

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).

2012 IL App (4th) 111149-U
NO. 4-11-1149
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
November 14, 2012
Carla Bender
4th District Appellate
Court, IL

In re: the Marriage of,)	Appeal from
KIMBERLY JO REEDER-WARD,)	Circuit Court of
Petitioner-Appellee,)	Clark County
and)	No. 10D34
TIMOTHY D. WARD,)	
Respondent-Appellant.)	Honorable
)	Tracy W. Resch,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court did not err in awarding the ex-wife \$23,500 as repayment for dissipated marital funds, and such an award did not represent a fraud on the court.
- (2) The trial court did not abuse its discretion in awarding (a) temporary and permanent child support, (b) the ex-wife \$8,000 as payment for jewelry taken by the ex-husband, and (c) awarding the ex-wife \$15,000 in attorney fees.
- (3) The trial court's division of property was not against the manifest weight of the evidence.
- ¶ 2 On December 1, 2011, following a September 2011 hearing, the trial court entered an order dissolving the marriage of petitioner, Kimberly Jo Reeder-Ward, and respondent, Timothy D. Ward. Relevant to this appeal, the order included the following: (1) for Timothy to pay \$390-per-week child support, (2) an award to Kimberly of \$23,500 as repayment for Timothy's dissipation of the marital estate, (3) an award to Kimberly of the property in Carmi,

Illinois, as her nonmarital property, (4) an award to Kimberly of \$8,000 as compensation for her missing jewelry, and (5) an award to Kimberly of \$15,000 for attorney fees.

¶ 3 Timothy appeals the trial court's dissolution judgment and presents the issues for review in the following manner: (1) whether (a) Kimberly committed a fraud upon the court and (b) the court erred in awarding Kimberly \$23,500; (2) whether the court abused its discretion in setting temporary and permanent child support at \$390 per week; (3) whether the court abused its discretion in awarding Kimberly \$8,000 as compensation for her missing jewelry; (4) whether the court's division of property was against the manifest weight of the evidence concerning (a) Kimberly's award of the Carmi residence as her nonmarital property, and (b) the court's failure to order an appraisal of Petro-Junction; and (5) whether the court abused its discretion in awarding Kimberly \$15,000 for attorney fees.

¶ 4 I. BACKGROUND

¶ 5 On October 26, 1991, Kimberly and Timothy married. During their marriage, Kimberly and Timothy had two children, Kindra (born in February 1997) and Tori (born in November 1999). On May 3, 2010, Kimberly filed a petition for dissolution of marriage in White County. On May 24, 2010, venue was transferred to Clark County.

¶ 6 On June 3, 2010, Kimberly filed a petition for preliminary injunction, alleging Timothy dissipated the marital estate. On August 11, 2010, Kimberly filed a verified petition for temporary relief. Kimberly requested (1) temporary custody of Kindra and Tori, (2) temporary and permanent child support, (3) temporary maintenance, and (4) repayment for Timothy's dissipation of the marital estate.

¶ 7 On October 8, 2010, the trial court held a hearing on temporary relief. The court

heard evidence in support of the following issues: dissipation, temporary custody, and temporary child support.

¶ 8 Kimberly testified the parties operated two business, KJ Plumbing and Petro-Junction. KJ Plumbing was an S-corporation, set up in Kimberly's name in 1994 for the purposes of plumbing contracting work, specializing in commercial work. Timothy performed the labor associated with the business and Kimberly managed the books—the bids, invoices, and billing. Timothy and Kimberly paid all of their personal bills out of the KJ Plumbing account, "even vacations," "to make the business look like it made as little as possible." Kimberly testified the parties would have a net profit of at least \$5,000 each month after all bills were paid from the KJ Plumbing account.

¶ 9 Kimberly testified they always took their books on KJ Plumbing to Ben Lueken, an accountant, to prepare their personal taxes and the taxes for KJ Plumbing. Kimberly testified Timothy always signed the taxes prepared by Lueken but refused to sign the business's 2009 tax returns, prepared by Lueken on August 14, 2010, because they showed income of \$30,769. Timothy had Lueken prepare a second set of 2009 tax returns on August 25, 2010. These returns showed income of \$4,464. Kimberly testified Timothy told her he would not sign the tax documents she had prepared because "it showed so much of a profit" and he did not want to pay child support. Lueken also prepared Kimberly and Timothy's personal taxes. The documents Lueken prepared for Kimberly showed the parties had an adjusted gross income of \$48,371 for 2009, while the documents Lueken prepared for Timothy showed an adjusted gross income of \$27,730.

¶ 10 Kimberly testified KJ Plumbing was in operation up until shortly after the parties

separated but is no longer in operation because Timothy refused to do plumbing work for the business. Kimberly testified Timothy has "turned down bids" and "refus[ed] to work."

¶ 11 The second business owned by the parties was Petro-Junction, a gas station and convenience store, which was set up as a limited liability corporation and opened in August 2009. Kimberly and Timothy were partners in Petro-Junction. Kimberly assisted in running Petro-Junction until the parties' separation. Kimberly testified Petro-Junction "was actually doing quite well," but she did not know how much money they took home each month after all expenses were paid.

¶ 12 Timothy testified he did not shut down KJ Plumbing, but he also testified people had approached him concerning new jobs. Timothy did not accept the new work for KJ Plumbing because he did not have the proper insurance. Timothy stated the insurance lapsed because he no longer had the money to pay for it. Timothy admitted the parties paid their personal expenses out of the KJ Plumbing account, testifying "we did pay a lot out of there when me and her was [*sic*] together."

¶ 13 Timothy also testified he was a member of the Terre Haute 157 Plumbers and Steamfitters Union. Timothy was able to make \$40 an hour working out of the union hall. Timothy stated he did not work out of the union hall because he had Petro-Junction and did not have time.

¶ 14 In regard to Petro-Junction, Timothy testified he balanced the drawer at the end of each day to produce a report evidencing Petro-Junction's gross income. Timothy explained the "z-2" tape on the cash register shows the gross sales for the day, but he has to subtract the expenses from those sales to come up with the net profit for the day. Timothy provided

documentation of the balanced drawer, showing Petro-Junction had gross sales of \$151,686.23 for April 2010. Timothy also provided documentation of the expenses for Petro-Junction. All of the expenses were hand-written on graph paper, in pencil, by Timothy. Timothy did not provide any supporting documentation for the deduction of expenses, such as receipts or checks. Timothy's documentation for August 2010 showed gross sales of \$164,722.19, with a net loss after subtracting expenses.

¶ 15 Timothy testified Petro-Junction "hasn't made no profit [*sic*]" and for child support purposes his only income was \$330 a week. Timothy filed a financial affidavit to that effect. Timothy testified he began paying himself \$330 a week on August 20, 2010, as an employee of Petro-Junction. Prior to August 20, 2010, Timothy was not collecting a paycheck from Petro-Junction.

¶ 16 At the close of the hearing, the trial court stated it considered the evidence and found "the testimony of Kimberly Jo Reeder-Ward [wa]s entirely credible." The court further found (1) Timothy dissipated the marital estate by taking \$47,105.73 and using it "as he saw fit"; (2) Timothy handicapped the court in determining his net income for child support purposes because he had "complete control" over the necessary information but failed to present reliable evidence; (3) Timothy "historically ha[d], and continues to, run personal expenses through his business in order to conceal income and avoid taxes"; (4) Timothy did not display "a good[-]faith intent to pay child support, and he ha[d] concealed income with the specific intent of avoiding payment of child support" and; (5) the evidence suggested Timothy had paid not less than \$8,500 in attorney fees while at the same time he had only paid \$500 in child support.

¶ 17 On October 22, 2010, following the temporary hearing, the trial court filed a

temporary relief order. The court found Timothy's testimony was "presented with an effort to obfuscate the facts in this case and not in an effort to illuminate the facts." The court also found Timothy was "well able to earn an income as a plumber or through the parties' marital business known as 'KJ Plumbing', which he has shut down." The court ordered, in relevant part, for Timothy to (1) pay child support of \$390 per week and (2) pay Kimberly \$23,500 as repayment for Timothy's dissipation of the marital estate.

¶ 18 On November 29, 2010, Kimberly filed a petition for rule to show cause, alleging Timothy was in arrearage on his child support and he had failed to pay Kimberly the \$23,500 ordered by the court in the October 22, 2010, temporary relief order.

¶ 19 On December 15, 2010, the trial court held a hearing on Kimberly's petition for rule to show cause. Timothy testified he was in arrears on his child support because Petro-Junction "had a bad start off" and the \$390 he was ordered to pay "was based on the net income of the gross off of Petro, and it was way over-calculated." Timothy further testified he did not pay the \$23,500 because he did not have the money and was unable to secure a loan for the money.

¶ 20 The trial court found Timothy was \$1,515 in arrears on his child support payments and his failure to pay was "intentional, willful[,] and contumacious." The court ordered Timothy to serve 30 days in jail, with the condition he be released if he paid the \$1,515 arrearage prior to the expiration of the 30-day term. The court also ordered Timothy to sign a quitclaim deed in connection with a pending case in Clark County to which Timothy and Kimberly were parties. By signing the deed, Timothy and Kimberly would receive \$25,000 being held in an escrow account. The \$25,000 was subject to a \$15,000 lien by the parties' attorney, William Sunderman,

for his representation in the matter. The trial court ordered the remaining \$10,000 be turned over to Kimberly "in fulfillment of the temporary relief order that was previously entered." The court directed Kimberly's attorney to draft the written order for the court's approval.

¶ 21 On January 3, 2011, the trial court entered its written order, reflecting its ruling at the close of the December 15, 2010, hearing. The order ruled on child support, Timothy's jail sentence, and the quitclaim deed. The order also stated all money being held in escrow by the Clark County circuit clerk's office was to be turned over to Kimberly. However, the written order did not mirror the court's verbal order that the money in escrow was to be "in fulfillment of the temporary relief order previously entered."

¶ 22 On January 3, 2011, Timothy filed a petition for reduction of child support. On February 14, 2011, Kimberly filed a second verified petition for temporary relief, alleging in relevant part, (1) Timothy was still in arrears on child support, (2) Timothy had not yet paid the \$23,500 the trial court ordered him to pay Kimberly, and (3) Kimberly had not yet received the money being held in escrow in connection with the case in Clark County. Kimberly requested (1) "exclusive, temporary possession of the marital business" based on particular aspects of Timothy's behavior, including his failure to pay the \$23,500, (2) suspension of Timothy's visitation rights, and (3) the court to order the sale of stock valued at \$7,000 for support of her and the two minor children, as an advance from Timothy's portion of the marital estate. Kimberly also filed a rule to show cause, alleging Timothy was \$4,235 in arrearage on child support payments as of February 11, 2011.

¶ 23 On March 3, 2011, the trial court held a hearing on Timothy's petition for reduction of child support and Kimberly's petition for temporary relief. The court denied

Timothy's petition, finding "[t]he [c]ourt has previously ruled and the parties will have an opportunity to relitigate, if they chose, issues of child support when they get to a final hearing in which [a] final child support order is entered." In regard to Kimberly's petition for temporary relief, the court reserved several issues to be ruled on at the next hearing of March 15, 2011. However, the court ordered Timothy to (1) turn over a \$5,000 negotiable check of which he testified he was in possession and (2) turn over the proceeds from the sale of stock, believed to be worth approximately \$7,000, which Timothy testified the parties owned. The court ordered the \$5,000 check and the stock proceeds to be applied to Timothy's child support arrearage and any surplus was to be applied to Timothy's ongoing support obligations.

¶ 24 When the trial court reconvened on March 15, 2011, the court found Timothy had delivered \$14,542.28 to the circuit clerk's office—the \$5,000 check and \$9,542.28 from the sale of stock. The court found the amount was sufficient to pay Timothy's arrearage and "any additional child support that ha[d] accrued" and any remaining balance of funds would be credited against future child support. The court then ruled on the remaining issues (those of which are not relevant to this appeal) it had reserved from Kimberly's petition for temporary relief.

¶ 25 On September 29, 2011, the trial court conducted a final bench trial on the parties' dissolution of marriage. Among other issues, Kimberly testified to property in Carmi, Illinois, she alleged to be her nonmarital property. Kimberly testified the home in Carmi was her childhood home, which her parents deeded to her and her brother in March 2000 while they were still alive. When her parents passed away, Kimberly inherited a life insurance policy and car from her father. Kimberly collected on the life insurance policy and used the car as collateral to

secure a loan in her name until she sold the car. She used the money from the life insurance policy and the loan to purchase the property from her brother and two sisters. Kimberly paid her siblings \$30,000—\$10,000 each. Kimberly testified no marital money was used to purchase her siblings' interest in the home.

¶ 26 Kimberly also testified about jewelry she owned prior to the parties' separation, which went missing during the course of the dissolution proceedings. Kimberly testified Timothy admitted to her he took the jewelry. She also testified the jewelry was irreplaceable because so many pieces were given to her by her parents, but she placed a monetary value of \$8,000 on the jewelry. Timothy denied taking the jewelry. He did not testify as to the jewelry's value.

¶ 27 Timothy testified as to the net profits of Petro-Junction. His testimony was similar to his testimony during the hearing on temporary relief. The trial court ultimately found Timothy concealed the necessary financial information concerning Petro-Junction and his evidence and testimony was insufficient to ascertain its value.

¶ 28 On October 4, 2011, the parties presented their closing arguments and the court issued its ruling from the bench. The court awarded Kimberly full custody of Tori and Kindra and set Timothy's permanent child support at \$390 a week. The court found this amount was "consistent with the 25[%] [*sic*] statutory standard, whether based on [Timothy's] previous earnings from operating KJ Plumbing or based upon estimated revenues of Bi-Petro."

¶ 29 On December 1, 2011, the trial court entered its written judgment for dissolution of marriage. The court ordered the marital home and surrounding acreage to be sold at public auction. The court awarded Kimberly her nonmarital property in Carmi, Illinois, the marital

property located in Denninson, Illinois, her 2009 Jeep, and a Yamaha Scooter. The court also awarded Kimberly the following: (1) one half of the proceeds from the sale of the marital residence, (2) \$14,921.10 for her student loans, (3) \$15,000 attorney fees, (4) \$23,500 previously ordered as repayment for Timothy's dissipation of the marital estate, (5) \$8,000 as compensation for her missing Jewelry, and (6) \$7,511—representing one half of the parties' 2009 tax refund and one half of the proceeds from the sale of stock (both of which were applied to child support prior to the final dissolution). The court ordered Timothy to pay these awards out of his portion of the proceeds from the sale of the marital home.

¶ 30 The trial court awarded Timothy (1) one half of the proceeds from the sale of the marital residence, (2) property known as the Poplar residence—property Timothy purchased during the breakdown of the marriage, (3) Petro-Junction, (4) KJ Plumbing and all its tools and assets, (5) a van used in connection with KJ Plumbing, (6) the 2007 family camper, (7) his GMC extended-cab truck, (8) a "Dually Pipe-Rack Truck," (9) a riding mower, and (10) a tractor.

¶ 31 The trial court also allocated items of personal property and awarded each party their individual retirement accounts and insurance policies.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 We consider Timothy's arguments in turn.

¶ 35 A. Fraud on the Court and Kimberly's Award of \$23,500

¶ 36 Timothy first argues that Kimberly and her attorney committed a fraud upon the trial court when Kimberly's attorney wrote an order, as directed by the court, in favor of his client. The order Timothy refers to in his brief is the January 3, 2011, order. Timothy claims

Kimberly's attorney did not write the order as the court verbally instructed at the close of the December 15, 2010, hearing, but rather, "fraudulently misquoted" the trial court's verbal order. Timothy quotes the following instructions of the court from the December 15, 2010, hearing: "The [c]ourt will direct that the money held in escrow be delivered to Kimberly Ward, except for that portion covered by Mr. Sunderman's lien and that will be in *fulfillment of the temporary relief order* that was previously entered." (Emphasis added.) In support of his argument that Kimberly committed a fraud upon the court and "fraudulently misquoted" the court, Timothy points to the January 3, 2011, order, drafted by Kimberly's attorney and submitted for the court's approval, which states: "That all money being held in escrow by the Clark County [c]ircuit [c]lerk be turned over to Kimberly Jo Reeder-Ward, except for the portion that is to be paid to Attorney Sunderman for his current lien in fulfillment of his work as counsel for both [p]etitioner and [r]espondent."

¶ 37 Although Timothy quotes the above material from the December 15, 2010, hearing and the January 3, 2011, order, Timothy asks this court to reverse the trial court's December 1, 2011, final judgment for dissolution of marriage, in respect to the portion ordering Timothy to pay Kimberly \$23,500 of the proceeds from the sale of the marital residence. Timothy argues he should not be required to pay Kimberly the \$23,500 (as originally ordered in the October 22, 2010, temporary relief order and reordered in the December 1, 2011, dissolution judgment) because the payment was fulfilled by the \$25,000 escrow account awarded to Kimberly. Thus, it appears Timothy is arguing Kimberly committed a fraud on the court because her attorney failed to include the court's verbal order that the money held in escrow was to be "in fulfillment of the temporary relief order" when her attorney wrote the January 3, 2011, order.

Timothy suggests the omission of such language in the January 3, 2011, order induced the court, in its December 1, 2011, dissolution judgment, to improperly reorder him to pay Kimberly \$23,500 even though he had satisfied the award with the funds in escrow.

¶ 38 Kimberly argues she did not commit a fraud upon the trial court. Kimberly contends the court's verbal order at the December 15, 2010, hearing, ordering the funds in escrow to be paid to Kimberly "in fulfillment of the temporary relief order" was not in reference to the \$23,500 the court had ordered Timothy to pay. Rather, Kimberly suggests, the court was ordering the funds in escrow to be paid to Kimberly to satisfy Timothy's child support obligations. Thus, Kimberly argues, Timothy's obligation is still outstanding and was therefore properly included in both the January 3, 2011, order her attorney drafted and the December 1, 2011, dissolution judgment. We agree with Kimberly.

¶ 39 A person commits a fraud when he engages in "acts, omissions, and concealments based upon a breach of a legal or equitable duty, trust, or confidence, resulting in damage to another." *Semmens v. Semmens*, 77 Ill. App. 3d 936, 940, 396 N.E.2d 1282, 1286 (1979). Officers of the court have a duty to be honest and forthright in all dealings with the court. *Semmens*, 77 Ill. App. 3d at 940, 396 N.E.2d at 1286. Fraud on the court is directed to the judicial machinery and occurs when the "impartial functions of the court have been directly corrupted." *In the Matter of Whitney-Forbes, Inc.*, 770 F.2d 692, 698 (1985). A judgment procured by fraud is void and unenforceable. *Hartman v. Hartman*, 89 Ill. App. 3d 969, 971, 412 N.E.2d 711, 713 (1980).

¶ 40 Whether Kimberly committed a fraud upon the court and induced the court to improperly order Timothy to pay an award he should not have been required to pay, depends on

whether the award was previously satisfied. The record shows the money in escrow was not applied to the \$23,500 Timothy was ordered to pay Kimberly in the October 22, 2010, temporary relief order. Thus, as the record shows Timothy had not yet satisfied this award, the court properly included this provision in its December 1, 2011, dissolution judgment.

¶ 41 Prior to the trial court's October 22, 2010, temporary relief order, Timothy and Kimberly were parties to a lawsuit involving a parcel of the marital property. As part of the judgment in that case, Timothy and Kimberly were to sign a deed, relinquishing ownership to the parcel of property in exchange for \$25,000 which was being held in an escrow account. The \$25,000 was also subject to a \$10,000 lien by Sunderman, the attorney who represented them in the case. Thus, after the satisfaction of Sunderman's lien, Kimberly and Timothy were to receive \$15,000 from the escrow account.

¶ 42 On August 11, 2010, Kimberly filed a petition for temporary relief. At the time of this petition, the parties had not executed the necessary documents to receive the money in escrow. In her petition Kimberly requested, in relevant part, that Timothy be required to (1) pay Kimberly child support, (2) pay Kimberly \$23,500 as repayment for Timothy's dissipation of marital funds, and (3) sign the deed facilitating the release of the funds in escrow. The trial court held a hearing on the petition on October 10, 2010. During the hearing, the court found the money in escrow "should be paid into the—should be acquired and the [c]ourt should be permitted to distribute that money as part of the temporary relief." Thereafter, in the court's October 22, 2010, written order, the court directed the parties to execute any necessary documents to obtain the money in escrow. Also included in the order, among other provisions, was (1) a direction for Timothy to pay \$390 per week in child support and (2) an order for

Timothy to pay Kimberly \$23,500 as repayment for his dissipation of the marital estate.

¶ 43 On November 29, 2010, Kimberly filed a petition for rule to show cause, alleging (1) Timothy had not yet signed the necessary documents to obtain the money in escrow, (2) Timothy was in arrears on his child support, and (3) Timothy had not yet paid Kimberly the \$23,500 as repayment for dissipation. The trial court held a hearing on Kimberly's petition on December 15, 2010. The court found Timothy had not yet signed the deed to obtain the escrowed funds and verbally ordered Timothy to sign the deed at the close of the hearing, as a copy of the deed was before the court. At that time, Timothy's attorney asked if the funds were to be turned over to Kimberly, that Timothy be "credited for that amount towards either child support arrearage or towards the lump sum payment the [c]ourt ordered him to pay." At the close of the hearing, the court verbally directed Kimberly's attorney to prepare a written order reflecting "that the money held in escrow be delivered to Kimberly Ward, except for that portion covered by Mr. Sunderman's lien and that will be in *fulfillment of the temporary relief order* that was previously entered." The court, however, did not specify which portion of the temporary relief order was to be fulfilled by the money in escrow.

¶ 44 Kimberly's attorney submitted a written order to the trial court as directed. The order was filed on January 3, 2011. In reference to the money in escrow, the order stated the following: "That all money being held in escrow by the Clark County [c]ircuit [c]lerk be turned over to Kimberly Jo Reeder-Ward, except for the portion that is to be paid to Attorney Sunderman for his current lien in fulfillment of his work as counsel for both [p]etitioner and [r]espondent." As noted above, the order did not include language directing that the money in escrow was in fulfillment of the temporary relief order.

¶ 45 Although the trial court did not specify which part of the temporary relief order the money was to be applied to, and the written order of January 3, 2011, entirely failed to include fulfillment language, the record of subsequent proceedings in this case reveals the money in escrow was not credited toward the \$23,500 Timothy owed Kimberly.

¶ 46 On August 11, 2011, the money in escrow was still apparently being held by the circuit clerk's office. In an order the trial court issued on that day, the court directed the circuit clerk "to pay R.W. Fiscus & Associates \$800.00 for their appraisal of the marital home, out of the parties' money, being held in escrow by the [c]ircuit [c]lerk." The court further ordered "[t]hat all remaining funds from the escrow account being held by the [c]ircuit [c]lerk shall be turned over to [p]etitioner, Kimberly Jo Reeder-Ward, for future child support and [r]espondent shall be given credit for such." Thus, the record affirmatively shows the escrow money was used to pay for an appraisal of the marital home and for future child support.

¶ 47 Timothy's own testimony supports our conclusion Timothy has not yet satisfied the \$23,500 awarded in Kimberly's favor. At a March 3, 2011 hearing, on direct-examination Timothy was asked, "You haven't paid the \$23,000 that you were previously ordered to pay Ms. Ward, have you?" Timothy's response was "No." At a later hearing on September 29, 2011, on direct-examination, Timothy was asked, "Okay. Now you remember when you took that \$47,000 out of all of the accounts." Timothy responded "Yes." He was then asked, "Okay. You haven't paid that \$23,500 back to Ms. Ward, have you?" Timothy responded, "Nope."

¶ 48 Further supporting evidence is found elsewhere in the record. On October 4, 2011, during closing arguments, the trial court asked Kimberly's attorney about the "money that was in escrow as a result of litigation before Judge Lewis." The trial court asked counsel if there

was "any such money currently outstanding." Counsel's response was the money was "paid to Mrs. Ward" after attorney fees "just for living expenses that she incurred over time when Mr. Ward wasn't helping her" and "there [wa]s no money left on that." Finally, at the close of the hearing, Kimberly's attorney reminded the court:

"If the [c]ourt remembers, there is a previous order put into this [c]ourt where [Timothy] is to pay [Kimberly] for him taking marital property after the divorce started. We would ask that that also be added and paid out of the equity that [Timothy] has out of the marital home."

The court then asked Timothy's attorney if he had "[a]ny response to that last part[.]" His attorney responded, "No, Judge, I think the [c]ourt understands the case." The court later ordered Timothy to pay the \$23,500 to Kimberly out of the proceeds of the sale of the marital home in its December 10, 2011, dissolution judgment.

¶ 49 Based on the foregoing, we conclude Kimberly did not commit a fraud upon the trial court. Kimberly's actions did not induce the court to include the \$23,500 award in the dissolution judgment. Rather, the record demonstrates the court properly included this provision in the dissolution judgment because Timothy had not yet satisfied the award.

¶ 50 B. Temporary and Permanent Child Support

¶ 51 Timothy's next challenge on appeal is to the trial court's award of temporary and permanent child support. Timothy argues the court abused its discretion in making each award. Specifically, Timothy argues (1) Kimberly's attorney improperly testified as to the profitability of Petro-Junction, and the court improperly relied on such testimony in computing Timothy's

income; (2) Kimberly failed to file a financial affidavit; (3) the evidence supported an award of \$100 per week; and (4) the amount of support awarded was unreasonable under the circumstances. Timothy requests this court to remand with directions to modify Timothy's child support order to \$100 per week.

¶ 52 Kimberly argues (1) her attorney did not testify as to Timothy's income, and thus, the court did not improperly rely on such testimony; (2) Kimberly filed a financial affidavit in support of her request for child support; (3) the court properly rejected \$100 per week as an unacceptable amount of child support; and (4) the court's award of \$390 per week was reasonable under the circumstances. We agree with Kimberly.

¶ 53 Section 505(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/505(a)(1) (West 2010)) provides guidelines in determining the minimum amount of child support a noncustodial parent will be required to pay. Section 505(a) has established that a noncustodial parent with two children is to pay a minimum of 28% of his net income in child support. 750 ILCS 5/505(a)(1) (West 2010). "In determining net income, the court may consider the party's credibility and forthrightness in disclosing his or her income." *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 109, 735 N.E.2d 1037, 1044 (2000). Section 505(a) further provides, "[i]f the net income cannot be determined because of default or any other reason, the court shall order support in an amount considered reasonable in the particular case." 750 ILCS 5/505(a)(5) (West 2010). Moreover, a court may consider past earnings in making its determination of child support if the present net income is difficult to ascertain or is otherwise uncertain. *In re Marriage of Olson*, 223 Ill. App. 3d 636, 652, 585 N.E.2d 1082, 1093 (1992). We review the trial court's award of child support for an abuse of discretion. *In re Marriage of*

Berberet, 2012 IL App (4th) 110749, ¶ 37, 974 N.E.2d 417, 424.

¶ 54 1. *Statements by Kimberly's Attorney*

¶ 55 In regard to child support, Timothy first argues Kimberly's attorney improperly testified about Timothy's net income, in violation of Rules 602 and 703 of the Illinois Rules of Evidence. See Ill. Rs. Evid. 602 (eff. Jan. 1, 2011) (prohibiting a witness from testifying to a matter without first having personal knowledge of the matter); 703 (eff. Jan. 1, 2011) (allowing an expert witness to testify as to his opinion or inference based upon facts or data made known to him or perceived by him in the particular case in which he testifies). In support of his argument, Timothy directs us to the October 8, 2010, hearing on temporary relief. On direct-examination of Timothy, Timothy and Kimberly's attorney had the following exchange:

"Q. Isn't it true, Mr. Ward, that the industry average for convenience stores and gasoline stations, and this is not, not an exact number because we would have to get in and get accountants and do discovery to find exact numbers, but the industry average is your net earnings will be just a hair over four percent of your gross sales?

A. I started this business up out of scratch. I didn't even know anything about the business. To tell the truth, my accounting ain't very well [*sic*], but this is the way we did it. I don't know about the gross net.

Q. You don't know about the four percent?

A. No, I have no clue."

The record shows Kimberly's attorney was not testifying during the above exchange, and thus, Rules 602 and 703 did not apply to Kimberly's attorney. Rather, Kimberly's attorney was asking leading questions of an adverse witness—an acceptable mode of questioning under Rule 611(a) (Ill. R. Evid. 611(a) (eff. Jan. 1, 2011)). We also note, even if Kimberly's attorney did engage in behavior prohibited by the rules of evidence, Timothy failed to make the appropriate objections at trial. Moreover, the trial court is presumed to know the law and follow it, and we will not assume it failed to do so unless the record affirmatively shows otherwise. *People v. Thorne*, 352 Ill. App. 3d 1062, 1078, 817 N.E.2d 1163, 1177 (2004).

¶ 56 Timothy also takes issue with Kimberly's attorney's statements at the close of the hearing on October 8, 2010. In response to the trial court's inquiry as to what Kimberly was requesting, Kimberly's attorney stated as follows:

"Well, your honor, I have no way to figure up the numbers, but this is what I'm requesting, and this is giving Mr. Ward the benefit of the doubt on everything. He said he makes about \$150,000 a month gross. And I know there's no pure evidence in this, but the industry average is a little over four percent that you take home from your gross.

If you do those numbers, Your Honor, *** that comes to \$6,067.44 that he's taking home. If you times that 28 percent [*sic*], that's \$1,698.88 a month child support. That's \$1,700 a month child support.

When we first got our first OP that was actually what the

original order stated, around \$400.00 a week."

Timothy also cites Rules 602 and 703 in arguing this statement was improper. It appears Timothy is arguing Kimberly's attorney may not testify to as to what the national average net income is for convenience store owners because he is not an expert in the matter. This argument fails as Kimberly's attorney was making a closing argument in support of his client's requests and was not testifying.

¶ 57 However, we note Kimberly's attorney's statements were improper statements concerning facts not in evidence. See *Watkins v. American Service Insurance Co.*, 260 Ill. App. 3d 1054, 1067, 631 N.E.2d 1349, 1358 (1994) ("[a] statement in closing argument regarding facts not in evidence is improper"). When Kimberly's attorney asked Timothy if the national average net income for convenience store owners is 4% of gross profits, Timothy denied such facts. Kimberly never introduced additional evidence or testimony concerning the national average, and thus, such facts were not in evidence. Although the statements were improper, it is presumed in a bench trial the trial judge "has only considered competent evidence in reaching his decision." *Watkins*, 260 Ill. App. 3d at 1067, 631 N.E.2d at 1358. Based on the record, we conclude this presumption has been overcome. At the close of the hearing, the court seemingly utilized a 4% figure (as suggested by Kimberly's attorney) in calculating Timothy's net income. The court found the following:

"Under all the evidence that the [c]ourt has, with all of its inadequacies, the [c]ourt finds that it is reasonable to believe that the gross income of Petro is something on the order of \$151,000 per month. ***

The [c]ourt finds that \$6,090 is an amount that, in the absence of reliable evidence, is a reasonable amount to believe that may be net profit per month. Twenty-eight percent of that would be \$1,680. If you multiply that times twelve [*sic*], divide it by 52, 28 percent is approximately \$390 per week."

The court incorporated these findings into its written order. Thus, it appears the court erroneously relied on Kimberly's attorney's improper statement and arrived at a net income equal to the supposed 4% national average for convenience stores when it calculated child support.

¶ 58 As we will discuss next, despite the trial court's erroneous reliance on Kimberly's attorney's statements, we conclude the record supports a finding of \$390 per week child support. Therefore, because we conclude the improper statements and the court's reliance thereon were harmless and did not ultimately prejudice Timothy, we will not reverse the court's decision. See *Watkins*, 260 Ill. App. 3d at 1067, 631 N.E.2d at 1358 (improper statements made during closing arguments only constitute reversible error when they are "so prejudicial as to deprive a party of a fair trial"). We also note Timothy never made objections to Kimberly's attorney's statements during the October 2010 hearing.

¶ 59 *2. Child Support at \$390 - Per - Week*

¶ 60 Before addressing the parties' arguments concerning child support, we first address an issue not discussed by either party. Timothy, in his briefs to this court, attempts to separately challenge both the trial court's temporary relief order and its final dissolution judgment with respect to child support. Temporary orders, however, "terminate[] when the final judgment is entered" (750 ILCS 5/501(d) (West 2010)) and are not independently appealable (see *In re*

Marriage of Dunseth, 260 Ill. App. 3d 816, 828, 633 N.E.2d 82, 92 (1994) (temporary orders are only appealable to the extent that they affect the final order)). "Once the final order is entered it must be assumed that the trial court has thereby adjusted for any inequity in its temporary orders." *Dunseth*, 260 Ill. App. 3d at 827, 633 N.E.2d at 92. Thus, on appeal, we are only to consider whether the final order as a whole is erroneous, not whether parts of the underlying order are erroneous. *Dunseth*, 260 Ill. App. 3d at 827-28, 633 N.E.2d at 92.

¶ 61 We will not review the trial court's October 2010 temporary order and its December 2011 dissolution judgment separately, as two independently appealable issues. Because the record shows the court relied on evidence and testimony from the hearing on temporary relief in reaching its final decision, and because these two orders are so closely intertwined, we review both orders together to determine if the court erred in setting child support in the final dissolution judgment. Although we review the orders jointly, we will set forth the court's findings as to each individual order, as the parties do in their briefs.

¶ 62 In setting temporary support at \$390 per week, the trial court made the following findings: (1) Timothy handicapped the court in determining his net income for child support purposes because he had "complete control" over the necessary information but failed to present reliable evidence; (2) Timothy "historically ha[d], and continues to, run personal expenses through his business in order to conceal income and avoid taxes"; (3) Timothy did not display "a good[-]faith intent to pay child support, and he ha[d] concealed income with the specific intent of avoiding payment of child support"; (4) the evidence suggested Timothy had paid not less than \$8,500 in attorney fees while at the same time he had only paid \$500 in child support.

¶ 63 The trial court rejected Timothy's financial affidavit, reporting income of \$330 per

week, as being complete and reliable. The court stated, "[u]ntil the separation, the Ward family had substantially more income and assets than [Timothy] is now claiming and they have lived in a style that could not possibly have been maintained on an income of \$330 per week." The court also found Timothy was capable of continuing the parties' plumbing business or working at \$40 per hour for the union he belonged to but he refused to do so. Based on the evidence and testimony, the court set temporary child support at \$390 per week.

¶ 64 Timothy had an opportunity to present additional evidence and argument at the September 2011 final dissolution hearing concerning child support and his contention that \$390 per week was not an appropriate amount. After having done so, the trial court remained of the opinion, based on the totality of the evidence, that \$390 per week was the proper amount of child support.

¶ 65 In setting permanent child support the trial court ultimately found \$390 per week was an amount "consistent with the *** statutory standard, whether based on [Timothy's] previous earnings from operating KJ Plumbing or based upon estimated revenues of Bi-Petro." The court also found Timothy had control over the evidence concerning his net income, and the evidence he did present was not reliable. The court further noted, if Timothy found this amount to be excessive he should "keep reliable and trustworthy books and records [of Petro-Junction], audited by an expert and take advantage of the law that applies to modification."

¶ 66 In determining Timothy's net income and setting child support, the trial court made credibility determinations and found Timothy's evidence unreliable. Such a consideration was permissible. See *Olson*, 223 Ill. App. 3d at 652, 585 N.E.2d at 1093 ("The credibility and forthrightness of the noncustodial parent in disclosing income is a factor to be considered in

accepting evidence of net income."). The court found it could not adequately determine net income in regard to Petro-Junction because Timothy's evidence was unreliable and insufficient, and therefore the court had to consider the parties' past earnings. The court could properly do so. See *Olson*, 223 Ill. App. 3d at 652, 585 N.E.2d at 1093 (a court may consider past earnings in making its determination of child support if the present net income is difficult to ascertain or is otherwise uncertain). Thus, the court utilized a figure it found to be supported by the totality of the evidence and reasonable under the circumstances. We defer to those determinations.

¶ 67 *3. Kimberly's Financial Affidavit*

¶ 68 Timothy next argues the trial court abused its discretion in awarding temporary child support because Kimberly did not file the required financial affidavit prior to the court's October 8, 2010, hearing on temporary relief. Timothy cites to "Rule VIII" in advancing this argument. It is unclear whether Timothy is referring to the Illinois Supreme Court Rules or a local rule or something else entirely. Further, Timothy simply claims Kimberly did not file a financial affidavit. Timothy does not explain the effect of this omission on the court's award of child support or why we should reverse based on these grounds. Rule 341(h)(7) requires an appellant to provide this court with citation to the authority upon which his arguments rely. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). As our appellate courts have routinely stated, a reviewing court "is not a repository into which an appellant may foist the burden of argument and research." (Internal quotation marks omitted.) *People v. Universal Public Transportation, Inc.*, 2012 IL App (1st) 073303-B, ¶ 50, 974 N.E.2d 251, 263. Because Timothy has failed to provide coherent argument or cite proper authority on this issue, we will not attempt to address its merits.

¶ 69 *4. \$100-Per-Week Child Support*

¶ 70 Timothy next argues the evidence supports an award of \$100-per-week child support. Timothy's only support for this argument is the parties agreed-to amount of \$100 per week prior to the court's October 22, 2010, temporary hearing on relief. Kimberly argues this amount was prematurely agreed to out of a need to continue the temporary hearing and the trial court specifically rejected such an amount as appropriate. We agree with Kimberly.

¶ 71 Prior to the temporary relief hearing, an order of protection had been entered, ordering Timothy to pay temporary support. The order of protection is not included in the record on appeal, and thus, we do not know at what amount temporary support was set. It is Timothy's burden to provide this court with a record sufficient to demonstrate the error of which he complains, and he has failed to do so.

¶ 72 On September 28, 2010, the parties appeared before the trial court for a motions hearing. During this hearing, the court explained it understood the temporary support in the order of protection had been set at "\$300 or \$350 or something." The court further explained it had a telephone conference with the parties and granted the parties a continuance prior to the September 28, 2010, hearing, on the condition the parties came to an agreement on temporary support until a proper hearing could take place. The court was under the impression the parties had agreed to an amount similar to the amount in the order of protection—an amount the court thought be somewhere over \$300 per week. Kimberly's attorney then explained to the court the parties ultimately agreed to an amount of \$100 per week because it was the only amount Timothy's attorney offered. Kimberly's attorney described the agreement as a "take it or leave it" situation wherein he had to accept the \$100 per week or accept nothing. Thus, Kimberly's attorney explained, "we took it so we could continue th[e] case."

¶ 73 The trial court expressed its dissatisfaction with the agreement. The court stated the following:

"The [c]ourt frankly believed that the parties understood that the agreement for child support necessarily was going to be an agreement higher than the \$100. I mean, that was simply—I mean, that was not an agreement resolving the child support issue, that was simply an agreement continuing a previous order that was entered that was a temporary order. So I am quite surprised that we're at the situation we're at today.

The matter should have gone to a hearing a couple of weeks ago, and the [c]ourt would not have granted a continuance under the circumstances that are now disclosed."

¶ 74 The record demonstrates the trial court did not find \$100 per week was an appropriate amount; nor did it intend for child support to be set at such an amount. The record also shows, when the parties entered into the agreement for \$100 per week, evidence to support such an award had not yet been presented. Thus, we reject Timothy's contention child support at \$100 per is appropriate or was supported by the evidence.

¶ 75 C. Kimberly's Jewelry

¶ 76 Timothy's third argument on appeal is the trial court abused its discretion in ordering Timothy to pay Kimberly \$8,000 as compensation for missing jewelry. Specifically, he argues Kimberly did not present evidence Timothy took the jewelry other than her testimony, which he contends is not credible. He further argues Kimberly did not present evidence of the

jewelry's valuation and the court should not have assigned the jewelry a value of \$8,000.

¶ 77 We reject Timothy's first contention the trial court abused its discretion in finding he took Kimberly's jewelry. Timothy's only basis for this argument is his belief Kimberly's testimony was not credible. The trial court specifically found Kimberly's testimony to be "entirely credible." "The determination of all issues regarding the credibility of the parties *** or the weight to give the evidence lies with the trier of fact." *In re Marriage of Werries*, 247 Ill. App. 3d 639, 642, 616 N.E.2d 1379, 1384 (1993). Such determinations made by the trier of fact are given great deference. *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641, 686 N.E.2d 670, 675 (1997). Our review of the record does not support a conclusion the trial court erred in assessing Kimberly's credibility and relying on her testimony in finding Timothy took her jewelry.

¶ 78 Kimberly testified she was missing two wedding ring sets, her mother's gold band she had on when she passed away, Kimberly's class ring, all the rings and necklaces Kimberly's parents had given her as a child for graduations and Christmases, Kimberly's emerald and diamond ring, Kimberly's "pink ice" rings, bracelets, and some of her mother's other rings. Kimberly testified she kept a majority of the jewelry in her jewelry box on top of the stereo, and the rings that she wore everyday were kept in a basket in the bathroom. Kimberly stored her jewelry in the same place for approximately four to five years and "never scattered" it around the house when she was not wearing it.

¶ 79 Kimberly testified she twice confronted Timothy about taking her jewelry. When Kimberly first noticed the jewelry was missing, she asked Timothy where it had gone. She testified he gave her the following response: "oh gee, I don't know, maybe you took a nerve pill

and accidentally misplaced them and forget what you did with them, or maybe the house got robbed while we were gone today." At a later meeting between Kimberly and Timothy at a restaurant, after the parties' separation, Kimberly again confronted Timothy about the jewelry. Kimberly testified Timothy acknowledged taking the jewelry. Kimberly also testified one of her daughters told Kimberly she saw the jewelry in a cabinet at Timothy's house. When asked about the jewelry during the dissolution proceedings, Timothy testified he did not take it and did not know where it was. The trial court found Kimberly's testimony credible, and based on that testimony, the court found Timothy took the jewelry. We defer to the court's determination.

¶ 80 Timothy further argues Kimberly did not present evidence of valuation of the jewelry, and thus, the trial court abused its discretion in ordering Timothy to pay Kimberly \$8,000 as compensation for the jewelry. We disagree.

¶ 81 The trial court has broad discretion in valuing and distributing assets in marital property matters, and we will not overturn that decision absent an abuse of discretion. *In re Marriage of Benz*, 165 Ill. App. 3d 273, 285, 518 N.E.2d 1316, 1322 (1988). "It is the obligation of the parties to provide sufficient information to the trial court in marital property valuation matters." *Benz*, 165 Ill. App. 3d at 285, 518 N.E.2d at 1323. When the parties have had ample opportunity to present evidence of valuation and failed to do so, this court will not reverse and remand for further proceedings on valuation. *Benz*, 165 Ill. App. 3d at 285, 518 N.E.2d at 1323. Moreover, we will not reverse and remand for a new valuation when doing so would serve no useful purpose. *Benz*, 165 Ill. App. 3d at 285, 518 N.E.2d at 1323.

¶ 82 Kimberly testified as to what jewelry was missing, which she described as "anything that was worth anything and anything that had a sentimental value that you can't even

put a price on was gone." When asked about their value, she testified "I am saying that if you went and bought all of those new, you're probably looking at a minimum of about \$8,000, but I'm telling you, sir, that the rings my parents gave me and the ring my mom died with on her finger, you will never place a value on, never." Timothy never presented evidence of valuation of Kimberly's missing jewelry. Instead, Timothy consistently denied taking the jewelry. Timothy is not permitted to benefit on appeal from his failure to introduce any evidence as to valuation. See *Benz*, 165 Ill. App. 3d at 285, 518 N.E.2d at 1323.

¶ 83 Kimberly never presented receipts or expert testimony concerning the value of the jewelry. However, because the jewelry was missing, it would have been impossible for Kimberly to get an appraisal of the jewelry. Further, it would have been difficult to assign the jewelry a market value and estimate the cost to replace the jewelry because it consisted mostly of irreplaceable gifts and inherited pieces Kimberly had acquired over many years. Acknowledging Kimberly had no way of assessing a market value to the missing jewelry, Kimberly's attorney asked the trial court during closing arguments to order Timothy to pay "any money that it feels is equitable," given there was "no amount that would be appropriate to give [Kimberly] for the loss of her rings." The court found an equitable amount was \$8,000, and we conclude it did not abuse its discretion in doing so.

¶ 84 In cases involving compensatory damages for property which has been damaged, stolen, or converted, our appellate courts have consistently concluded the fair market value at the time of the loss is the ordinary measure of damages for personal property. See *Jankoski v. Preiser Animal Hospital, LTD.*, 157 Ill. App. 3d 818, 820, 510 N.E.2d 1084, 1086 (1987). However, our appellate courts have also recognized "that there are a number of items of personal

property that have no market value," and damages as compensation for these items "must be ascertained in some rational way from such elements as are attainable." *Jankoski*, 157 Ill. App. 3d at 820, 510 N.E.2d at 1086. Such items include, for example, heirlooms, photographs, trophies, and pets. *Jankoski*, 157 Ill. App. 3d at 820, 510 N.E.2d at 1086. Where the item has no market value, damages can be measured by the value of the object to its owner, which may include some element of sentimental value. *Jankoski*, 157 Ill. App. 3d at 821, 510 N.E.2d at 1087.

¶ 85 We conclude the reasoning in *Jankoski* should be applied to this case. A market value for Kimberly's jewelry was not possible to determine, and the jewelry no doubt had sentimental value to Kimberly. She described the jewelry as something "you can't put a price on." The trial court was in the difficult position of trying to assign a monetary value to a priceless item with sentimental value to its owner, and this court finds no reason to substitute its judgment for that of the trial court.

¶ 86 We conclude the trial court did not abuse its discretion in valuing the jewelry at \$8,000 in light of (1) the amount and type of jewelry the court found to be missing, (2) Kimberly's testimony the jewelry was priceless and her estimation the replacement cost was at least \$8,000, (3) Timothy's failure to present any evidence as to possible valuation and (4) the difficulty of ascertaining an actual market value. We further note our conclusion is supported by the fact that remanding this cause for further valuation would be futile and serve no purpose because (1) the jewelry is missing and cannot be appraised and (2) the court would encounter the same difficulties as in the original proceedings.

¶ 87 D. Division of Property

¶ 88 Timothy next argues the trial court did not equitably divide the marital estate. Timothy contends the division was not equitable because (1) the court misclassified the home in Carmi, Illinois, as Kimberly's nonmarital property and (2) the court erred in not allowing an appraisal of Petro-Junction. We will address each argument separately.

¶ 89 *1. Carmi Home Classification*

¶ 90 A trial court's division of marital property will not be disturbed absent an abuse of discretion. *Weries*, 247 Ill. App. 3d at 649, 616 N.E.2d at 1388. However, a court's determination of whether an asset is marital or nonmarital rests largely in the determination of the credibility of the witnesses, and thus, will only be overturned if that determination is against the manifest weight of the evidence. *Weries*, 247 Ill. App. 3d at 641, 616 N.E.2d at 1383.

¶ 91 Timothy argues Kimberly used marital assets to purchase the property located in Carmi, Illinois. Kimberly argues she used separate funds to purchase the home in Carmi. Kimberly alleges she inherited a joint interest in the property with her brother and shortly thereafter paid off her brother and two sisters with nonmarital funds so she could have an undivided interest in the Carmi property. Kimberly maintains the nonmarital funds came from a life insurance policy and a car she inherited from her father. Timothy does not dispute Kimberly inherited a one-half interest in the Carmi property. He does, however, claim the Carmi property is a marital asset because Kimberly commingled her nonmarital funds with marital funds by depositing the proceeds from the life insurance policy and the car into the marital bank account and issuing checks to her siblings from the marital account to purchase the Carmi property. Kimberly responds she did not intend to transmute the property.

¶ 92 Under the Dissolution Act, a presumption exists that property acquired after

marriage is marital, but property acquired by one party through gift, legacy, or descent is considered nonmarital. See 750 ILCS 5/503(a) (West 2010). Marital and nonmarital assets are considered commingled, and therefore transmuted to the marital estate when (1) one asset is so intermingled with another that it loses its identity or (2) assets from the marital and nonmarital estates are combined to acquire new property. *Verries*, 247 Ill. App. 3d at 642, 616 N.E.2d at 1383-84. In deciding whether marital and nonmarital funds have been commingled, our reviewing courts consider whether the party accused of commingling has evidenced an intent to transmute. See *In re Marriage of Norris*, 252 Ill. App. 3d 230, 236, 625 N.E.2d 6, 11 (1992) (where there is no evidence of intent to transmute, assets purchased with separate funds remain separate property).

¶ 93 Kimberly testified the home in Carmi was the home she grew up in, having lived there between the ages of 3 and 21. Kimberly's parents deeded the home to Kimberly and her brother in March 2000, while they were still alive. When her parents passed away, Kimberly inherited a life insurance policy and car from her parents. Kimberly collected on the life insurance policy and used the car as collateral to secure a loan in her name until she sold the car. She then "took the life insurance checks and the loan from [her] parents' car, [and] put them in [her] personal account and wrote the checks to [her] brother and sisters out of [her] personal account so [she] would have a paper trail." She could not remember if Timothy's name was on the account. Kimberly paid her siblings \$30,000—\$10,000 each. She paid all of her siblings even though the home was left to her and her brother because she "felt it was fair." Timothy's attorney asked Kimberly, "Was there any marital money put into that home to pay off your brothers and sisters?" Her response was "[n]o."

¶ 94 Based on the foregoing testimony the trial court found the Carmi home was Kimberly's nonmarital property. The only evidence Timothy suggests supports a finding of commingling is Kimberly's depositing of her inherited funds into a joint bank account. However, where there has been no evidence of intent to transmute, depositing funds into a joint marital account does not alone establish a commingling of the marital and nonmarital estates. See *Norris*, 252 Ill. App. 3d at 236, 625 N.E.2d at 11 (trial court rejected the ex-wife's claim assets were transmuted after they were deposited into joint bank account, absent other evidence of ex-husband's intent to transmute).

¶ 95 We conclude the trial court's finding the Carmi home was Kimberly's nonmarital property was not against the manifest weight of the evidence. We further conclude the court did not abuse its discretion in dividing the marital estate.

¶ 96 *2. No Order for Petro-Junction Appraisal*

¶ 97 The trial court found Petro-Junction to possibly be "the most valuable asset in the marital estate" and awarded Petro-Junction to Timothy. Timothy, however, argues the court did not equitably divide the marital estate because the court did not allow an appraisal of Petro-Junction, which left the court without an accurate accounting of the true value of the marital estate. We disagree.

¶ 98 At a pretrial conference, the trial court expressed its concerns that an appraisal might be expensive and the parties could ascertain a value by other means. The court suggested the following:

"It might well be that if you basically opened your premises and gave [Kimberly's attorney] an opportunity, perhaps with

someone else, you know, to go through it and observe the kind of operation it is and the inventory you have on hand, open up your books, that the parties can come up with a figure that is approximately right or at least something in the range of what you can both live with."

The trial court never prohibited Timothy from getting an appraisal of Petro-Junction; he was free to get an appraisal if he so desired. The court simply did not order the parties have one conducted. Moreover, the court made it clear the value of Petro-Junction could not be ascertained because Timothy did not "present evidence as to its fair market value or as to its net operating income or as to its generation of free cash flow." The court further noted "Mr. Ward has concealed the necessary financial information in two ways: one, he doesn't maintain standard financial records; two, he hasn't provided Ms. Ward with financial records either through discovery or even by presenting evidence at trial." The court described Timothy's business records as "incomprehensible financial scribbles."

¶ 99 Timothy cannot now complain of a lack of appraisal and the trial court's valuation of Petro-Junction when he failed to present the financial information necessary to properly assess the value of the business. See *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 651, 913 N.E.2d 1077, 1086 (2009) (on appeal, a party may not complain of a lack of hard facts in the record concerning the valuation of the marital business when he is responsible for depriving the court of such facts). Moreover, the court is not required to place a specific value on each item of property. *Sanfratello*, 393 Ill. App. 3d at 651, 913 N.E.2d at 1086.

¶ 100 We conclude the trial court did not err by not ordering an appraisal of Petro-

Junction, as the court found Timothy created the deficiencies in properly valuing Petro-Junction.

¶ 101 E. Attorney Fees

¶ 102 Timothy's final contention on appeal is the trial court abused its discretion in awarding Kimberly \$15,000 in attorney fees. Specifically, Timothy argues the court awarded Kimberly attorney fees before the proper petition for fees was filed. Kimberly argues the court acted within its discretion in awarding attorney fees. We agree with Kimberly.

¶ 103 Section 508 of the Dissolution Act allows the trial court to order contribution to attorney fees from the opposing party after considering the financial resources of the parties. See 750 ILCS 5/508 (West 2010). Section 508 also provides any contribution to be in accordance with subsection (j) of section 503. 750 ILCS 5/508(a) (West 2010). Section 503 requires a party to file her petition for contribution either (1) prior to the final hearing on other issues between the parties, (2) "no later than 30 days after the closing of proofs in the final hearing" or (3) "within such other period as the court orders." 750 ILCS 5/503(j)(1) (West 2010). We review a trial court's award of attorney fees for an abuse of discretion. *In re Marriage of Agostinelli*, 250 Ill. App. 3d 492, 502, 620 N.E.2d 1215, 1222 (1993).

¶ 104 The only argument Timothy makes in relation to Kimberly's award of attorney fees is she did not file her petition for contribution prior to the trial court's award of fees. The record shows on May 30, 2010, in her original petition for dissolution of marriage, Kimberly requested the court to award her attorney fees. Later, on October 8, 2010, Kimberly filed a petition for interim attorney fees. Finally, on September 29, 2011, Kimberly submitted, as exhibit H, an affidavit of attorney fees. Based on this record, we do not conclude the court awarded attorney fees before a petition for such was filed. Therefore, the court did not abuse its

discretion in awarding Kimberly attorney fees.

¶ 105

III. CONCLUSION

¶ 106

For the reasons stated, we affirm the trial court's judgment.

¶ 107

Affirmed.