

was against the manifest weight of the evidence; (3) that the circuit court's classification of two buildings located on the marital residence real estate as marital property and the court's award of those buildings to Paula was against the manifest weight of the evidence; (4) that the circuit court's distribution of the marital estate was an abuse of discretion; and (5) that the circuit court abused its discretion in ordering David to pay a portion of Paula's attorney fees. For the reasons that follow, we affirm.

¶ 3 The facts necessary to the disposition of this appeal are as follows. David and Paula were married on April 21, 1984. Two children were born during the marriage, both of whom were over the age of 18 at the time of their parents' separation. David filed a petition for dissolution of marriage on March 17, 2010. At the time of the trial, David was 49 years old and was employed by the State of Illinois earning an annual salary of \$76,602. David was an elected member of the White County Board, which earned him an additional annual income of \$6,600 (the position is a two-year term). Additionally, David owned and operated an auction and appraisal business, and his income from the business varied each year. The following was his net income from the auction business from 2009 until 2011: in 2009, he earned \$11,296; in 2010, he earned \$7,127; and in 2011, his net income was \$0.

¶ 4 Paula was 48 years old and was employed as a bookkeeper at Campbell Funeral Home in Carmi. Paula earned a gross salary of \$375 per week. On August 9, 2009, Paula was involved in an accident where she was struck by a vehicle as she was crossing the street. She sustained injury to her right leg and required surgery. As a result of the accident, she has received extensive medical care relating primarily to her knee, was immobile for three months following the surgery on her leg, and had to undergo extensive therapy to learn how to walk again. Following the surgery and physical therapy, she continued to experience pain in her right leg and she was required to wear a knee brace. She testified that the pain limited her daily activity and she may be required to have knee replacement surgery in the future.

Paula received an uninsured motorist personal injury settlement as a result of the accident, and \$82,107 in settlement proceeds remained after all medical liens were paid.

¶ 5 Throughout the marriage, Paula had health insurance coverage through David's employment with the State of Illinois. Chris Miller, a health insurance agent with First Insurance Agency of White County, Incorporated, testified that Paula contacted him to request a quote for a health insurance policy that was similar to the health insurance benefits she received from David's employment. Miller quoted \$509.48 per month for a medical and dental plan that would be similar to the benefits she received under David's insurance with the State of Illinois.

¶ 6 The parties owned two tracts of farmland in White County (an 11.68-acre tract and a 30-acre tract). The 30-acre tract was purchased in December 2009 for \$90,000. The parties earned approximately \$7,000 in farm income in 2010 on the two tracts of land. The parties stipulated that the 30-acre tract of farmland was marital property, but they were unable to agree on the value of the property. Kay Stinson, a certified general appraiser licensed by the State of Illinois, testified regarding the fair market value of the 30 acres. Stinson testified as to the methodology she utilized to determine the value of the land, which included reviewing four comparable sales in the immediate area that occurred within 12 months of the appraisal. She testified that the price of tillable-acreage farmland in White County had increased dramatically over the past two years. She concluded that the estimated fair market value of the 30 acres was \$121,200 as of January 18, 2011. On cross-examination, she testified that the four comparable sales that she reviewed consisted of the following acreage: 123.75; 70; 80; and 77. Connie Warner, a licensed appraiser testifying on David's behalf, agreed that the price of farmland in White County, Illinois, had substantially appreciated over the past two years. Warner was retained to appraise the marital residence and the 11.68-acre tract of farmland, but not the 30-acre tract of farmland.

¶ 7 David testified that the 30 acres were purchased in December 2009 for \$90,000 (\$3,000 per acre). He opined that the value of the farmland as of June 2011 was \$90,000. He testified about the sale of two properties located within two miles of the 30-acre tract, properties that David believed were comparable to the 30 acres. The first sale was \$3,000 per acre for a 40-acre tract and the second sale was \$2,700 per acre for two 40-acre tracts.

¶ 8 With regard to the two buildings located on the marital residence, David testified that the buildings, *i.e.*, a grain bin on skids and a farrowing house, were his nonmarital property. He testified that these buildings were given to him by his family and had been on the marital property for several years. Paula testified that the buildings were given to the couple to be used at the marital residence. She testified that the grain bin had been located on the marital property for approximately 20 years. The buildings were used for storage.

¶ 9 The parties also owned the following financial accounts that required division by the circuit court: (1) a First Financial brokerage account valued at \$26,247.75 (\$12,252.39 belonged to the parties' son as stipulated by the parties); (2) a Franklin Templeton IRA valued at \$25,615.76; (3) an ING IRA valued at \$3,693.30; (4) an ING IRA valued at \$7,904.96; (5) an ING IRA valued at \$3,521.32; (6) David's IMRF retirement account; (7) David's State of Illinois retirement account; and (8) David's deferred compensation account.

¶ 10 The parties presented the following evidence concerning David's allegation that Paula dissipated the marital assets by giving money to her brother-in-law, her parents, and their daughter's former boyfriend. Paula admitted that she gave \$20,000 in cash to her brother-in-law in June or July 2008. She explained that she considered the transfer a loan, but she admitted that her brother-in-law told her that he would likely never have the money to pay the loan back. She explained that she gave her parents a total of \$6,500 to help them pay bills and for the purchase of a vehicle. She characterized the transfer as a gift. She also gave \$1,100 to the their daughter's former boyfriend (little evidence was offered regarding this

transfer of money).

¶ 11 During the trial, David sought to prove that the parties' marriage suffered an irreconcilable breakdown as of July 19, 2008, and the three transfers made by Paula were dissipation of the marital assets. David presented evidence that on July 19, 2008, the parties entered into a written agreement concerning a dispute over financial issues. According to the agreement, the parties decided to maintain separate financial accounts until a time when they were able to trust each other. However, Paula countered that the marriage suffered an irreconcilable breakdown at a later date and the July 2008 agreement was an attempt to reconcile because they were experiencing problems in their marriage. Evidence was presented that Paula consulted with an attorney regarding a divorce in June or July 2009 and that David moved out of the marital residence on March 1, 2010.

¶ 12 The trial court entered an order dissolving the parties' marriage on October 21, 2011. The findings pertinent to the resolution of this appeal are as follows. The court awarded the 30-acre tract of farmland to David and valued the property at \$121,200. In valuing the property, the court found Stinson's testimony to be more persuasive than David's. The court found significant the fact that both Stinson and Warner testified that the value of farmland in White County, Illinois, had appreciated over the past few years.

¶ 13 The court concluded that Paula's transfer of \$20,000 to her brother-in-law was not dissipation of the marital assets because the marriage was not undergoing an irreconcilable breakdown at the time of the transfer. The court determined that the language of the parties' July 2008 written agreement indicated that the parties were attempting to reconcile and preserve their marriage. The court further determined that the parties' marriage began suffering an irreconcilable breakdown between June or July 2009, when Paula attempted to hire an attorney to represent her in a divorce, and March 1, 2010, when David moved out of the marital residence. The court further found that no other act or expenditure made by Paula

constituted dissipation of the marital estate. Additionally, the court did not find any dissipation with regard to David paying \$19,111 in attorney fees out of marital assets.

¶ 14 The court awarded Paula the entirety of the following financial accounts: (1) Franklin Templeton IRA valued at \$25,615.76; (2) ING IRA valued at \$3,693.30; (3) ING IRA valued at \$7,904.96; (4) ING IRA valued at \$3,521.32; and (5) First Financial brokerage account valued at \$26,247.75. Paula was also given one-half of the following financial accounts: (1) David's IMRF retirement account; (2) David's State of Illinois retirement account; and (3) David's deferred compensation account. The court awarded Paula four-fifths of the personal injury settlement award (\$64,685.60) and awarded David one-fifth (\$16,421.40) of the settlement award.

¶ 15 David was ordered to pay Paula \$1,000 per month in maintenance for a period of six years subject to modification or extension as provided by law. In awarding Paula maintenance, the court noted that Paula's income is less than David's; Paula will be required to pay for health insurance and real estate taxes and insurance on the marital residence following the divorce; Paula sustained permanent injury and permanent disability as a result of being hit by a vehicle; and David has the ability to earn additional income through his auction business.

¶ 16 On October 27, 2011, Paula's counsel filed a petition for contribution to attorney fees and costs, requesting the court order David to pay a set amount of her attorney fees. Paula's counsel also filed a motion to reconsider, arguing, in pertinent part, that the circuit court erred when it found that David did not dissipate marital assets when he paid \$19,111 in attorney fees with marital funds. On November 4, 2011, David's counsel filed a motion to reconsider, noting that the court failed to award the two building, *i.e.*, the grain bin on skids and the farrowing house, located on the marital residence property to either party and requesting that the buildings be classified as nonmarital property and awarded to David. On

February 3, 2012, the trial court entered an order dealing with the issue of dissipation, the two buildings, and attorney fees. In the order, the court reconsidered its original ruling that David did not dissipate marital assets when he paid \$19,111 in reasonable attorney fees with marital funds. The court concluded that the attorney fees paid by David were an advance from his portion of the marital assets and awarded him \$19,111 in the distribution of marital assets. The court awarded the two buildings to Paula because Paula was awarded the marital residence, the two buildings were located on the marital residence property, and the contents of the buildings were awarded to Paula. The court ordered David to contribute to Paula \$7,715.47 in attorney fees, which represented one-half of her outstanding attorney fees and costs. David appeals the October 21, 2011, judgment of dissolution of marriage and the February 3, 2012, order.

¶ 17 The first issue raised by David on appeal is whether the circuit court's valuation of the 30 acres of farmland was against the manifest weight of the evidence. The circuit court's determination regarding the valuation of marital assets is subject to a manifest-weight-of-the-evidence standard of review. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699 (2006). Conflicts in testimony concerning the valuation of marital assets are matters to be resolved by the trier of fact. *In re Marriage of Weinberg*, 125 Ill. App. 3d 904, 909-10 (1984). The circuit court's valuation of the assets will not ordinarily be disturbed on appeal as long as that valuation was within the range of evidence presented. *Id.* at 910.

¶ 18 Here, Stinson, a licensed real estate appraiser, valued the 30 acres of farmland at \$121,200. She testified that farmland in White County, Illinois, had appreciated over the past few years. David's expert agreed that White County farmland had substantially appreciated over the last two years. In contrast, David opined that the value of the 30 acres was \$90,000, which was the purchase price of the property in 2009. In support of his valuation, he presented evidence of two comparable sales in the immediate vicinity of the 30 acres. The

circuit court valued the 30 acres at \$121,200 because it found Stinson's testimony more persuasive. The circuit court's valuation was within the range of evidence, and we do not believe that it was against the manifest weight of the evidence.

¶ 19 David next argues that the circuit court's finding that the \$20,000 transfer from Paula to her brother-in-law was not dissipation of the marital estate was against the manifest weight of the evidence. The circuit court's determination concerning dissipation of the marital assets is subject to a manifest-weight-of-the-evidence standard of review. *In re Marriage of Hubbs*, 363 Ill. App. 3d at 699. Dissipation of the marital estate refers to the use of marital property for the sole benefit of one spouse for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown. *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 374 (2008).

¶ 20 Here, the circuit court determined that the parties' marriage was undergoing an irreconcilable breakdown between June or July 2009, when Paula sought legal advice regarding obtaining a divorce, and March 1, 2010, when David moved out of the marital residence. Therefore, the court concluded that Paula's transfer of \$20,000 to her brother-in-law was not dissipation of the marital estate because the marriage was not undergoing an irreconcilable breakdown at the time the transfer occurred. The court also determined that it did not find dissipation of the marital estate by any other act or expenditure of Paula. David argued that the marriage was undergoing an irreconcilable breakdown on July 19, 2008, when the parties entered into a written agreement concerning financial matters. The circuit court disagreed and believed that this written agreement indicated that the parties were attempting to reconcile and was created in an effort to preserve the marriage. After reviewing the record, we do not believe that the circuit court's decision was against the manifest weight of the evidence. Further, we note that the circuit court awarded Paula the \$20,000 as a marital asset even though Paula's testimony indicated that the loan will never

be repaid. David further argues that dissipation of the marital estate also occurred when Paula gifted her parents with \$6,500 and gave the parties' daughter's former boyfriend \$1,100. David argues that these two expenditures should be considered dissipation and notes that they were never addressed by the circuit court. However, these expenditures occurred prior to the range of dates that the circuit court determined to be the beginning of the irreconcilable breakdown of the parties' marriage and therefore would not constitute dissipation. Accordingly, we find that the circuit court's finding that Paula did not dissipate the marital estate by making expenditures that occurred *before* June or July 2009 and March 1, 2010, was not against the manifest weight of the evidence.

¶ 21 David next argues that the circuit court's award of two buildings located on the marital property to Paula was against the manifest weight of the evidence. The evidence at trial indicated that two buildings, *i.e.*, a grain bin on skids and a farrowing house, were located on the marital residence real estate for several years. David testified that the buildings were nonmarital property because they were gifts to him from his family. In contrast, Paula testified that the buildings were given to both of them to be used at the marital residence (both buildings were used for storage). The circuit court concluded that the two buildings were marital property and awarded them to Paula. The court noted that the buildings were located on the marital residence property, the contents of the buildings had been awarded to Paula, and Paula was awarded the marital residence.

¶ 22 The circuit court's classification of property as either marital or nonmarital will not be disturbed on appeal unless the classification is against the manifest weight of the evidence. *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 154 (2005). Section 503(b)(1) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/503(b)(1) (West 2010)) instructs that all property acquired by either spouse during the marriage is presumed to be marital property. This "presumption can be overcome only with a showing, by clear

and convincing evidence, that the property falls within one of the statutory exceptions listed in section 503(a) of the Act." *In re Marriage of Wojcik*, 362 Ill. App. 3d at 154. One of the section 503(a) exceptions is where the property has been acquired by gift, legacy, or descent. 750 ILCS 5/503(a)(1) (West 2010).

¶23 Here, the circuit court concluded that the buildings were marital property and awarded them to Paula with the marital residence. Paula testified that the buildings were given to the parties to be used for storage at the marital residence, and the buildings had been located on the marital residence real estate for several years. Accordingly, we do not believe that the circuit court's decision was against the manifest weight of the evidence.

¶24 David also argues that the circuit court's distribution of the marital estate was an abuse of discretion. Specifically, David argues that the circuit court abused its discretion by awarding Paula 100% of the following marital financial accounts: (1) Franklin Templeton IRA valued at \$25,615.76; (2) ING IRA valued at \$3,693.30; (3) ING IRA valued at \$7,904.96; (4) ING IRA valued at \$3,521.32; and (5) First Financial brokerage account valued at \$26,247.75. David also argues that the circuit court abused its discretion by awarding Paula one-half of the following retirement accounts: (1) David's IMRF retirement account; (2) David's State of Illinois retirement account; and (3) David's deferred compensation account. David argues that the court's division of the financial accounts was an abuse of discretion because he has to provide for his own housing in the future; his retirement prospects are limited by the division of the accounts; and Paula received more of the marital estate. David asserts that the financial accounts should have been divided equally between the parties.

¶25 The circuit court's determination concerning the ultimate division of marital property is reviewed under an abuse-of-discretion standard of review. *In re Marriage of Hubbs*, 363 Ill. App. 3d at 700. An abuse of discretion occurs when no reasonable person would take the

view adopted by the trial court. *In re Marriage of Gable*, 205 Ill. App. 3d 696, 699 (1990). Section 503(d) of the Act (750 ILCS 5/503(d) (West 2010)) instructs the court to divide marital property in "just proportions."

¶ 26 Here, the evidence indicated that David earned \$76,602 per year from his employment with the State of Illinois and \$6,600 per year in his position as an elected member of the White County Board. The circuit court awarded him the 41.68 acres of farmland that was owned by the parties. In 2010, this farmland produced approximately \$7,000 in farm income. He also has the ability to earn extra money from his auction business. Additionally, the evidence indicated that David voluntarily contributed \$1,330 per month from his state salary to his deferred compensation plan. Further, the trial court concluded that David dissipated \$19,111 in marital assets by paying his reasonable attorney fees with marital funds, an amount the court considered as an advance from his portion of the marital assets.

¶ 27 Paula earned a salary of \$375 per week in her employment as a bookkeeper. David was ordered to pay her \$1,000 per month in maintenance for a period of six years to supplement this income. Paula suffered permanent injury that may affect her employment in the future. Therefore, the trial court's division of the marital financial accounts was in just proportions and was not a division that no reasonable person would accept. Accordingly, we find the trial court's division of the marital property was not an abuse of discretion.

¶ 28 Last, David argues that the circuit court abused its discretion in ordering him to pay a portion of Paula's attorney fees. Generally, attorney fees are the responsibility of the party who incurred the fees. *In re Marriage of Schinelli*, 406 Ill. App. 3d 991, 995 (2011). To justify an award of attorney fees, the party seeking payment must show a financial inability to pay the fees and the ability of the other spouse to do so. *In re Marriage of Gable*, 205 Ill. App. 3d at 700. "Financial inability exists when payment would strip that person of his or her means of support and undermine his or her economic stability." *Id.*

¶ 29 Here, David argues that the parties' income is similarly situated following the circuit court's disposition of the marital assets and the award of maintenance and therefore he should not be responsible for one-half of Paula's outstanding attorney fees, which totaled \$7,715.47. As explained above, David voluntarily contributed \$1,330 per month to his deferred compensation plan, had the ability to earn additional income from his auction business (this income was not factored in the court's calculation of David's income), and dissipated \$19,111 of the marital estate when he paid his reasonable attorney fees with marital funds. In the judgment for dissolution of marriage, the court noted that Paula suffered from a permanent disability and would be required to pay health insurance premiums, real estate taxes, homeowner's insurance on the marital residence, and car insurance (expenses that David was paying following a temporary order of the court entered June 14, 2010). David was living in his mother's home while remodeling a home owned by her with the intention of living there. He was making the improvements to the home in lieu of paying \$350 per month in rent. Accordingly, we do not believe that the circuit court abused its discretion by ordering David to pay one-half of the outstanding balance of Paula's attorney fees.

¶ 30 For the foregoing reasons, the judgment of the circuit court of White County is hereby affirmed.

¶ 31 Affirmed.