \$692,909 worth of unencumbered marital property to petitioner and the rest, valued at \$2,545,857, to respondent, including its "significant debt load, obligations and contingent liabilities." The trial court ordered respondent to pay an equalization payment of \$998,974 at the minimum rate of \$50,000 per year, plus statutory interest. This amount was to be reviewed at the same time maintenance was to be reviewed, which is every five years, in order to determine whether respondent can pay more. As security, the trial court granted petitioner a lien on all marital real estate. The trial court awarded petitioner \$4,000 per month in maintenance, to be reviewed after five years, and ordered respondent to pay \$150,000 toward petitioner's attorney fees and costs. Respondent previously paid \$15,000 toward petitioner's attorney fees. In order to ensure payment of the remaining balance, the trial court "awarded the Burnstein 100 acres with a value of \$234,000 that shall be added to [petitioner's] portion of the marital estate property, less the \$135,000 remaining balance of attorney fees awarded herein (\$99,000.00 net value)."

¶ 21 Respondent filed a motion for postjudgment relief. The trial court found that none of its prior rulings were against the manifest weight of the evidence and denied respondent's motion, but it did order maintenance review every three years rather than

every five and placed the burden on petitioner to justify continuing maintenance. Respondent filed a timely notice of appeal.

¶ 22

ANALYSIS

¶ 23 The first issue we are asked to consider is whether the trial court's valuation of GAFF at \$3.5 million is contrary to the manifest weight of the evidence. Respondent contends the trial court erred in its valuation by (1) expressly double counting respondent's personal goodwill in arriving at its valuation, (2) incorrectly concluding that GAFF was worth almost \$3 million more than its net tangible assets, and (3) rejecting the opinions of both experts and then failing to require the parties to present acceptable proof of the value of GAFF. Petitioner responds that the trial court's valuation of GAFF at \$3.5 million is not contrary to the manifest weight of the evidence but was well reasoned and logical in light of the evidence presented. Petitioner further asserts that any reexamination of GAFF's value and remand to the trial court for more valuation evidence is an exercise in futility because regardless of the outcome of reevaluation, the division of property would likely be the same as ordered by the trial court.

¶ 24 Testimony concerning the valuation of assets in an action for dissolution is a matter to be resolved by the trier of fact, and so long as the trial court's valuation is within the range testified to by the expert witnesses, it ordinarily will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Grunsten*, 304 Ill. App. 3d 12, 17, 709 N.E.2d 597, 601 (1999). A decision is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the trial court's findings are unreasonable, arbitrary, and not based on the evidence. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 663, 895 N.E.2d 1025, 1047 (2008). Determining market value for a closely held business such as GAFF is similar to the evaluation process that is applied in valuing professional corporations, a process which is

inherently subjective, as described by the following:

" 'Placing a fair market value on the professional corporation is an art, not a science, and the court must rely on expert witnesses to assist it in this difficult task. There is no exact formula that can be applied, so the trial court must rely on experts who may differ significantly in both methodology and valuation. The trial court must consider the relevant evidence before it; determine the credibility of the experts, the reasonableness of their testimony, the weight given to each of them, and their expertise in the particular area of valuation; and then determine fair market value.' " *In re Marriage of Grunsten*, 304 Ill. App. 3d at 17, 709 N.E.2d at 601 (quoting *In re Marriage of Gunn*, 233 Ill. App. 3d 165, 183, 598 N.E.2d 1013, 1025 (1992)).

The problem in the instant case is that the trial court specifically rejected the valuations presented by both parties' experts.

¶ 25 The trial court correctly pointed out that "[b]oth parties have an obligation to present sufficient evidence of value" but found "both efforts flawed." The trial court then went on to state as follows:

"Accordingly, the [c]ourt is left with making its own 'apples to oranges' comparison to determine a reasonable value to place on GAFF. The court would have preferred finding one of the two proposed valuations acceptable making an ultimate determination of value more convenient. However, this court is authorized to accept both proposals of value (basically a 'low ball' versus a 'pie in the sky'), consider the credibility and concerns as to both and then determine a reasonable value somewhere in between the two. To simply split the difference would result in a GAFF valuation of \$4,000,000 which the court declines to do under the circumstances."

The trial court the went on to find that despite the recent downturn in business, GAFF still had considerable assets, including its 20-plus-year history of revenue, its real estate equity, its business assets, and the capabilities of respondent, and ultimately valued GAFF at \$3.5 million.

¶ 26 Frankly, our own review of the record leaves us unsympathetic toward either of the parties. Their extravagant lifestyles and business practices with regard to not only GAFF but also Our Sorrowful Mother's Ministry leave a lot to be desired. While we are sympathetic to the trial court's plight in not having an acceptable valuation presented by either party, we cannot ignore the fact that there is simply nothing in the record to support the trial court's valuation.

¶ 27 The trial court specifically rejected the valuations of both Mr. Reedy and Mr. Wood. The trial court not only rejected both experts' valuations, it also refused to split the difference between their valuations, noting that such an approach was unacceptable. While the trial court attempted to justify its valuation, it is clear to us that \$3.5 million was a number not supported by the evidence.

¶ 28 While there are no precise rules for determining the value of closely held corporations, the book value or shareholders' equity is an appropriate figure to use as a starting point for determining the value of a closely held corporation, but it is not conclusive. *In re Marriage of Kaplan*, 141 Ill. App. 3d 142, 148, 490 N.E.2d 69, 73 (1986). Where an expert's opinion lacks factual basis, the opinion deserves little weight, and the expert's opinion cannot be based solely on guess, surmise, or conjecture. *Doser v. Savage Manufacturing & Sales, Inc.*, 142 Ill. 2d 176, 195-96, 568 N.E.2d 814, 823 (1990). Here, the experts' opinions were wide and varied, and the trial court found that neither party met its burden of providing sufficient evidence to correctly value GAFF. Once the trial court made a specific finding that none of the experts offered credible

evidence on the issue of valuation, there was a failure of proof, and any valuation made by a court without the financial analysis of the health of the corporation was arbitrary. See *In re Marriage of Blackstone*, 288 Ill. App. 3d 905, 911, 681 N.E.2d 72, 77 (1997). While the trial court tried to place a fair value on GAFF, our review of the record indicates there simply was not enough evidence to correctly value GAFF. The trial court's valuation was nothing more than a guess, and therefore we are required to find it against the manifest weight of the evidence.

¶ 29 We caution, however, that our ruling today should not necessarily be considered a "win" for respondent. Based upon the record before us, we simply are unsure of the value of GAFF. It is clear that GAFF has value, but whether that value is several million dollars or several thousand dollars is questionable. We refuse to say exactly what method should be used to value GAFF upon remand, but, relying on *In re Marriage of Blackstone*, we point out that good starting points are whether GAFF could be successfully sold to a third party, and, if so, at what price, and what is GAFF's "book value." *In re Marriage of Blackstone*, 288 Ill. App. 3d at 913, 681 N.E.2d at 78. Goodwill should also be considered. *In re Marriage of Kaplan*, 141 Ill. App. 3d at 142, 490 N.E.2d at 73. Furthermore, because the trial court did not have sufficient evidence to correctly value the largest asset between the parties, its entire judgment order is called into doubt.

¶ 30 Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act specifically governs the distribution of marital property and directs courts to consider various factors and distribute marital property "in just proportions" to the spouses. 750 ILCS 5/503(d) (West 2008). Relevant factors include the following:

"(3) the value of the property assigned to each spouse;

(5) the relevant economic circumstances of each spouse when the division of property is to become effective ***;

* * *

(8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;

(10) whether the apportionment is in lieu of or in addition to maintenance; [and]

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income[.]" 750 ILCS 5/503(d)(3), (d)(5), (d)(8), (d)(10), (d)(11) (West 2008).

"[E]vidence of both the marital and nonmarital assets of the parties must be shown on the record in order for a reviewing court to determine the propriety of the division of marital property." *In re Marriage of Blackstone*, 288 Ill. App. 3d at 910, 681 N.E.2d at 76.

¶ 31 We disagree with petitioner's assertion that any reexamination of GAFF's value and remand to the trial court for additional valuation evidence is an exercise in futility. Because the evidence was lacking with regard to the value of GAFF, we cannot say whether the trial court properly divided the marital estate, properly awarded maintenance, and/or properly awarded attorney fees. As we previously pointed out, our decision should not be considered a win for respondent. Petitioner's awards could potentially be increased upon remand.

¶ 32 Accordingly, we hereby reverse and remand with directions for the parties to present additional evidence regarding the value of GAFF and for the trial court to reevaluate its division of marital property and the propriety of maintenance and attorney fees in light of the new valuation. We also vacate the findings of the trial court regarding

reimbursement of the marital estate and dissipation of the marital estate and order these issues also be reconsidered. Because our ruling on the first issue is dispositive of this appeal, we need not address additional issues raised by respondent.

¶ 33 For the foregoing reasons, we reverse in part, vacate in part, and remand with directions the judgment order of the circuit court of Fayette County.

¶ 34 Reversed in part and vacated in part; cause remanded with directions.