2013 IL App (2d) 121420-U
No. 2-12-1420
Order filed December 16, 2013

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF	)	Appeal from the Circuit Court
GILMAN L. SATHER,	)	of McHenry County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 07-DV-427
	)	
ANNETTE N. SATHER,	)	Honorable
	)	Suzanne C. Mangiamele,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in its dissipation findings, nor did it err in ruling that money that petitioner's mother gave him was petitioner's nonmarital property. Respondent forfeited her argument that the trial court erred in not considering petitioner's income from "12b-1" fees. Therefore, we affirmed.

¶ 2 The marriage of respondent, Annette N. Sather, and petitioner, Gilman L. Sather, was dissolved on January 19, 2012. Respondent thereafter filed a motion to reconsider portions of the dissolution judgment. She argued, in part, that the trial court erred in its dissipation findings because it found that the marriage was irretrievably broken as of April 18, 2007, rather than

years earlier, and because it did not include certain expenditures as dissipation. Respondent also argued that the trial court erred in ruling that money that petitioner had received from his mother was nonmarital. The trial court denied respondent's motion to reconsider on these issues, and she raises them on appeal. Respondent also argues that the trial court erred by not considering petitioner's income from "12b-1" fees. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties were married on October 8, 1966. The parties had four children, all of whom were emancipated when petitioner filed for dissolution of the parties' marriage on May 3, 2007. About two years later, on May 22, 2009, respondent filed a petition claiming dissipation for money petitioner spent on his employee and girlfriend, Carol Marino. The trial took place on various dates from May 2009 to September 2010. We summarize the evidence that is relevant to the issues on appeal.

¶ 5 A. Petitioner's Testimony

¶ 6 Petitioner was born in December 1943 and was 65 at the time of the first hearing. He established an accounting practice in 1987 and became a registered representative with a brokerage firm in 1993. He was also licensed to sell health and life insurance. Petitioner's business, G.S. and Associates, Inc., encompassed both his accounting and investment practices.

¶ 7 Petitioner hired Marino in 2001 or 2002, part time. She graduated high school but did not have a college degree. Marino had previously been the office manager of a large California company. She started working for petitioner full-time in January 2004 as an office manager, secretary, and administrative assistant. He initially paid her hourly but began paying her a salary in May 2004. Petitioner made this switch because under new federal guidelines, she qualified as an employee rather than an independent contractor. Also, it was cheaper to put Marino on a

salary than to pay her at her hourly rate plus overtime for the first four months, which had totaled $11,047. He now paid her about $60,000 per year, which he based on $20 per hour plus $10 per hour bonus. Marino also received about $15,000 in pension benefits per year and health insurance. Petitioner testified that because he had a self-employed pension plan, the law required him to give full-time employees the same percentage that he paid himself for the plan.

¶ 8 Petitioner agreed that in 2004, "in order to avoid paying [Marino] three times $11,000 or $33,000, [he] opted to put her on a salary and pay her $68,000" for the last eight months of the year. The latter amount included a $40,000 bonus paid in December 2004. Subsequently, Marino's annual bonuses were $20,000. Petitioner paid Marino a total salary (inclusive of bonuses) of $64,800 in 2005 and $58,200 (plus $3,000 for "casual labor") in 2006.

¶ 9 In 2006, petitioner paid both Marino and another employee, Rhonda Polizzi, a bonus of $1 for every hour they had worked the previous year. Petitioner also gave Polizzi a raise after respondent had recommended doing so in spring 2005.

¶ 10 Petitioner hired Rosa Santana in April 2008. He paid her $19 per hour for data entry, and she worked three days per week. Santana had no responsibilities other than data entry, whereas Marino was responsible for running the office, "all the functions relating to cash receipts," cash disbursements, billing, accounts payable, and all paperwork related to the brokerage representation. Petitioner did not provide Santana with health insurance because she was a part-time employee, she had been employed for less than one year, and she already had her own insurance. Santana would be eligible in April 2010 for the 401k plan.

¶ 11 Petitioner was aware of the compensation paid for support staff in his community based on doing tax returns for others in various industries. Support staff for an office his size would generally consist of an office manager (typically paid $40,000), bookkeeper (typically paid

$12,000), data entry clerk (typically paid $18,000), receptionist, and a person responsible for brokerage files (with administrative staff typically paid $20,000). The total amount petitioner was paying Marino and Santana was about $20,000 less than other offices. Santana's salary was mid-range based on other people petitioner had talked to. If petitioner were to replace Marino, he would have to pay someone of her experience and ability about $70 per hour.

¶ 12 Petitioner became romantically involved with Marino in 2004. He retained an attorney on January 11, 2005, to consult with about a divorce.

¶ 13 Petitioner's accounting business had an annual gross income of $259,000 from October 2008 to September 2009, and he paid himself a $60,000 salary. Petitioner additionally received $36,455 in income from his brokerage work during that time. From 2006 to 2008, he had roughly $180,000 available to him as income each year.

¶ 14 Petitioner calculated that he had spent $122,284 on respondent's behalf from May 9, 2006, to March 31, 2009, and he was not seeking reimbursement for any of that money. Petitioner calculated that he had spent about $68,831 in 2007 and 2008 on vacations for himself and Marino and for work done on Marino's property; he agreed that respondent should get credit for half of these payments. Marino paid for their 2009 vacation to Tahiti, and she also paid for one of their trips to Cancun.

¶ 15 Every year, Marino also traveled with petitioner to Las Vegas, where petitioner would take classes for his continuing education requirements. During those trips, Marino took a couple of courses related to accounting.

¶ 16 Petitioner agreed that he had spent thousands of dollars from a business promotions account on gifts for Marino. He also paid for some services to Marino's property. He later

included these amounts in his admission that he had dissipated the marital estate in the amount of $80,821.93.

¶ 17 In 1998, petitioner's mother gave him about $70,000 that she had inherited from her sister. She wanted him to have control of the money so that if she went into a nursing home, she could qualify for public aid, and the State would not take the money. Petitioner invested the money in a brokerage account in his name. When petitioner's mother passed away in 2003, he split the money in the account with his brother. Petitioner was claiming the money remaining in the account, about $58,000, as his nonmarital property.

¶ 18 B. Respondent's Testimony

¶ 19 Respondent graduated from college in 1966 and worked as a teacher for three years following the parties' marriage. She stopped teaching full-time to raise the parties' children, and she substitute taught from 1984 to 2004. Respondent could no longer work because of her age and hearing impairment. Her current sources of income were temporary maintenance and social security.

¶ 20 When petitioner first opened his practice, respondent helped him with various office tasks. Petitioner's first employee was Polizzi, who worked part-time doing computer input and "payrolls" and preparing W-2s. In the "mid-2000s," petitioner said that Polizzi thought she deserved a raise, but he was not going to give her one. Respondent asked if he was sure, because Polizzi had been working for him for a long time and had two children. Polizzi left the office in August 2008. Respondent was not aware of Polizzi receiving a bonus.

¶ 21 Petitioner hired Marino in 2001, and she worked six to nine hours per week. Her responsibilities were to clean out and update petitioner's brokerage files. Respondent could have done the work if petitioner had trained her.

¶ 22 Respondent spent about an hour or two per day in the office. She observed Marino filing, but she also talked a lot. Marino did not have any computer skills in 2001 or 2002. She may have gained some by 2003, and she also spent more time in the office that year. Marino became a full-time employee in 2004, but respondent still observed her doing only secretarial duties. There was no business purpose for Marino to travel to Las Vegas because petitioner went there for tax seminars, and Marino did not do tax work.

¶ 23 On January 10, 2005, petitioner revealed to respondent that he was having an affair with Marino and that it started in 2003. He said that he was going to see an attorney the next day and that their assets would be divided equally. Petitioner left the residence and moved in with Marino. He returned around two weeks later on January 23, 2005, saying that he had made a mistake and wanted to rebuild the parties' relationship. Respondent quit substitute teaching in order to focus on the marriage. They went to marriage counseling from February to August 2005. The counseling was not successful because petitioner was not committed and was dishonest. Respondent eventually discovered that petitioner had a cell phone hidden in the basement that he used to call Marino. Also, on January 18, 2006, petitioner said that he was going to the gym. Respondent followed him and found him at Marino's apartment. Marino said that they were in love and that petitioner was leaving respondent. Respondent told petitioner, "let's go home," and he continued to live with respondent until April 18, 2007.

¶ 24 Respondent agreed that petitioner spent $62,000 in 2007 on improvements to the marital residence. However, that was his decision because he said that "he was planning to work things out and be there," and the improvements were still incomplete. Respondent agreed that petitioner was also paying for a cleaning service for respondent's mother.

¶ 25 C. Darryl Wolff

¶ 26 Darryl Wolff, a CPA hired by respondent as an expert, testified as follows. He operated a CPA practice out of three locations, with the largest office having five year-round employees. Polizzi, who had a bachelor's degree in accounting, had worked for him for two years. He paid her $15 per hour plus a bonus of about $200. Wolff was not aware of any small CPA practices having a separate office manager. He paid clerical staff $9.50 to $12 per hour; CPAs earned $25 per hour plus a nominal bonus; some other tax professional earned $20 per hour; and the accounting and bookkeeping staff earned $15 to $17 per hour. Wolff opined that bonuses of $20,000 and $40,000 to Marino were not reasonable because the nature of her job description did not warrant that level of compensation.

¶ 27 On cross-examination, Wolff agreed that petitioner paid Polizzi $18.50 per hour, which was more than Wolff was paying her, for less demanding work than she did for Wolff. Wolff also thought that if petitioner was paying Santana $19 per hour for data entry, he was overpaying her.

¶ 28 D. Trial Court's Ruling

¶ 29 The trial court issued its written decision on January 13, 2012, stating as follows, in relevant part. Dissipation occurs when property is improperly used for one spouse's sole benefit, for a purpose unrelated to the marriage, when the marriage in undergoing an irreconcilable breakdown. "Determining the instant when the marriage becomes irretrievably broken down can be difficult." It cannot be viewed as a prolonged gradual process extending from the initial signs of trouble in a marriage until the actual breakdown itself. Here, the clearest delineation of when the parties' marriage had irretrievably broken down was on April 18, 2007, when petitioner left the marital residence and did not return.

¶ 30 Respondent argued that petitioner dissipated the marital estate by various expenditures, such as trips with Marino, gifts for her, and improvements to her property. The parties acknowledged dissipation of $80,821.93 for such expenditures. Petitioner's testimony that he paid Marino $25,500 for retroactive rental payments was incredible, so this amount would additionally count as dissipation, as would $1,444.50 in lawn care and snow removal expenses for Marino's residence. The $40,000 bonus petitioner paid Marino in December 2004 was an unreasonable business expenditure given Marino's duties, and it also raised a red flag because petitioner initially departed the marital residence soon after, in January 2005. However, the payment occurred in 2004, before the parties had an irretrievable breakdown in their marriage. "The Court *** consider[ed] [petitioner's] unorthodox practice in his business as part of this Court's consideration in the valuation of the business and division of property." The pension contributions for Marino were not dissipation. Petitioner paid his employees more than other accounting practices, and though Marino's salary was "somewhat suspect" given her relationship with petitioner and their sharing of household expenses, it was "not out of the realm of a salary for the numerous duties assigned to her as testified in this case." The total amount of dissipation was $107,766.43, and the trial court awarded respondent half of this amount. The trial court "considered the parties' remaining arguments as to dissipation not specifically addressed in this Decision in the division of the parties' marital property."

¶ 31 Petitioner's income was $178,995 in 2007; $186,284 in 2008; and $75,362 for September 2009 to August 2010. Petitioner's business had decreased during the proceedings. The decrease was due in part to the loss of some clients from the economic downturn and also because petitioner was spending less time at his business, based on a desire to eventually retire.

¶ 32 Regarding the money petitioner received from his mother, the funds were placed in petitioner's name so that his mother could qualify for public aid if she went into a nursing home. The money was kept separate from other marital funds. When his mother died, petitioner split the money with his brother, and about $58,000 remained in the account. It appeared that his mother's intent was to give the money to petitioner, and the money constituted, at a minimum, a gift. The money was under petitioner's name and sole control from the time he received it, and the court found that it was nonmarital property.

¶ 33 The court awarded respondent $2,500 per month in maintenance and one-half petitioner's brokerage earnings (less certain expenses) as additional maintenance. Petitioner was also to reimburse respondent one-half the amount he had paid his attorney, less the marital money she had used to pay her attorney.

¶ 34 The judgment for dissolution of marriage was entered on January 19, 2012.

¶ 35 E. Motion to Reconsider

¶ 36 Both parties filed motions to reconsider on February 17, 2012. Respondent argued, in relevant part, that the trial court erred in: (1) finding that the marriage was irretrievably broken as of April 18, 2007, rather than in 2003 when the affair began; (2) finding that the $40,000 bonus paid to Marino in 2004 was not dissipation; (3) finding that the pension contributions to Marino were not dissipation; (4) finding that the money petitioner received from his mother was a gift; (5) not requiring petitioner to account for the decrease of the money in his business checking account from $293,165 to $22,728.59; and (6) not requiring petitioner to account for the money he earned from 2006 to 2008.

¶ 37 The trial court held a hearing on the motions to reconsider on October 3, 2012. The trial court stated that it set April 17, 2007, as the date when the marriage was irretrievably broken

because it was the last time that petitioner left the marital residence, after having attempted an almost two-year reconciliation when he initially left and returned in 2005. The trial court set an amount of dissipation and awarded respondent half. The trial court found that petitioner's payments to Marino were partially because of his emotional ties to her but also because, in his mind, she was a good employee. The trial court had accounted for petitioner's business decisions, including Marino's bonuses, by awarding respondent 52% of the marital estate, which it valued at $2,641,159 total. Finally, although respondent disputed that the money petitioner's mother gave to him was a gift, it was clear that the money was not intended to be for respondent.

¶ 38 Respondent timely appealed.

¶ 39 II. ANALYSIS

¶ 40 A. Dissipation

¶ 41 On appeal, respondent largely challenges the trial court's findings regarding dissipation. In determining the distribution of marital property under section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act), the trial court must consider a number of factors, including "dissipation by each party of the marital or non-marital property." 750 ILCS 5/503(d)(2) (West 2010). Dissipation refers to the " 'use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time the marriage is undergoing an irreconcilable breakdown.' " *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497 (1990) (quoting *In re Marriage of Petrovich*, 154 Ill. App. 3d 881, 886 (1987)). "Once a *prima facie* case of dissipation is made, the charged spouse has the burden of showing, by clear and convincing evidence, how the marital funds were spent." *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d 761, 779 (2007). In determining whether dissipation occurred, the trial court must determine the credibility of the spouse charged with dissipation. *In re Marriage of Berberet*,

2012 IL App (4th) 110749, ¶ 50. The trial court's factual findings of whether dissipation has occurred are reviewed under the manifest weight of the evidence standard, but we review its final property distribution under an abuse of discretion standard. *Tabassum & Younis*, 377 Ill. App. 3d at 779. A factual finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident, or if the finding is arbitrary, unreasonable, or not based on the evidence. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 86.

¶ 42 1. Irreconcilable Breakdown

¶ 43 Respondent first argues that the trial court erred in calculating petitioner's dissipation only as of April 17, 2007. Respondent maintains that the trial court made this error, in part, because it applied the wrong standard in determining dissipation, in that it relied on a date that the marriage was "irretrievably broken" rather than when it was "undergoing an irreconcilable breakdown."

¶ 44 Respondent cites *In re Marriage of Holthaus*, 387 Ill. App. 3d 367 (2008). There, this court stated that the trial court improperly attempted to pinpoint a date on which the parties' marriage was irretrievably broken instead of determining when the marriage began to irreconcilably break down. *Id.* at 375. We stated that the trial court's error was not harmless because years before the parties physically separated, they stopped living in the same parts of the house, sharing meals, and communicating. *Id.* at 376. The wife had also previously told the husband she wanted a divorce, and she wrote him a letter detailing a plan for the division of property. *Id.* Respondent maintains that the trial court here also mistakenly focused on the date the marriage was irretrievably broken rather than when the marriage began to undergo an irreconcilable breakdown.

¶ 45 Respondent argues that the correct date for when the marriage was undergoing an irreconcilable breakdown was in May 2004, when petitioner's affair with Marino was "in full bloom." Respondent argues as follows. Petitioner paid Marino $11,047 for the first four months of 2004 and $68,000 for the last eight months of that year, incredibly claiming that he was saving money by paying her a salary. Petitioner additionally paid for Marino's insurance, put money in her health savings account, and made large contributions to her pension. Marino traveled with petitioner to a tax seminar in Las Vegas the same year even though there was no business reason for her to do so, because she did not do any tax work. Petitioner bought Marino jewelry and lingerie, and he paid for her trips to the tanning salon. Petitioner moved out on January 10, 2005, telling respondent that he was leaving her, and he moved in with Marino. The next day, he paid an attorney a $2,500 retainer to represent him in divorce proceedings. He returned to respondent on January 23, 2005, claiming that he had made a mistake and wanted to end the affair. However, he kept a cell phone hidden in the basement, which he used to call Marino. Further, Marino's propertly was in foreclosure in 2005, and petitioner loaned her money and structured her salary to assist her in qualifying for a mortgage. Petitioner was clearly working with Marino "to get a proper place where they could live together."

¶ 46 Respondent additionally argues as follows. In January 2006, she caught petitioner and Marino together at a time petitioner claimed he was going to the health club. That year, petitioner dramatically increased the money in his business promotion account from $2,137 to $16,453.75, and he spent all of the latter money on Marino. He continued this pattern into 2007, with 27 of the 42 entries from the account being for purchases at Victoria's Secret, for jewelry, or for tanning. A husband trying in good faith to reconcile with his wife would not engage in such behavior.

¶ 47 Respondent argues that just as the amount of money in petitioner's business promotions account exploded in 2006, so did the amount of money petitioner spent for building and maintenance from business accounts, which corresponds to Marino's purchase of her house. Respondent maintains that many of petitioner's expenditures from his business accounts were made by credit card, but petitioner destroyed the records on a regular basis and did not produce the records in his possession. Respondent argues that although petitioner admitted to an initial amount of dissipation, he later agreed that he had spent significantly more, showing that he was previously testifying falsely, which was a part of his continuing pattern of deceit.

¶ 48 Respondent argues that this case is similar to *In re Marriage of Carter*, 317 Ill. App. 3d 546 (2000). There, the parties separated in April 1992 because of the husband's gambling problem, and the wife filed a petition for dissolution of marriage the same month. *Id.* at 548. She dismissed the petition in December 1992 because the husband agreed to stop gambling and amassing debts. The husband returned to the house, but the parties mostly lived separate lives, eating their meals separately and keeping separate finances. The wife later discovered that the husband had continued gambling, and she filed another petition for dissolution in October 1998. *Id.* at 549. The trial court set July 1999 as the date of the marriage's irreconcilable breakdown. *Id.* at 552. The appellate court disagreed, stating that the purported reconciliation in December 1992 was pretextual because the husband secretly continued to incur debt, and the marriage had been undergoing an irreconcilable breakdown since at least 1992. *Id.*

¶ 49 We begin by noting that although the trial court used the term "irretrievable" rather than "irreconcilable" in describing the breakdown of the marriage, these terms are synonymous in the context of dissipation. *Romano*, 2012 IL App (2d) 091339, ¶ 93. We do agree with respondent that, according to caselaw, dissipation must be measured from when the marriage begins

"undergoing" an irreconcilable breakdown (see *O'Neill*, 138 Ill. 2d at 497), rather than after the marriage is irreconcilably broken. *Romano*, 2012 IL App (2d) 091339, ¶¶ 89-91.

¶ 50 In *Romano*, the wife argued, as respondent does here, that the trial court improperly focused on an exact date of the marriage's irreconcilable breakdown rather than looking at when the marriage began undergoing an irreconcilable breakdown. *Id.* ¶ 91. This court stated that not every incident or conflict during a marriage signals that a marriage has begun to undergo an irreconcilable breakdown. *Id.* ¶ 91. We stated that to constitute dissipation, the marriage must be undergoing an *irreconcilable* breakdown, with "irreconcilable" defined as " 'impossible to bring into friendly accord or understanding: hostile beyond the possibility of reconciliation.' " *Id.* ¶ 91 (quoting Webster's Third New International Dictionary 1195 (2002)). We concluded that the trial court did not apply an improper standard in determining when the irreconcilable breakdown of the Romanos' marriage occurred. *Id.* ¶ 92.

¶ 51 In this case, we similarly conclude that the trial court did not apply an improper standard regarding the irreconcilable breakdown of the marriage. The trial court noted the *O'Neill* language that dissipation occurs when the marriage in "undergoing" an irreconcilable breakdown. It also cited *In re Marriage of Hazel*, 219 Ill. App. 3d 920, 921 (1991), where the appellate court stated that the time a marriage is undergoing an irreconcilable breakdown may not "be viewed as a prolonged gradual process extending from the initial signs of trouble in a marriage until the actual breakdown itself." See also *Romano*, 2012 IL App (2d) 091339, ¶¶ 90-91 (citing *Hazel* with approval). The trial court here stated: "Given the testimony and evidence the clearest delineation of when the parties' marriage had irretrievably broken down was on April 18, 2007 when [petitioner] left the marital residence and did not return." The language the trial court ultimately employed is inexact, but it is clear from the hearing on respondent's motion

to reconsider that the trial court understood the proper standard. The trial court stated that although there were problems with the marriage, it appeared that petitioner felt some obligation toward respondent because they had been together a long time and had children together. Petitioner "was torn between two women" and was trying to maintain his relationship with respondent while continuing the affair. Petitioner left the residence for the last time April 18, 2007, "having attempted a reconciliation with his wife for almost a two-year period after he initially left in 2005 and then came back."

¶ 52 In sum, the trial court effectively found that there was a possibility of reconciliation until petitioner moved out in 2007, *i.e.*, that the marriage was not clearly undergoing an irretrievable breakdown until petitioner left the second time and did not return. The trial court did not misapply the dissipation standard in making its findings.

¶ 53 We further conclude that the trial court's finding that the marriage began its irretrievable breakdown on April 18, 2007, is not against the manifest weight of the evidence. Although it is undisputed that by 2004, petitioner was having an affair with Marino and spending significant amounts of money on her, even respondent testified that petitioner kept the affair a secret from her until 2005. We recognize that petitioner left the marital residence to live with Marino on January 10, 2005, and the next day, he hired an attorney in preparation of filing a dissolution action. These steps could indicate that the marriage was beginning to undergo an irreconcilable breakdown, or had already been undergoing an irreconcilable breakdown, if it were not for the fact that shortly after, on January 23, 2005, petitioner returned to the marital residence for the explicit purpose of reconciling. Correspondingly, respondent quit substitute teaching so that she could focus on the marriage, and the parties underwent counseling.

¶ 54 Respondent argues that petitioner was not committed to reconciliation, but petitioner could have easily moved in with Marino again if he had wanted. Indeed, even though respondent cites petitioner helping Marino obtain a mortgage as evidence that petitioner was working towards getting a place where they could live together, petitioner had already lived with Marino once before she bought her house, and he did not ultimately move in with her until almost two years after the purchase. Tellingly, when respondent found petitioner with Marino in January 2006, with Marino declaring that petitioner loved her and was going to leave respondent, respondent's reaction was to tell petitioner "let's go home" rather than that he should move out, and petitioner returned to the marital house instead of remaining with Marino. As opposed to indicating signs of hostility beyond the possibility of reconciliation (see *Romano*, 2012 IL App (2d) 091339, ¶ 91), this incident shows that the parties were trying to keep their marriage intact. See also *McBride v. McBride*, 2013 IL App (1st) 112255, ¶ 46 (a marriage is undergoing an irreconcilable breakdown on the date a breakdown is inevitable). In this way, this case is clearly distinguishable from *Holthaus*, where the parties had stopped living in the same parts of the house, sharing meals, and even communicating (see *Holthaus*, 387 Ill. App. 3d at 376), and *Carter*, where the parties were also essentially leading separate lives while still living together (see *Carter*, 317 Ill. App. 3d at 552). Further, in 2007, petitioner spent $62,000 on improvements to the marital home, which is evidence that he was planning to stay. Petitioner also continued to spend money on Marino, but the trial court found that he was either torn between the marriage and the affair or attempting to continue both, which is supported by the evidence. Therefore, the trial court's finding that the marriage began to undergo an irreconcilable breakdown on April 18, 2007, when petitioner left the marital residence and did not return, is not against the manifest weight of the evidence.

¶ 55 2. Amount of Dissipation

¶ 56 Respondent argues that even if the trial court was correct in determining that April 18, 2007, was the cutoff date for determining dissipation, it still failed to account for large sums of money. Respondent refers to, among other things, Marino's $40,000 bonus in 2004, petitioner's 2004 contributions to her employee pension plan, petitioner's 2004 $11,000 "casual labor" payment to Marino, and additional $20,000 payments made to her in 2005 and 2006. However, dissipation refers to a party's use of marital property for his or her sole benefit only during the time in which the marriage is undergoing an irreconcilable breakdown (*O'Neill*, 138 Ill. 2d at 496), so petitioner's expenditures on Marino before April 18, 2007, cannot constitute dissipation.

¶ 57 Respondent also argues that the trial court erred in not counting as dissipation the money spent from petitioner's business bank account, which dropped from a $283,876 balance on November 30, 2006, to about $150,000 as of March 8, 2008, and to $21,736 on January 30, 2009. Respondent notes that during the same time period, petitioner had roughly $180,000 in earnings available to him each year. Respondent points out that petitioner's October 2008 financial affidavit listed about $50,000 in expenses each year, and when asked about the remaining income, petitioner said that he "left it in the business." Respondent argues that, however, petitioner failed to meet his burden and account for these missing sums. According to respondent, the "significant amount of money *** warrants the court making a specific finding of fact," and "[g]ranting a few dollars more in settlement does not properly resolve this issue."

¶ 58 Respondent further argues that the trial court erred in not finding money spent on Marino to constitute dissipation. Respondent refers to her own testimony and that of Wolff indicating that Marino was overpaid, and to petitioner's testimony regarding Marino's duties. Respondent maintains that Marino should be paid not more than $20 per hour, which equates to $41,600 per

year. Respondent argues that any money beyond this, including casual labor payments and pension and retirement account contributions, should be considered dissipation.

¶ 59 Finally, respondent argues that the trial court erred by accepting petitioner's word that Marino started paying for vacations at the beginning of 2009. Respondent argues that she has no evidence to counter petitioner's testimony, as petitioner failed to produce some records and destroyed others, but petitioner's testimony was already proven faulty and lacking in credibility on other financial issues.

¶ 60 Petitioner argues as follows. Respondent overlooks the trial court's express finding that it considered and addressed her remaining arguments as to dissipation in the division of the marital property, and that it awarded her half of the amount it did identify as dissipation, even though it was not required to. Further, petitioner testified that he reinvested money in the business, transferred money to meet expenses, paid for improvements to the business location, provided funds to respondent for trips and home improvements (totaling $122,284 from May 9, 2006, to March 31, 2009), and paid respondent temporary maintenance. He testified that business was down due to the recession, and the trial court found that his income decreased to $75,362 for September 2009 to August 2010. Petitioner also testified that in 2008, he began with a net income of $133,000 in his business account but had to add about $54,000 to pay business expenses. He testified that money would also be transferred into various mutual funds he had control over, and the value of those funds varied over the years due to market fluctuations. He additionally provided banking statements to respondent.

¶ 61 On the subject of Marino, petitioner argues that although respondent believes that Marino was unqualified and not worthy of the salary paid to her, petitioner testified that if he hired someone to replace her, he would expect to pay that person a much a higher salary for all of the

jobs Marino performs. He refers to his testimony that he changed Marino's salary from hourly to yearly because he was required to under new IRS guidelines, and that he actually saved money this way. He testified that he had to make pension and IRA contributions for her because it was required by law based on her full-time employee status and his own such contributions. Petitioner argues that respondent's testimony on this subject is not reliable because she offered incorrect testimony as to the rate of pay as to other employees in the office, such as testifying that petitioner never gave Polizzi a raise or bonuses; petitioner testified that he gave Polizzi a raise due to respondent's urging and that he paid Polizzi $1,000 bonuses for several years. Petitioner points out that the trial court found that petitioner may have paid his employees at a higher than average rate, and that Marino's salary was within reason based on her numerous duties. Petitioner argues that although respondent also disputes that Marino began paying for trips in 2009, her intimation cannot take the place of actual evidence to the contrary and cannot show that the trial court's findings were contrary to the manifest weight of the evidence.

¶ 62 We conclude that the trial court findings regarding dissipation after April 17, 2007, were not against the manifest weight of the evidence, and that it did not abuse its discretion in the manner that it accounted for the dissipation through its property distribution.

¶ 63 Beginning with petitioner's vacations with Marino from 2009 on, respondent acknowledges that she has no evidence to show that respondent paid for these, blaming that lack of proof on petitioner's destruction of records and failure to produce others. However, respondent has not appealed from any rulings on discovery motions, so she may not rely on any alleged violations as support. Therefore, respondent's argument on this issue is meritless.

¶ 64 Although respondent also argues that the trial court should have made specific findings of fact about the amount of money allegedly dissipated from petitioner's business bank account,

from his income, and from his salary arrangement with Marino, a trial court is not required to specify what conduct constitutes dissipation, to award the other spouse cash or property equal to half of the amount dissipated, or even state an exact dollar amount of dissipation. *Tabassum & Younis*, 377 Ill. App. 3d at 779.

¶ 65 Further, regarding Marino, the trial court found that her salary was somewhat suspect because of her relationship with petitioner, but it was "not out of the realm of a salary for the numerous duties assigned to her as testified in this case." While respondent's expert, Wolff, testified that Marino was overpaid, he also testified that petitioner's other employees were overpaid. In fact, Wolff paid Polizzi, petitioner's former employee, less money for more demanding work. The trial court, as the trier of fact, is in a superior position to observe witnesses' demeanor, determine and weigh their credibility, and resolve any conflicts in their testimony. *Romano*, 2012 IL App (2d) 091339, ¶ 95. Given the trial court's role in weighing witness credibility, it was not against the manifest weight of the evidence for the trial court to accept that Marino had work responsibility beyond that of a secretary and that the allegedly excessive portion of her salary was not dissipation.

¶ 66 As for petitioner's business accounts, the trial court found that petitioner's business had decreased during the course of proceedings, which is consistent with petitioner's assertions that he had to actually add money to the account to pay business expenses. This explanation is also in accord with petitioner's testimony that he reinvested much of his unused available income in the business. Even by respondent's own testimony, petitioner spent $62,000 in just 2007 on improvements to the marital residence, which would also have come from petitioner's available income. This is not to say that the trial court did not find any dissipation regarding petitioner's business accounts or his "missing" income, as the trial court stated that it had "considered the

parties' remaining arguments as to dissipation not specifically addressed in this Decision in the division of the parties' marital property." During the hearing on the motion to reconsider, the trial court stated that it had considered additional dissipation from petitioner's business practices, such as paying for trips through the businesses and his payments to Marino, in awarding respondent about 52% of the marital property.

¶ 67 The trial court found dissipation of $107,766.43 and awarded respondent half of this amount ($53,883.22), even though it was not strictly required to. *Tabassum & Younis*, 377 Ill. App. 3d at 779; see also *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 51 (dissipation is but one factor to be considered in the division of property). It further awarded respondent approximately the same amount for additional dissipation, in that 2% of the $2,641,159 marital estate equals about $52,823. In light of the trial court's findings on dissipation, which we have determined are not against the manifest weight of the evidence, we conclude that the trial court did not abuse its discretion by compensating respondent around $100,000 for petitioner's dissipation.

¶ 68 B. Brokerage Account as Petitioner's Nonmarital Property

¶ 69 Respondent next argues that the trial court erred in awarding petitioner the money in a brokerage account, which he had received from his mother, as his nonmarital property. Respondent points out that petitioner took control of money his mother inherited from her sister so that if petitioner's mother went into a nursing home, she could qualify for public aid without the State taking the money. Respondent maintains that all property acquired during a marriage is presumed to be marital property, and this property does not fall into any exceptions. Respondent argues that although petitioner claims to have inherited the money from his mother, a person cannot inherit money from a living person. See *In re Marriage of Flemming*, 143 Ill. App. 3d

592, 598 (1986) (no one is the heir of a living person). Respondent argues that although the trial court labeled the money as a gift, petitioner never asserted it was a gift, and no evidence was presented other than that petitioner intended to defraud public aid.

¶ 70 Section 503(b) of the Dissolution Act creates a rebuttable presumption that all property acquired after marriage is marital property. 750 ILCS 5/503(b) (West 2010); *In re Marriage of DeRossett*, 173 Ill. 2d 416, 420 (1996). However, a property transfer from a parent to a child is presumed to be a gift. *In re Marriage of Lonvick*, 2013 IL App (2d) 120865, ¶ 49; see also 750 ILCS 5/503(a)(1) (West 2010) (property obtained by gift, legacy, or descent is nonmarital property). Where the property at issue is subject to these conflicting presumptions, the presumptions cancel each other out, and the trial court is free to determine whether the asset is marital or nonmarital. *Id.* A trial court's classification of property as marital or nonmarital will not be reversed unless it is against the manifest weight of the evidence. *Id.* ¶ 48.

¶ 71 Here, whether petitioner may have labeled the money he received from his mother as a gift or an inheritance is immaterial, as he consistently asserted that it was his nonmarital property based on the underlying facts. We conclude that the trial court's finding that the money was his nonmarital property is not against the manifest weight of the evidence, as it is undisputed that petitioner's mother gave him the money at issue and that he placed it in a brokerage account solely in his name. *Cf. id.* ¶ 48 (the trial court's determination that money was the husband's nonmarital property was not against the manifest weight of the evidence where the husband's father either deposited the money into the husband's bank account or wrote the checks to him as the sole payee).

¶ 72 C. Petitioner's "12b-1" Fees

¶ 73 Last, respondent argues that the trial court erred by not considering the issue of petitioner's "12b-1" fees. Respondent notes that Wolff testified as follows. 12b-1 fees are marketing and distribution fees paid by mutual fund companies to the brokerage firm of record. They are typically paid on a quarterly basis based on the portfolio's asset value, but a broker can choose to take a larger commission either up front or later on. Petitioner had brokerage income of $321,702.61 in 2004, and it was based on a large amount of annuities he sold that year. Seven years is the standard time for contingent deferred sales charges with annuity companies, and if all of petitioner's annuity clients invested in new products in 2011, petitioner would receive a commission similar to that he received in 2004.

¶ 74 Respondent argues that the trial court erred "by not considering this issue," and that petitioner may have received a substantial windfall of over $300,000 in 2011 which is unaccounted-for marital property.

¶ 75 Petitioner maintains that respondent forfeited this issue by not citing any authority for her argument. We agree. See *Adler v. Greenfield*, 2013 IL App (1st) 121066, ¶ 59 (failure to support argument with citation to legal authority results in forfeiture of the argument on appeal); Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument in brief shall contain citation to authorities relied upon). Even otherwise, Wolff testified that petitioner would earn a substantial income from such fees in 2011 only if all the annuity clients invested in new products that year, so any such earnings would be speculative at best. Further, the trial court already awarded respondent one-half of petitioner's brokerage earnings (less certain expenses) as additional maintenance, and petitioner testified that his brokerage income included 12b-1 fees.

¶ 76 III. CONCLUSION

¶ 77 For the foregoing reasons, we affirm the judgment of the McHenry County circuit court.

¶ 78 Affirmed.