

NOTICE  
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2012 IL App (4th) 110283-U

Filed 1/6/12

NO. 4-11-0283

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of	)	Appeal from
JOEL R. NILLES,	)	Circuit Court of
Petitioner-Appellant,	)	McLean County
and	)	No. 08D599
NICOLE N. NILLES,	)	
Respondent-Appellee.	)	Honorable
	)	David W. Butler,
	)	Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Turner and Justice Cook concurred in the judgment.

**ORDER**

- ¶ 1 *Held:*
- (1) The trial court erred by awarding Nicole permanent maintenance.
  - (2) The trial court did not abuse its discretion by awarding Nicole a combined maintenance and child support award of \$17,000 per month.
  - (3) The trial court did not abuse its discretion by ordering Joel to pay 70% of the minor children's uncovered medical, dental, optical, and orthodontic expenses.
  - (4) The trial court did not err in its determination of the appropriate valuation dates for the parties' checking account and money market account.
  - (5) The trial court did not err in not allocating the parties' outstanding federal and state income tax liabilities between the parties.
  - (6) The trial court did not err by ordering Joel to pay an equalization payment in the amount of \$162,931.18.
- ¶ 2 Following a hearing in September 2010, the trial court entered an order dissolving the marriage of petitioner, Joel R. Nilles, and respondent, Nicole N. Nilles, and an order

disposing of the remaining ancillary issues. Specifically, the court's December 2010 opinion ordered, in pertinent part, the following: (1) Joel was ordered to pay Nicole \$8,500 per month in permanent maintenance and \$8,500 per month in child support; (2) Joel was ordered to maintain health and dental insurance on the parties' minor children and pay 70% of any medical, dental, orthodontia, and optical expenses not covered by insurance; and (3) Joel was ordered to pay Nicole \$162,931.18 in two installments by November 1, 2012, as an equalization payment to ensure an equal distribution of the marital property.

¶ 3 Joel appeals, arguing the trial court (1) abused its discretion when it (a) awarded Nicole permanent maintenance; (b) awarded Nicole \$17,000 per month in combined permanent maintenance and child support; and (c) ordered Joel to pay 70% of the children's uncovered medical, dental, orthodontia, and optical expenses; and (2) committed error as a matter of law when it (a) used inconsistent valuation dates to determine the value of certain marital assets, *i.e.*, the Citizens Bank of Chatsworth (Citizens Bank) money market account and the Citizens Bank checking account; (b) failed to allocate the outstanding marital tax debt between the parties; and (c) ordered him to pay the \$162,931.18 equalization payment. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In October 1994, Joel and Nicole were married. During their marriage, they had three children, Addison Nilles (born September 22, 1996), Cale Nilles (born October 29, 1998), and Marin Nilles (born September 21, 2004). The parties separated in June 2008. In December 2008, Joel filed a petition for dissolution of marriage.

¶ 6 In September 2010, the trial court conducted a hearing on all contested issues. Joel testified he was 42 years old and leased a house in Morton, Illinois. Pursuant to his lease,

he paid \$2,500 per month in rent and had an option to eventually purchase the house. His rent increased to \$3,500 per month if he failed to exercise the option within 90 days of signing the lease. As of the hearing date, he was unable to exercise the option due to the uncertainty of the divorce proceedings. Because Joel could not afford the security deposit and rental payments (totaling \$17,500) on the Morton house, he borrowed \$17,000 from Regions Bank to cover these expenses.

¶ 7 Nicole and their three children lived in the marital residence in Bloomington. During the separation, Joel paid (1) the mortgage (totaling approximately \$5,000) and utilities on the marital residence, (2) Nicole's car payment, and (3) an additional \$5,000 per month to Nicole. In total, he paid Nicole a monthly average of approximately \$11,000 to \$12,000 during the course of their separation.

¶ 8 According to Joel, the parties had the following outstanding financial obligations at the time of their separation: (1) federal tax debt totaling \$86,000; (2) a significant amount of credit card debt; (3) student loan debt totaling approximately \$160,000; (4) a \$20,000 line of credit with Citizens Bank; and (5) an \$11,000 line of credit with Bank of America.

¶ 9 Joel testified he was living in a student apartment attending Illinois State University (ISU) when he first met Nicole in 1988. Leading up to and following the parties' marriage, Joel attended the following colleges and participated in the following internships and residencies: (1) undergraduate at ISU from January 1987 to June 1991; (2) medical school in Kansas City from August 1991 to June 1995; (3) a one-year rotating internship in Florida at Columbia University General Hospital (Columbia Hospital) from July 1995 to June 1996; and (4) a three-year emergency medicine residency at Deaconess West Hospital in St. Louis from

July 1996 to June 1999. The parties lived together while he attended medical school and were ultimately married in the fall of 1994. Although Nicole was employed full-time, Joel testified they were primarily living off his student loans while he attended medical school. (Joel testified he accrued student loans at approximately \$45,000 to \$50,000 annually in medical school.) Joel's one-year internship at Columbia Hospital was paid. Following his three-year residency, Joel worked at Prairie Emergency as an independent contractor making approximately \$20,000 per month (\$240,000 per year).

¶ 10 Joel testified the parties' federal and state income tax returns for 2003 through 2006 indicated the following: (1) in 2003, a business income of \$304,072 and \$86,031 owed in federal taxes; (2) in 2004, the parties owed \$93,681 in federal taxes, and the taxes reflected the income Joel received from his additional employment as medical director at BroMenn; (3) in 2005, an adjusted gross income of \$345,162 and an underpayment of taxes by \$66,101; and (4) in 2006, a gross business income of \$329,826, an additional distribution of \$22,222 from an individual retirement account (IRA), and unpaid taxes in the amount of \$96,363. He admitted the parties consistently failed to pay their tax obligations by the payment deadline and instead paid a prior year's taxes in the course of the following year, *i.e.*, 2003 taxes due and owing in April 2004 were paid in full by the end of 2004. Joel testified the parties were building the marital residence and were unable to "get caught up" on their quarterly tax obligation. According to Joel, he was the party earning the majority of the income during the parties' marriage and separation.

¶ 11 In 2007, Joel had a "falling out" with the owners of Prairie Emergency, and he formed an emergency medical services partnership under the name of Primus Trauma (Primus)

with two other physicians. Although the partnership was formed in early 2007, Joel continued to work for Prairie Emergency until he was terminated in July 2007. The partners employed or contracted with physicians to provide emergency room services for various hospitals. As a result of leaving Prairie Emergency, Joel was required to make a one-time payment of \$60,000 for malpractice insurance (tail insurance) to ensure he was covered for his last seven years with Prairie Emergency. According to Joel, his income at Prairie Emergency was not dependent upon him receiving money from a reimbursing source because his pay was based on his contract rate.

¶ 12            However, at Primus, his income reflected a "stagnation of billables," where the reimbursement source might not pay a patient's bill for several months. According to Joel, this "stagnation of billables" caused the partnership's revenue to be "somewhat distortedly high" in 2008. Joel testified significant loans (approximately \$750,000) were taken out by him and another partner to keep the business afloat, pay salaries and insurance, and pay the partnership's bills.

¶ 13            A substantial amount of the partnership's loans and obligations were repaid in 2008. Joel testified his salary in 2008 was approximately \$25,000 to \$27,000 per month (\$300,000 - \$324,000 per year), and he received approximately \$85,000 in partnership distributions. An additional \$200,000 was set aside to pay potential tax liabilities, *i.e.*, the 2008 taxes and the anticipated first quarter installment for 2009. Joel testified the \$200,000 was substantially used for those tax obligations. The parties' 2008 income tax returns showed the business income from Primus was \$790,000 and after certain adjustments for interest, dividends and a loss of \$38,675 (probably from Prairie Emergency), total income for 2008 was \$754,332. However, Joel testified he did not realize anything "remotely close" to the \$790,000 reflected on

the tax returns because some of the income went to repayment of the partnership's loan debt. The 2008 returns also revealed tax liabilities in the amount of \$157,729 due and owing in April 2009. (The parties had a total tax liability of \$228,684, but Joel made approximately \$71,000 of estimated payments leaving a balance of \$157,729.) Joel testified he made quarterly estimated tax payments four times a year, and, by the time of the hearing, he was able to remain current on these payments by either making payments throughout the course of the year or by paying the obligations on April 15 of the following year.

¶ 14 The parties' 2009 federal and state tax returns indicated a total of \$455,364 in partnership earnings, \$15,000 in IRA distributions, and \$20,472 in business income, for a total income of \$493,605. Joel testified he gave the \$15,000 IRA distribution to Nicole to pay her legal fees. (Joel was ordered to pay \$15,000 toward Nicole's attorney's fees, interim fees, and expert witness fees at a temporary relief hearing held in this case.)

¶ 15 According to Joel, the IRA account (Thrivent annuity account) was significantly depleted because substantial withdrawals were made to pay \$15,000 toward Nicole's legal fees and to pay two installments of the parties' tax liabilities due in 2010. From April 2009 to January 2010, he paid approximately \$110,000 for the income tax obligations in four quarterly payments. Nicole did not make any payments toward these tax obligations. Joel also made the first and second quarter installment payments (totaling \$30,000) for the 2010 taxes without any contribution from Nicole.

¶ 16 Prior to Joel and Nicole separating in June 2008, Joel's typical yearly income ranged from \$304,000 to \$345,000. Around the time of the parties' separation, their debt amounted to \$225,000, which excluded the debt on the marital home. After the separation, Joel

worked approximately 18 to 20 shifts per month (a monthly increase of 36 to 48 hours compared to when he worked at Prairie Emergency). At the time of the hearing, his standard workload was 14 to 17 shifts per month.

¶ 17 According to Joel, he eliminated or reduced the following marital debt during the separation: (1) federal tax liens in the amount of \$95,161.35; (2) student loans totaling \$5,245.72 (he typically paid between \$1,000 to \$1,500 toward his student loan debt on a monthly basis); (3) \$1,927.09 in credit card debt; (4) \$6,570.47 for furniture purchases (Joel testified Nicole retained the furniture related to this debt); (5) paid off the \$3,400 Sears credit card debt; (6) \$12,952.82 owed to Citizens Bank; (7) \$4,000 paid to Regions Bank to pay overdraft account balances; (8) and approximately \$7,000 for the mortgage loan on the marital residence. Joel testified his student loans were consolidated and payments were first applied to his older loans and then were applied progressively forward. He testified \$45,235 in outstanding student loan debt was incurred during the parties' marriage.

¶ 18 Joel testified he maintained two accounts at Citizens Bank, a standard checking account and a money market account. The money market account was often used as a holding account where Joel deposited money in anticipation of making the quarterly tax payment.

¶ 19 The parties submitted financial affidavits showing their monthly income and expenses prior to the hearing on the contested issues, and Nicole submitted an undated financial affidavit a few days before the final pretrial, indicating an increase in her monthly expenses in the amount of \$6,000. (Nicole's original financial affidavit listed her total monthly living expenses as \$11,494.48; however, her updated affidavit listed her monthly expenses as \$17,637.34) According to Joel, the expenses listed on Nicole's financial affidavit were not

consistent with the standard of living the parties enjoyed during the marriage. Joel explained the following expenses listed on Nicole's financial affidavit were expenses incurred during the separation: (1) a \$401.10 monthly pool maintenance expense (during the marriage, any pool company expense was for the opening and closing of the pool); (2) a \$250 monthly yard service charge; (3) a \$1,250 voluntary retirement expense; (4) \$217 in animal expenses; (5) \$548.50 in educational expenses; and (6) a \$500 increase in the monthly credit card expenses (increased from \$200 to \$700).

¶ 20 The parties stipulated the fair market value of the marital residence was \$375,000. Joel testified the parties improved the marital residence by installing an in-ground swimming pool, installing a fence in the backyard, landscaping the backyard, and finishing the basement, improvements totaling in excess of \$70,000. Before the decline of the housing market, Joel believed the marital residence was appraised at \$470,000. The stipulation of the fair market value of \$375,000 resulted in a "net negative equity" of approximately \$80,000.

¶ 21 Joel testified the parties have the following vehicles between them: (1) a 2007 GMC Denali, which Nicole drives; (2) a 2010 Honda Pilot, which Joel drives; and (3) a 2008 Honda Accord, which was parked at his father's house. Joel testified the Honda Accord was parked at his father's house because it was leased and only had 36,000 miles remaining on the remainder of the lease. Joel purchased the Honda Pilot because the lease penalties for excessive mileage would cost as much or more as purchasing the Pilot.

¶ 22 Joel admitted he dissipated certain marital funds during the separation when he did the following: (1) made several payments to his sister to supplement her income when her husband broke his leg and was unable to work for approximately one year; (2) made \$2,845 in

payments to a good friend because the friend was unemployed for over a year; (3) purchased two television sets totaling \$1,670, one for himself and one to give as a gift; and (4) purchased an expensive watch for his father as a combination gift for several holidays. Joel agreed these payments and purchases would be considered dissipation to the marital estate.

¶ 23 When Joel filed the petition for dissolution of marriage, he offered to pay Nicole \$7,500 per month for child support and maintenance. Ultimately, he paid between \$11,000 and \$12,000 per month during the parties' separation. He testified during the past 15 or 16 years, Nicole was never employed full-time and never indicated a desire to seek full-time employment or return to college. Joel testified he never discouraged Nicole from working full-time or attending college. Nicole only worked part-time since the parties' separation.

¶ 24 Joel proposed he pay Nicole \$6,500 in rehabilitative maintenance for 64 months and child support in the amount of \$7,500 per month. Joel noted Nicole requested a combined maintenance and child support award of \$21,000 per month (\$19,000 net). Joel testified the parties' expenses during the marriage were never close to Nicole's requested maintenance and child support amount. After paying tax obligations between \$95,000 to \$125,000, the monthly household income during the parties' marriage was approximately \$12,000 to \$13,000. However, Joel admitted there was additional income over and above that amount and testified he thought \$13,000 to \$14,000 per household would put the parties on substantially equal footing. (Of course, Nicole would be supporting four people with her income and child support, while Joel only had responsibility for himself with his share of the remaining \$14,000 per month.)

¶ 25 On cross-examination, Joel testified shortly after the parties' separation, he started depositing most, if not all, of his income into an account held exclusively in his name. For a

short period of time after the separation, Joel rented a condominium in Normal paying approximately \$800 per month in rent.

¶ 26 He admitted the \$95,161.35 federal tax lien was released in 2006 and the \$82,481.66 federal tax lien was released in 2007, prior to the parties' separation. He further admitted the \$5,245.72 American Education Services student loan was a nonmarital student loan paid off with marital funds, and he chose to pay this nonmarital student loan before making payments toward any student loans incurred during the marriage. He also paid \$20,488 toward the Citizens Bank loan in February 2008 before the parties' separation. Although he paid an additional \$10,455 toward the Citizens Bank loan in August 2008, he subsequently borrowed \$20,050. The \$4,000 in overdraft charges at Regions Bank were incurred on the parties' joint checking account. Joel established direct debits for money to be transferred from the Regions Bank checking account to the Thrivent annuity account for "investment type things," such as the children's college savings and life insurance premiums. However, sufficient funds were not deposited in the checking account to cover these direct debits.

¶ 27 Joel acknowledged Nicole was in high school when the parties first met and started dating, and the parties periodically lived together up until the time they were married in Fall 1994.

¶ 28 Joel testified he currently paid between \$1,500 to \$2,000 per month for tail insurance, which he was required to maintain for approximately six or seven years. In approximately four years, the debt for the tail insurance should be eliminated. As of the date of the hearing, Joel paid his attorney approximately \$22,000 for legal fees in the divorce proceedings, which did not pay these fees in full.

¶ 29 Joel listed the \$15,000 IRA distribution used to pay Nicole's attorney fees as an advance to Nicole on his proposed distribution of assets and liabilities submitted to the trial court. However, Joel failed to include the \$22,000 paid to his attorney from marital funds on his proposed distribution. Joel admitted the depleted IRA had a value of approximately \$40,000 before the parties' separation.

¶ 30 In Joel's financial affidavit submitted to the trial court, he listed his total monthly living expenses as \$21,236. He testified the expenses listed in the affidavit were comparable to the parties' monthly expenditures during their marriage, except for the \$800-per-month rent expense (at the time the affidavit was prepared, Joel rented a condominium in Normal). Joel acknowledged subtracting the \$800-per-month rent expense indicated the parties' monthly marital expenses were approximately \$20,436. However, he reiterated the parties' standard of living during the marriage was between \$11,000 and \$12,000 per month. Joel testified the large amount of negative equity in the marital residence was a consequence of the home loan being refinanced to include the federal tax liability in the mortgage.

¶ 31 Joel testified he entered into the lease to rent the five-bedroom house in Morton approximately 10 days before the final pretrial was held in this case, and, pursuant to the lease, he issued two checks totaling \$17,5000 for the security deposit and three months' rent. Joel testified his girlfriend moved with her three children from Bloomington to live with him in the Morton house. The lease agreement gave Joel until October 31, 2010 (this hearing was held in September 2010), to exercise the option to purchase the residence for \$417,000. If Joel failed to exercise the option by the deadline, his monthly rent increased from \$2,500 per month to \$3,500 per month. Joel testified he was "planning" on buying the property, and prior to entering the

lease, he determined Citizens Bank was willing to loan him money to purchase the residence.

¶ 32 Joel testified his monthly expenditures include a \$686 lease payment and an insurance payment for the Honda Accord sitting at his father's house. His lease agreement provided for a \$.15-per-mile mileage tax for exceeding the 36,000 leased miles. If he continued to drive the same amount of miles (approximately 1,705 miles per month) during the duration of his lease agreement, it would exceed the 36,000 maximum leased mileage by 25,000, which would result in a \$3,750 mileage tax. (Joel testified when he parked the vehicle, it had 29,000 miles on it, and he still had 17 months remaining in the lease term.) Joel paid \$40,743 for the 2010 Honda Pilot and financed the loan through Citizens Bank (he made a \$10,000 down payment and borrowed \$30,000 to complete the purchase).

¶ 33 Joel indicated he incurred the following student loan debt during the marriage: (1) in January 1995, (a) \$10,000 and (b) \$8,500; and (2) in April 1995, \$8,235. He admitted his original calculation of marital student loan debt of \$45,235 was incorrect because his figure counted two loans twice (totaling \$18,500). Therefore, the total student loan debt incurred during the marriage was \$26,735. (The parties later stipulated to the fact the marital portion of the student loans totaled \$26,735.)

¶ 34 On redirect, Joel testified he would transfer funds from the Thrivent IRA account to the Citizens Bank account. In September 2009, the IRA account contained approximately \$41,077, and \$15,000 was withdrawn pursuant to the trial court's temporary relief order to pay Nicole's attorney fees. Another \$15,000 was withdrawn in June 2010 for other expenses, which included payments on the federal income tax liability and payment toward his own attorney fees.

¶ 35 Joel testified several expenses listed on his financial affidavit were expenses for both his residence and Nicole's residence. He further testified Nicole's original financial affidavit was more consistent with the parties' monthly expenditures during the marriage. Joel testified he assumed emergency services in hospitals located in Lincoln and Rushville, which significantly increased his vehicle mileage. As of the date of the hearing, he traveled approximately 30,000 miles in one year.

¶ 36 Dennis Knobloch, a certified public accountant, testified as follows. (Although this witness was Nicole's witness, he was taken out of order and testified first.) In his role as Nicole's expert witness, he prepared calculations of the parties' net disposable income, a proposed maintenance amount to be paid by Joel, and a proposed child support amount also to be paid by Joel. He based his calculations on the parties' personal income tax returns for 2003 through 2009, financial statements from Joel's current medical practice and the practice's income tax returns, the parties' financial affidavits, and the parties' interrogatories and answers to interrogatories. First, Knobloch calculated the parties' taxable income by adding each party's income from all sources (Knobloch used a projected income of \$16,640 for Nicole based on full-time employment making \$8 per hour), which included his projected maintenance calculation as income for Nicole. In order to calculate Joel's taxable income, Knobloch averaged the following: (1) Joel's 2007 income of \$200,557; (2) Joel's 2008 income of \$810,371; and (3) Joel's 2009 income of \$475,836. Pursuant to his calculations, Knobloch determined Joel had an average gross income of \$495,588.

¶ 37 Next, Knobloch subtracted the parties' tax deductions and personal exemptions to determine the parties' taxable income. Then, he subtracted, from the taxable-income figures,

deductions for federal income tax, state income tax, and social security and medicare tax (including a \$4,744 alternative minimum tax payable by Nicole and self-employment tax payable by Joel). Knobloch also made accounting adjustments to the parties' income after taxes, which included giving Joel a \$32,000 housing allowance and subtracting his proposed child-support figure from Joel's income. Knobloch explained he used 2010 tax rates in order to use the most current rates in effect as of the date of the hearing.

¶ 38 Knobloch noted his \$16,640 figure for Nicole's projected 2010 gross income was much greater than Nicole's actual 2009 income, which was approximately \$2,000. Knobloch testified he used the three-year average for Joel's income due to fluctuations in his income from 2007 through 2009 caused from Joel leaving his previous employment at Prairie Emergency and becoming a partner in Primus.

¶ 39 Knobloch testified spousal maintenance of approximately \$135,000 per year (\$11,270 per month) paid to Nicole would provide the parties with comparable net disposable income. Knobloch further testified child support in the amount of \$115,073 per year (\$9,589 per month) would be in line with the statutory guidelines (32% for three children). After subtracting for (1) taxes, (2) his proposed child-support amount, and (3) his proposed maintenance amount, Knobloch determined Joel's net disposable income would be \$75,699 annually. Knobloch testified Nicole's projected net disposal income, which included the proposed \$135,000 annual maintenance, would be \$75,638 annually. However, Knobloch did not consider his \$115,073 proposed-child-support figure in his calculation of Nicole's disposable income. Knobloch explained he never added his proposed-child-support amount into his disposable-net-income calculations because the custodial parent typically incurred extra expenses from the children

living with her and child support was for the children's benefit.

¶ 40 On cross-examination, Knobloch noted the parties' 2009 federal and state tax returns indicated a \$135,482 tax obligation for federal taxes and \$12,677 for state taxes. According to Knobloch, based on his calculations, Nicole had \$69,000 in deductions, which would shelter her from tax liability.

¶ 41 Knobloch admitted Joel would be financially responsible for the children during his visitation, and Knobloch did not consider either party's household expenditures when preparing his calculations. Knobloch further admitted under his calculations, Joel would be responsible for paying more than 50% of the needs of the children. Although Knobloch was unaware Joel had incurred \$150,000 in outstanding student loans, he would not include those payments as a deduction in calculating the proposed child-support amount because he did not believe "it's an expenditure for the repayment of indebtedness used to produce business income."

¶ 42 Nicole testified she was 38 years old and worked part-time at the Gap, a clothing store in the Bloomington mall, making minimum wage. She testified she could only work part-time during the separation because she had to transport the children to school and their activities, and she had to watch her youngest daughter, who was only five. Nicole testified her total gross taxable income in 2009 was approximately \$2,000. She currently made between \$60 to \$200 every two weeks.

¶ 43 Nicole requested the trial court make any child support award retroactive to February 2, 2009, the date she filed a petition requesting child support. Nicole testified she required child support of \$9,590 per month in order to maintain the standard of living the

children enjoyed during the time the parties lived together. She testified she filed a second financial affidavit because she was not privy to the household's monthly expenditures when she filed her original affidavit. She testified Joel paid the majority of the bills during their marriage. When she prepared for the final hearing in this case, she reviewed 12 months of bills and averaged the amounts to determine the approximate amount paid per month. The majority of the expenditures did not substantially change since she filed her original financial affidavit; however, she listed new expenses on the subsequent affidavit, including some anticipated expenses. The following anticipated monthly expenses were included on Nicole's second financial affidavit: (1) a \$25 cleaning service expense (in anticipation she will be working and attending school); (2) a \$250 yard maintenance expense (for mulching, a weed removal service, lawn mowing, and snow removal); (3) a \$536.21 health insurance expense; (4) a \$1,250 voluntary retirement contribution; and (5) a \$548.50 educational expense.

¶ 44 Nicole testified she and Joel agreed it would be better if she stayed home with the children during the marriage. She testified her education was put on hold because she did not have sufficient time to devote to her schooling. Nicole had a high school diploma and last attended college for one semester in either 1990 or 1991. She investigated two local colleges and determined it would cost her \$3,560 annually (\$1,780 per semester and \$296 per month) in tuition and fees to attend Heartland Community College and \$9,660 annually (\$4,830 per semester and \$805 per month) in tuition and fees at ISU. However, she did not enroll in college classes because she did not know how much she would be awarded for child support and spousal maintenance. She testified she wanted her spousal maintenance to provide sufficient funds so she could rehabilitate herself.

¶ 45 Nicole further testified she listed a \$200 monthly vacation allowance on her updated financial affidavit and noted this expense was comparable to the \$1,000 monthly entertainment and vacation expense listed on Joel's financial affidavit. She also listed an anticipated monthly expense of \$83.12 for life insurance. After reviewing Joel's financial affidavit prepared in March 2009, Nicole realized she understated certain monthly expenses, *i.e.*, groceries and household supplies, and she reviewed prior bank statements to determine a more realistic amount (\$2,000 per month). The balances on Nicole's credit cards substantially increased by thousands of dollars during the separation. Nicole owed Knobloch approximately \$5,000 for his expert witness fees, and she owed her attorney \$19,291 for attorney fees.

¶ 46 On cross-examination, Nicole agreed if she was awarded \$9,590 in monthly child support and \$11,270 in permanent maintenance (pursuant to her proposal), she would receive a net amount of approximately \$19,000 per month. Further, her monthly income would also include her net income realized from her employment, which would amount to approximately \$1,400 per month. If the trial court followed Nicole's proposal regarding maintenance and child support, Joel's disposable income would be \$5,000 or \$6,000 per month.

¶ 47 In Nicole's second financial affidavit, she listed a projected expense of \$6,000 annually for house maintenance; however, she admitted she did not spend \$6,000 on home maintenance within the last 12 calendar months. Further, she admitted if a 12-month average from July 2009 to July 2010 for pool maintenance expenses was calculated, it would not reflect \$5,000 worth of pool maintenance expenses. She also admitted the parties were not able to save approximately \$15,000 annually for retirement without invading funds from their IRA to pay obligations; however, she listed \$15,000 annually for anticipated retirement savings as an

expense on her financial affidavit.

¶ 48 Nicole also listed a \$700-per-month credit card payment as an expense on her updated financial affidavit. According to Nicole, she used the credit card to purchase items for the children, such as clothing. Her credit card balance totaled \$4,800, which was accrued during the course of the separation.

¶ 49 Nicole testified she typically worked 20 hours per week, and she based the income listed on her financial affidavit (gross income of \$320) on her 2009 W-2. She admitted her earnings at the Gap were less than her typical day-care expenses. Her youngest child currently attended full-day kindergarten classes. In 2009, the child attended morning day-care four days a week and also attended preschool in the afternoon those four days.

¶ 50 As of the date of the hearing, Nicole paid \$16,781 in attorney fees for the divorce proceedings, \$4,000 coming from marital funds given to her by Joel and \$15,000 paid by Joel pursuant to the interim order.

¶ 51 On redirect, Nicole testified she multiplied the \$267.40 weekly pool maintenance expense by the number of weeks typically between Memorial Day and Labor Day (approximately 19 weeks) to calculate the annual pool maintenance expense of \$5,000. She testified her July 2010 pay stub from the Gap indicated a year to date gross income of \$1,504.

¶ 52 In December 2010, the trial court entered an order dissolving the parties' marriage and an opinion resolving the remaining issues. In its opinion, the trial court valued and distributed the marital estate as follows:

<b>Marital Asset</b>	<b>Value</b>	<b>Joel</b>	<b>Nicole</b>
Citizens Bank of Chatsworth - Money Market account	\$14,401.99	\$14,401.99	

Citizens Bank of Chatsworth - checking account (valued as of June 27, 2010)	\$26,540.92	\$26,540.92	
Thrivent account ending in ___ 8	\$634.35	\$634.35	
Thrivent annuity (valued as of September 30, 2009) (IRA in which the \$15,000 was withdrawn for Nicole's attorney fees)	\$41,077.73	\$41,077.73	
2010 Honda Pilot	\$40,743.01	\$40,743.01	
Primus Trauma Care	\$200,118.37	\$200,118.37	
Payments to Angela Henbest	\$29,500	\$29,500	
Dissipation to Kevin Davenport	\$2,845	\$2,845	
Dissipation to Stuart Henning	\$1,670.73	\$1,670.73	
Dissipation to Blue Nile	\$948	\$948	
2008 Honda Accord	\$0-Leased	\$0	
Marital home located in Bloomington	\$375,000		\$375,000
Regions Bank checking account	\$1,401.99		\$1,401.99
Regions Bank savings account	\$102.32		\$102.32
Regions Bank account No. __ 7	\$88.64		\$88.64
Regions Bank account No. __ 5	\$100.21		\$100.21
Thrivent account ending in ___ 7	\$578.28		\$578.28
Thrivent life insurance policy No. 1	\$3,781.98		\$3,781.98
Thrivent life insurance policy No. 2	\$54.91		\$54.91
2007 GMC Yukon Denali	\$27,450		\$27,450
Thrivent life insurance policy No. 3	\$51,584.76		\$51,584.76
<b>Total Property</b>		\$358,480.10	\$460,143.09
<b>Marital Liabilities</b>	Value	Joel	Nicole
Citizens Bank of Chatsworth - Honda Pilot Loan	\$28,967.25	\$28,967.25	
Capital One Master Card	\$6,752.64	\$6,752.64	
American Express	\$4,966.14	\$4,966.14	

Marital Student Loans	\$26,735	\$26,735	
Aurora Loan (mortgage)	\$455,866.69		\$455,866.69
Citizens Bank of Chatsworth-Denali Loan	\$27,612.80		\$27,612.80
Visa Credit Card	\$11,466.88		\$11,466.88
<b>Total Liabilities</b>		\$67,421.03	\$494,946.37

The court determined the net property (marital property minus debt) awarded to Joel totaled \$291,059.07, and the net property awarded to Nicole totaled negative \$34,803.28. Accordingly, the court determined the amount necessary to equalize the net property distribution was \$162,931.18 and ordered Joel to pay Nicole this amount. The court required the payment be made in two installments, \$100,000 due by November 1, 2011, and the remaining \$62,931.18 due by November 1, 2012. The court ordered Nicole to "take whatever steps are necessary" to remove Joel from the marital residence's mortgage by December 31, 2011, "by refinancing, paying off the mortgage or by selling the home." If Joel paid the \$100,000 equalization payment by November 1, 2011, the court ordered Nicole to remove Joel from the mortgage within 60 days of receipt of the payment. However, if Joel failed to make the required payment by November 1, 2011, the court gave Nicole until 60 days after the payment was made to remove Joel's name from the mortgage.

¶ 53 Further, Nicole was awarded sole permanent custody of the parties' minor children subject to Joel receiving visitation. The trial court ordered Joel to pay Nicole \$8,500 per month in child support, noting the "statutory guideline for support in this case [was] difficult to determine because there [were] significant fluctuations in Joel's income." The court noted it was required to order support in an amount considered reasonable under the circumstances when net income cannot be determined. The court determined, without further explanation, that

\$8,500 per month was a reasonable amount for child support in this particular case.

¶ 54 The trial court also ordered Joel to pay Nicole \$8,500 per month in permanent maintenance, noting Nicole was a high school graduate with approximately 12 hours of college credit. The court also noted the following: (1) the parties were married in October 1994; (2) three children were born during the marriage, all of whom were still minors; (3) the parties separated in June 2008, and the children resided with Nicole; (4) the parties met when Nicole was in high school and married during Joel's senior year of medical school; (5) Joel was 42 years old and Nicole was 39 and both parties were in good health and able to work full-time; (6) Joel was a partner in Primus Trauma Care; (7) the parties' annual income for 2005 through 2009 was (a) \$350,222 in 2005, (b) \$351,862 in 2006, (c) \$226,721 in 2007, (d) \$754,332 in 2008, and (e) \$493,605 in 2009; (8) prior to the parties' separation, Nicole had not worked outside the home since 1995; and (9) after the separation, Nicole obtained part-time employment making minimum wage.

¶ 55 The trial court determined an award of \$8,500 in permanent maintenance was necessary "to meet Nicole's reasonable needs in light of the standard of living established during the marriage and in light of Joel's ability to pay." The court noted the following regarding awarding a spouse limited versus permanent maintenance:

"In lengthy marriages in which the recipient of maintenance served as caregiver for the children, there is no question that the Illinois courts give consideration to a more permanent award of maintenance to wives who have undertaken to raise and support the family. [Citations.] The purpose of rehabilitative, or time

limited, maintenance is to provide an incentive for the spouse receiving support to use diligence in procuring training or skills necessary to obtain self sufficiency. [Citation.] This goal, however, must be balanced against the realistic appraisal of the likelihood that the spouse will be able to support herself in a reasonable approximation of the standard of living established during the marriage. Limited maintenance is appropriate only where the spouse is employable at an income that would provide the appropriate standard of living enjoyed during the marriage. Permanent maintenance is necessary where a spouse is not employable or is employable only at a low income as compared to her previous standard of living. [Citation.] Where a spouse is not employable or is employable only at a low income compared to the previous standard of living, indefinite maintenance would be appropriate. [Citation.]

Accordingly, the court determined permanent maintenance was necessary in this case considering Nicole's lack of education, job experience, and job skills. In ordering permanent maintenance, the court noted it was "not likely [Nicole would] ever earn enough income to sustain the standard of living enjoyed by the parties during the marriage."

¶ 56 Further, the trial court ordered Joel to (1) maintain health and dental insurance on the parties' minor children and (2) pay 70% of any medical, dental, orthodontia, and optical expenses not covered by the insurance with Nicole paying the remaining 30%.

¶ 57 On January 20, 2011, Joel filed a motion to reconsider the court's opinion, and on January 25, 2011, Nicole also filed a motion to reconsider. The trial court denied both motions in March 2011. This appeal followed.

¶ 58 II. ANALYSIS

¶ 59 A. Maintenance and Child Support Amount

¶ 60 First, Joel argues the trial court erred by awarding Nicole \$8,500 per month in permanent maintenance where (1) Nicole "did very little if anything to mitigate" her need for maintenance, and (2) she could become self-sustaining if motivated. Further, he argues the court erred by ordering him to pay Nicole \$17,000 per month in combined maintenance and child support. Specifically, Joel argues an amount of \$17,000 per month (1) substantially exceeds Nicole's monthly expenses, (2) exceeds the standard of living enjoyed by the parties during their marriage, and (3) denies Joel any ability to enjoy the same standard of living.

¶ 61 1. *Standard of Review for a Maintenance Determination*

¶ 62 "The propriety, amount, and duration of a maintenance award lie within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion." *In re Marriage of Dunlap*, 294 Ill. App. 3d 768, 772, 690 N.E.2d 1023, 1026 (1998). An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292, 932 N.E.2d 543, 548 (2010). Accordingly, the court's maintenance determination has a presumption of correctness. *Nord*, 402 Ill. App. 3d at 292, 932 N.E.2d at 547.

¶ 63 2. *Duration of Maintenance*

¶ 64 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolu-

tion Act) (750 ILCS 5/504(a) (West 2010)) sets forth the following factors for the trial court to consider when determining the duration and amount of a maintenance award:

"(1) the income and property of each party, including marital property apportioned and non[]marital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having foregone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable."

¶ 65 When determining the duration of a maintenance award, "the trial court must balance the realistic ability of the spouse to support herself in some approximation of the standard of living enjoyed during the marriage against a goal of financial independence." *In re Marriage of Charles*, 284 Ill. App. 3d 339, 348, 672 N.E.2d 57, 64 (1996). An award of permanent maintenance is appropriate where a spouse is not employable or is only employable at a lower income as compared to the parties' standard of living during the marriage. *Nord*, 402 Ill. App. 3d at 305, 932 N.E.2d at 557. Rehabilitative maintenance should be awarded where the spouse is employable at an income that would provide the spouse the approximate standard of living enjoyed by the parties during their marriage. *Id.* "In authorizing rehabilitative maintenance, the [Dissolution] Act aims to provide incentive for the spouse receiving support to use diligence in procuring training or skills necessary to attain self-sufficiency." *In re Marriage of Cheger*, 213 Ill. App. 3d 371, 378, 571 N.E.2d 1135, 1140 (1991).

¶ 66 Although the parties in the present case have greatly disparate earning capacities, we find the duration of the parties' marriage, Nicole's good health and young age, and Nicole's ability to rehabilitate herself indicates the trial court erred in awarding permanent maintenance. The parties had a 13-year marriage, one we would characterize of medium duration, not a long-

term marriage. At the time of the dissolution, Nicole was in her late 30s, in good health, and the parties' three children were attending school during the day. According to Nicole, she required permanent maintenance because she had a high school education and limited work experience. Nicole also testified she needed a sufficient amount of spousal maintenance so she could rehabilitate herself. She explored the cost of attending two nearby colleges. The amount of maintenance awarded is sufficient for Nicole to fund her education and become employable at a higher level than she currently qualifies for. Additionally, the fourth factor to be considered when determining the amount and duration of maintenance directs a court to consider whether the impairment of the earning capacity of the party seeking maintenance results from foregone or delayed education, *inter alia, due to the marriage*. Here, the parties met in 1988 and married in 1994. Nicole had six years prior to the marriage to complete her education, as well as an additional two years subsequent to the marriage and prior to the birth of the parties' first child in 1996. During those eight years, Nicole only acquired about 12 hours of college credit. Thus, (1) the marriage did not interfere with Nicole's ability to continue her education and obtain a degree; and (2) Nicole is in her late 30s, in good health, and has the opportunity to further her education while her children attend school full-time. Accordingly, we find the trial court erred in awarding Nicole permanent maintenance. Instead, we find an award of rehabilitative maintenance for a fixed term, *e.g.*, until the youngest child reaches the age of majority, or within a few years thereafter, would be more appropriate because it would give Nicole the time and incentive to acquire the education or training necessary for her to attain self-sufficiency. Here, Nicole requested a relatively high award of maintenance on the basis she could then rehabilitate herself. To then award a high maintenance amount and also make it permanent, reduces any

incentive for Nicole to work toward financial independence.

¶ 67 Although the rehabilitative-maintenance award will terminate at the end of the term set by the trial court, Nicole may seek an extension of the maintenance award by showing a continuation of maintenance is necessary at the end of the fixed term, should the trial court make it reviewable. See *Blum v. Koster*, 235 Ill. 2d 21 (2009). A rehabilitative-maintenance award, subject to review prior to the end of its term, merely shifts the burden from Joel having to prove a substantial change in circumstances to Nicole having to show further maintenance is required, perhaps at a reduced amount.

¶ 68 In determining the permanent-maintenance award was error, we note the present case is distinguishable from *Nord*, 402 Ill. App. 3d at 306, 932 N.E.2d at 558, where this court determined a \$17,000 per month permanent-maintenance award was not an abuse of the trial court's discretion. In *Nord*, 402 Ill. App. 3d at 305, 932 N.E.2d at 557, the parties' marriage had lasted over 30 years, the wife was 58 at the time of the dissolution of marriage, she had a high school education, and she had not worked outside the home for the majority of their marriage. In the present case, Nicole is in her late 30s, the parties' children are attending school full-time, and she has the resources and opportunity to continue her education and find employment.

¶ 69 Further, we note this case is also distinguishable from *Mayhall*, 311 Ill. App. 3d at 766-67, 725 N.E.2d at 23-24, where this court determined the trial court did not abuse its discretion in awarding \$463.67 per month in maintenance subject to modification or termination as provided under section 510 of the Dissolution Act (750 ILCS 5/510 (West 1996)) to the 32-year-old former wife following dissolution of a 14-year marriage. In the present case, Nicole was awarded \$8,500 per month in maintenance, an amount significantly greater than awarded to



¶ 73 Here, the trial court ordered Joel to pay \$8,500 per month to Nicole in maintenance. According to the court, this amount was necessary "to meet Nicole's reasonable needs in light of the standard of living established during the marriage and in light of Joel's ability to pay." In setting the maintenance award, the court noted the parties' annual income from 2005 through 2009 as stated above. The court also noted the parties proposed the following: (1) Joel proposed to pay \$6,500 per month in maintenance for 64 months; and (2) Nicole proposed permanent maintenance be set at \$11,270 per month.

¶ 74 b. Child Support Award

¶ 75 i. *Standard of Review*

¶ 76 A trial court's determination of the appropriate amount of child support will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 395, 775 N.E.2d 1045, 1057 (2002).

¶ 77 ii. *Amount of Child Support*

¶ 78 Section 505(a)(1) of the Dissolution Act (750 ILCS 505(a)(1) (West 2010)) establishes guidelines for determining the percentage amount of child support. In the case of three children, the *minimum* amount of child support the trial court should order is 32% of the noncustodial parent's net income. 750 ILCS 505(a)(1) (West 2010); *In re Keon C.*, 344 Ill. App. 3d 1137, 1141, 800 N.E.2d 1257, 1261 (2003). "If the court deviates from the guidelines, the court's finding shall state the amount of support that would have been required under the guidelines, if determinable." 750 ILCS 5/505(a)(2) (West 2010).

¶ 79 Section 505(a)(2) of the Dissolution Act (750 ILCS 5/505(a)(2) (West 2010)) sets forth the following factors the trial court should consider when setting the amount of the child-

support award:

"(a) the financial resources and needs of the child;

(b) the financial resources and needs of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child, and his educational needs; and

(e) the financial resources and needs of the non-custodial parent."

Additionally, a child's entitlement to support is not limited to the child's basic " 'shown needs.' " *In re Marriage of Bussey*, 108 Ill. 2d 286, 297, 483 N.E.2d 1229, 1234 (1985).

¶ 80 Here, Joel proposed child support be set at \$7,500 per month, and Nicole proposed a child support amount of \$9,590 per month. The trial court ordered Joel to pay Nicole \$8,500 per month, noting the "statutory guideline for support in this case [was] difficult to determine because there [were] significant fluctuations in Joel's income." The court further noted it was required to order support in an amount considered reasonable under the circumstances when net income cannot be determined. The court determined, without further explanation, \$8,500 per month was a reasonable amount for child support.

¶ 81 c. Combined Maintenance and Child Support

¶ 82 Joel argues the trial court erred by ordering \$17,000 in combined maintenance and child support because the amount (1) substantially exceeds Nicole's monthly expenses, (2) exceeds the standard of living enjoyed by the parties during their marriage, and (3) denies Joel any ability to enjoy the same standard of living. Joel argues this court should use his net income

earned while working as an independent contractor for Prairie Emergency, *i.e.*, net income from 2004 through 2007, to establish the parties' standard of living during the course of their marriage. According to Joel, his net realized income for 2004 through 2007 was \$18,000 to \$20,000 per month. He argues this court should not consider, in determining the parties' standard of living during the marriage, his increased earnings as a partner in Primus because that income was realized after the parties' separation.

¶ 83           The parties were married in October 1994 and separated in June 2008. Joel testified his typical income prior to the parties' separation was between \$304,000 to \$345,000. As previously explained, the evidence showed the parties' total annual income for 2004 through 2009 was as follows: (1) \$348,933 in 2004; (2) \$350,222 in 2005; (3) \$351,862 in 2006; (4) \$226,721 in 2007; (5) \$754,332 in 2008; and (6) \$493,605 in 2009. Because Joel experienced fluctuations in his income, Knobloch calculated his gross income by averaging his 2007 through 2009 income, which resulted in an average gross income of \$495,588.

¶ 84           Although the parties' income was significantly less during their marriage than realized in 2008 and 2009, we will consider Joel's 2008 and 2009 income when determining whether the trial court's combined child support and maintenance award was an abuse of discretion.

¶ 85           We note the parties' financial affidavits submitted to the trial court were of limited value in determining the parties' actual monthly expenses. Joel listed his total monthly expenses as \$21,236, but testified several of the listed expenses reflected expenses for both households. Nicole originally stated her total monthly expenses were \$11,494.48 but subsequently amended her affidavit to reflect monthly expenses in the amount of \$17,637.34, which included several

anticipated expenses such as educational expenses and voluntary retirement contributions.

¶ 86 As previously stated, the evidence indicated Nicole (1) was employed outside the home during the parties' marriage until their eldest child was born; (2) had a high school diploma; (3) last attended college in 1990 or 1991 for approximately one semester; and (4) had a 2009 gross taxable income of approximately \$2,000.

¶ 87 Based on the evidence presented to the trial court, we cannot find the court abused its discretion in ordering Joel to pay a combined monthly maintenance and child support award of \$17,000. Nicole's potential for becoming self-sustaining through employment is limited without further education or training. In contrast, Joel was a partner at Primus with a 2009 income of \$493,605, which will likely increase as the partnership contracts with more physicians. Considering the disparity in the parties' present and future earning capacity, their 13-year marriage, the standard of living enjoyed by the parties and the children during the marriage, and the parties' monthly expenditures as reflected on their financial affidavits, we find the amount of the combined award of maintenance and child support was appropriate in this case.

¶ 88 *B. Uncovered Medical, Dental, Optical, and Orthodontic Expenses*

¶ 89 Joel argues the trial court abused its discretion by ordering him to pay 70% of the children's uncovered medical, dental, optical, and orthodontic expenses because Nicole enjoys substantially greater household income and resources. Nicole argues Joel should be required to pay these expenses because he (1) is not paying child support commensurate with the statutory guidelines (pursuant to Knobloch's testimony, the trial court awarded approximately \$1,100 less than required under statutory guidelines); and (2) has a greater future earning capacity.

¶ 90 "[A]lthough there are few discernable guidelines regarding contingent medical

expenses not covered by insurance, it is \*\*\* within the trial court's *discretion* to order the payment of uncovered and extraordinary medical expenses." (Emphasis added.) *In re Marriage of Raad*, 301 Ill. App. 3d 683, 688, 704 N.E.2d 964, 967 (1998).

¶ 91 Here, the trial court ordered Joel to pay 70% of any uncovered medical, dental, orthodontia and optical expenses for the children with Nicole paying the remaining 30%. The evidence indicated Joel's present and future earning capacity was superior to Nicole's. At the time of the hearing, Joel earned substantially more than Nicole, and it was highly likely he would realize increased future earnings. The court was fully aware of the financial position of both parties and could reasonably determine Joel was in a superior financial position (even with awarding Nicole \$17,000 per month in maintenance and child support) to bear the cost of 70% of the children's uncovered medical, dental, orthodontia and optical expenses. Accordingly, we find the court did not abuse its discretion in ordering Joel to pay these expenses.

¶ 92 C. Division of Marital Property

¶ 93 1. *Standard of Review*

¶ 94 An appellate court reviews a trial court's determinations on dissipation and marital property valuations under the manifest-weight-of-the-evidence standard of review; however, the court reviews a trial court's decision concerning the ultimate division of marital property under an abuse-of-discretion standard. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700, 843 N.E.3d 478, 482 (2006). "It is well-settled that fair and equitable division of marital property under the [Dissolution] Act does not require that the marital estate be split in equal proportions." *In re Marriage of Marthens*, 215 Ill. App. 3d 590, 598, 575 N.E.2d 3, 8 (1991). Instead, section 503(c) of the Dissolution Act (750 ILCS 5/503(c) (West 2010)) requires

a court to divide the marital property in "just proportions."

¶ 95 *2. Valuation Dates*

¶ 96 Joel argues the trial court erred in attributing the following values to the parties' marital accounts: (1) \$14,401.99 for the Citizens Bank money market account; and (2) \$26,540.92 for the Citizens Bank checking account.

¶ 97 In order to apportion the marital assets under section 503(c), the trial court must determine the value of the assets. *In re Marriage of Brooks*, 138 Ill. App. 3d 252, 260, 486 N.E.2d 267, 272 (1985). Ordinarily, the property should be valued as of the date of trial or as close to the date of trial as practicable. 750 ILCS 5/503(f) (West 2010). "Further, it is the obligation of the parties in a dissolution proceeding to present the court with sufficient evidence of the value of the property." *In re Marriage of Courtright*, 155 Ill. App. 3d 55, 59, 507 N.E.2d 891, 894 (1987).

¶ 98 Here, the parties submitted the following proposals for the valuation of the parties' marital accounts: (1) Joel proposed the trial court value the Citizens Bank checking account (No. \_\_\_-\_\_\_-2) at \$6,207.15 as of December 27, 2009, where Nicole proposed the account be valued at \$26,540.92 as of June 27, 2010; (2) Joel proposed the court value the Citizens Bank money market account (ending in \_\_-3) at \$14,153.08 as of December 27, 2009, where Nicole proposed the account be valued at \$19.07 as of June 27, 2010; (3) Joel proposed the court value the parties' Thrivent annuity account (ending in \_\_-3) at \$41,077.73 as of September 30, 2009, but subtract the \$15,000 withdrawal for payment toward Nicole's attorney fees, and Nicole proposed the account be valued at \$41,077.73 as of September 30, 2009, without any deduction for the \$15,000.

¶ 99 In its December 2010 opinion, the trial court noted the assigned property values were based on the parties' exhibits which were closest in time to the date of the final pretrial. Exhibits were submitted reflecting the most current valuation date of June 2010 for the checking account and money market account. After reviewing the evidence, the court valued the money market account at \$14,401.99, the checking account at \$26,540.92 (as of June 27, 2010), and the Thrivent annuity account at \$41,077.73 (as of September 2009) with no deduction for the \$15,000 paid to Nicole.

¶ 100 During the hearing on the parties' motions to reconsider, Joel's attorney argued the valuation dates used by the trial court were inconsistent. Specifically, he argued the following:

"[I]t should be noted on Respondent's Exhibit 67, [the June 2010 checking account statement] included \$15,000 of the Thrivent account shown as an entry on 6-25. And so if that \$26,000 is going to include that, you can't double dip that with the \$41,000 in the Thrivent account. \*\*\*

If you use \$41,000 in the Thrivent account, which the court may well place on my client's column, then you have to back out the \$15,000 that came from the Thrivent account that reduced the Thrivent account down that made the account \$26,540. \*\*\*

\*\*\*

In terms of the Chatsworth money market account 573, you have [\$]14,401. That's taken from much earlier in the year. And the testimony was from my client, 'hey, I moved the money from

the money market account into the checking account so I can pay taxes or pay bills and that's what I did.' And so what [Nicole's attorney] took was a point in time where it was \$19.07.

And so we're saying, Judge, if you're going to take [Nicole's] values and her dates, take them consistently where it shows \$19.07. Don't pick and choose from a date earlier in the year. \*\*\*

And so in that respect, we're offering this court an opportunity to examine what we think is a clear misapplication of the law because the law says if you're going to pick a date, make it consistent. \*\*\* And there shouldn't be a double inclusion because you show here \$41,077 to my client from Thrivent. And you rejected the whole notion that the [\$]15,000 that was paid out for attorney's fees should be deducted, and we're not arguing that. \*\*\*

We're not having so much of a problem with the court deciding that that was the operative date for that. But if the money then comes out of that account to make up for the account to get the value to [\$]26,540, we've got some double recovery."

Following counsels' arguments, the court noted "one of the guiding considerations" in marital property division was equity, and the court believed the original distribution was equitable. Shortly thereafter, the court denied the parties' motions.

¶ 101 The trial court deliberately included the \$15,000 transferred from the annuity

account to the checking account and the funds transferred between accounts for payment of taxes and bills in its valuations and, after reflecting on its decision, determined the initial distribution of the marital assets and liabilities was equitable. We find the court's decision concerning the valuation dates was reasonable. We note the \$22,000 paid by Joel to his attorney during the course of the parties' separation was paid with marital funds. We further note this money was not accounted for in the trial court's distribution of assets and liabilities, which would have increased Joel's equalization payment if considered as an asset awarded to Joel. Additionally, Nicole requested the court allocate the real estate taxes between the parties (Nicole claimed the 2010 real estate taxes totaled \$11,466.88 but were not payable until 2011). However, the court ordered Nicole responsible for all taxes on the marital residence without accounting for the debt on the court's distribution of liabilities. Accordingly, we find the court's determination of the valuation dates for the checking account and money market account reasonable.

¶ 102

### *3. Tax Liabilities*

¶ 103 Next, Joel argues the trial court erred by not (1) including within the allocation of assets and debts the remainder of the parties' outstanding 2009 federal and state tax liabilities and (2) allocating the unliquidated 2010 federal and state income tax liabilities, which were projected to be approximately \$140,000.

¶ 104 The trial court's opinion contained the following provision concerning the parties' 2010 income taxes:

"Unless the parties agree otherwise, if the parties file a joint tax return for 2010, Joel shall receive any refund or be solely responsible for any tax liability. If the parties file separately, each

shall be entitled to their own refund or be liable for their own taxes due."

However, the court did not allocate any of the parties' outstanding federal and state income tax liabilities in its distribution of the assets and liabilities.

¶ 105 At the hearing on the parties' motion to reconsider, Joel's attorney argued the trial court erred by failing to allocate the outstanding tax obligations. Specifically, he argued:

"Finally, in terms of the last thing is the court failed to include any of the substantial tax liabilities for the 2009 last quarter or the 2009 final payment or the 2010 first and second quarters in any of these particular analyses.

The 2009 fourth quarter tax liability was unrebutted stated at \$20,000. It was even on all the income tax returns. The 2009 final tax payment was \$25,632. By pure simplistic analysis, the opinion came in at the end of 2010, and there was \$135,000 of liabilities in 2009. It's reasonable to extrapolate that there's going to be \$135,000 of liability in 2010.

I understand that the court may have said, you know, and I didn't give [Nicole] the retroactive relief for child support back to the date of when the original petition was as they were asking for or retroactive maintenance. And that may have been a factor in basically indicating that [Joel] should assume that without contribution by [Nicole].

However, that was less than clear. And inasmuch as [Nicole] has since filed a Motion to Reconsider on that particular issue, maybe some clarity ought to be added to it so that we know exactly what consideration was given from one to the next."

¶ 106 Although the trial court was aware the outstanding tax liabilities were not allocated between the parties and would be assumed by Joel, it determined its original allocation of the assets and liabilities was equitable. We conclude the trial court did not err by not allocating the outstanding federal and state tax liability between the parties. In the December 2010 opinion, the court denied Nicole's request for retroactive child support dating back to February 2, 2009 (the date Nicole filed a petition for temporary relief, which included a request for temporary child support). Nicole proposed the court order Joel to pay the difference between the amount awarded (\$8,500) and the monthly amount Joel paid subsequent to the separation (the evidence indicated he paid \$5,000 in support since February 2009), which would total \$70,000.

¶ 107 *4. Equalization Payment*

¶ 108 Last, Joel argues the trial court erred by ordering him to pay Nicole an equalization payment in the amount of \$162,931.18. Nicole argues the court's decision was not error because she was burdened with the obligation to refinance the outstanding marital residence debt.

¶ 109 The trial court provided as follows with regard to the equalization payment:

"The parties agree that the net marital property should be divided equally. In order to provide for an equal distribution of property, Joel shall pay Nicole \$162,931.18. Joel shall pay

\$100,000.00 by November 1, 2011, and the remaining \$62,931.18  
by November 1, 2012."

¶ 110 During the hearing on the parties' motions to reconsider, the trial court noted it attempted to fashion an order "that gave [Nicole] an incentive to apply the equalization payment" to the marital residence debt. The court further noted Nicole was ordered to remove Joel's name from the marital residence mortgage by December 31, 2011. However, an earlier deadline applied if Joel paid the \$100,000 equalization payment prior to November 1, 2011 (60 days from the date of payment to remove his name from the mortgage). Alternatively, a later deadline applied if Joel failed to pay the \$100,000 equalization payment by the November 1, 2011, deadline (60 days from the date of payment to remove his name from the mortgage). The court noted it made the deadline for refinancing contingent on the receipt of the equalization payment because Nicole was unable to afford the house unless she applied the equalization payment to the mortgage debt.

¶ 111 A review of the record indicates the trial court carefully considered the equalization-payment issue. The court noted at least \$100,000 of the equalization payment would likely be paid toward reducing the marital-residence debt to allow Nicole the opportunity to refinance the mortgage (the marital residence had a "net negative equity" of approximately \$80,000). Accordingly, we cannot say the trial court erred in ordering Joel to pay Nicole an equalization payment in the amount of \$162,931.18.

¶ 112 III. CONCLUSION

¶ 113 For the reasons stated, we affirm the trial court's judgment with respect to the amount of the combined maintenance and child support award, the uncovered medical expenses,

the valuation dates used for the parties' marital accounts, the outstanding state and federal tax liabilities, and the equalization payment. However, we reverse the trial court's judgment with respect to the award of permanent maintenance and remand for the trial court to determine the appropriate duration for the rehabilitative-maintenance award, consistent with this order. Prior to the end of the term set by the trial court, Nicole can seek, if appropriate, an extension of maintenance.

¶ 114            Affirmed in part, reversed in part, and cause remanded with directions.