

2012 IL App (2d) 100037-U  
No. 2-10-0037  
Order filed May 29, 2012

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

---

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

---

<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
PHILIP J. BARTHOLET,	)	of Kane County.
	)	
Petitioner-Appellant and	)	
Cross-Appellee,	)	
	)	
and	)	No. 04-D-67
	)	
LISA K. BARTHOLET,	)	
	)	Honorable
Respondent-Appellee and	)	Franklin D. Brewes,
Cross-Appellant.	)	Judge, Presiding.

---

JUSTICE BOWMAN delivered the judgment of the court.  
Justices Burke and Birkett concurred in the judgment.

**ORDER**

*Held:* In husband's appeal, the trial court's decisions regarding the husband's income and business valuation were against the manifest weight of the evidence, and the cause was remanded for reconsideration of those amounts and distribution of the marital estate. The trial court's decisions regarding the retroactive date of child support, application of interest, date of maintenance termination, and dissipation were affirmed. In wife's cross-appeal, the trial court erred in distributing the marital debt and failing to enter an appropriate repayment schedule that also included interest on arrearage amount. The cause was remanded for further consideration.

¶ 1 Petitioner, Philip J. Bartholet, appeals the trial court's findings and orders related to his petition for dissolution of his marriage to respondent, Lisa K. Bartholet. Specifically, Philip argues that the trial abused its discretion in: (1) awarding child support based on his gross income rather than net income in violation of section 505 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505 (West 2008)); (2) denying his petition to modify the temporary child support and maintenance orders because his income decreased due to the economic downturn; (3) awarding interest on back child support and maintenance when the court had not yet determined an amount owed; (4) valuing his business based upon an outdated valuation; and (5) finding he dissipated marital assets but Lisa had not and awarding Lisa two vehicles that should have gone to him. Because of these multiple errors, Philip argues that the distribution of the marital estate was incorrect, and the cause should be remanded for redistribution. Lisa cross-appeals, arguing that the trial court erred in the following ways: (1) failing to proportionately distribute the marital debt incurred for attorney fees; (2) failing to set a final repayment date for the second mortgage, which was taken out to pay attorney fees; (3) keeping a joint debt obligation on the property where the property was awarded to one spouse; and (4) setting a \$100 monthly payment schedule for the \$87,000 arrearage amount. We affirm in part and reverse in part, and remand the cause to the trial court for further consideration.

¶ 2

## I. BACKGROUND

¶ 3 In reviewing the record, we note that the proceedings in this divorce were prolonged and contentious, resulting in numerous petitions and motions that went undecided or were heard and ruled upon in an untimely fashion. There were also numerous changes in attorneys by both parties, resulting in further delays.

¶ 4 Philip filed a petition for dissolution of marriage on January 16, 2004, which contained the following general facts. The parties married on July 13, 1991, and lived together until November 2003. The parties had three children: Brittany (born in 1995), Megan (born in 1997), and Micayla (born in 2002). The family resided in Batavia in a home on Seavey Road. Philip was the sole proprietor of Bartholet Concrete Construction. On February 25, 2004, Lisa filed a petition for temporary child support and maintenance, seeking the statutory 32% for three minor children and alleging Philip's income for 2003 was \$156,820. On March 18, 2004, the trial court ordered Philip to pay Lisa \$3,000 per month in child support and \$3,000 per month in maintenance. Within that same order, the trial court stated that the parties agreed there was a \$7,000 Discover credit card balance that Lisa would pay using a loan from her mother. The order noted that the debt would be allocated between the parties at the time of trial.

¶ 5 The parties entered a joint parenting agreement on January 20, 2005, and custody is not at issue in this case. An agreed order was also entered on that date providing Lisa with clear title to a 2003 Chevrolet Suburban and Philip with clear title to a 2001 Chevrolet pick-up truck. The order provided that the values and debts of these vehicles would be factored into a final settlement or trial.

¶ 6 On February 14, 2005, Philip filed a petition to modify the temporary child support and maintenance order. In that petition, Philip alleged that he suffered a serious knee injury, which severely inhibited his ability to work and operate his concrete company. The matter was continued to a date in June, upon which Lisa filed a petition for a rule to show cause for Philip's alleged failure to pay \$5,000 for attorney fees as ordered by the court. Philip's petition to reduce temporary support was continued again. Philip then changed attorneys, further delaying a hearing on his petition.

¶ 7 On July 26, 2005, Lisa filed a petition for a rule to show cause, alleging that Philip was in arrears in his support payment for the month of July 2005 in the amount of \$4,000. On August 9, 2005, Philip paid the \$5,000 attorney fee sum, and his petition to reduce temporary support was continued again. On November 7, 2005, the petition to reduce temporary support was again continued, and Lisa's rule to show cause petition was granted. The order noted that Philip was in arrears in the amount of \$10,000 and that he was to begin paying an extra \$1,000 per month to pay off the arrearage amount.

¶ 8 On January 19, 2006, Philip filed a motion to reduce the temporary support order, noting that his previously filed motion was pending. On April 24, 2006, Lisa filed a notice of intent to charge Philip with dissipation, alleging that he spent large amounts of marital assets without her knowledge on vacations with his girlfriend. On April 25, Philip filed a motion to terminate temporary maintenance because Lisa was living with her new partner.

¶ 9 On May 8, 2006, the trial court ordered that Philip advance \$20,000 to Lisa's attorney and \$20,000 to his attorney, which was to be paid through a line of credit on the Seavey Road residence. The court order noted that the debt would be allocated later. A trial date was set and then continued to December 2006, at which time Lisa moved to continue because she changed attorneys again. The trial was then set for June 2007. On January 9, 2007, Lisa filed a petition for a rule to show cause, alleging that Philip failed to pay his maintenance support payments from December 2005 through January 2007. She alleged that Philip failed to pay in retaliation for her repeated requests to continue the trial. She alleged that she was owed \$42,000 in outstanding maintenance payments. She also alleged that Philip failed to pay the previously determined \$10,000 arrearage amount, stating he paid \$1,000 of that amount and still owed \$9,000. Lisa further alleged that Philip failed to pay his child

support for December 2006 and January 2007. She requested the court order him in civil contempt and requested 9% interest on the outstanding amount. These amounts alleged, excluding any interest, total \$57,000.

¶ 10 The June 2007 trial was continued because the parties were working on a settlement agreement. On July 10, 2007, Lisa filed a motion to compel trial because Philip never prepared a comprehensive settlement agreement as discussed during settlement negotiations. The trial was set for March 2008. On July 26, 2007, Lisa filed a motion to compel Philip to turn over an insurance payout on the Chevy Suburban that was destroyed in an accident while she was driving on vacation. On July 31, Lisa filed a petition for a rule to show cause, alleging that Philip failed to pay her \$6,000 in child support (for months July and August 2007) and failed to pay the \$9,000 owed in arrears from the trial court's previous order. Philip's attorneys then moved to withdraw from his case. On October 5, 2007, the trial court granted Lisa's petitions for rules to show cause regarding Philip's failure to pay child support for July, August, September, and October 2007, and found Philip in indirect civil contempt for his failure to pay.

¶ 11 On November 6, 2007, the trial court continued Philip's motion to reduce the amount of temporary child support to January 16, 2008, for a hearing to be conducted. On November 28, 2007, Lisa filed another notice of her claim of dissipation, alleging Philip spent marital assets on his girlfriend. She then filed another petition for a rule to show cause on December 4, 2007, alleging Philip failed to pay child support and maintenance for November and December 2007 and had not yet paid the \$9,000 he owed from a previous court order.

¶ 12 On March 4, 2008, the trial commenced with Philip testifying to the following. He currently lived in a home in Elburn, which he purchased in July 2007 with down payment money that he

inherited from a relative. He lived in the home with Kristine Brelliant and their son, Anthony. He testified that some marital property still remained at the Seavey Road home, including furniture and two snowmobiles. He owned a 1967 Pontiac GTO, which he valued at \$20,000 to 25,000; he acquired it during the marriage. He gave a \$17,000 interest in that car to a friend who loaned him purge money for one of his contempt orders. Philip also owned a property in Geneva, which had a \$151,000 outstanding mortgage and was purchased for \$181,000. He admitted he purchased the home using marital funds for the down payment of \$18,000. The Geneva home was appraised by both parties' appraisers at \$200,000 and \$205,000. Philip purchased the home when the marriage began breaking down, and he lived there from December 2003 until July 2007. The Geneva home was vacant at the time of trial. He testified that he had two IRA accounts, worth about \$9,000 total, and Lisa had a rollover IRA worth approximately \$32,000, which she acquired at a job she held prior to the birth of the couple's second child.

¶ 13 The Seavey Road residence had less than a \$30,000 remaining mortgage. A second mortgage, however, was taken out for the parties' attorney fees. That mortgage was \$80,000. Philip testified that he has been making the interest-only payments on the second mortgage and was two payments behind. Philip's appraiser, Anthony Roveda, valued the Seavey home at \$470,000 in 2005 and \$540,000 in 2006. Lisa's appraiser, Dorothy Coleman, valued the property at \$375,000 in 2005 and at \$410,000 in 2006. Philip admitted on cross-examination that he has known Roveda for many years and that he stood up in Roveda's wedding.

¶ 14 On cross-examination, Philip admitted that despite business being slower, he decided to purchase the larger home in Elburn while still owning and paying the mortgage on the Geneva home. He explained that he had a new son and girlfriend plus his three daughters and needed the bigger

home. He admitted that on a July 2007 loan application form for the mortgage on the Elburn property, he listed his gross monthly income as \$22,980.

¶ 15 Philip admitted to taking some snowmobiling trips once or twice per year, which involved driving to Lake Holcombe with Kristine and other friends. He testified the trips only cost around \$200 to \$300, which paid for the gas and some food. Lodging was free because they stayed in a friend's cabin. He admitted he went to Las Vegas for a few days in 2006 with Kristine. He paid for the tickets and hotel on a credit card. In July 2006, he went to Montana with his children and Kristine. They stayed in a hotel one or two nights on the way to stay with a friend in South Dakota. He also admitted to traveling to Mexico in October 2004 with Kristine and another couple. Philip testified that his friend purchased their vacation packages. Philip paid for their airline tickets on a credit card. He testified that it was a business trip as the other couple was one of his suppliers. He admitted Kristine did not pay him back for anything that he paid for on any of the trips.

¶ 16 Philip denied paying for Kristine's college classes, buying her a computer, or paying for her expenses. He admitted she was driving his Yukon and using a business computer for her school work and that she was not paying for any car payments or insurance costs. He testified that he paid for the Elburn home using inheritance money and was using inheritance money to pay for the mortgage, but that money was running out "this month." He admitted, however, that approximately \$28,000 of the inheritance money remained locked in a certificate of deposit and approximately \$14,876 remained outside of the cd. The total of the Elburn mortgage payments and the second mortgage on Seavey Road exceeded the \$14,876 amount by close to \$700. Kristine was paying utilities. Kristine also paid for all copayments for their son's birth and ensuing medical care, although Anthony was insured on Philip's policy along with Lisa and their children.

¶ 17 Regarding maintenance issues, Philip testified that Lisa worked for approximately ten years as an administrative assistant and bookkeeper until the birth of their second child. Their youngest child was in kindergarten and in after-school daycare so Philip did not believe there was any childcare issues preventing Lisa from working. Regarding his income, Philip testified that he was making approximately \$125,000 to \$200,000 between the years of 1991 to 1999. The peak year for his company was 2005. Presently, Philip testified that he could lose his business because of his debts and decreased business. He also has procrastinated getting a knee operation because of the business. Philip testified that he never agreed to the temporary maintenance and child support amounts and was “hardly” able to pay it. He petitioned the court several times to decrease the amount.

¶ 18 Regarding the value of Bartholet Construction Company, Philip testified that the expert valuations were performed several years ago. He testified that he was currently behind on some loan payments for various equipment for the business. According to Philip, the first quarter of 2008 had debts exceeding its receivables. The housing crisis has deteriorated Philip’s concrete business, and he believed he lost some enterprise goodwill value when he lost one of his biggest clients, Abigail Homes, in late 2006 and early 2007. He has cut his employees in half. Considering his current business debts, assets, and goodwill, Philip testified his business currently had a zero value. He was depending on the economy getting better, and an increase in new home construction, for his business to survive. Philip testified that he injured his knee in August 2005, requiring surgery. During that time, he had to hire employees to do the work that he normally would have performed. For that year, Philip had approximately \$62,000 of additional expenses to pay for these additional temporary employees.

¶ 19 On cross-examination, Philip testified that his adjusted gross income in 2004, deducting for maintenance and child support that he paid, was \$117,457. He admitted that the January 2006 business valuation did not factor in equipment purchases made after that, including a cat crawler and trailer and a tag trailer. Philip testified that he had two business loans: \$43,678 for a six-wheeler truck and \$30,734 for a crew truck.

¶ 20 Lisa testified that she has had an ongoing sexual relationship with Jay Jewitt beginning sometime in October 2004. In December 2003, Lisa traveled alone to Florida and used the marital timeshare. She met a man named Jim with whom she had a more-than-friendly relationship. She admitted she traveled to Florida four times in 2004 to meet with Jim. Lisa testified her mother bought her plane tickets for Christmas. Later, she met Jay in October 2004, and they maintain an ongoing, sexual relationship. Lisa denied that Jay moved into her home. She admitted that he stayed overnight at her home and vice versa, but the number of times varied. She denied that Jay provided her with any financial assistance, other than nominal gifts.

¶ 21 Regarding employment, Lisa testified that she was currently employed by the Girl Scouts as an administrative assistant, making \$13 per hour and working approximately 25 hours per week. Additionally, she started a bookkeeping business and had obtained some clients from Laurie Henert, her divorce accountant expert. She charged those clients \$30 per hour. She billed out anywhere from 5 to 12 hours per week. Lisa was also taking college courses in accounting to increase her employment opportunities. She testified that she was bringing home approximately \$1,700 per month and day care costs consumed between \$600 to \$800 per month. Lisa testified that her mother loaned her \$127,911 for marital debts and expenses that she would like to have repaid out of the marital estate. Her mother paid \$7,704.75 to satisfy a joint credit card debt.

¶ 22 The trial was continued after the few March 2008 trial dates, and at some point, the parties changed attorneys. On February 2, 2009, Lisa filed a petition for a rule to show cause, alleging that Philip failed to make interest payments on the couple's court-ordered home equity loan, which was taken out to pay attorney fees for both of them. Philip was also recalled to testify. He admitted that in 2004, he spent approximately \$12,000 on Kristine and other friends for trips to Las Vegas and two snowmobiling trips. He also admitted to consolidating the three loans on the business equipment purchases, reducing his monthly payment to \$1,500 per month. He extended the term of the loans but the lower amount allowed him not to fall behind. Philip also testified that his son, Anthony, was diagnosed with a severe form of epilepsy that has caused him to incur thousands of dollars in medical costs. Anthony was on experimental medication that was not covered by insurance, and they had taken him to numerous specialists. The medical bills were still in dispute with his insurance company so Philip did not know the total amount he would be required to pay out of pocket.

¶ 23 The parties then disputed whether the trial court should allow the motion to reopen the proofs argued by Philip's counsel. The trial court granted the motion, stating that the parties were the victims of the "passage of time," and that the new evidence (updated financial records) had nothing to do with inadvertence or calculated risk.

¶ 24 Philip continued to testify that his business was now doing "terribly." He laid off all employees, including Kristine, and may have to shut down if he did not get a couple of jobs in the near future. He testified that his equipment was pledged collateral for the landlord for his business location because he was more than a year behind on the rent. He has not paid himself for January or February 2009, and he was behind in all his expenses, including mortgages.

¶ 25 Lisa was recalled and testified as follows. Jay moved in with her and the children in September 2008. She was now working full-time as a bookkeeper for the Girl Scouts, earning \$16 per hour. She testified that Philip stopped paying her \$3,000 per month child support in November 2007. She received \$1,000 in November 2007, \$1,000 in January 2008, \$1,500 in May 2008, \$1,000 in August 2008, and \$1,500 in September 2008. She testified that he had not paid her maintenance since July 2005. Lisa borrowed money from her mother to make up for Philip's failure to pay. She testified that she owed her mother \$153,561.

¶ 26 Lisa testified that the Seavey Road home mortgage balance was \$16,000. The home also had an \$80,000 second mortgage, which Philip was making interest-only payments on. She believed he was approximately \$800 behind in those payments.

¶ 27 On February 23, 2009, Philip filed a motion to have the agreed order of March 18, 2004, which ordered him to pay \$3,000 per month in child support and \$3,000 per month in maintenance, declared void because his attorney at that time did not disclose that he had a longstanding work and mentor-type relationship with Lisa's attorney. Philip alleged that these sums were not supported by evidence of his actual income and his attorney did not argue on his behalf. This motion was later denied.

¶ 28 The trial was then continued to February 24, 2009. On that date, Lori Henert was called to testify for Lisa. Henert, a certified public accountant and a certified divorce planner, testified that she reviewed the Quickbook records for Bartholet Concrete. The records were all-inclusive through the end of 2008. For 2008, Henert computed the company's net income at \$93,123. She testified that she used an accelerated depreciation method, which was used to accelerate the write-off of the purchase of equipment for tax purposes.

¶ 29 Philip testified that he used straight-line depreciation now but admitted he had used the accelerated depreciation method in the past with his prior accountants.

¶ 30 Numerous documents were admitted into evidence. Philip's 2007 tax return was admitted, showing his adjusted gross income at \$60,479 and his company's net profit at \$71,507. His 2006 tax return showed his adjusted gross income at \$154,764 and his company's net profit at \$171,598. Philip's 2005 tax return showed his adjusted gross income at \$121,798 and his company's net profit at \$167,294. Finally, his 2004 tax return showed an adjusted gross income of \$117,457 and his business's net profit at \$159,191.

¶ 31 A record, prepared by Lisa, of the monies she borrowed from her mother showed \$153,561.50 was loaned to her between March 2004 and January 2009. Lisa repaid her mother \$19,903.30 from an insurance payout on the car she totaled in 2007. Another document, prepared by Lisa, outlined the daycare expenses she paid between January 2007 and October 2008 (\$6,333.82). Lisa also submitted a document showing that she paid her mother \$4,640.25 to provide daycare between May 2008 and January 2009. Lisa submitted a document of out-of-pocket medical expenses she paid for the children between March 2004 and October 2008. The total showed \$4,050. Another document prepared by Lisa showed she paid \$10,520.44 for the kids' educational and extracurricular expenses between February 2004 and January 2009. A copy of Lisa's 2007 tax return showed her adjusted gross income at \$5,872.

¶ 32 An appraisal of the Seavey Road property, dated July 8, 2004, by Anthony Roveda, was admitted, showing a value of \$470,000. Another appraisal by Roveda, dated March 23, 2006, was admitted, showing the value of this property at \$540,000. A 2007 loan application that Philip signed for the purchase of the Elburn home was admitted, showing he listed his base monthly income as

\$22,980. An appraisal of the Seavey Road location, performed by Dorothy Coleman as of September 22, 2004, listed the value of the home at \$375,000.

¶ 33 Valuation reports of Bartholet Concrete are contained in the record. A valuation by Trenwith Valuation, LLC, dated February 28, 2006, valued Bartholet Concrete at \$280,000. A valuation by Ward, Lane and Associates, which valued the company as of December 31, 2005, valued the company at \$500,000. These documents were also attachments to a May 2007 letter signed by Mary Lynn Hoffer, a certified public accountant with Digiove Hnilo Jordan & Johnson, in which she evaluated both valuations and concluded the Trenwith valuation understated the value. Hoffer opined that the most likely range of the fair market value of Bartholet Concrete was \$350,000 to \$400,000. However, Hoffer did not review any new or updated data from the company. None of these evaluators testified at trial.

¶ 34 Following the close of trial, Philip moved to submit his corrected 2008 tax return, which the court allowed. His 2008 adjusted gross income was listed at \$13,457 and his business's net profit was \$39,067. On July 17, 2009, Philip moved to reopen the proofs, alleging he suffered a knee injury on June 23, 2009. The knee injury prevented him from working and would require surgery and a recovery period of at least 9 to 12 months. He argued the court should factor this evidence into its ruling on the dissolution. On August 3, 2009, Lisa also filed a motion to reopen the proofs, alleging that she had incurred additional debt to her mother for child care and other living expenses since the close of trial. The court denied both parties' motions on that same date.

¶ 35 Finally, the parties submitted written closing arguments, and then the trial court issued a written letter to them on August 17, 2009. The letter contained the following findings. Henert opined that Philip's net income was \$93,123, and the court found that was the best evidence of his

income. The trial court set child support in the amount of \$2,483.28 per month. As to the effective date of the child support, which Philip argued should be retroactively applied to November 2005 when he filed his petition to reduce child support, the court ordered it be effective as of January 1, 2007, which was when the evidence showed a decline in Philip's business. Regarding extracurricular expenses, the trial court granted Lisa's petition for half of the \$10,520.40. It also ordered Philip to pay half of the \$4,050 in medical expenses that Lisa submitted. Regarding day care expenses, the trial court agreed with Philip that Lisa's mother provided service *gratis* and ordered that Philip should pay half of the daycare costs provided by other services, which totaled \$3,628.

¶ 36 Regarding maintenance, the trial court agreed with Philip that Lisa and Jay enjoyed a *de facto* husband-wife relationship as of the date of Philip's petition to terminate maintenance. Therefore, maintenance was terminated as of April 26, 2006. The court agreed with Lisa that Philip was guilty of dissipation based on the evidence of the snowmobiling and Las Vegas trips and that it would factor that into its distribution of marital property.

¶ 37 Next, the court found that the Seavey Road residence was worth \$410,00, subject to a \$16,000 first mortgage and \$80,000 second mortgage. The court awarded Lisa this property. The court found that the Elburn residence was purchased with nonmarital assets and was Philip's property. The court found the Geneva residence was worth \$205,000, subject to a \$151,000 mortgage. It ordered the residence to be sold and proceeds divided on a 60/40 basis with Lisa receiving 60%.

¶ 38 Regarding Bartholet Concrete, the court stated it selected the Trenwith value because it had a "ring of truth" to it. The court placed the value on the company at \$280,000 and awarded the business to Philip.

¶ 39 The remaining marital assets were divided. Lisa received: all the IRA's the couple had, total value \$35,860; the GTO, value \$30,000; the Yukon, value \$7,000; and the timeshare. Philip received: the 1971 Chevy Silverado and the jetskis, value \$6,700. Later, the order also awarded the Gran Torino to Philip.

¶ 40 The marital debts were divided. The \$80,000 second mortgage was divided with Lisa owing \$60,000 of the debt and Philip owing \$20,000 of the debt. The \$7,899.39 Discover card debt that Lisa's mother paid off would be divided equally. Each party was ordered to pay his or her own attorney fees.

¶ 41 The court resolved miscellaneous issues, including that Philip pay Lisa's mother the amount he owed in arrearages up to \$81,408.20, which was the amount the court found to be legitimate loans after removing the amount of Lisa's attorney fees.

¶ 42 The court then ordered the attorneys to prepare a judgment of dissolution consistent with its written opinion.

¶ 43 On August 26, 2009, Lisa moved the court to clarify its memo which awarded the GTO to both parties. The motion also argued that the court ordered the parties to bear their own attorney fees but then apportioned the \$80,000 debt, which was secured for attorney fees, with Lisa responsible for \$60,000.

¶ 44 On December 8, 2009, the judgment for dissolution of marriage was filed. The order incorporated the court's earlier memorandum. Both parties were barred from any future periodic maintenance. The temporary maintenance award was terminated effective April 26, 2006. The arrearage amount was reserved.

¶ 45 On February 3, 2010, Lisa filed her post-trial motion pursuant to section 1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2010)), arguing in relevant part that the division of the \$80,000 second mortgage should have been split 50/50, and that the court should have determined an arrearage amount and entered a payment schedule.

¶ 46 On February 16, 2010, Philip filed a motion to reduce child support, arguing that the court's determination of his income was outdated and that his gross income was \$24,858. After *numerous* continuances, the trial court finally resolved the parties' posttrial motions. On October 29, 2010, the trial court, in relevant part: (1) denied Lisa's request for reallocation of the second mortgage; (2) granted Lisa's request that Philip pay the \$825 within 45 days; (3) granted Lisa's request to require Philip to pay interest on 25% of the total principal balance of the second mortgage as of March 1, 2009; (4) granted Lisa's request to set a payment schedule for the medical, extracurricular, and day care expenses and ordered Philip pay Lisa \$100 per month until the \$9,075 was paid in full; (5) ordered that Philip pay \$50 a month for the children's medical, extracurricular, and day care expenses incurred between March 1, 2009 and December 8, 2009; and (6) determined Philip owed a total of \$87,848.55 in arrearages and that he would make \$100 per month payments to Lisa on this sum. The arrearage amount was broken down as follows: \$58,565.28 plus \$5,296.85 interest in back child support; and \$16,932.76 plus \$7,053.66 interest in back maintenance. The parties timely appealed.

¶ 47

## II. ANALYSIS

¶ 48

### A. Philip's Appeal

¶ 49 We begin with Philip's claims of error. Philip first argues that the trial court erred in determining that his net income, for child support purposes, was \$93,123. Philip argues that this

figure, provided by Henert, was his gross income instead of his net income as set forth in section 505(a)(3) of the Act. 750 ILCS 5/505(a)(3) (West 2008). Philip argues that Henert's testimony did not take into account income taxes, business loan repayments, and social security, and thus her figure of \$93,123 did not represent his net income. We agree with Philip that the trial court's determination that his net income was \$93,123 was an abuse of discretion where the evidence submitted did not support that amount.

¶ 50 Section 505(a)(1) provides that the court shall determine the minimum amount of support for three children at 32% of the supporting party's net income. 750 ILCS 5/505(a)(1) (West 2008). Section 505(a)(3) defines "net income" as the total of all income from all sources less deductions for federal income tax, state income tax, social security withholdings, mandatory retirement contributions required by law or as a condition of employment, union dues, dependent and individual health/hospitalization insurance premiums, prior obligations of support or maintenance actually paid pursuant to a court order, and expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income, medical expenditures, and reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts. 750 ILCS 5/505(a)(3) (West 2008). The findings of the trial court as to the net income and award of child support are within its sound discretion, and we will not disturb its decision absent an abuse of discretion. *In re Marriage of Tegeler*, 365 Ill. App. 3d 448, 453 (2006). An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view of the trial court. *In re Marriage of Lindman*, 356 Ill. App. 3d 462, 467 (2005).

¶ 51 Here, Henert did not testify that Philip's net income was \$93,123. Rather, she testified that was the business's net profit. Philip testified as to loan payments for equipment necessary for his

business, but Henert did not testify as to how she factored those expenditures into her computation. Further, Philip's tax returns for 2008, which the trial court admitted after the close of trial, showed his adjusted gross income was \$13,457, and his business's net profit was \$39,067. His 2007 tax returns showed that his adjusted gross income was \$60,479, and the net profit was \$71,507. Henert testified that she reviewed Quickbook records through the end of 2008 but she did not testify that she deducted Philip's taxes, social security, or other allowable deductions, such as allowed under section 505(a)(3). Even accepting Lisa's painstaking argument that the expenditures were not "reasonable" under section 505(a)(3) for the production of income, the trial court seemingly did not consider the reasonableness of the expenditures, Philip's testimony, or the recent tax return evidence, showing his lower income and lower net profits the last two years. Therefore, we agree with Philip that the trial court's selection of the \$93,123 was an abuse of its discretion because the evidence submitted did not support this figure. On this issue, we remand to the trial court for consideration of Philip's salary as of January 1, 2007 (the effective date of the child support award) and through the date of the dissolution.

¶ 52 Next, Philip argues that the trial court erred in making the effective date of the child support January 1, 2007, instead of in 2005 when he first filed his petition to reduce the temporary support amount. We note that Philip filed a petition to reduce temporary child support on February 14, 2005 and again on January 19, 2006. These motions were never ruled upon prior to the final dissolution being entered. A movant has the responsibility to obtain a ruling from the trial court to avoid forfeiture of the issue on appeal. *City of Springfield v. West Koke Mill Development Corp.*, 312 Ill. App. 3d 900, 909 (2000).

¶ 53 The trial court ultimately awarded child support pursuant to section 505 of the Act in December 2009, when the court ordered Philip pay \$2,483.28 and made the order retroactively effective January 1, 2007. It is within the trial court's discretion to award child support on a retroactive basis. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1119 (2004). To the extent Philip argues that the effective date of the child support award should have been earlier, we reject his argument. The tax returns submitted into evidence did not show a decline in the business until 2007. The Trenwith Valuation showed the business to be thriving through February 2006. No evidence in the record points to a decline in 2006 that would lead us to conclude that the trial court abused its discretion in determining a January 1, 2007, effective date. We therefore reject Philip's argument regarding the effective date of the child support award.

¶ 54 We also reject Philip's argument that the trial court's determination that no maintenance should be paid to Lisa effective April 26, 2006, was an abuse of discretion. As stated earlier, Philip never obtained a ruling on the February 14, 2005, and January 19, 2006, petitions to modify the temporary maintenance and child support order, and therefore those issues are forfeited. Later, Philip filed a petition to reduce temporary maintenance on April 25, 2006, alleging that Jay and Lisa were living together. That petition also was never ruled upon. However, the trial court essentially "granted" this petition when it awarded zero maintenance pursuant to section 505 and made that retroactively effective on that date. We do not find that the trial court abused its discretion where there was no evidence that Jay and Lisa's relationship began any earlier and the earlier petitions regarding Philip's income were abandoned. Moreover, the trial court determined that Philip's income did not decline until 2007; therefore, even if the trial court considered the abandoned

petitions, there was no evidence supporting Philip's claim that his income had dropped significantly in 2005 or 2006.<sup>1</sup>

¶ 55 We further reject Philip's argument that he should not be responsible for interest on unpaid support. From March 18, 2004, through January 1, 2007, Philip was to pay Lisa \$3,000 per month for child support. From March 18, 2004, through April 26, 2006, Philip was to pay Lisa \$3,000 per month for maintenance. From January 1, 2007, through present, Philip was to pay Lisa \$2,483.28 per month. Despite the fact that the dissolution order was not entered until December 2009, Philip was supposed to have been paying Lisa *more* in child support between January 2007 and December 2009 and maintenance since March 18, 2004, until the December 2009 judgment retroactively ended it in April 2006. Philip should have received a *credit* had he been following earlier court orders. However, Philip did not make the payments, and accordingly owes interest.

¶ 56 Next, Philip argues that the trial court's finding that the business was valued at \$280,000 at the time of the judgment was against the manifest weight of the evidence. We agree. The trial court's determination of the value of an asset will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Cutler*, 334 Ill. App. 3d 731, 735 (2002). Reviewing courts have found it acceptable for trial courts to select a valuation between opposing values in evidence when a record contains conflicting evidence. *Id.* at 736. The Act also provides that all marital assets must be valued as of the date of the dissolution of the marriage. 750 ILCS 5/503 (West 2010); *id.* at 737.

---

<sup>1</sup> Philip attempts to argue that we should modify his child support award following the date of the dissolution judgment. He admits he has a pending postdissolution petition to reduce the child support award. His argument in this appeal on that point is premature. We address only the dissolution order in this appeal.

¶ 57 In this case, the trial court was presented with the following evidence on the value of Bartholet Concrete: (1) Philip's testimony in 2008 that given the current business climate, debts, assets, and goodwill, the value was zero; (2) Philip's testimony in 2009 that the business was doing so "terribly" that he laid off employees, pledged equipment as collateral to his landlord, had not paid himself for January and February 2009, and was behind on his expenses; (3) February 2006 Trenwith Valuation Report valuing the company at \$280,000; (4) December 2005 Ward, Lane and Associates valuation at \$500,000; (5) May 2007 Hoffer letter stating value in range of \$350,000 to \$400,000 after reviewing the Trenwith and Ward reports; and (6) tax returns through 2008, which showed a net profit for the company in 2008 close to \$40,000. The trial court felt the Trenwith report had a "ring of truth" to it but made no comment on the fact that the valuation was nearly four years old by the time of the date of dissolution and that Philip submitted more recent tax returns and provided unrebutted testimony that the business was experiencing a significant decline due to the deteriorating housing market.

¶ 58 While the trial court selected a middle-ground figure, given it had evidence of the value ranging from \$0 to \$500,000, the \$280,000 to \$500,000 figures were based on data through the end of 2005. The court is to determine the value of an asset as of the date of dissolution, which in this case was not until the end of 2009. It is clear that the parties contributed to the delay in the entry of the dissolution because of their numerous changes of attorneys and incessant filing of motions. The parties also had the opportunity to submit more current expert reports or other evidence regarding the value of Bartholet Concrete. Philip did so by testifying that he incurred more debt on equipment purchases, had experienced a significant decline in business since 2007, having lost his biggest client, and through his 2007 and 2008 tax returns, which showed a decline in the company's net

profits since 2005. It is true that when faced with a conflict in testimony concerning the valuation of assets, the matter is to be resolved by the trier of fact. *In re Marriage of Simmons*, 221 Ill. App. 3d 89, 91 (1991). However, when the evidence does not support the trial court's finding as of the date of dissolution, we may reverse and remand for reconsideration of the value of the asset as of that date. See *In re Marriage of Lundahl*, 396 Ill. App. 3d 495, 506-507 (2009) (reversing and remanding cause for further specific finding on business valuation where the trial court's value was not supported by the evidence). Lisa counters that the trial court did take into account Philip's testimony and the fact that he purchased new equipment during the time he claimed the business was failing. It is true the trial court may have considered Philip less credible and considered the equipment purchases as evidence the business was doing better than the zero value. However, the equipment purchases were made using loans to which Philip testified that he was still paying back, and the tax evidence also showed a decline in business as of the date of the dissolution. Here, the trial court's selection of the \$280,000 value appeared arbitrary and upon remand, the trial court should consider all of the evidence in determining the value of the company as of the date of dissolution.

¶ 59 Philip next argues that the trial court erred in determining that he dissipated marital assets by taking vacations with Kristine, but not making the same finding against Lisa and her trips with Jay. Philip does not argue that the trial court erred in determining that he dissipated marital assets, so we do not review that aspect of the trial court's findings. Lisa counters that Philip never made a dissipation claim against her. First, we reject the relevancy of this counterargument where notice of dissipation is not required under section 503 of the Act and where a court may find dissipation *sua sponte*. See *In re Marriage of Sanfrantello*, 393 Ill. App. 3d 641, 653 (2009).

¶ 60 Whether dissipation has occurred is a question of fact for the factfinder, and we will not disturb the factfinder's determination unless it is against the manifest weight of the evidence. *In re Marriage of Romano*, 2012 IL App. (2d) 091339, ¶86. Dissipation is defined as the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown. *Id.* The date of an irreconcilable, or irretrievable, breakdown is the date by which it is apparent that a breakdown is inevitable. *Id.*, ¶87. The person charged with dissipation bears the burden of establishing by clear and convincing evidence how the funds were spent. *Sanfrantello*, 393 Ill. App. 3d at 653.

¶ 61 At trial, Philip argued that Lisa was also guilty of dissipation because she traveled to Florida on several occasions after they separated to visit a boyfriend and traveled with Jay as well. While Lisa testified that she went to Florida on approximately four occasions, she testified that she used monetary gifts from her mother to pay for the trips. No evidence was submitted to the contrary. She also did not testify that she paid for trips or other activities with Jay. No evidence was submitted to the contrary. Therefore, the trial court's failure to find that Lisa dissipated marital assets was not against the manifest weight of the evidence, and we will not disturb its finding on this issue.

¶ 62 Philip's final argument is that the cause must be remanded for distribution in light of the trial court's errors in valuing Bartholet Concrete and because the trial court erred in distributing both personal vehicles to Lisa. Philip argues it was unfair to distribute the Yukon and the 1967 GTO to Lisa where Lisa totaled the car she had and did not use the funds to purchase another. Philip was now driving a company vehicle instead of a personal use vehicle. Because we are remanding the cause for reconsideration of the value of Bartholet Concrete, we need not reconsider the vehicle distribution issue as the trial court will have to reconsider the marital property distribution again.

¶ 63

B. Lisa's Cross-Appeal

¶ 64 Moving on, Lisa argues that the trial court erred in (1) distributing the second mortgage debt unequally without a certain date for repayment and in keeping a joint obligation on property awarded to one spouse; and (2) setting a \$100 monthly payment schedule without interest for arrearages over \$87,000. We agree.

¶ 65 First, we have already reversed and remanded this cause for reconsideration of the value of Barholet Concrete, which necessarily requires the trial court to reconsider the marital estate distribution in the event the value of the company is changed. Lisa's first argument provides an additional ground for reversal and reconsideration of the division of the marital estate. The record reflects that the \$80,000 home equity line was intended to be used equally by the parties for attorney fees. The trial court stated that this debt would be divided equally at the time of the dissolution. The dissolution order itself stated that the parties would bear their own attorney fees and marital debt would be divided equally. Yet, the trial court split this particular debt by ordering Lisa responsible for \$60,000 and Philip \$20,000. Additionally, the manner in which the debt was distributed is questionable given the second mortgage is on the home awarded solely to Lisa and would keep the parties tied to a joint debt for potentially decades. An effective property distribution provides finality for the parties whose goal is severance of the relationship. *In re Marriage of Albrecht*, 266 Ill. App. 3d 399, 403 (1994). This is another issue the trial court is to consider upon remand and redistribution of the marital property.

¶ 66 Lisa also argues that the trial court should have entered a shorter schedule for Philip to pay the \$87,848.55 arrearage amount and should have included interest per section 505(b) of the Act. We agree that the arrearage amount should accrue interest. See 750 ILCS 505(b) (West 2008) ("A

support obligation \*\*\*which becomes due and remains unpaid as of the end of each month \*\*\* shall accrue simple interest as set forth in Section 12-109 of the Code of Civil Procedure.”) Accordingly, upon remand, the trial court should enter an appropriate repayment schedule on an arrearage amount, which may include liquidation of assets or through obtaining a loan, and the schedule for the repayment of the arrearage amount should include the accrual of interest.

¶ 67

### III. CONCLUSION

¶ 68 For the reasons stated, we reverse the Lake County circuit court’s judgment and remand the cause for reconsideration of Philip’s income, the value of Bartholet Concrete, the division of the marital estate, including the debts, and the arrearage payment schedule and interest calculation. We affirm the circuit court’s findings as to the retroactive date of the child support award, the application of interest on back support, the termination of maintenance date, and the failure to find that Lisa dissipated marital assets.

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