2013 IL App (2d) 120121-U
No. 2-12-0121
Order filed March 20, 2013
Order Modified Upon Denial of Rehearing filed August 27, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF RENEE C. SKIBINSKI, Petitioner-Appellant, and KEVIN J. SKIBINSKI, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Kane County. No. 09-D-1230 Honorable John A. Noverini, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER
MODIFIED UPON DENIAL OF REHEARING

¶ 1 *Held*: The trial court did not abuse its discretion when it classified and divided the assets between the parties, and its findings regarding valuation and dissipation were not against the manifest weight of the evidence. Further, the trial court did not abuse its discretion when it awarded maintenance to petitioner and ordered respondent to pay a portion of petitioner's attorney fees. We affirmed the judgment of the trial court.

¶ 2 On August 31, 2009, petitioner, Renee C. Skibinski, filed a petition for dissolution of marriage from respondent, Kevin J. Skibinski. The trial court conducted a bench trial beginning on February 9, 2011. Thereafter, the proceedings were delayed by continuances and hearings, with the

bench trial recommencing on October 13, 2011, regarding the financial aspects of the dissolution. The trial court entered a bifurcated judgment for dissolution of marriage on October 17, 2011, and the bench trial concluded on December 15, 2011, after seven days of testimony. On January 3, 2012, the trial court presented its findings and entered a final judgment for dissolution of marriage, in which it dissolved the parties' marriage, divided the marital property, and awarded custody of the parties' two children. On January 31, 2012, petitioner filed a timely notice of appeal, contending that the trial court erred when it entered a bifurcated judgment for dissolution of marriage and when it distributed the marital property, presenting issues regarding valuation and dissipation. Petitioner further contends that the trial court erred in its findings regarding child support, maintenance, and attorney fees. We affirm.

¶ 3 The parties were married on October 9, 1993; two children were born from the marriage, and they were 16 and 13 years of age at the time of the trial. At the time of the marriage, each party earned approximately $25,000 per year. During the course of the marriage, each party advanced in their respective careers. Petitioner was employed by the State of Illinois Commissioner of Banks and Trust Companies. That entity is currently known as the Illinois Department of Financial and Professional Regulation, where petitioner remains employed as a bank examiner. During the marriage, petitioner earned a Chartered Financial Analyst (CFA) designation. The trial court found petitioner was currently earning a gross annual salary of $93,000 plus occasional overtime.

¶ 4 Respondent earned his bachelor's degree in Industrial Engineering Technology and was thereafter employed by Burgess-Norton Manufacturing in Geneva, Illinois. During the marriage, respondent earned a master's degree in Industrial Management. During his tenure with Burgess-Norton, a subsidiary of Amsted Industries Inc., respondent achieved the title of director of sales and

marketing. In 2009, respondent was transferred to fellow subsidiary Amsted Rail, where he is currently employed as director of marketing. The trial court found that respondent earned an annual gross base salary of $143,312 plus discretionary bonuses and stock options. The trial court further found that in 2010, respondent received discretionary bonus income of $40,921 and received the third and final note payment for previously exercised stock options in the gross amount of $37,612.70.

¶ 5 In 2009, respondent withdrew $95,000 from the parties' jointly held money market account at Park National Bank. The record reflects that respondent paid $54,330.79 from those funds for a down payment on the purchase of a residence located at 742 Lancaster Lane, Geneva, Illinois (the Lancaster home). Respondent testified that the remaining funds were deposited into his individual checking account and presented an exhibit accounting for the expenditures from that account. Petitioner testified she was not aware that the down payment on the Lancaster home was made from the parties' joint account at the time. Shortly thereafter, petitioner withdrew $95,000 of marital funds from the parties' Park National accounts. The trial court found both parties expended funds on appropriate living expenses and that neither party had committed dissipation against the marital estate.

¶ 6 On April 14, 2010, petitioner obtained an order awarding her temporary custody of the children and enjoining respondent from disposing of marital income except in the "ordinary course of business." On August 31, 2010, the trial court entered an order setting forth the parties' parenting schedule and scheduling the matter for trial to begin on February 9, 2011. On October 20, 2010, the trial court granted petitioner's request for a continuance and set forth a new trial schedule which would conclude on March 9, 2011. The parties entered into a final joint parenting agreement on

March 8, 2011, providing for joint legal custody and designating petitioner as the children's residential parent. On March 9, 2011, the trial court awarded petitioner exclusive temporary possession of the marital residence, ordered respondent to pay temporary child support to petitioner, and continued the trial regarding financial matters to begin on March 28, 2011.

¶ 7 On March 29, 2011, the remaining trial dates were stricken and set to continue on August 29, 2011. Shortly thereafter, respondent dismissed his attorneys and retained new counsel. On May 17, 2011, on the trial court's own motion, the trial was again rescheduled for September 15, 2011. On August 19, 2011, petitioner filed a motion to reset the trial, alleging that respondent had failed to comply with discovery. After petitioner's motion to reset trial was denied on August 23, 2011, petitioner filed a motion for change of venue for cause, alleging that the trial court was prejudiced against her and requesting a substitution of judge. On September 7, 2011, petitioner's motion for change of venue was denied. The September 15, 2011, trial date was then rescheduled for October 13, 2011, after petitioner's counsel filed an emergency motion to continue trial due to "relentless chest pains." Thereafter, respondent filed a motion to bifurcate the proceedings and a petition to modify child support, which the trial court set for hearing on September 30, 2011. The trial court entered a bifurcated judgment for dissolution of marriage on October 17, 2011.

¶ 8 The trial ultimately required seven days over the course of three months and concluded on December 15, 2011. The trial court entered a final judgment for dissolution of marriage on January 3, 2012. The trial court found that the parties' net marital estate had a value of $2,524,356.67 and awarded petitioner assets totaling $1,391,735.36, or approximately 55% of the marital estate.

¶ 9 Petitioner's award included possession of the parties' marital residence located at 665 Nichole Lane, Geneva, Illinois (the Nichole home). The trial court found that the Nichole home had

a fair market value of $220,000 and was unencumbered. The trial court found that petitioner's CMS Deferred Compensation 401(k) plan was marital and awarded petitioner the entire plan, which was valued at $147,123. The trial court found that respondent's Fidelity 401(k) was marital and had a value of $286,826.21, of which petitioner was awarded $56,858.

¶ 10 The parties stipulated that respondent had acquired 33,930.929 shares of his company's Employee Stock Ownership Plan (ESOP) as of June 30, 2011. The trial court found that 9,043.371 of the shares were acquired by respondent before the parties' marriage and were thus respondent's nonmarital property. The trial court awarded petitioner 14,887.56 of the marital shares and valued the shares at $62 per share for a total of $923,028.72, with the final 10,000 shares being awarded to respondent. The remaining assets included in petitioner's award need not be discussed for the purposes of this appeal.

¶ 11 The trial court awarded respondent sole possession the Lancaster home, finding that the property had fair market value of $285,000 but was subject to a mortgage of $225,759.82. The trial court also awarded respondent possession of the parties' vacation residence located at 127-1B Cedar Glen, Camdenton, Missouri (the Cedar Glen home), finding that the property had a fair market value of $148,000 and was unencumbered. The trial court found that respondent borrowed $50,000 from his Fidelity 401(k) to help pay for his attorney fees and subjected his allocation to the loan.

¶ 12 The record reflects that respondent acquired 7,000 stock options from the Amsted Industries Stock Appreciation Rewards (SARS) program during the marriage. The trial court found that the stock options were marital property with a value of $20,905 and awarded them to respondent.

¶ 13 The record reflects that the parties collaborated in creating a "Paw Washer" or "Paw Bath" invention and that respondent had applied for a U.S. patent on the invention. The record further

reflects that the parties invested $15,000 of marital funds toward the invention and that the estimated cost of tooling the patent was $155,000. The trial court ordered that the patent continue to be held in respondent's name and that, in the event that the parties should contribute 50% of the costs associated with issuing and maintaining the patent by the required due dates, each party shall be entitled to 50% of the profits, if any. The trial court further found that if, after 6 months from the date of the judgment, the parties had not jointly agreed to move forward with the manufacture and production of the patent, either party shall have the option of buying out the other party for a cost of $7,500 plus or minus the amount expended to maintain the patent. The remaining assets included in respondent's award need not be discussed for the purposes of this appeal.

¶ 14 The trial court found that both parties were able to be self-supporting and denied petitioner maintenance. The trial court ordered respondent to pay child support to petitioner for the parties' two children in the amount of $1,700 per month. The trial court acknowledged that the sum represented a downward deviation from the statutory guidelines, but found it was justified due to the amount of time that respondent would be caring for the children under the terms of the parties' joint parenting agreement. Respondent was further ordered to pay 35% of the net of any future bonus income he earned, including the bonus he earned in November, 2011. The trial court ordered petitioner be solely responsible for maintaining the costs associated with the health and dental insurance for the parties' two minor children as long as the children remained eligible under the terms of her insurance plan. The trial court stated that it considered this finding when determining petitioner's deviated child support amount.

¶ 15 The trial court ordered that the parties be equally responsible for the costs of their minor children's extracurricular activities, in accordance with the parties' joint parenting agreement. The

trial court further ordered that any of the minor children's new extracurricular activities be agreed upon by the parties in advance and that the parties each pay 50% of the total costs associated with such activities after such time that such an agreement was reached. In the event that either party enrolled either of the minor children in any new extracurricular activities without the other party's consent, the trial court ordered that the enrolling party be solely responsible for the costs associated with the activity.

¶ 16 Finally, the trial court found that as of November 4, 2011, petitioner had paid attorney fees of at least $57,500 and had a balance owing of $42,665.40 with additional fees incurred after November 4, 2011. The trial court found that respondent had paid $151,713.64 in attorney fees through December 2, 2011, with a balance due of $29,022.04, of which he was disputing $24,297.04. The trial court ruled that each party should be solely responsible for their own attorney fees incurred in the cause. The remaining aspects of the trial courts findings and orders need not be discussed for the purposes of this appeal.

¶ 17 On appeal, petitioner challenges the trial court's (1) entry of a bifurcated judgment; (2) findings with regards to the division of marital assets and dissipation of the marital estate; (3) downward deviation from guideline child support; (4) denial of maintenance; and (5) order that the parties be responsible for their own attorney fees. We will address these issues in turn.

¶ 18 Petitioner first contends that the trial court erred when it entered a bifurcated judgment for dissolution of marriage, arguing that the trial court's motivation in doing so was an inappropriate attempt to punish petitioner for the continuance sought due to her counsel's "relentless chest pains." In support of her argument, petitioner asserts that the bifurcated judgment was intended to prevent petitioner from acquiring property rights in respondent's upcoming bonus and ESOP shares.

Accordingly, petitioner further argues that the trial court again abused its discretion when it permitted respondent to retain his bonus and ESOP shares as his nonmarital property. Respondent counters that the trial court properly entered a bifurcated judgment because of the numerous continuances throughout the litigation.

¶ 19 The Illinois Marriage and Dissolution of Marriage Act (the Act) states that the trial court must, to the extent that it has jurisdiction, consider and approve provisions for child custody, child support, spousal maintenance, and disposition of property before entering a judgment for dissolution of marriage. 750 ILCS 5/401(b) (West 2010). Section 401 of the Act further permits the trial court to enter a bifurcated judgment for dissolution of marriage which reserves any of the referenced issues "either upon (i) an agreement of the parties, or (ii) motion of either party and a finding by the court that appropriate circumstances exist." *Id.* Bifurcated judgments are justified in circumstances including, but not exclusive to, "[w]here the court does not have *in personam* jurisdiction over the respondent; where a party is unable to pay child support or maintenance if so ordered; where the court has set aside an adequate fund for child support pursuant to section 503(d) of the [Illinois Marriage and Dissolution of Marriage] Act; or where the parties' child or children do not reside with either parent." *In re Marriage of Cohn,* 93 Ill. 2d 190, 199 (1982). When the circumstances of a particular action are similar to or of the same caliber as those enumerated in *Cohn*, bifurcated judgments are also justified. *In re Marriage of Bogan*, 116 Ill. 2d 72, 80 (1986). The standard of review for the trial court's decision to enter a bifurcated judgment is abuse of discretion. *In re Marriage of Wade*, 408 Ill. App. 3d 775, 778 (2011). An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010).

¶ 20 In the present case, the trial court found that there was an appropriate basis under the Act to bifurcate the proceedings because of the "special circumstances" that existed therein, including, but not limited to, petitioner's counsel's "representation" that medical issues prevented him from continuing with the trial on September 15 and 16, 2011, and because the matter would "not likely be completed prior to January 2012." As discussed previously, the medical issues referenced herein were petitioner's counsel's alleged "relentless chest pains." As also discussed previously, petitioner's petition for dissolution of marriage was filed on August 31, 2009, and the ensuing bench trial commenced on February 9, 2011. Given the protracted nature of the litigation and the parties' March 2011 joint parenting agreement, which resolved the issue of custody, we cannot say that the trial court abused its discretion.

¶ 21 Petitioner argues that the trial court erred because the "appropriate circumstances" described by the reviewing court in *Cohn* were not present in the case at bar. In support, petitioner asserts that the trial court does not have unfettered discretion to bifurcate a judgment for dissolution. See *Cohn*, 93 Ill. 2d at 199. Respondent counters that the trial court was in the best position to determine the effect that bifurcation would have on the parties and their children, and therefore should be afforded a considerable amount of discretion. See *In re Marriage of Wade*, 408 Ill. App. 3d 775, 781 (2011). The reviewing court in *Wade* upheld the trial court's finding that bifurcation was justified because of numerous delays in the litigation and the detrimental impact it was having on the parties' children. *Id*. "To the extent the court believed respondent was delaying proceedings by repeatedly replacing counsel, it did not act inappropriately by granting bifurcation to overcome those delays and foster the progression of the case." *Id.* at 780-81 (citing *Partipilo v. Partipilo,* 331 Ill. App. 3d 394, 401, (2002)). Similar to the trial court in *Wade*, the trial court in the present case believed bifurcation was

necessary to overcome delays and foster progression of the case. As such, the trial court properly exercised its discretion, and we reject petitioner's unsubstantiated claim that bifurcation was granted merely as a means of punishment.

¶ 22 Within the issue of the trial court's decision to enter a bifurcated judgment, we reject petitioner's assertion that the trial court abused its discretion by permitting respondent to retain the ESOP shares and bonus that he was awarded after bifurcation. See *In re Marriage of Mathis*, 2012 IL 113496 (supporting the general rule that, once the parties are divorced, the property they acquire is no longer marital property); *In re Marriage of Awan*, 388 Ill. App. 3d 204, 209-11 (2009) (discussing law and policy reasons for bifurcated judgments and property acquired after the bifurcated judgment of dissolution). Moreover, as respondent points out, these issues were considered in the final distribution of assets, in which respondent received approximately $250,000 less from the marital estate and was ordered to pay petitioner 35% of the bonus in the form of child support.

¶ 23 Petitioner next contends that the trial court erred in its division of the marital assets, challenging most aspects of the trial court's award. Petitioner argues that the trial court abused its discretion when it (1) divided respondent's ESOP shares; (2) valued and awarded respondent his stock options; (3) failed to divide respondent's bonus and stock option income received while the divorce was pending; (4) set off respondent's dissipation with petitioner's marital expenditures; (5) allocated the Paw Washer patent title; (6) allocated the Cedar Glen home; and (7) valued of the marital estate. Petitioner's contention relies upon the trial court's purported mathematical miscalculations and declarations and its purported misapplication of the law.

¶ 24 Before a trial court may dispose of property upon dissolution of marriage, the property must be classified as either marital or non-marital. *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2009) (citing *In re Marriage of Didier,* 318 Ill. App. 3d 253, 258 (2000)). Once the trial court classifies the property, section 503(d) of the Act requires the trial court to divide the parties' marital property "in just proportions considering all the relevant factors." 750 ILCS 5/503(d) (West 2010). The relevant factors to be considered include:

> "(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including (I) any such decrease attributable to a payment deemed to have been an advance from the parties' marital estate under subsection (c-1)(2) of Section 501 and (ii) the contribution of a spouse as a homemaker or to the family unit;
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> (2) the dissipation by each party of the marital or non-marital property;
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> (3) the value of the property assigned to each spouse;
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> (4) the duration of the marriage;
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> (5) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;
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> (6) any obligations and rights arising from a prior marriage of either party;
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> (7) any antenuptial agreement of the parties;
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> (8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;
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> (9) the custodial provisions for any children;

(10) whether the apportionment is in lieu of or in addition to maintenance;

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(12) the tax consequences of the property division upon the respective economic circumstances of the parties." 750 ILCS 5/503(d)(1) to (d)(12) (West 2010).

¶ 25 The touchstone of proper apportionment is whether it is equitable, and each case rests on its own facts. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 121. An equitable division does not necessarily mean an equal division, and one spouse may be awarded a larger share of the assets if the relevant factors warrant such a result. *Id.* (citing *In re Marriage of Henke*, 313 Ill. App. 3d 159, 175 (2000)). Determinations of the trial court regarding credibility, as the entity closest to the litigation and as the trier of fact, are given great deference, and there is a strong presumption the trial court made the right decision. *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641. " 'A reviewing court applies the manifest-weight-of-the-evidence standard to the factual findings of each factor on which a trial court may base its property disposition, but it applies the abuse-of-discretion standard in reviewing the trial court's final property disposition***.' " *Romano*, 2012 IL App (2d) 091339, ¶ 121 (quoting *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 205 (2005)).

¶ 26 Petitioner first argues that the trial court improperly awarded respondent the 904.371 ESOP shares he acquired prior to the marriage as his nonmarital property. Petitioner asserts that respondent was vested in only 40% of those shares prior to the marriage and became vested in the remainder of the shares during the marriage. Thus, petitioner maintains that, of the 60% remaining, she is entitled to one-half of the shares. In its finding, the trial court cited *Robinson v. Robinson,* 146 Ill. App. 3d 474 (1986), and *In re Marriage of Hunt,* 78 Ill. App. 3d 653 (1979), stating: "[t]he appellate court

has routinely held that any interest in a retirement plan that accrues during the course of the parties' marriage is marital property, regardless of whether the interest is mature, vested, or nonvested." The trial court concluded that the instant case presented the converse scenario, whereby an interest acquired prior to a marriage would likewise constitute nonmarital property, regardless of when the interest became fully vested.

¶ 27 Petitioner argues that the cases cited by the trial court stand for the opposite conclusion. Petitioner asserts that *In re Marriage of Evans,* 85 Ill. 2d 523 (1981), holds that the vested portion of stock attributable to services rendered during the marriage is marital property. Respondent counters that the *Evans* court was concerned with potential future benefits arising from marital property, whereas the issue confronted by the trial court here involved future benefits arising from nonmarital property. Regardless, respondent argues that the holding in *Evans* supports the trial court's finding because the trial court correctly focused on when the future interest was *acquired*, as opposed to focusing on when the future interest became fully vested. Both parties overlook the fact that *Evans* did not resolve the issue in question, focusing its holding instead on the valuation of nonvested stock. See *Evans*, 85 Ill. 2d at 534 ("We intimate no opinion as to the circumstances, if any, in which a right to future payments of income should be treated as marital property."). Our review of the case law reveals nothing that would contradict the logic employed by trial court. *See In re Marriage of Peters*, 326 Ill. App. 3d 364, 368 (2001) (stating that, "although Illinois has not addressed stock bonuses earned in part during the marriage, Illinois considers pension benefits acquired after the marriage but before a judgment of dissolution of marriage to be marital property"). Therefore, we decline to conclude that the trial court abused its discretion when it classified the ESOP shares acquired by respondent before the marriage as his nonmarital property.

¶ 28 Petitioner also asserts that the trial court abused its discretion by using a combined method of valuation for the ESOP shares. Courts generally follow one of two methods when valuing pension rights. *Peters*, 326 Ill. App. 3d at 370. The first is the "total offset" approach, which first requires a determination based on actuarial evidence with consideration of future risks and present value. *Id.* Under this approach, the court determines the marital portion of that value, awards that value to the pensioner and awards the nonpensioner spouse with an offsetting amount of marital property. *Id.* The second approach, which is also used for the allocation of stock options, is the "reserved jurisdiction" approach, whereby the trial court orders the future allocation of the asset, if and when it is exercised. *Id.* at 371. In the instant case, the trial court used the current sales price of the ESOP shares for valuation purposes and proceeded to allocate a percentage of the shares to each of the parties. Petitioner asserts that no actuarial value of the shares was presented at trial and that it was therefore improper for the trial court to have accepted such a valuation. As stated above, the trial court found a value of $62 per share and awarded petitioner 14,887.56 of the marital shares, with the remaining 10,000 marital shares awarded to respondent. We disagree with petitioner's assertion that the trial court should have instead utilized the "total offset" approach, thereby awarding her immediate cash or property equivalent to the marital shares that she was awarded. The trial court used the reserved jurisdiction approach by awarding a specific number of shares. However, from the trial court's comments, it appeared to place a "value" on the shares to somehow make the division of the estate more concrete and understandable to the parties. To the extent that the trial court placed a value on the stock, such a finding was erroneous and we therefore vacate it. When respondent retires or otherwise terminates his employment, petitioner will be entitled to collect payment on the shares awarded to her based upon the fair market value of the ESOP shares to the

time of allocation. In looking at a 60/40 distribution in favor of petitioner with respect to the marital ESOP shares, we find no abuse of the trial court's discretion.

¶ 29 Petitioner next argues that the trial court improperly valued and awarded the SARS stock options that respondent received in 2005, 2006, and 2007, none of which have been exercised. These options were granted to respondent in three tranches. The parties stipulated to an exhibit showing that the "Estimated Exercise Gain" for the 2006 and 2008 options was $47,545. That same exhibit showed that the 2007 options had no value at the time of the trial. The trial court found that the options had a value of $20,905 and awarded them to respondent. Petitioner argues that the trial court abused its discretion by arbitrarily reducing this value from $47,545 to $20,905. However, respondent counters, and the record supports, that the trial court did not arrive at this result arbitrarily, but rather subtracted the strike price from the share price and multiplied that value by the current number of exercisable shares. Accordingly, petitioner has failed to meet her burden of establishing an abuse of the trial court's discretion.

¶ 30 Alternatively, petitioner argues that the trial court abused its discretion by valuing the stock options in the first instance, citing *In re Marriage of Frederick,* 218 Ill. App. 3d 533 (1991), for the assertion that stock options cannot be valued until exercised. Whereas petitioner argued that the trial court should have used the "total offset" approach in its award of the ESOP shares, petitioner now argues that the trial court should have used the reserved jurisdiction approach in its award of the stock options. Respondent counters that petitioner should be estopped from claiming that the stock options have no value because she stipulated to the exhibit showing their current value.

¶ 31 In *Frederick,* the trial court did not attempt the valuation of stock options because there was no evidence presented at trial regarding the present value of the options. 218 Ill. App. 3d at 541.

Accordingly, the trial court found it appropriate to retain jurisdiction over the future allocation of the realized profits, if and when the options were exercised. *Id*. On review, the *Frederick* court found support for the trial court's method of distribution from *In re Marriage of Moody*, 119 Ill. App. 3d 1043 (1983). In *Moody,* the trial court was held to have improperly determined the value of the stock options by taking judicial notice of the market value and calculating the profit. *Moody,* 119 Ill. App. 3d at 1047. However, in reversing the trial court, the reviewing court in *Moody* also relied on other factors in holding that it was impossible to value the options until they were exercised. *Id.* Although only 1,600 of the 3,000 options were exercisable on the date of the trial, the trial court was held to have erroneously included all 3,000 options in its calculation. *Id* at 1048. Further, the court found that the husband's financial circumstances made it nearly impossible for him to exercise the options before they expired. *Id*.

¶ 32 We find the circumstances in the present case to be distinguishable from both *Frederick* and *Moody*. Unlike in *Frederick*, there was evidence presented in the present case regarding the value of respondent's stock options. Contrary to the trial court in *Moody*, the trial court in the present case only calculated the value of the exercisable shares. Also contrary to *Moody,* given respondent's stated financial circumstances, it is likely that he will be able to exercise the options before they expire. Finally, unlike the parties in either *Frederick* or *Moody*, the parties in the present case stipulated to evidence regarding the values of the stock options. Given these differences, the trial court did not abuse its discretion in valuing the stock options.

¶ 33 Petitioner's next two arguments involve the trial court's finding that neither party committed dissipation against the marital estate. Petitioner first argues that the trial court abused its discretion by failing to divide respondent's 2010 bonus and stock options. This argument is based solely on

petitioner's unsupported assertion that respondent failed to provide a sufficient accounting of those assets at trial. We need not address this argument other than to note that the trial court found respondent provided an adequate accounting of the assets in question, and petitioner has not shown this finding to be an abuse of discretion. Petitioner then argues that those same 2010 bonus and stock options, along with several other assets, were dissipated by respondent. In support, petitioner asserts that the trial court abused its discretion by failing to find that respondent's expenditures regarding the acquisition of the Lancaster home was dissipation.

¶ 34 Section 503(d)(2) of the Illinois Marriage and Dissolution of Marriage Act (the Act) states that the trial court may consider the parties' dissipation when dividing marital property. (750 ILCS 5/503(d)(2) (West 2012)). "Dissipation" is defined as "the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at the time that the marriage is undergoing an irreconcilable breakdown." *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 374 (2008).

¶ 35 The party claiming dissipation must make "a preliminary showing of dissipation before the burden shifts to the party charged with dissipation to refute the accusations." *In re Marriage of Manker*, 375 Ill. App. 3d 465, 476-77 (2007). A finding of dissipation will not be sustained where the record does not indicate which specific amounts comprised the dissipation. *In re Marriage of Landwehr*, 225 Ill. App. 3d 149, 151 (1992). Thereafter, "[t]he spouse charged with dissipation of marital funds has the burden of showing, by clear and specific evidence, how the marital funds were spent." *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 700 (2006) (quoting *In re Marriage of Tietz,* 238 Ill. App. 3d 965, 983 (1992)). Whether dissipation has occurred is a question of fact to be determined by the trial court, and such a determination will not be disturbed on appeal unless it is

against the manifest weight of the evidence. *Romano*, 2012 IL App (2d) 091339, ¶ 86 (citing *Holthaus*, 387 Ill. App. 3d at 374). As discussed previously, a factual determination is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent, or when the court's findings appear to be unreasonable, arbitrary, or not based upon the evidence. *Id.* (citing *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 181-82 (2002)).

¶ 36 In its finding, the trial court analogized respondent's expenditures to those made in *In re Marriage of Murphy*, 259 Ill. App. 3d 336 (1994). In *Murphy,* the respondent similarly made significant expenditures of marital assets for the down payment and furnishing of his new residence. *Id.* at 339. The court in *Murphy* held that the respondent's expenditures were, "on the whole, legitimate expenses incurred in setting up an entirely new household made necessary by the separation and impending dissolution." *Id.* at 340. In the present case, the trial court also referenced the holding from *In re Marriage of Schinelli*, 406 Ill. App. 3d 991, 1000 (2011), wherein the court held that the husband did not dissipate marital assets where he was paying household expenses at the parties' marital residence, as well as expenses for himself and the parties' child. Finally, the trial court in the present case found that respondent "was in need of a residence, furniture and furnishings, and paid for expenses for the children, the marriage, and his personal living expenses." The trial court stated that respondent's exhibits and answers during cross examination had proved by "clear and specific evidence" how the funds he withdrew and his 2010 bonus and stock options were expended.

¶ 37 Petitioner asserts that the present case is distinguishable from *Murphy* because the husband in that case moved out of the marital residence after making the down payment, whereas petitioner alleges that respondent continued living in the marital residence. Petitioner also asserts that the

parties in *Murphy* agreed that the husband would need to purchase a separate residence, while no such agreement was reached in the present case. Petitioner's attempts to distinguish the cases relied upon by the trial court do not warrant a rejection of the trial court's reasoning. The trial court explained that respondent continued residing at the marital residence due to the lengthy custody dispute that lasted from the dissolution filing date, August 31, 2009, through March 8, 2011, when the parties entered into the joint parenting agreement. The trial court also found that petitioner was aware that respondent was purchasing the Lancaster home prior to its purchase. Accordingly, we decline to disturb the trial court's determinations.

¶ 38 Petitioner also argues that the trial court abused its discretion when it refused to find that respondent dissipated approximately $205,000 in addition to the amount constituting the funds withdrawn from the marital accounts and 2010 bonus and stock options. This argument essentially involves a line-by-line challenge of the explanations provided in respondent's exhibits and accepted by the trial court in its finding. Petitioner asserts that respondent's exhibits were false with regards to, among other things, the payment of utility bills, reimbursement checks from his employer, and paychecks. Petitioner also relies heavily on her assertion that respondent's representations of money spent on living expenses and food for the parties' children were overstated and unreasonable. For example, petitioner asserts that respondent unreasonably purchased a new bicycle for $700 when he testified that there was nothing wrong with the bike and that he subsequently sold it to a neighbor for $25. This example is indicative of petitioner's other dissipation challenges on appeal.

¶ 39 As discussed above, the trial court in the present case found that both parties had withdrawn $95,000 during the course of the proceedings, but that both parties also spent the funds on appropriate living expenses and that neither party had committed dissipation against the estate. As

also discussed above, this included a finding respondent appropriately utilized a significant portion of those funds for the down payment on the Lancaster home, which was to be his separate personal residence after the dissolution proceedings. The trial court assessed the respondent's explanations and determined respondent to be credible. See *In re Marriage of Zweig*, 343 Ill. App. 3d 590, 596 (2003). On our review of the record, we conclude the trial court's rulings regarding the alleged instances of dissipation were not against the manifest weight of the evidence. See *In re Marriage of Ramono*, 2012 IL App (2d) 091339, ¶ 86.

¶ 40 We may similarly dispose of petitioner's final arguments regarding the trial court's allocation of the Paw Washer patent and Cedar Glen home, as well as its final calculation of the marital estate. Petitioner asserts that she has a lower income, lacks the ability to pay for 50% of the costs associated with issuing the Paw Washer patent and that the trial court's finding was unjust because of respondent's "significantly larger income." Petitioner asserts that the trial court arbitrarily awarded respondent the Cedar Glen home and ignored petitioner's better ability to vacation there due to her flexible work schedule. Finally, petitioner provides a detailed reconfiguration of the parties' marital assets based on her conclusions discussed above, and asserts that she was ultimately awarded only 41% of the marital estate, as opposed to the 55% calculated by the trial court. Similar to the prior arguments discussed above, petitioner's argument here is lacking both in supporting case law and in merit. We have reviewed the trial court's reasoning and rulings, and we are convinced that the trial court thoroughly considered all relevant factors, including those listed in section 503(d) of the Act (750 ILCS 5/503(d) (West 2010)) before it rendered its decision. As such, we conclude the trial court's division of assets was equitable and not against the manifest weight of the evidence. See *Henke*, 313 Ill. App. 3d at 175.

¶ 41 Petitioner's next contention is that the trial court abused its discretion when it applied a downward deviation from the guidelines for child support. Petitioner argues that the trial court improperly attempted to equalize the parties' income and overstated the amount of parenting time that respondent had with the children pursuant to the joint parenting agreement. Petitioner further argues that the trial court miscalculated the guideline support and improperly ordered petitioner to continue paying for the children's current health insurance. Finally, petitioner argues that the trial court improperly permitted respondent to avoid contributing to the children's new extracurricular activities upon which the parties did not agree.

¶ 42 In a dissolution proceeding, the trial court may order either or both of the parents to pay child support in an amount reasonable and necessary for the support of the child, as determined by the guidelines set forth in section 503 of the Act. See 750 ILCS 5/503(a)(1) (West 2010). The court may deviate from the guidelines if it determines that such action is appropriate after considering the best interest of the child in light of the evidence, including, but not limited to, the financial resources and needs of the child and both parents, the standard of living the child would have enjoyed had the marriage not been dissolved, and the physical, mental, emotional, and educational needs of the child. 750 ILCS 5/503(a)(2) (West 2010). If a deviation is made, "the court's finding shall state the amount of support that would have been required under the guidelines, if determinable. The court shall include the reason or reasons for the variance from the guidelines." *Id.* Children are not entitled to a windfall just because one of their parents earns a high income. *In re Marriage of Singleteary,* 293 Ill. App. 3d 25, 26 (1997). A determination regarding the appropriate amount of child support will be reversed only if the trial court abused its discretion. *In re Marriage of Ackerley,* 333 Ill. App. 3d 382, 394-95 (2002).

¶ 43 In accordance with section 503(a)(2) of the Act (750 ILCS 5/503(a)(2) (West 2010)), the trial court in the present case stated the statutory child support as set forth under the guidelines would require respondent to pay 28% of his net monthly income, or approximately $2,363 per month. In ordering respondent to pay $1,700 per month, the trial court acknowledged that the amount represented a downward deviation from the guidelines, but found that deviation was warranted because of the amount of time that respondent would be caring for the children pursuant to the joint parenting agreement. The trial court also noted that it considered the cases of *In re Marriage of Reppen-Sonneson*, 299 Ill. App. 3d 691 (1998), *In re Marriage of Steadman,* 283 Ill. App. 3d 703 (1996), and *In re Marriage of Scafuri,* 203 Ill. App. 3d 385 (1990), before making its decision and ordered that respondent pay petitioner 35% of his net bonus earnings in additional support.

¶ 44 Although the trial court explained the effects of its finding on the after tax allocation of the parties' marital income, we reject petitioner's assertion that the court's decision to apply a downward deviation from the guidelines was based on its motivation to equalize the parties' respective incomes. We also reject petitioner's argument that the trial court overstated the amount of parenting time that respondent would have with the children, which argument is based on her assertion that the trial court did not count the number of days based on a 24-hour period, but instead relied on those days where respondent would have the children from 6 p.m. to 9 p.m. Keeping with that theme, we further reject petitioner's arguments that the trial court miscalculated respondent's after-tax income, improperly ordered her to pay for the children's health insurance, and required the parties to agree on the children's extracurricular activities as a prerequisite to contribution. The trial court considered case law and delivered a finding in compliance with the Act's requirements for a

downward deviation. Nothing propounded by petitioner shows an abuse of discretion, and we decline to disturb the trial court's ruling.

¶ 45 Petitioner's fourth contention is that the trial court abused its discretion by denying maintenance. Petitioner argues that she stayed in a "dead-end" job for the duration of the marriage to be available for the parties' children while respondent's history shows that he will continue to "rise the corporate ladder." Petitioner asserts that she will not be able to maintain her standard of living given her lesser income and that her child support will be further reduced when the parties' oldest child is emancipated. Respondent counters that petitioner misstates the law in support of her arguments and that the trial court properly found petitioner to have inflated her expenditures during the divorce proceedings.

¶ 46 A trial court may grant maintenance in an amount and of a duration as it deems just, after considering the relevant factors, which include:

> "(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;
>
> (2) the needs of each party;
>
> (3) the present and future earning capacity of each party;
>
> (4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;
>
> (5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or

herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

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

(7) the duration of the marriage;

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

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

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

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a) (West 2010).

¶ 47 "As a general rule, 'a trial court's determination as to the awarding of maintenance is presumed to be correct.' " *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010) (quoting *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 650 (2008)). The trial court is accorded broad discretion to determine the propriety, amount, and duration of maintenance, and its judgment will not be overturned absent an abuse of discretion. *In re Marriage of Shinn*, 313 Ill. App. 3d 317, 321-22 (2000); see also *Heroy*, 385 Ill. App. 3d at 650 (stating that maintenance awards are within the sound discretion of the trial court, and will not disturbed absent an abuse of discretion). An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *Nord*, 402 Ill. App. 3d at 292 (citing *In re Marriage of Schneider,* 214 Ill. 2d 152, 173 (2005)). Finally,

when a party claims the trial court abused its discretion in awarding maintenance, that party bears the burden of showing the trial court abused its discretion. *Id*.

¶ 48 Petitioner relies on *Heroy,* 385 Ill. App. 3d 640, for the assertion that she will not be able to continue supporting her lavish lifestyle. Petitioner further relies on *Nord,* 402 Ill. App. 3d 288, for the assertion that maintenance is justified so that she may maintain herself in a manner established during the marriage, even though she received significantly more assets from the marital estate. Respondent counters that those cases are not factually analogous to the present case. For example, the husband earned nearly $2 million per year, and the wife had stopped working to devote her time to raising the parties' children. *Heroy,* 385 Ill. App. 3d at 658.

¶ 49 We hold no abuse of the trial court's discretion occurred. The trial court found that both parties were able to be self-supporting because they were both well-educated and had excelled at their places of employment for years. The trial court found that petitioner's expenses "were inflated and she made a few changes to her lifestyle after she filed her [p]etition for [d]issolution for [m]arriage." The trial court noted petitioner's employment of a cleaning person, purchase of a new vehicle, purchases of expensive clothing, expensive grooming treatments, and vacations with friends and the minor children as examples. The trial court stated that it had "carefully considered the factors set forth in [section 504]" and found that the denial of maintenance was permitted due to her sufficient income and property apportioned to her. Finally, the trial court noted that petitioner was receiving approximately 55% of the marital estate, which constituted roughly $1.4 million, and in addition earned approximately $93,000 per year and was being awarded a residence free of encumbrances. Petitioner's arguments regarding her "dead-end" job and her inability to continue

supporting her "lavish lifestyle" are unpersuasive; nothing in the trial court's denial of maintenance indicates an abuse of discretion occurred.

¶ 50 Petitioner last contends that the trial court abused its discretion in denying her contribution toward her attorney fees. As discussed above, the parties have combined to incur attorney fees that may approach a total of $300,000. Petitioner argues that respondent should contribute $34,000 as a result of his increased attorney fees and her inability to pay. Petitioner's argument rests on her previously disposed-of contentions regarding the division of assets, child support, and maintenance.

¶ 51 Attorney fees are generally the responsibility of the party who incurred the fees. *In re Marriage of Cantrell*, 314 Ill. App. 3d 623, 630 (2000). Section 508(a) of the Act provides in part: "The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees." 750 ILCS 5/508(a) (West 2010). The propriety of an award of attorney fees is dependent upon a showing by the party seeking them an inability to pay and the ability of the other spouse to do so. *Schinelli*, 406 Ill. App. 3d at 995. The allowance of attorney fees in a dissolution case and the proportion to be paid by each party are within the trial court's discretion and will not be disturbed on appeal absent an abuse of that discretion. *In re Marriage of Pylawka*, 277 Ill. App. 3d 728, 735 (1996). Although awarding attorney fees rests largely in the trial court's discretion, such an award will be reversed when the financial circumstances of both parties are substantially similar and the party seeking fees has not shown an inability to pay. *Schinelli*, 406 Ill. App. 3d at 995 (citing *In re Marriage of Roth*, 99 Ill. App. 3d 679, 686 (1981).

¶ 52 The trial court conducted a hearing, heard the arguments of the parties, and determined that both parties would be responsible for their own attorney fees based on their awarded assets,

respective incomes, and ability to pay their own fees without contribution. Given the trial court's reasoning, we decline to find that an abuse of discretion occurred. See *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). We need not address petitioner's arguments to the extent that rely upon previously rejected contentions.

¶ 53 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County.

¶ 54 Affirmed.