

No. 1-12-2974

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IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> Marriage of:)	Appeal from the
)	Circuit Court of
MAUREEN PULLEN,)	Cook County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 07 D2 30434
)	
JOHN PULLEN,)	The Honorable
)	Elizabeth Loredó-Rivera,
Respondent-Appellant.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

ORDER

HELD: The trial court properly followed intent of our prior mandate related to the instant cause, had jurisdiction over the parties and the marital asset at issue, and its prior determination regarding the valuation and distribution of this asset was not void. However, we would remand for the sole and limited purpose of removing certain specific language used by the trial court, as described herein. In addition, the trial court did not err by including personal goodwill in the valuation and distribution of the asset, in its valuation or distribution of the asset, or in its award of attorney fees and child support.

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¶ 1 Following a decision entered by this Court vacating in part a previous trial court order regarding the valuation and distribution of a company owned by respondent-appellant John Pullen (John) during divorce proceedings with petitioner-appellee Maureen Pullen (Maureen) due to the existence of a bankruptcy stay on this property, Maureen moved the trial court to reenter its original judgment once the bankruptcy was closed. The trial court eventually granted her motion and reinstated its prior determinations regarding the valuation and distribution of the company. John appeals, asserting five contentions of error for review, namely, that the trial court (1) erred when it failed to follow our mandate; (2) erred when it included his personal goodwill in the valuation and distribution of the company; (3) erred in distributing the marital assets; (4) erred in its valuation of the company; and (5) erred in awarding attorney fees to Maureen and in its assessment of child support. John asks that we reverse and vacate the judgment of the trial court with instructions to enforce our mandate by vacating the void portions of the judgment order and redistributing the parties' assets in an equitable manner without charging the value of the company against his share of the marital estate. For the following reasons, we affirm, with limited remand.

¶ 2

BACKGROUND

¶ 3 This cause was originally before this Court pursuant to John's appeal, whereupon we issued a decision. *In re Marriage of Pullen*, No. 1-10-0238 (2011) (unpublished order under Supreme Court Rule 23). As the instant appeal relates to that, we will not recite every fact presented therein, but only those pertinent to our decision here.

¶ 4 During the lengthy and contentious divorce proceeding between John and Maureen, it

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was revealed that, during their 14-year marriage, John, an electrical subcontractor, became the president and sole shareholder of Ripec, Inc. (Ripec), a company he established and which consisted of a clerical staff, a sales staff and working electricians. Maureen filed for divorce in August 2007, and various issues regarding the divorce, such as child support, visitation, the sale of the parties' multiple homes, attorney fees, etcetera, were dealt with accordingly. Trial regarding the remaining issues in the divorce proceeding, including the division of the marital estate to which Ripec belonged, was to begin in June 2009.

¶ 5 In January 2009, the trial court entered an order setting the briefing schedule for the parties, directing them to disclose the names of any Illinois Supreme Court Rule 213 witnesses by February 5, 2009, and to exchange any of these witnesses' reports by March 5, 2009. The trial court notified the parties that discovery would close on March 31, 2009. John did not meet these deadlines and, when he filed a motion in the trial court for an extension of time to file his Rule 213 disclosures, the trial court denied his motion, thereby barring the presentation of any such witnesses on his behalf at trial.¹

¶ 6 Then, on April 28, 2009, before the scheduled start of the June 2009 trial, Ripec filed for chapter 7 bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois.

¶ 7 As the bankruptcy proceeding commenced, the trial court, meanwhile, continued with the divorce trial as scheduled. Relevant to the instant appeal, Maureen presented the testimony of

¹The facts surrounding John's failure to comply with the discovery deadlines, as well as the trial court's reasoning and decision to sanction him with the bar of any Rule 213 witnesses was discussed in our prior decision. See *Pullen*, No. 1-10-0238, at 3, 19-22 (2011) (unpublished order under Supreme Court Rule 23).

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Michael Goldman, a business valuation expert who had examined Ripec and had prepared a report regarding the company's value.² Goldman was questioned and testified at length about the methods he used to value Ripec, the company's revenues and receipts, the goodwill involved, its record-keeping practices, and its bankruptcy. It was Goldman's opinion that the bankruptcy was fraudulent and that Ripec was worth \$822,500. Goldman further testified that, with respect to goodwill, he had not included this in his analysis of the business.

¶ 8 Following the testimony of several other witnesses, including the parties themselves, regarding myriad issues that were part of the divorce, the trial court ultimately entered a judgment for dissolution of marriage on December 22, 2009. In addition to finding Maureen was credible in her testimony and John was not, the trial court went on to divide the marital estate between the parties. With respect to Ripec, the trial court found that John had blatantly and willfully forced the company into bankruptcy in order to avoid the payment of support to Maureen and to dissipate its value so it could not be considered as a distributable asset during the divorce. Turning to Goldman, who the court noted "was questioned extensively" regarding Ripec, it expressly found him to be "qualified *without objection* as an expert in : 1.) business valuation; 2.) fraud examination; and 3.) bankruptcy insolvency services." (Emphasis in original.) Relying, then, on Goldman's testimony, the trial court set the value of Ripec at \$822,500, declared that John had dissipated the marital estate of this value due to the bankruptcy, and charged this entire amount to his distributive share of the estate. The court also found that

²In accordance with the trial court's discovery deadlines, Maureen had timely and properly disclosed Goldman as a Rule 213 witness who would be testifying as to the valuation of Ripec.

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Ripec had no personal goodwill. Finally, the court made several other holdings with respect to the parties and the marital estate: it divided the remaining assets, it "considered the dissipation by each party" and found that John had dissipated at least \$10,000 but did not assign any dissipation to Maureen, and it ordered that John should pay \$75,000 to Maureen for her attorney fees and \$3,279 per month in child support³.

¶ 9 The bankruptcy proceeding concerning Ripec closed on January 19, 2010, after the trial court had issued its December 22, 2009 divorce judgment.

¶ 10 The next day, John filed a notice of appeal regarding the trial court's judgment in our Court. He asserted some seven contentions for our review. The first four of these all dealt with the trial court's findings regarding Ripec and its effect on the division of the marital estate. He claimed that the trial court erred in including his personal goodwill in the valuation and distribution of Ripec as a divisible marital asset, that this inclusion of his goodwill resulted in the improper distribution of the marital assets in a one-sided manner, that the court's valuation of Ripec was against the manifest weight of the evidence and that the court's finding that he intentionally bankrupted Ripec and was voluntarily underemployed was against the manifest weight of the evidence. John also made an overarching argument regarding Ripec, asserting that the trial court had violated the automatic stay in bankruptcy and, thus, had exceeded its jurisdiction in considering and ruling on issues involving the valuation and distribution of Ripec in its judgment for dissolution. John's remaining three contentions on appeal challenged the trial

³The parties have three children; Maureen was awarded full custody of them as part of the divorce.

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court's findings with respect to dissipation and the presentation of certain witnesses at trial: he asserted that the trial court had abused its discretion when it failed to charge Maureen's dissipation to her share of the marital property, that its finding that he dissipated \$10,000 was against the manifest weight of the evidence, and that the court had abused its discretion when it barred him from presenting his own Rule 213 witnesses to testify regarding the valuation of Ripec as a discovery sanction where he was late in disclosing these witnesses.

¶ 11 Upon our thorough review of the arguments and the record in the cause, we issued our decision on May 20, 2011. See *Pullen*, No. 1-10-0238 (2011) (unpublished order under Supreme Court Rule 23). Considering John's first four contentions regarding Ripec together, we agreed with his overarching argument and held that the trial court's judgment for dissolution was void with respect to the portions dealing with the valuation and distribution of Ripec as a marital asset due to a lack of subject matter jurisdiction. See *Pullen*, No. 1-10-0238, at 10 (2011) (unpublished order under Supreme Court Rule 23). Briefly, we concluded that, because a stay over property in a bankruptcy estate is automatically invoked under section 362(a) of the United States Bankruptcy Code (Bankruptcy Code) when a bankruptcy is filed, and because Ripec had filed for bankruptcy before the trial court entered its judgment (a bankruptcy which continued until January 2010 when it closed), a stay was in effect over any issue dealing with Ripec at the time the trial court issued its judgment. See *Pullen*, No. 1-10-0238, at 10 (2011) (unpublished order under Supreme Court Rule 23). In other words, while the trial court had the authority to legally dissolve the parties' marriage and to deal with a wide array of matters such as child support and attorney fees, it had no authority to make a determination as to the value of Ripec or

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to distribute this value between the parties at the time that it did, since Ripec was subject to bankruptcy. See *Pullen*, No. 1-10-0238, at 10 (2011) (unpublished order under Supreme Court Rule 23). Therefore, we declared void those portions of the trial court's judgment dealing with Ripec. See *Pullen*, No. 1-10-0238, at 10, 15 (2011) (unpublished order under Supreme Court Rule 23).

¶ 12 However, in a footnote, we briefly cited *Cohen v. Salata*, 303 Ill. App. 3d 1060, 1066 (1999), suggesting that, once the automatic stay in bankruptcy is no longer in effect, there would be no impediment to the trial court's ability to acquire subject matter jurisdiction over Ripec and to conduct a valuation and distribution of it between the parties as part of their marital estate, if Maureen should present a discharge order issued by the bankruptcy court and should she file a complaint and complete service accordingly. See *Pullen*, No. 1-10-0238, at 15, n.2 (2011) (unpublished order under Supreme Court Rule 23).

¶ 13 Regarding John's remaining contentions on appeal, we addressed these three separately, concluding that we could not agree with him with respect to any of them. First, we held that the trial court did not abuse its discretion, and its decision was not against the manifest weight of the evidence, when it chose not to assess any dissipation against Maureen. See *Pullen*, No. 1-10-0238, at 17-18 (2011) (unpublished order under Supreme Court Rule 23). Similarly, we next held that the trial court's decision to assess \$10,000 in dissipation against John for his personal and corporate credit card usage was not against the manifest weight of the evidence, since it was clearly based on evidence presented at trial which remained predominately unchallenged by John. See *Pullen*, No. 1-10-0238, at 18-19 (2011) (unpublished order under Supreme Court Rule 23).

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And, finally, we held that the trial court did not abuse its discretion in barring John from presenting any Rule 213 witnesses as a discovery sanction; not only had the trial court considered the pertinent legal factors in rendering its decision, but it was clear that John's Rule 213 witnesses would have only testified regarding the valuation of Ripec, which would have been superfluous in light of Goldman's stipulated testimony and, regardless, was not a subject properly before the trial court. See *Pullen*, No. 1-10-0238, at 20-22 (2011) (unpublished order under Supreme Court Rule 23).

¶ 14 Accordingly, we ultimately vacated the trial court's order in part regarding any valuation and distribution of Ripec as a marital asset as void *ab initio* in violation of the automatic stay provision of section 362(a) of the Bankruptcy Code, and we affirmed the trial court's order in part regarding its determination of dissipation against Maureen and John and its decision to bar John's Rule 213 witnesses from testifying at trial.

¶ 15 Shortly after our mandate issued, Maureen filed a petition to enter supplemental judgment for dissolution of marriage, wherein she asked the trial court, now that the bankruptcy had concluded and the stay had been lifted, to reenter its judgment regarding the valuation and distribution of Ripec it had reached at trial. John objected, arguing that Maureen had not presented a final order from the bankruptcy court formally indicating that the stay had been lifted, nor had she filed a new complaint and completed service regarding this issue as we had directed her to do in our decision pursuant to our footnote. In addition, John asked the trial court to enforce our mandate and to modify its order by removing anything therein relating to Ripec. On December 15, 2011, the trial court granted Maureen's petition. In its order, the trial court

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acknowledged our decision finding that it had no jurisdiction and, thus, no authority to value and distribute Ripec at the time that it had. However, it noted that the parties had stipulated that the bankruptcy had been closed and the case summary documents concerning this were with the court. In light of this, and pursuant to our decision, the trial court declared that it now had the authority to decide any issue as to Ripec. And, because it had "already heard all the evidence" concerning Ripec at trial including "extensive evidence" from Maureen's expert witness who was "qualified without objection," and because John remained barred from presenting anything more concerning it, there was "no reason for" the trial court "to rehear all the evidence yet again." Accordingly, the trial court "re-adopted" its prior findings and orders as to the valuation and distribution of Ripec it had reached at the time it entered the original divorce judgment of December 22, 2009, and "re-affirmed and re-incorporated" them into a supplemental judgment for dissolution of marriage, as set forth therein.

¶ 16 John filed a motion to reconsider, arguing that the trial court had failed to follow our mandate and that it still had no subject matter jurisdiction. Maureen responded by arguing that, because the parties had stipulated as to the close of the bankruptcy case, there was no need to file a new complaint, complete service and conduct a new hearing on Ripec. After considering all this, the trial court granted John's motion to reconsider. The trial court noted that John was correct in that, while the parties had stipulated to the close of the bankruptcy estate and had submitted the appropriate documentation, Maureen had not taken any step, other than to file her petition for supplemental judgment, to effect jurisdiction. Accordingly, on May 29, 2012, the court vacated its December 15, 2011 supplemental judgment for dissolution of marriage and

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denied Maureen's petition.

¶ 17 On June 1, 2012, Maureen filed a second petition to enter supplemental judgment for dissolution of marriage. This time, Maureen sent notice to John and to the United States Bankruptcy Trustee. John objected, arguing that the trial court still lacked jurisdiction and that Maureen had still not followed the steps necessary for the court to obtain jurisdiction since she had not filed a new complaint and had not served him with it. He also argued that, even if the court had jurisdiction, it could not simply reenter the same decision.

¶ 18 On September 21, 2012, the trial court granted Maureen's second petition to enter supplemental judgment. At the outset, the court noted that, this time, Maureen had "complied with the service requirement" by serving the bankruptcy trustee and John with her petition. Then, the court reiterated that it had "heard extensive evidence" regarding Ripec at trial during the divorce proceeding from an expert who had been qualified without objection, and that our Court had affirmed its bar on any further evidence from John in this regard. Thus, the court determined that it required "no further evidence" as to the valuation of Ripec or its dissipation. Accordingly, the trial court concluded that its "prior findings and orders *** in its Judgment for Dissolution of Marriage entered on December 22, 2009 as to the valuation and distribution of Ripec, Inc. are re-affirmed and re-incorporated into this Supplemental Judgment for Dissolution of Marriage."

¶ 19 In addition to granting Maureen's second petition, the trial court issued an order on this same date. In it, the trial court stated that the issue in these proceedings was whether entry of the supplemental judgment, which it stated "mirrors the same judgment entered before the appeal," is

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proper "now that the bankruptcy of Ripec has been terminated, *and* now that Maureen has taken additional steps." (Emphasis in original.) After again quoting our reference to *Cohen* in our decision on appeal, the trial court answered this question affirmatively. First, the court noted that it had been presented with the proper documentation that the bankruptcy case was over. Second, the court found that Maureen "has complied with the Appellate Court's procedural requirements;" the court found that she satisfied the requirement of filing a "complaint" by having filed her petition to enter supplemental judgment which was proper in the context of a divorce proceeding, and she satisfied the requirement of service by serving the United States bankruptcy trustee, the case trustee for Ripec, and thereby John, who, as sole shareholder, was a party to any action involving the now-dissolved company. Then, finding that "the evidence [of Ripec's valuation] would be the same because the Appellate Court did not find fault with the trial court's decision" regarding Maureen's nondissipation, John's dissipation and its bar of any Rule 213 witnesses by John, and, again, since it had heard extensive evidence from a qualified and unchallenged expert witness, the trial court entered judgment on Maureen's behalf, as per its accompanying order granting her second petition to enter supplemental judgment for dissolution of marriage.

¶ 20

ANALYSIS

¶ 21 Similar to his previous appeal before this Court, John, as noted, currently raises several issues for our review. The first of these attacks the trial court's September 21, 2012 grant of Maureen's second petition and its accompanying order "re-affirm[ing] and re-incorporat[ing]" its prior findings regarding the valuation and distribution of Ripec into its supplemental judgment for dissolution of marriage as void for lack of jurisdiction. He then presents his remaining

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arguments on appeal, which include more substantive matters such as the trial court's valuation and distribution of Ripec, its distribution of the marital assets, and its award of attorney fees and child support, in the alternative should we conclude that jurisdiction was proper.

¶ 22 I. Jurisdiction and Our Prior Mandate

¶ 23 We turn, first, to John's argument regarding jurisdiction, as it is a threshold matter for this appeal. John asserts that the trial court erred when it failed to follow our prior mandate. He claims that, since we declared as void *ab initio* all portions of the judgment for dissolution of marriage relating to the valuation and distribution of Ripec without any direction for remand, all the trial court was permitted to do was to modify its judgment by removing its discussion and valuation of Ripec from its order, removing the \$822,500 charge against John's share of the marital estate, and redistributing the assets to reflect an equitable split, making this its final judgment. However, because, as John characterizes, the trial court went on to conduct further proceedings to determine the value of Ripec and to again charge that value against his share of the marital estate without Maureen having first filed a new complaint and serving him, as he says our Court told her she must, the trial court still lacked subject matter jurisdiction over Ripec when it entered its supplemental judgment.

¶ 24 Based on the record before us, we disagree with John's argument and his characterization of what occurred here.

¶ 25 As we have described, in our prior decision, we were faced with the dilemma of the trial court having valued and distributed a marital asset that, at the same time, comprised an asset in a bankruptcy estate. Pursuant to our review of the law, it was clear that, while the state trial court

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has jurisdiction to enter a divorce decree, a pending federal bankruptcy action takes precedent over such a state court action with respect to the asset at issue. See *Pullen*, No. 1-10-0238, at 8-9 (2011) (unpublished order under Supreme Court Rule 23). This is the essence of the Bankruptcy Code's automatic stay provision of section 362(a). See 11 U.S.C. § 362(a) (1994); *Pullen*, No. 1-10-0238, at 9 (2011) (unpublished order under Supreme Court Rule 23). As applied to John and Maureen's case, the automatic stay took effect immediately and automatically the moment John filed his petition for Ripec's bankruptcy in April 2009, before the start of the state court divorce action. Therefore, while the trial court had every jurisdictional right in December 2009 to legally dissolve the parties' marriage and deal with issues like child custody, child support and attorney fees, it had no authority—no subject matter jurisdiction—to make a determination of the value of Ripec or to distribute this value between the parties. See *Pullen*, No. 1-10-0238, at 10 (2011) (unpublished order under Supreme Court Rule 23). Instead, subject matter jurisdiction over Ripec lay, at that time, within the auspices of the bankruptcy court, as Ripec's bankruptcy was still pending. See *Pullen*, No. 1-10-0238, at 10 (2011) (unpublished order under Supreme Court Rule 23). Accordingly, since the trial court had overstepped its jurisdictional bounds at the time it issued its judgment for dissolution of marriage by valuing and distributing Ripec, those portions—and only those portions—of its decision were null and void. See *Pullen*, No. 1-10-0238, at 10 (2011) (unpublished order under Supreme Court Rule 23). This was, in a nutshell, our holding on appeal.

¶ 26 However, because John repeatedly raised, in his brief on appeal, a potential issue with the timing of the closing of the bankruptcy estate, we went a step further. John, without any record

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proof at the time, stated to us that the bankruptcy case closed on January 19, 2010—shortly after the trial court had entered its judgment for dissolution of marriage. Maureen did not dispute this. While this yet-to-be-proven fact was irrelevant to our decision at that time, we had the foresight to anticipate that an issue would soon arise.

¶ 27 Therefore, in a footnote, we discussed the case of *Cohen*, which we had already cited extensively for our determination that the trial court did not have subject matter jurisdiction over Ripeç—which is now, not surprisingly, at the forefront of the instant appeal. In *Cohen*, the plaintiff filed a malpractice action against the defendant dentists. Two weeks before, however, the defendants had filed for bankruptcy, thereby invoking a section 362(a) bankruptcy stay which remained in effect until the defendants were discharged, which did not occur until long after the plaintiff had filed her complaint. Upon discharge, the defendants were served with the plaintiff's complaint, whereupon they moved to dismiss because it had been filed during the pendency of the bankruptcy, thereby rendering it void for lack of jurisdiction. The trial court granted the defendants' motion and dismissed the plaintiff's complaint. The *Cohen* court agreed. It concluded that, because the plaintiff had filed her complaint against the defendants during the time the automatic stay provision of section 362(a) of the Bankruptcy Code was in effect, her filing was void and the subject matter jurisdiction of the trial court could not be invoked to address her claims against the defendants. See *Cohen*, 303 Ill. App. 3d at 1065-66.

¶ 28 Yet, the *Cohen* court did not end its decision there. While it held that the trial court lacked jurisdiction over the plaintiff's complaint at the time it was originally filed, it could not help but note that the bankruptcy stay, at the time of its decision in the case, was no longer in

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effect, since the defendants had been discharged from their bankruptcy case. See *Cohen*, 303 Ill. App. 3d at 1066. In short, the bankruptcy was now over and the bankruptcy estate had been closed. Accordingly, the *Cohen* court declared that, because of this, there was now "no impediment to the circuit court's ability to acquire subject matter jurisdiction" over the plaintiff's cause if she vested the court with this jurisdiction, namely, "by the filing of a complaint and service of process." *Cohen*, 303 Ill. App. 3d at 1066.

¶ 29 In our decision on appeal, we were the first to admit that *Cohen* was not a divorce case. However, the facts could not have been more similar and the applicable law more directly on point. We, too, were presented with a situation where a state court action was commenced involving an asset currently subject to a federal bankruptcy stay. As *Cohen* made clear, the age-old adage is true even in the law: timing is everything. Just at the trial court in *Cohen* did not have subject matter jurisdiction over the plaintiff's complaint because the defendants had filed for bankruptcy beforehand, the trial court here did not have subject matter jurisdiction over Ripecc because it was an asset in a bankruptcy estate filed before the divorce proceeding had begun. Taking a cue from *Cohen*, we ended our comparison of these cases by reminding the parties that the trial court could acquire subject matter jurisdiction over Ripecc, and over its valuation and distribution, if, as John insisted on appeal, the bankruptcy was truly over and if the trial court was vested accordingly—which, we suggested at the time in line with *Cohen*, meant that Maureen should do something in the vein of filing a complaint and completing service as outlined in *Cohen*. See *Pullen*, No. 1-10-0238, at 15, n.2 (2011) (unpublished order under Supreme Court Rule 23) (suggesting that, "should Maureen present a discharge order issued by the bankruptcy

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court ***, and should she file a complaint and complete service, we find no reason that the trial court would not then, at that time, finally have the legal power to conduct a valuation and distribution of Ripec between the parties as part of their marital estate").

¶ 30 Clinging to the strictures of the language we chose to use at the time of our decision, John's current argument is that Maureen did not satisfy the procedural requirements we ordered in our mandate. That is, he claims that, because her (second) petition to enter supplemental judgment for dissolution of marriage was not a "complaint" and because he was never personally served, Maureen did not file a complaint and complete service as we specifically ordered her to do to vest the trial court with jurisdiction. However, John's argument misses the mark in several respects.

¶ 31 Our mandate was clear that this cause would be returning to the trial court. From our legal reasoning, as applied to the facts before us, John and Maureen's divorce was not over. Instead, even though all the other issues—for example, child custody, child support, division of real property, division of personal property, insurance, attorney fees, medical claims, settlement monies—had all been disposed of, one was left unresolved: Ripec. While the trial court essentially jumped the gun at the time it valued and distributed Ripec between John and Maureen because the bankruptcy stay was in effect, and while we were forced to void its decision in this respect at the time we were presented with the case, the key fact we had gleaned and had stressed from *Cohen* was that, once the bankruptcy stay on Ripec was over, that asset would finally be up for grabs again for valuation and distribution by the trial court.

¶ 32 How would this occur? In *Cohen*, this meant the filing of a complaint and the completion

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of service. Again, we stated in our decision that we had found no legal precedent for the situation before us in the context of a divorce proceeding. Instead, *Cohen* involved an ordinary civil matter—dental malpractice. As we were clear to note, the trial court in *Cohen* had to dismiss the plaintiff's complaint against the defendants because they had filed for bankruptcy before she had filed her cause of action. To vest the trial court with jurisdiction after the bankruptcy was over, now that the defendants' assets were fair game again with the lift of the stay, this would require, as the *Cohen* court stated, the filing of a complaint (since there was none of record pursuant to the dismissal) and service. See *Cohen*, 303 Ill. App. 3d at 1066; see, e.g., *Juszczyk v. Flores*, 334 Ill. App. 3d 122, 125 (2002) (in civil case, trial court obtains jurisdiction when complaint is filed, service is completed and subject matter jurisdiction is satisfied). Due to the circumstances of the *Cohen* case, the plaintiff was starting her lawsuit from scratch.

¶ 33 The intent of our mandate was to effectuate the same outcome as in *Cohen*: to allow the trial court to render its decision now that the bankruptcy stay was lifted. In other words, and applicable to John and Maureen's case, if John was truly correct that the stay was lifted and the bankruptcy court was finished with its determinations regarding Ripec, the trial court should finally be allowed to render its decision regarding the valuation and distribution of Ripec between John and Maureen—the last open issue in their divorce. While, again, this meant the filing of a complaint and the completion of service in *Cohen*, the situation here was totally different. This is not to say that we did not find the requirements announced in *Cohen* to be unimportant. Rather (and as John stresses in his current appeal), we did cite them in our decision. See *Pullen*, No. 1-10-0238, at 15, n.2 (2011) (unpublished order under Supreme Court

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Rule 23). However, John and Maureen's was not just another civil case; it was a divorce proceeding. Unlike the plaintiff's complaint in *Cohen*, Maureen's cause of action—the divorce itself—had never been dismissed. Accordingly, it is no wonder that the procedure to vest the trial court with jurisdiction here would be different from that in *Cohen*.

¶ 34 First, regarding the need to "file a complaint," we find that Maureen's second petition for supplemental judgment, in this context and contrary to John's assertion, was the equivalent of a complaint. Section 411(a) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) governs the commencement of dissolution actions, *i.e.*, how a divorce may legally begin. It states that "[a]ctions for dissolution of marriage *** shall be commenced as in other civil cases or, at the option of petitioner, by filing a praecipe for summons with the clerk of the court ***, in which latter case, a petition shall be filed." 750 ILCS 5/411(a) (West 2010). Accordingly, Maureen, as the petitioner, could either have filed a complaint, just as in any other civil case, or, at her choosing, she could have filed a petition. The Marriage Act gave her the choice, and she chose to file the latter. In this context, her petition was equivalent to the filing of a complaint.

¶ 35 Second, regarding the need to "complete service," we find that this, too, was satisfied within the context before us and the trial court. As we have been highlighting throughout our decision here, John and Maureen's divorce proceeding was wholly different than the ordinary civil cause of action in *Cohen*. Again, whereas the plaintiff's complaint in *Cohen* was dismissed and she was required to restart her legal pursuit from the beginning, Maureen's complaint for dissolution of marriage, filed way back in August 2007, never was. Moreover, divorce cases are simply different, in a category of their own and governed by their own particular laws. While a

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cause for divorce advances a single claim, namely, the legal dissolution of the marriage, there are myriad other issues involved, such as custody, support, maintenance, property division, etcetera, that are ancillary to that cause. See *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983).

These are not separate and unrelated claims but, rather, merely separate issues related to the same claim. See *Leopando*, 96 Ill. 2d at 119; see also *In re Marriage of Mardjetko*, 369 Ill. App. 3d 934, 935-36 (2007) ("the basic issues that a court must resolve in a dissolution proceeding are all part of a single, unified claim"). Therefore, "until all of the ancillary issues are resolved, the petition for dissolution is not fully adjudicated." *Leopando*, 96 Ill. 2d at 119. This is precisely why a divorce court's jurisdiction is said to be "continuing and does not terminate with the entry of the divorce judgment." *In re Marriage of Homan*, 126 Ill. App. 3d 133, 135 (1984); see also *In re Marriage of Adamson and Cosner*, 308 Ill. App. 3d 759, 764 (1999) ("[i]n a dissolution action the trial court retains extraordinary continuing jurisdiction not applicable to civil cases generally").

¶ 36 Moreover, the purpose of service is to give notice to those whose rights are about to be affected by the plaintiff's cause of action and to vest jurisdiction in the trial court over the person whose rights are to be affected. See *O'Halloran v. Luce*, 2013 IL App (1st) 1290230, ¶ 31. In the instant cause, that was completed long ago, when Maureen first filed for divorce, thereby vesting the trial court with jurisdiction over John and all those matters that comprised the divorce, including Ripec's valuation and distribution. From that time on, then, the trial court retained jurisdiction over the parties until all the ancillary issues were disposed of, including, again, Ripec's valuation and distribution. While this was postponed for a time due to the

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bankruptcy stay, the trial court never lost jurisdiction over John and over Ripec, an asset not separate and unrelated, but ancillary and relating specifically to the divorce. Again, until all of the ancillary issues between John and Maureen were resolved, including the valuation and distribution of Ripec, the divorce was not fully adjudicated. See, *e.g.*, *Leopando*, 96 Ill. 2d at 119.

¶ 37 Earlier, we explained the legal holding of our previous mandate. Here, we have just explained our intent behind it. True, some sort of vestment was required in the trial court after the termination of the bankruptcy case. In *Cohen*, that required the filing of a complaint and the completion of service, since the original complaint had been dismissed. Here, the same requirements were satisfied in the unique context that is this divorce case. Maureen's filing of her second petition for supplemental judgment was, under section 411 of the Marriage Act, the equivalent of the filing of a complaint, and, under the extraordinary continuing jurisdiction of divorce law, the trial court never lost personal jurisdiction over John or subject matter jurisdiction over the ancillary matter of the valuation and distribution of Ripec, the last open issue in this divorce. While this subject matter jurisdiction over Ripec may have been postponed for a time due to the bankruptcy stay, the trial court was never fully divested of its authority over this asset of the divorce estate.

¶ 38 It was never our intent with the footnote in our mandate to strictly bind Maureen to file a document entitled "complaint" or to again "complete service" on John in order to vest the trial court with jurisdiction with respect to him or Ripec. We did not mean this to be taken literally; while these may be the steps required in the average civil case involving a bankruptcy stay as in

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Cohen to open the door to the trial court again, these are not so technically required in the instant cause which involves the uniqueness of divorce law. Frankly, it could never have been reasonably concluded by anyone, including John, that simply because Ripec filed for bankruptcy it ceased to be an issue involved in the divorce proceedings. Instead, it was always—at some point in time—going to be dealt with by the trial court; it just could not be dealt with at the time of the bankruptcy stay. And, it was not as if Ripec was the object or subject of an action separate to the divorce. Instead, it was always ancillary to the dissolution. Thus, all that was necessary under *Cohen*, in this context, was for Maureen to present a discharge order issued by the bankruptcy court, and to vest the trial court with jurisdiction. This was done: the parties stipulated to the bankruptcy's termination and presented the trial court with the proper documentary evidence, Maureen filed her second petition for supplemental judgment, and the trial court's continuing jurisdiction over John and Ripec remained intact. Accordingly, we find that the trial court acted properly and in line with the intent of our mandate when it proceeded with the valuation and distribution of Ripec after Maureen completed the necessary requirements to vest it with jurisdiction here, just as we anticipated once the bankruptcy stay over Ripec was lifted. See *PSL Realty Co. v. Granite Investment Co.*, 86 Ill. 2d 291, 308 (1981) (in construing language of appellate court mandate, matters which are implied may be considered embraced by the mandate); accord *Suburban Auto Rebuilders, Inc. v. Associated Tile Dealers Warehouse, Inc.*, 388 Ill. App. 3d 81, 95 (2009) (trial court is to examine reviewing court's decision and proceed in manner conforming with views expressed therein).

¶ 39 Even if we were to agree with John's perception that our mandate required Maureen to

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literally follow the requirements set forth in *Cohen* of filing a complaint and completing service here, we would conclude, based on the facts before us, that Maureen satisfied these.⁴

¶ 40 John claims that Maureen failed to file a complaint and personally serve him. However, as we just discussed, legally, under section 411 of the Marriage Act, Maureen's second petition was the equivalent of a complaint. And, regarding service, in addition to the fact that the trial court had continuing personal jurisdiction over John within the context of the divorce, which had yet to be concluded precisely because of the bankruptcy stay on Ripec, Maureen served John with her second petition in his capacity as both the sole shareholder and successor in interest to Ripec (now dissolved) and as Ripec's registered agent. She also served the United States bankruptcy trustee assigned to the Ripec matter, in case there was any remaining interest the trustee wanted to protect. Moreover, John appeared in court and contested the second petition. He never argued that the trial court did not have personal jurisdiction over him (*i.e.*, that he was never served by Maureen) but, rather, only that it did not have subject matter jurisdiction over Ripec because a whole new lawsuit was required. As such, John waived any issue with respect to service. See *Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 49 (party's appearance before trial court with no objection to court's personal jurisdiction over him constitutes waiver of claim regarding service); accord *LaSalle Bank, N.A. v. DeCarlo*, 336 Ill. App. 3d 280, 287 (2003) (requirement of prior service waived where person participates in court proceeding without objection to jurisdiction). Thus, even had we intended that the trial court take the language of our mandate

⁴Again, we stress that this was not the intent of our mandate; our intent was solely the vestment of jurisdiction with the trial court following the lift of the bankruptcy stay, whatever that meant in the situation before the trial court.

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literally, we would still find that the court abided by it and acted in accordance with it by finding that Maureen satisfied the steps required under *Cohen* to vest the court with personal jurisdiction over John and subject matter jurisdiction over Ripec.

¶ 41 In a final note here, John makes one last argument regarding jurisdiction and our mandate. Whereas his prior argument focused on the procedural ability of the trial court to deal with Ripec following the bankruptcy stay, this argument centers on the court's substantive finding regarding the valuation and distribution of Ripec. He asserts that even if the trial court had subject matter jurisdiction over Ripec, its supplemental judgment, which "re-affirmed and re-incorporated" its initial valuation of Ripec at \$822,500 and its charge of this amount against John's share of the marital estate, was still void since the proceedings it relied upon were *coram non judice*. In other words, he claims that even with jurisdiction over Ripec, the court's initial valuation and distribution of Ripec in its December 22, 2009 judgment for dissolution could not be retroactively validated since those proceedings over Ripec did not take place before a proper authority. We ultimately disagree.

¶ 42 John is somewhat correct. *Coram non judice* translates to "before a person not a judge," and means that the proceeding in question cannot be considered a judicial proceeding because lawful judicial authority was not present and, therefore, a legally valid judgment could not have been produced. See *Burnham v. Superior Court of California, County of Marin*, 495 U.S. 604, 608-09 (1990). The result of a *coram non judice* proceeding is to invalidate, or not recognize, the resulting judgment. See *Burnham*, 495 U.S. at 609. Such reasoning would be in line with what we held in our mandate. Due to the bankruptcy stay, we declared that the trial court's

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valuation and distribution of Ripec, as contained in its divorce judgment, was void *ab initio* since it lacked subject matter jurisdiction over that asset at that time. A judgment that is void *ab initio* is one that is as if it never existed. See, e.g., *In re Marriage of Newton*, 2011 IL App (1st) 090683, ¶ 39. Accordingly, pursuant to our mandate, it was to be as if that portion of trial court's judgment assessing Ripec to be worth \$822,500 and charging that amount against John's share of the marital estate never occurred.

¶ 43 However, John takes this a bit further by stating in his brief that, under the concept of *coram non judice*, because the proceedings did not take place before a proper authority, "[t]hey are just as void as the judgment itself." However, such an argument is, we feel, stretching the concept, particularly with respect to the unique facts of the instant cause. We note that John points us to no case specifically declaring that *proceedings* heard by a trial court that are later found to be *coram non judice* are void, rather than just the judgment itself. In fact, the only mention he cites is a sentence in a special concurrence found in *Lind v. Spannuth*, 8 Ill. App. 3d 442, 450 (1956), which, in turn, cites a different case, *Austin v. Dufour*, 110 Ill. 85 (1884), and generically states "unless the court has jurisdiction both of the person and subject matter of the suit, its proceedings will be *coram non judice*, -or, in other words, void." Contrary to this, the majority of modern cases discussing *coram non judice*, as we noted earlier, do not go so far as to void the proceedings had but, rather, only the judgment reached. See *Burnham*, 495 U.S. at 609 (declaring only the judgment to be not recognizable as a result of *coram non judice* and not the proceedings themselves); accord *Progressive Party v. Flynn*, 401 Ill. 573, 579-80 (1948) (under *coram non judice*, all the court's "orders and acts" relative to the cause are "ineffectual for any

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purpose").

¶ 44 In addition, John fails to cite one of the only divorce cases discussing *coram non judice* that is of any relevance here: *Farris v. Kiriazis*, 329 Ill. App. 225 (1946). Briefly, in *Farris*, the plaintiff wife filed a petition for order fixing alimony to be paid her by the defendant husband pursuant to the power reserved to the trial court in the final decree awarding the plaintiff a divorce. The court dismissed her petition for lack of jurisdiction to award alimony at that time, since the divorce was already final. The plaintiff appealed, and the defendant sought the affirmance of the dismissal, asserting that the court was required to resolve the question of alimony at the time the divorce was granted and could not do so now in a different proceeding, thereby rendering the entire proceeding for alimony *coram non judice*. See *Farris*, 329 Ill. App. at 231. The *Farris* court disagreed, specifically stating with respect to the principles and operation of the concept of *coram non judice* that "[w]e are of the opinion that the settled practice in this state is otherwise." *Farris*, 329 Ill. App. at 231 (emphasis in original). It went on to explain that, in the context of divorce, the plaintiff's petition asked for two items of relief: a dissolution of her marriage and the allowance of support. See *Farris*, 329 Ill. App. at 231. Finding that the prayer for alimony was incidental to the main relief sought, the *Farris* court dismissed the defendant's *coram non judice* argument by concluding that "[i]t was entirely in harmony with recognized equity practice to grant a final decree as to the main question, viz., the divorce, and to retain jurisdiction of the incidental matter of alimony till some later date and term for any reason which seemed to the court to justify that course." *Farris*, 329 Ill. App. at 231 (see also numerous cases cited therein expressing same).

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¶ 45 While subtle, this is a distinction with a difference. Under John's proposition of *coram non judice*, any proceeding—any testimony or evidence—the trial court heard and considered during the original divorce proceeding regarding Ripec is to be considered void, along with its original valuation and distribution. However, under our consideration of the concept, and in line with the holding of *Farris*, while the trial court's original valuation and distribution are technically void (as John asserts and as we declared in our mandate), we would find no reason to also completely void the proceedings that led to its decision. Again, in light of all the case law regarding *coram non judice* we have just reviewed, as well as the unique facts of this case, we conclude that the latter rendition is the correct one to be applied here.

¶ 46 It is not, nor has ever been, disputed that the trial court, at the time of the initial dissolution proceedings, heard expert testimony from Goldman regarding Ripec—its value, its revenue and receipts, its goodwill, its record-keeping practices and its bankruptcy. Indeed, throughout the duration of this cause, there was at least one theme that was constantly repeated: the trial court had heard extensive evidence from Goldman, who was found to be an expert qualified in this field without objection from John. In addition, we cannot forget the genesis of Goldman's testimony. At the outset of the dissolution so many years ago, the trial court had set expert witness disclosure deadlines with which Maureen complied but John did not. Any such evidence John sought to bring in regarding Ripec was barred by the trial court. Hence, the testimony of Goldman was presented at trial, but none from a competing witness on John's behalf. John attempted to appeal this decision before our Court, whereupon we affirmed the trial court's bar. See *Pullen*, No. 1-10-0238, at 21-22 (2011) (unpublished order under Supreme Court

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Rule 23). This is a holding that still stands.

¶ 47 Accordingly, from all this, and in the interest of judicial economy, we find no reason to, as John would have us, declare void the proceedings the trial court had with respect to Ripec during the dissolution of the parties' marriage. While it is true that our mandate voided *ab initio* the trial court's judgment valuing Ripec at \$822,500 and charging this amount against John's share of the marital estate, the proceedings the court conducted to reach that decision are not void. Just as in *Farris*, Maureen has asked for two branches of relief: the dissolution of her marriage and the valuation and distribution of Ripec. Her prayer for the valuation and distribution of this marital asset was incidental to the main relief she sought. Thus, there is no reason to not only grant the divorce, but also reserve jurisdiction with the trial court of this incidental matter until a time it could decide it, *i.e.*, after the stay in bankruptcy was over. Again, the trial court had already heard lengthy and extensive testimony from an expert regarding the main issue here—the valuation of Ripec. This testimony was never rebutted or challenged by John and, due to the Rule 213 expert witness bar, it can never be. To declare the proceedings, along with the judgment, void would require the trial court to start from scratch and rehear testimony that is already in the record, remains valid, and cannot ever be challenged. This is simply not necessary nor required under the circumstances.

¶ 48 Perhaps the current situation could have been avoided had the trial court chosen to word its supplemental decision differently. Instead of ordering that its initial valuation of Ripec was "re-affirmed and re-incorporated" into the supplemental judgment for dissolution, thereby reentering an order we had determined to be void *ab initio*, it simply should have entered the

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judgment of an \$822,500 value as to Ripec, to be charged against John's share of the marital estate, based on the evidence presented at trial, which was still valid and which was never challenged by John. Clearly, this would have avoided the voidness issue and would have been in line with the fact that, due to the Rule 213 expert witness bar, John could not, nor cannot even now, present any additional evidence regarding Ripec's valuation.

¶ 49 Ultimately, as it stands, and based on our prior findings, the trial court's decision was, though harmless in light of the facts, inartfully worded. Accordingly, having concluded that the trial court followed the intent of our mandate, that it had jurisdiction over John and Ripec, and that its prior proceedings were not void, we would affirm the court's grant of Maureen's second petition for supplement judgment, along with its order valuing and distributing Ripec as it has. However, we would remand for the sole and limited purpose of removing the "re-affirmed and re-incorporated" language the court chose to use, along with any reference to its initial valuation and distribution from its December 2009 order and, instead, to replace it with a simple holding that, based on the uncontroverted evidence presented and still of record in this cause, it values Ripec at \$822,500 and that this amount should be charged against John's share of the marital estate.

¶ 50 II. Alternative Arguments

¶ 51 Having found that jurisdiction properly lay with the trial court, we now turn to John's remaining alternative arguments on appeal.

¶ 52 In the first of these substantive issues, John contends that the trial court erred when it included his personal goodwill in the valuation and distribution of Ripec as a divisible marital

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asset. Citing the trial court's finding in its December 2009 dissolution judgment that Ripec had no personal goodwill as a company, he asserts that this was clearly against the manifest weight of the evidence in light of Goldman's testimony that the majority of Ripec's value was its personal goodwill. Based on this, John claims that the trial court improperly divided this asset between the parties in contravention of Illinois law and asks that we reverse and remand with instructions to redistribute the marital assets and to credit his share of the marital estate in the amount of \$735,706.⁵ In conjunction with this, John next argues that, were we to agree that the trial court erred in including his personal goodwill in its division of the marital estate, we must further reverse and remand, since this error materially affected the distribution of the marital assets in a one-sided manner against him and in favor of Maureen, who was awarded "an unintended windfall." However, because we conclude that the trial court did not err in its valuation and distribution of Ripec, we disagree with both of John's arguments here.

¶ 53 Goodwill comprises the value of a business beyond just its physical assets. See *In re Marriage of Talty*, 166 Ill. 2d 232, 238 (1995) (this is not a consideration for only professional corporations anymore). As John points out, there are two types of goodwill in the context of business analysis. Enterprise goodwill is that which is attributable to the business itself; it exists independent of anyone's particular personal efforts with respect to the business and it will outlast anyone's particular involvement in the business. See *Talty*, 166 Ill. 2d at 240. Meanwhile, personal goodwill is that which is attributable to a particular person involved in the business, is

⁵John arrives at this figure by taking Goldman's testimony that Ripec was worth \$822,500, and subtracting \$86,794, Goldman's estimate of Ripec's combined physical assets.

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personal to him, depends on his efforts with respect to the business and will cease once his involvement in the business ends. See *Talty*, 166 Ill. 2d at 240. Our law has declared that enterprise goodwill is to be considered an asset of the business and, thus, of a marriage; therefore, it is a divisible marital asset. See *Talty*, 166 Ill. 2d at 240. Conversely, it has been established that personal goodwill is not to be considered property or an asset of the business; therefore, it is not a divisible marital asset. See *Talty*, 166 Ill. 2d at 240. Ultimately, in determining and calculating goodwill, it is critical to remember that "[g]oodwill represents merely the ability to acquire future income." *Talty*, 166 Ill. 2d at 239.

¶ 54 Again, the crux of John's argument here is that the trial court erred when it concluded that Ripec had no personal goodwill. However, John ignores the fact that, at the time of trial, as well as at the time the trial court rendered its decision, Ripec was in bankruptcy. In other words, Ripec was no more; it was a bankrupt company that had ceased to exist. If, as our law describes, goodwill of either kind, personal or enterprise, is the consideration of a company's ability to acquire future income above and beyond the value of its current physical assets, then Ripec clearly did not have any goodwill. See *Talty*, 166 Ill. 2d at 238-40. Ripec, for all intents and purposes, was defunct. It was not as if, as common sense indicates, Ripec was an ongoing business for which goodwill could be characterized and calculated. Indeed, John points us to no case law indicating that a goodwill valuation can be made with respect to a dead company. See, e.g., *Talty*, 166 Ill. 2d 232; *In re Marriage of Alexander*, 368 Ill. App. 3d 192 (2006) (and cases cited therein all discussing goodwill valuations of ongoing businesses). Accordingly, we find no reason to take issue with the trial court's determination that Ripec had no personal goodwill.

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¶ 55 Moreover, in valuing and distributing Ripecc, the trial court made clear that it was doing so pursuant to a dissipation analysis. That is, the court stated that Ripecc, now bankrupt, was the marital estate's "most valuable asset," and that John had dissipated it of all its value. Pursuant to section 503(d)(2) of the Marriage Act, in a divorce proceeding, the trial court is to divide the marital property, which includes all property acquired by either spouse subsequent to the marriage, "in just proportions considering all relevant factors, including *** the dissipation by each party of the marital or non-marital property." 750 ILCS 5/503(a), (d)(2) (West 2010). In dividing this property, "just portions" does not mean strict equality, but only a division that is naturally equitable based on all the surrounding circumstances. See *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 658 (1998). Thus, each case of proper apportionment, as well as the determination of whether a spouse has dissipated the marital assets, rests on its own unique facts. See *In re Marriage of Vernon*, 253 Ill. App. 3d 783, 785 (1993); see also *In re Marriage of Tabassum and Younis*, 377 Ill. App. 3d 761, 779 (2007). And, once a *prima facie* case of dissipation is made, the charged spouse must show by clear and convincing evidence how the marital funds were spent; if he does not, the trial court must find dissipation. See *Tabassum*, 377 Ill. App. 3d at 779. The trial court has broad discretion in the valuation and distribution of marital assets which will not be disturbed absent an abuse (see *Nelson*, 297 Ill. App. 3d at 658; *Kew v. Kew*, 198 Ill. App. 3d 61, 65 (1990)), and, similarly, we review the trial court's findings of dissipation under a manifest weight of the evidence standard (see *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 374 (2008); *Tabassum*, 377 Ill. App. 3d at 779). See also *In re Marriage of Jelinek*, 244 Ill. App. 3d 496, 503, 507-08 (1993) (trial court's classification of property as

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marital or nonmarital will not be overturned unless against manifest weight of evidence, and its valuation of marital assets will not be disturbed on appeal, particularly if it falls within range testified to by expert).

¶ 56 The facts of the instant cause are relatively clear. Goldman, who, again, testified at length and without objection as a qualified expert in business valuation, set the value of Ripec at \$822,500. He testified, repeatedly, as found in the record, that he did not consider goodwill of any kind in his valuation. It was also his opinion that Ripec's bankruptcy was fraudulent. The trial court agreed, citing several facts in support of its conclusion that John purposefully bankrupted Ripec in an effort to dissipate this asset of the marital estate so it could not be distributed between the parties. Not only did the court blast John for his less than candid testimony regarding Ripec, but it noted multiple examples of John's use of Ripec's money in the few months before its bankruptcy for his own personal matters, including cash withdrawals to pay for his attorney fees, his income taxes, his real estate taxes and his child support payments. The court also noted that during the marriage, John had used Ripec money to pay family expenses, including a second mortgage on the family home.

¶ 57 Next, the court examined the un rebutted testimony of Daniel Breen, an electrical contractor who had his own company that shared a bank account with John. Breen testified that this account was actually a conduit to receive and disburse funds derived by Ripec in an effort to hide the money from its electricians' unions, from the court and from Maureen. John kept money in this account and used it as recently as January 2009, long after these legal proceedings had begun. In a 2007 conversation, John told Breen that he planned to bankrupt Ripec. Particularly

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significant to the trial court was the timing of this; not only had Maureen just filed for divorce, but Ripec had just concluded its most profitable year to date, earning over \$2 million.⁶

¶ 58 The trial court also examined the timing of Ripec's bankruptcy and its bankruptcy papers. John filed for bankruptcy of Ripec on the day after all the trial exhibits were due in the divorce proceeding, and only four days after Maureen was awarded sole custody of the parties' children following John's fight for joint custody, which had turned bitter. Moreover, Ripec's bankruptcy papers were inaccurate on many fronts and omitted crucial, and obvious, pieces of information, such as the amount of money Ripec owed to the electrical unions, Ripec's account held with Breen, and a Ripec loan which listed John as the guarantor. In addition, the trial court found that Ripec simply did not meet the general conditions of a legitimately bankrupt business. Its liabilities did not exceed its assets and it was never unable to pay its debts as they became due. John even admitted in his testimony before the court that he bankrupted Ripec to avoid union liability and not because Ripec had no business or because its had unmanageable debts.

¶ 59 Based on all this, a *prima facie* case of John's dissipation of Ripec was clearly made at trial, and the trial court found that John failed to rebut this. Pursuant to the legal principles we outlined earlier, namely, the deferential standard with respect to a trial court's finding of dissipation and its broad discretion in the valuation and distribution of marital assets, we find no reason to reverse the trial court's decision here, particularly in light of the circumstances it cited and the fact that its ultimate valuation of Ripec was the exact and unrebuted amount testified to

⁶Ripec had also earned approximately \$1.5 and \$1.9 million in each of the two preceding years.

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by the only expert in this cause. See *Jelinek*, 244 Ill. App. 3d at 503, 507-08.

¶ 60 Finally, with respect to these issues, we wish to address for the record John's pervasive characterizations in his brief on appeal that Goldman testified "most of the value" of Ripec was personal goodwill.

¶ 61 In its December 2009 judgment for dissolution of marriage, the trial court devoted several pages of its decision to Ripec. Indeed, Goldman testified at length regarding the company, which the trial court reviewed and reiterated in its decision. In response to John's contention during the divorce proceeding that all of Ripec's value was personal goodwill, the trial court stated at the outset that "Goldman testified that goodwill did not figure into his valuation." It also noted that Goldman testified that Ripec's workers, contacts and suppliers could easily be transitioned to a new purchaser, something uncharacteristic of personal goodwill. Then, after reviewing the law on personal goodwill, the court discussed that while John may have developed Ripec's contacts and accounts, it was the electricians' services and labor that ran the business and generated Ripec's income, not John himself. And, it concluded that, because the contacts and accounts, along with the electricians, are easily transferable and not dependent on John's active participation in Ripec, there was no personal goodwill in the company.

¶ 62 In his brief, John disputes the trial court's rendition of Goldman's testimony and characterizes it, instead, as Goldman having stated that most of the value of Ripec comprised his personal goodwill. In doing so, John repeatedly pulls the same quotes from Goldman's testimony wherein he was asked about goodwill in general and was asked to give his opinion with respect to it. John then pits his characterization of Goldman's testimony against the trial court's finding

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that Ripec had no personal goodwill in his effort to claim error. Upon our thorough review of the record, and in particular of Goldman's testimony, we find that John mischaracterizes what occurred at trial.

¶ 63 During cross-examination, Goldman was first asked about the concept of goodwill, whereupon he explicitly responded that he "did not distinguish between what was goodwill and what was tangible assets" when he arrived at his valuation of Ripec. Instead, he considered income streams and what other similar companies were selling for at the time. He further testified that he had not "done the analysis" of Ripec's goodwill; it was not a factor in his valuation of the company. Later, when pressed about personal goodwill and enterprise goodwill, and after repeating that these did not factor into his analysis, he stated on cross-examination as an afterthought to these questions that he did not believe Ripec had a lot of enterprise goodwill. John's counsel then asked Goldman if Ripec did not have a lot of enterprise goodwill, could it be "assum[ed] that the goodwill of Ripec is the personal goodwill" of John? Following an objection, Goldman responded affirmatively.

¶ 64 It is upon these comments that John hangs his argument here. However, it is clear to us that the context of this portion of Goldman's testimony was clearly hypothetical. Goldman repeatedly and affirmatively testified that he had not considered either type of goodwill, enterprise or personal, when he valued Ripec. He even responded on cross-examination that he could not state whether Ripec had any goodwill; this simply did not factor into his expert analysis of the company. It was when Goldman commented as an afterthought that he did not believe Ripec had a lot of enterprise goodwill that John's counsel proposed that, if the goodwill was not

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enterprise goodwill, was it safe to assume it was personal goodwill? Goldman responded affirmatively, and rightly so, since the law is clear that, if any goodwill exists, it can only be one of two types: enterprise or personal. Thus, it is clear to us that Goldman was simply advising that, if Ripec had any goodwill, which, again, he had not analyzed or considered as part of his valuation of the company, he believed it would more likely be personal rather than enterprise. In our view, from this mere commentary, we are hard-pressed to conclude, as John would have us, that Goldman affirmatively testified that Ripec had personal goodwill or that the majority of its value was goodwill, in direct opposition to the trial court's findings based on the voluminous evidence before it. Instead, from our reading of the entire record, having paid particular attention to the whole context of Goldman's testimony, we are convinced, in line with the trial court, that personal goodwill (and enterprise goodwill, for that matter) were not considered in Ripec's valuation.

¶ 65 John makes one last argument concerning the valuation of Ripec. In a brief, last-ditch claim, he asserts that the trial court erred in its valuation of the company because the manifest weight of the evidence showed that Ripec could not be sold as it had operated. He cites various portions of Goldman's testimony wherein Goldman described that he would not advise a client to purchase Ripec, particularly without a noncompete agreement which, as John states in his brief, would not likely happen due to his young age and the unlikelihood of his retirement. John is correct when he cites *Blackstone v. Blackstone*, 288 Ill. App. 3d 905, 913 (1997), for the proposition that a business' marketability, *i.e.*, whether it can be sold to a third party and at what price, is a relevant factor in the valuation of that business. However, in contradiction to his

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assertion, and as *Blackstone* even makes clear, it is only one of several factors to consider and, while sometimes a relevant consideration, is not mandatory. See *Blackstone*, 288 Ill. App. 3d at 913 (in valuing company for dissolution proceeding, expert may deduct marketability but such deduction is not required). In addition, as *Blackstone* notes, ultimately, there are no precise rules for valuing a company in the context of a dissolution proceeding and, as long as the trial court's valuation is within the range testified to by an expert witness, it will not be disturbed on appeal. See *Blackstone*, 288 Ill. App. 3d at 910, 913; see also *Jelinek*, 244 Ill. App. 3d at 503, 507-08. In the instant cause, while Goldman testified he would caution his prospective clients from purchasing Ripec, he never testified that Ripec could not be sold or at what value it could be sold. In fact, he actually testified that Ripec could be transferred to a new owner and that this could easily be accomplished in light of the fact that its particular electricians were the backbone of the company. Moreover, it cannot be forgotten that Ripec was, at the time of trial, a bankrupt company; thus, the factor of marketability here was simply not relevant. And, in the end, the trial court's valuation of Ripec at \$822,500 was in direct line with Goldman's expert valuation which, to this day, remains unchallenged. Accordingly, we find John's argument that the trial court erred in its valuation of Ripec because it could not be sold as operated to be meritless.

¶ 66 Ultimately, the record before us clearly demonstrates that the trial court did not include John's personal goodwill in its valuation and distribution of Ripec, nor did it include this in its division of the marital estate. In direct contradiction to John's arguments in this respect, we hold that the trial court did not err in its valuation and distribution of Ripec in the context of this divorce and, accordingly, we find no reason to reverse or remand its decision on appeal.

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¶ 67 John's remaining argument for review is that the trial court erred in awarding \$75,000 in attorney fees to Maureen and in its assessment of child support. He asserts that these awards are void as they are based upon the trial court's initial void findings of fact with respect to Ripec from its December 2009 judgment for dissolution. For example, he claims that, since the trial court believed the matter would not have gone to trial "but for [John's] insistence that Ripec had no value," and since the appellate court mandated that the trial court lacked jurisdiction to determine a value of Ripec, the award of attorney fees was based on a void finding and must also be vacated as void. Likewise, John claims that the child support award was based on the finding that Ripec had a value, that he intentionally bankrupted Ripec and that this resulted in voluntary underemployment. In the same vein, he then states that the trial court's decision to base its support order on factors other than his income level was grounded on a void finding involving the value of Ripec and, thus, it must also be vacated as void.

¶ 68 We disagree with both of these assertions, as John once again mischaracterizes what occurred here. As John presents these claims, he insists that the trial court directly linked its December 2009 determination regarding the value of Ripec to its decisions regarding attorney fees and child support, insisting that the former (which we declared was void) was the basis of the latter. However, from our reading of the trial court's decision as a whole, rather than on a few select quotations as lifted by John while giving short shrift to the remainder of the record, this is clearly not the case.

¶ 69 One of the more salient points made by the trial court in the entire context of its divorce judgment was its finding, following exhaustive witness testimony presented by both sides,

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including testimony by the parties themselves, that John was not credible, particularly when it came to financial matters. The trial court repeated this determination throughout its decision, in several sections, and when addressing the different issues involving the parties. It is true that the trial court mentioned Ripec as it reached its findings with respect to attorney fees and child support. However, this was only natural in light of the fact that Ripec was the marital estate's most valuable asset. Even so, it was not as if the trial court used Ripec as the determining factor in these findings.

¶ 70 Directly to the contrary, the trial court rested these two decisions in particular on the credibility of the parties—namely, Maureen's credibility and John's lack thereof. For example, and more specifically, when reaching its decision to order John to pay \$75,000 to Maureen for attorney fees, the trial court considered it significant that “much of this litigation was necessitated by” John and that he “litigated this case to the fullest, apparently heedless of cost.” It then stated that it was basing its decision directly on John's “prospective income and lack of credibility as to his current income.” The court's only mention of Ripec here was its brief reminder to John that this cause most likely would not have even gone to trial—and, thus, would not have originated such costly attorney fees—but for his insistence that the company had no value. Likewise, in its section dealing with child support, the trial court's only mention of Ripec came when it concluded that John deliberately closed the company in order to become voluntarily underemployed so as to avoid the payment of child support. Again, the court did not calculate its child support decision based on its valuation of Ripec. Instead, as it explicitly stated, the child support award was “based upon the needs of the children,” which the court discussed at length

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and outlined with much specificity in its decision.

¶ 71 Again, based on our thorough review of the record, and considering the entire context of the trial court's decision, it is more than evident that the trial court did not base its awards for attorney fees and child support on its initial determination regarding the value of Ripec, which we ultimately declared void in our prior order for lack of jurisdiction. Rather, as its decision makes clear, these determinations were based wholly on John's repeated incredibility with respect to financial matters and his continued "deliberate, calculated move[s] to conceal his ability to pay or even to earn money at this point." The court's attorney fee and child support decisions simply were not, as John asserts, "intertwined with" or directly derivative of the trial court's valuation of Ripec. Accordingly, having found that these determinations were in no way based on any void findings, and without more from John, there is no reason for us to invalidate them.

¶ 72

CONCLUSION

¶ 73 For all the foregoing reasons, we hold that the trial court properly followed our mandate here, that it did not include any personal goodwill in its valuation and distribution of Ripec, that there was no error in the distribution of the marital assets or the valuation of Ripec, and that there was no error in the trial court's award of attorney fees or in its assessment of child support. Accordingly, we affirm the judgment of the trial court granting Maureen's second petition to enter supplemental judgment for dissolution of marriage and its accompanying order, and remand for the sole and limited purpose to direct the trial court to remove the "re-affirmed and re-incorporated" language from its order, along with any reference to its December 2009 order and,

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instead, to replace it with a simple holding that, based on the uncontroverted evidence presented and still of record in this cause, it values Ripec at \$822,500 and that this amount should be charged against John's share of the marital estate.

¶ 74 Affirmed, with limited remand.