2014 IL App (4th) 130891-U

NO. 4-13-0891

Order filed December 1, 2014

Modified upon denial of rehearing February 19, 2015

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
RONALD R. BAUMAN,	)	Circuit Court of
Petitioner-Appellant,	)	Woodford County
and	)	No. 09D53
DIANE M. BAUMAN,	)	
Respondent-Appellee.	)	Honorable
	)	Charles M. Feeney,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Appleton and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: Despite petitioner's numerous contentions of the error, the trial court did not commit any reversible error where many of the issues came down to making a credibility determination, resolving a conflict in the evidence, or working with the scant evidence provided by the parties.

¶ 2 In May 2009, petitioner, Ronald R. Bauman, filed a petition for the dissolution of his marriage to respondent, Diane M. Bauman. In February 2012, the Woodford County circuit court entered an order dissolving the parties' marriage and distributing the parties' property. Petitioner filed numerous postjudgment motions. In September 2013, the court entered an order allowing petitioner to withdraw all pending motions as a final disposition.

¶ 3 Petitioner appeals, asserting (1) the trial court erred by requiring petitioner to reimburse the marital estate for all principal and interest paid during the marriage on his farmland mortgage; (2) the court erred by classifying the marital residence and outbuildings as

marital personal property; (3) if the residence and outbuildings were marital property, then the court erred in valuing them; (4) if the residence and outbuildings were petitioner's nonmarital property, then the marital estate should not be reimbursed for the 2000 and 2003 improvements; (5) the court erred by finding dissipation of various items by petitioner without any notice of a claim of such dissipation before trial and no opportunity to provide documentary proof in response; (6) the court's maintenance award was contrary to the manifest weight of the evidence; and (7) the court erred by rejecting the parties' postnuptial agreement. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The parties married in July 1983 and had two children, who were adults at the time the dissolution petition was filed. Petitioner was a farmer and owner of Midwest Asphalt Repair, Inc. (road-repair business), and respondent did not have outside employment during most of the marriage. During the marriage the parties resided at 1257 County Road 700 North in Eureka, Illinois (marital residence property). Petitioner's mother, Virginia Bauman, died in 1995. In her will, Virginia placed the marital residence property in a trust with her husband, Donald Bauman, as trustee. Under the terms of the trust, Donald had the use and control of the trust property during his life. Virginia left the residue of the trust property and the remainder interest to petitioner. Until the dissolution proceedings, respondent believed petitioner had inherited the marital residence property upon his mother's death. In July 2003, the parties entered into a postnuptial agreement. Petitioner moved out of the marital home in February 2009 and filed his petition for dissolution in May 2009.

¶ 6 The parties brought numerous pretrial motions and petitions in this case. We only set forth those that are relevant to the issues on appeal. In her August 2009 petition for temporary relief and for attorney fees, respondent contended Donald had served her with a 30-

day notice to vacate the marital residence property by September 5, 2009. Donald brought an eviction action against respondent. Bauman v. Bauman, No. 09-LM-68 (Cir. Ct. Woodford Co.). In December 2009, the trial court entered an agreed order, providing, *inter alia*, petitioner was to make available up to $300,000 to respondent for the purchase of a new residence for herself having a value of no more than $300,000, including closing costs. The new residence would be considered marital property and be awarded to respondent as part of her share of the marital estate. In the eviction case, the court entered a January 2010 agreed order, awarding Donald possession of the marital residence property but giving respondent until June 30, 2010, to vacate the property.

¶ 7 In November 2009, respondent filed a supplemental petition for a restraining order, alleging petitioner had told her he planned on quitting his profession as a farmer and terminating the family business to prevent her from receiving any maintenance or long-term support. In his response, petitioner admitted contacting respondent but denied he said those things. In February 2010, petitioner filed a petition to sell certain marital assets to finance the road-repair business's 2010 operations and pay other financial obligations. The petition noted petitioner had been unable to secure operating loans for the year 2010 for both the business and his farming operation. Petitioner also noted the reasons why he was unable to continue his farming operation in 2010, including the loss of several farming agreements. In April 2010, the trial court entered an agreed order on temporary matters, under which the parties agreed to sell their one-half interest in the farm equipment to Donald and petitioner was to continue to operate the road-repair business in good faith and in a reasonable, businesslike manner during the dissolution proceedings. The order also provided each party was entitled to $5,000 a month from the road-repair business's account.

¶ 8 In May 2010, respondent filed a petition for a finding of dissipation by petitioner on seven occasions in 2009 and 2010. In February 2011, respondent filed a second petition for a finding of dissipation, asserting the funds invested in the marital residence property were dissipation because the property belonged to petitioner's father. It also contended petitioner dissipated marital funds by (1) draining the equity of the road-repair business, (2) spending money on his girlfriend, and (3) refusing to work as a farmer.

¶ 9 In May 2010, petitioner sought to modify the December 2009 agreed order. Petitioner noted Donald had demanded to be paid rent for use of the outbuildings on the marital residence property and for his work on behalf of the road-repair business, and thus the business's costs had increased significantly. The business was very low on cash, and petitioner requested, *inter alia*, he not have to make any further payments to respondent from the marital estate until it was known the business had sufficient income. In December 2010, petitioner sought to modify the April 2010 agreed order, noting the business was in substantial debt and could no longer provide the monthly $5,000 payments to each of them. Both motions detailed the decline of the road-repair business. Petitioner's response to respondent's June 2011 petition for temporary and permanent maintenance also detailed the demise of the road-repair business and why he was no longer farming. Petitioner explained he was working as an hourly farmhand for Donald's farming operations.

¶ 10 In December 2011, the trial court held a three-day trial on the contested matters. While represented by counsel during the pretrial and posttrial phases of this case, petitioner was *pro se* during the actual trial. Both parties testified at the trial as well as their son, Brock Bauman, and Neil Gerber, a certified public accountant. The testimony presented at the trial was not recorded. Thus, all this court has is a bystander's report of the trial and the trial court's

recitation of the facts in its order. The evidence presented at trial relevant to the issues on appeal follow.

¶ 11 Respondent testified she worked part-time at a bank prior to the parties' marriage but was a stay-at-home mother during the marriage. She had only a high school education, and her only training was working at a bank. At the time of trial, she was 49 years old and working 35 hours per week at a bank until another employee returned to work, at which point her weekly hours would be reduced to 25. According to respondent, the marriage broke down in June 2008, when she discovered petitioner had a relationship with Mimi Maney, who lived in Wisconsin. Respondent further alleged the affair had been going on for an extended period of time, and petitioner had spent substantial sums of money on Maney, as documented in several exhibits regarding dissipation.

¶ 12 Petitioner admitted taking Maney on trips before the dissolution proceedings. However, as to some of the other allegations of dissipation, petitioner explained he did not recall the particular disposition and documents were available to support how the money was spent. Petitioner did not have the documents with him because he did not know he needed them available. Petitioner also noted he lacked documentation showing his disposition of the $70,000 he removed from the parties' joint account in early 2010. Petitioner also denied knowing he needed to present documentation on those dispositions. The bystander's report noted that, despite the trial lasting 4 1/2 days, petitioner did not bring in any documents regarding the $70,000.

¶ 13 Petitioner testified that, during the marriage, he worked as a farmer and ran the road-repair business. His father Donald was also a farmer, and they jointly owned most of their farming equipment. Petitioner had been farming about 2,000 acres, and Donald farmed about

1,000. Distributions from the road-repair business to petitioner were placed in the "farm account" that the parties used to pay their bills and expenses. The business had 10 to 12 employees, and he frequently took the employees and his business associates to Wisconsin and Florida. The trips were paid for with the business credit card. In 2010, he cut back on those "perks" but raised the employees' pay "somewhat."

¶ 14 Additionally, petitioner testified he was going broke from farming and needed to sell out. He had lost money in farming for several years, except for 2009. Pursuant to a trial court order in this case, he sold his interest in his farming equipment to Donald. Petitioner stopped farming, except for occasionally helping his father and his sons. He denied having farm income in 2010 and 2011. According to petitioner, Brock was farming petitioner's land and performing some of petitioner's other farming jobs. Petitioner had put some of Brock's income into a certificate of deposit so Brock would not spend it foolishly. Petitioner admitted he made himself an authorized signer on the account and acknowledged he used a debit card on the account to pay for some of his expenses. Respondent testified petitioner was still regularly farming.

¶ 15 Petitioner also explained he used the proceeds of the sale of the farm equipment as a cash infusion for the road-repair business. The road-repair business experienced a loss in 2010, and at the end of the year, the bank froze the business's account because it owed the bank $600,000. The bank eventually took the business's assets and sold them to Scott Hostetler, who had been the manager of the road-repair business. After the sale of the assets, petitioner still owed the bank $175,000. Hostetler continues to operate the road-repair business and utilizes the outbuildings on the marital residence property. Petitioner believed Hostetler paid Donald $3,500 in monthly rent to use the outbuildings.

¶ 16 Petitioner testified the marital residence property consisted of a home and a couple of outbuildings that were used for the farming operations as well as the road-repair business. The parties did not pay Donald any rent for the property until at least 2008 or 2009. Petitioner did not know the amount of monthly rent he now paid Donald but believed it was $3,000 for the outbuildings and $850 for the home. Respondent testified petitioner had told her the property was his, and she did not know it was Donald's. According to petitioner, in 2002-03, respondent wanted to do some major remodeling and improvements to the home, and he did not want to do so. He finally told her she could do the remodeling if she executed a postnuptial agreement. Petitioner testified respondent signed the postnuptial agreement at their home and threw it back at him. The agreement did not have a list of property attached to it. Respondent did not recall signing the document but noted she often signed papers for the business and farm without looking at them. Respondent's remodeling project took place in 2003 and 2004. Petitioner did not interfere with the project, which he explained as a tear down of everything except the stud walls and the roof. Petitioner testified the home they tore down for the current residence was worth $200,000. Respondent's exhibit showed the parties spent $453,782.86 on the home and $172,785 on the outbuildings. Petitioner presented a sales-comparison appraisal that valued the current marital home at $220,000. Respondent believed the home was worth substantially more than that.

¶ 17 Moreover, petitioner testified that, prior to the marriage, he had purchased 81.8 acres of farmland that was secured by a $200,000 loan. Petitioner sold the land for $163,000, of which he used $64,000 to purchase a 40-acre tract of land; $55,000 to pay a loan from Donald; and around $44,000 for the parties' joint account. At the time of the sale, the mortgage was not paid off but was transferred to the 40 acres and another 33.5-acre tract of land owned by

petitioner. Petitioner had been paying around $13,000 a year on the farm mortgage, and about $100,000 was still owed. At least after 1992, the farmland generated enough funds to at least cover the annual mortgage payment and the farming expenses. Any overage was put into the parties' joint account, and the parties paid all of the real estate taxes on the land.

¶ 18 Gerber explained his report valuing the road-repair business. In his opinion, the farming and business operations were very profitable up until 2009. After the parties' separation in 2009, the employees' pay and expenses increased dramatically, and some expenses were being paid that had not been in the past. Moreover, in Gerber's opinion, excessive distributions were made from the business to the farm account in 2009.

¶ 19 Brock initially denied but then acknowledged he was farming in 2010 and 2011. He was not sure if the money in the certificate of deposit in question was money that he earned from farming. Brock did not take any money from the account. Petitioner handled the account for Brock's farming and was an authorized signer. Petitioner normally wrote the checks from the account. The money was used for farm expenses and taking people to Wisconsin for snowmobiling.

¶ 20 On February 24, 2012, the trial court entered a 59-page written order, dissolving the parties' marriage and addressing the contested issues. The court began its order by noting the evidence in the case clearly demonstrated that "petitioner with the assistance of others ha[d] done much to attempt to mislead the court" and credibility was a significant issue. The court then went on to explain its ruling on each of the contested issues.

¶ 21 On March 23, 2012, petitioner filed two *pro se* motions to reconsider. That same month, respondent sought the payment of her attorney fees. In June 2012, petitioner filed a notice of bankruptcy, and the trial court stayed all of the pending matters. The parties continued

to file postjudgment motions, one of which was petitioner's motion to modify maintenance. In January 2013, the trial court found petitioner in indirect civil contempt, and petitioner complied with the order. Respondent's request for attorney fees was adjudicated. In August 2013, petitioner sought to withdraw his motion to modify maintenance and, in September 2013, filed a motion to withdraw all of his pending motions.

¶ 22 On September 6, 2013, the trial court entered an order allowing petitioner to withdraw his motion to reconsider and all other pending motions. The order declared the February 24, 2012, judgment was final and fully enforceable and appealable. On October 3, 2013, respondent filed a petition for rule to show cause, asserting petitioner had failed to pay her maintenance for September 2013. On October 4, 2013, petitioner filed his notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008). In January 2014, the rule to show cause was satisfied, and thus petitioner's notice of appeal became effective under Illinois Supreme Court Rule 303(a)(2) (eff. May 30, 2008). Accordingly, we have jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 23 II. ANALYSIS

¶ 24 A. Prologue

¶ 25 1. *Lack of Verbatim Transcript*

¶ 26 We begin by noting no verbatim transcript was produced for this complex dissolution case. The parties did prepare a bystander's report under Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005) and agree the trial court's recitation of the facts in its order was correct. However, we point out petitioner, as the appellant on this issue, had the burden to present a sufficiently complete record. See *Webster v. Hartman*, 195 Ill. 2d 426, 432, 749 N.E.2d 958, 962 (2001).

¶ 27 Regarding an incomplete record, our supreme court has stated the following:

> "This court has long recognized that to support a claim of error, the appellant has the burden to present a sufficiently complete record. [Citations.] From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant. *** Without an adequate record preserving the claimed error, the court of review must presume the circuit court's order had a sufficient factual basis and that it conforms with the law." (Internal quotation marks omitted.) *In re Marriage of Gulla*, 234 Ill. 2d 414, 422, 917 N.E.2d 392, 397 (2009).

Further, the supreme court has stated "[a]ny doubts stemming from an inadequate record will be construed against the appellant." *People v. Hunt*, 234 Ill. 2d 49, 58, 914 N.E.2d 477, 481 (2009).

¶ 28 2. *Forfeiture*

¶ 29 Additionally, our supreme court has instructed us to begin our review of a case by determining whether any issues have been forfeited. See *People v. Smith*, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 1059 (2008). Issues not raised in the trial court are forfeited and cannot be argued for the first time on appeal. *In re Marriage of Minear*, 181 Ill. 2d 552, 564, 693 N.E.2d 379, 384 (1998); *In re Marriage of Culp*, 399 Ill. App. 3d 542, 550, 936 N.E.2d 1040, 1047 (2010).

¶ 30 3. *Petitioner's Initial Brief*

¶ 31 Last, we note petitioner's initial brief exceeded the page limit set by Illinois Supreme Court Rule 341(b)(1) (eff. Feb. 6, 2013), and petitioner failed to seek permission to

exceed the page limit. Several of his issues are past the 50-page mark of his brief. Despite his noncompliance with the rules of our supreme court, we will go ahead and address all of his issues.

¶ 32 B. Reimbursement

¶ 33 Petitioner first asserts the trial court erred by requiring him to reimburse the marital estate for all interest and principal paid during the marriage on his farm mortgage. Respondent disagrees any error occurred.

¶ 34 Section 503(c)(2) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/503(c)(2) (West 2008)) provides, in pertinent part, the following:

> "When one estate of property makes a contribution to another estate of property, *** the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation; provided, that no such reimbursement shall be made with respect to a contribution which is not retraceable by clear and convincing evidence, or was a gift ***."

A reviewing court will not reverse a trial court's determination of whether one estate of property is entitled to reimbursement from another unless it is against the manifest weight of the evidence. *In re Marriage of Ford*, 377 Ill. App. 3d 181, 185-86, 879 N.E.2d 335, 339 (2007). "A judgment is against the manifest weight of the evidence when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *In re Marriage of Levinson*, 2012 IL App (1st) 112567, ¶ 33, 975 N.E.2d 270.

¶ 35 In this case, the trial court found petitioner had to reimburse the marital estate $378,450 for 29 annual mortgage payments of $13,050. The court then offset that amount by

$99,000, which was the amount of money the court found petitioner deposited into the parties' joint account from the sale of nonmarital farmland.

¶ 36 As to the interest argument, petitioner cites *In re Marriage of Snow*, 277 Ill. App. 3d 642, 650, 660 N.E.2d 1347, 1352 (1996), and contends no right to reimbursement exists for interest payments. However, our review of the record contains no indication petitioner raised that argument in the trial court. Accordingly, we find petitioner has forfeited his interest argument.

¶ 37 Regarding principal, petitioner cites *In re Marriage of Crook*, 211 Ill. 2d 437, 454, 813 N.E.2d 198, 206-07 (2004), and asserts reimbursement of the mortgage payments for the farmland to the marital estate was not warranted because the marital estate had already been reimbursed through its use over the years. Again, the record is not clear that, in the trial court, petitioner argued the marital estate had already been reimbursed by its use of the land. Thus, petitioner has also forfeited this issue.

¶ 38 Since petitioner has forfeited his two challenges to the trial court's reimbursement finding, we affirm the trial court's finding the marital estate was entitled to reimbursement for the mortgage payments.

¶ 39 C. Marital Residence Property

¶ 40 1. *Classification*

¶ 41 As to the marital residence property, petitioner first argues the trial court erred by classifying the residence and outbuildings on the marital residence property as marital personal property based on the First District's decision in *In re Marriage of Didier*, 318 Ill. App. 3d 253, 258, 742 N.E.2d 808, 813 (2000). Respondent contends that finding was not erroneous.

¶ 42 Prior to dividing the property in the dissolution, the trial court must classify the

property as either marital or nonmarital. *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017, 909 N.E.2d 221, 228 (2009). Section 503(b)(1) of the Dissolution Act (750 ILCS 5/503(b)(1) (West 2008)) provides a rebuttable presumption that all property acquired by either spouse after the date of marriage but before the entry of judgment of dissolution is marital property, *regardless of how title is held*. A party can overcome this presumption by a showing of clear and convincing evidence the property falls within one of the exceptions set forth in section 503(a) of the Dissolution Act (750 ILCS 5/503(a) (West 2008)). See *Schmitt*, 391 Ill. App. 3d at 1017, 909 N.E.2d at 228. Moreover, when marital and nonmarital property are commingled resulting in a loss of identity of the contributing estates, the commingled property is deemed transmuted to marital property. 750 ILCS 5/503(c)(1) (West 2008).

¶ 43 "The party claiming that the property is nonmarital has the burden of proof, and any doubts as to the nature of the property are resolved in favor of finding that the property is marital." *Schmitt*, 391 Ill. App. 3d at 1017, 909 N.E.2d at 228. Generally, a reviewing court will not disturb a trial court's classification of property unless it is contrary to the manifest weight of the evidence. *Schmitt*, 391 Ill. App. 3d at 1017, 909 N.E.2d at 228. Petitioner asserts the facts are undisputed and thus our review should be *de novo*. See *In re Marriage of Wendt*, 2013 IL App (1st) 123261, ¶ 15, 995 N.E.2d 439 (noting the classification of an asset is reviewed *de novo* when the facts are undisputed and the credibility of witnesses is not at issue). We disagree with petitioner the *de novo* standard of review is appropriate in this case as both the facts and credibility of the witnesses were in dispute.

¶ 44 In the trial court and on appeal, petitioner argues the marital residence property is his father's and should not be part of the dissolution property distribution. On appeal, he also adds the argument that, in the alternative, the trial court should have found he had a nonmarital

remainder interest in the property. Here, the evidence shows that, as a result of petitioner's mother's death, petitioner had a remainder interest in the marital residence property and his father, as trustee, had complete control of the property during his lifetime. Thus, petitioner clearly had a remainder interest in the marital residence property, and we do not address the propriety or the applicability of *Didier*. Accordingly, we find the trial court properly included the marital residence property in the parties' assets.

¶ 45 Under the facts of this case, whether the trial court considered the home and buildings on the marital residence property as personal property or recognized petitioner's remainder interest in the real estate is insignificant. For instance, it would have very little effect on valuation of the property as petitioner's father had not charged the parties' rent during their marriage and allowed them to make any improvements they wanted on the property. Further, the court found petitioner's father would allow petitioner to continue to use the property in that manner after the dissolution proceedings. Thus, we find the trial court's mislabeling of the marital residence property as personal property and not as a remainder interest in the real estate is not reversible error as it does not itself affect the parties' property distribution.

¶ 46 The real issue here is marital versus nonmarital property. Petitioner simply argues the property at issue was his nonmarital property under section 503(a)(2) of the Dissolution Act (750 ILCS 5/503(a)(2) (West 2008)), which provides "property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, legacy or descent" is nonmarital property. Under the facts of this case, the proper section is section 503(a)(1) (750 ILCS 5/503(a)(1) (West 2008)) and, under it, property that a spouse receives by inheritance during the marriage is generally nonmarital property. However, property can be transmuted. See, *e.g.*, *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 155, 838 N.E.2d

282, 292 (2005) (affirming the finding that inheritance deposited into joint accounts was marital property).

¶ 47 Section 503(c)(1) of the Dissolution Act (750 ILCS 5/503(c)(1) (West 2008)) provides the following:

> "When marital and non-marital property are commingled by contributing one estate of property into another resulting in a loss of identity of the contributed property, the classification of the contributed property is transmuted to the estate receiving the contribution, subject to the provisions of paragraph (2) of this subsection; provided that if marital and non-marital property are commingled into newly acquired property resulting in a loss of identity of the contributing estates, the commingled property shall be deemed transmuted to marital property, subject to the provisions of paragraph (2) of this subsection."

Section 503(c)(2) (750 ILCS 5/503(c)(2) (West 2008)) then provides for reimbursement to the contributing estate if the contribution is traceable by clear and convincing evidence. Given the unique facts of the this case, such as the house basically being rebuilt, new outbuildings, and petitioner having only a remainder interest, the new home and buildings constituted "newly acquired" property under section 503(c)(1).

¶ 48 Even if petitioner's interest in the property was nonmarital, the marital estate would be entitled to reimbursement under section 503(c)(2) because respondent presented ample evidence tracing the contribution. Moreover, the marital contribution was close in time to the breakdown of the marriage, and thus the marital estate received little benefit from its

contribution. Thus, the marital estate would be entitled to full reimbursement, which would lead to the same result as the trial court's valuation of the property as the amount of the remodeling costs, which we affirm in the next section. Whether the marital residence property is marital or nonmarital does not change the parties' property distribution.

¶ 49 Accordingly, we conclude the trial court's finding petitioner's interest in the marital residence property, which should have been characterized as a remainder interest, was marital property was not against the manifest weight of the evidence.

¶ 50 2. *Valuation*

¶ 51 Petitioner further argues that, if the marital residence property was marital property separate from the land, then the trial court's valuation of it was contrary to the manifest weight of the evidence. While we have disagreed the interest in the property was personal property, we have affirmed the trial court's finding it was marital property and thus will address petitioner's argument.

¶ 52 Under section 503(f) of the Dissolution Act (750 ILCS 5/503(f) (West 2008)), the property in a dissolution proceeding should be valued on the date of the trial or "some other date as close to the date of trial as is practicable." As with the classification of property, this court will not disturb a trial court's assignment of value to an asset unless it is against the manifest weight of the evidence. *In re Marriage of Lundahl*, 396 Ill. App. 3d 495, 504-05, 919 N.E.2d 480, 488 (2009).

¶ 53 In this case, petitioner presented an appraisal for just the current marital home that used the sales-comparison approach and produced a value of $220,000. Petitioner also testified the value of the home torn down for the current one was $200,000. Respondent presented the costs for (1) the 2003-04 remodeling project, on which the parties spent $453,782.86 on the

home; and (2) the outbuildings built in 2000, which was $172,785. The trial court noted those amounts did not include subsequent improvements to the outbuildings, such as the concrete pad for the indoor storing of rock. During their marriage, the parties paid for all of the maintenance on the marital residence property. The parties spent $300,000 on respondent's new home. The trial court valued the marital residence property at $626,567.86, the cost of most of the improvements done by the parties on that property, and respondent's home at $300,000. In doing so, the court stated "[t]he fair market value of the buildings on the real estate of another may not equate to the foregoing value."

¶ 54 Despite the burden of presenting evidence of valuation on the parties (see *In re Marriage of Albrecht*, 266 Ill. App. 3d 399, 402, 639 N.E.2d 953, 955 (1994)), they presented the trial court with very little evidence as to the value of the marital residence property. In valuing both the marital residence property and respondent's residence, the trial court treated both properties the same and used the amount of money the parties invested in the properties as their value. Petitioner claims the trial court should not have used that approach with the marital residence property because he presented a recent appraisal of the residence on that property. However, the amount of the appraisal, $220,000, is quite suspect. First, after the parties spent more than $450,000 on the current marital home, the appraisal was only $20,000 more in value than the home that the parties tore down. Second, the appraisal was just the house and not the outbuildings. Additionally, as to the property as a whole, the trial court suggested the marital residence property was customized for petitioner's business, and thus a sales-comparison approach would not be appropriate.

¶ 55 Regarding the outbuildings, petitioner acknowledges the trial court needed to use the improvement costs as a starting point but asserts the court erred by not taking depreciation

into consideration. He argues a value of $150,000 would "take that factor into some account." However, the record does not indicate the parties presented the court with any evidence of depreciation. Moreover, the court emphasized it did not include all of the improvement costs in the value of the marital residence property, suggesting the costs of the additional improvements offset any depreciation.

¶ 56 With the little and suspect evidence provided to it by the parties, the trial court did the best it could in valuing the real property interests in this case. Accordingly, we find the trial court did not abuse its discretion in valuing the marital residence property.

¶ 57 3. *Reimbursement*

¶ 58 Since we have affirmed the trial court's finding the marital residence property was marital property, we do not address petitioner's reimbursement argument.

¶ 59 D. Dissipation

¶ 60 In allocating property under section 503 of the Dissolution Act, the trial court must consider any "dissipation by each party." 750 ILCS 5/503(d)(2) (West 2008). "Dissipation has been defined as the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown ***." (Internal quotation marks omitted). *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 652-53, 913 N.E.2d 1077, 1088 (2009) (quoting *In re Marriage of Petrovich*, 154 Ill. App. 3d 881, 886, 507 N.E.2d 207, 210 (1987)). "The person charged with dissipation bears the burden of establishing by clear and convincing evidence how the funds were spent." *Sanfratello*, 393 Ill. App. 3d at 653, 913 N.E.2d at 1088. With dissipation, we review the factual findings under the manifest-weight-of-the-evidence standard but review the final property distribution under the abuse-of-discretion standard. *In re Marriage of Tabassum*, 377 Ill. App.

3d 761, 779, 881 N.E.2d 396, 413 (2007). "A trial court abuses its discretion only where its ruling is arbitrary, fanciful or unreasonable or where no reasonable person would take the view adopted by the trial court [citation], or where its ruling rests on an error of law." *In re Marriage of Iqbal*, 2014 IL App (2d) 131306, ¶ 44, 11 N.E.3d 1.

¶ 61 Petitioner suggests the lack of pretrial notice of all of the items the trial court found were dissipation by petitioner was a due-process violation. However, in civil cases, the general rule that issues not raised in the trial court are deemed forfeited on appeal also applies to constitutional claims. *In re Marriage of T.H.*, 255 Ill. App. 3d 247, 254, 626 N.E.2d 403, 408-09 (1993). The record on appeal contains no evidence petitioner raised this issue in the trial court. Accordingly, petitioner has forfeited this claim.

¶ 62 To the extent petitioner asserts the trial court erred by considering the claims of dissipation not included in respondent's notices of dissipation, we find no error. At the time of these proceedings, notice of dissipation was not required under section 503 of the Dissolution Act (see 750 ILCS 5/503(d)(2) (West 2008)), and a court could find dissipation *sua sponte* (see *Sanfrantello*, 393 Ill. App. 3d at 653, 913 N.E.2d at 1088). Additionally, we note the record does not indicate petitioner made a motion to continue the hearing to present additional evidence on the dissipation claims. Last, Public Act 97-941 (eff. Jan. 1, 2013) amended section 503(d)(2) of the Dissolution Act (750 ILCS 5/503(d)(2) (West 2010)) to require advance notice of dissipation claims. As petitioner recognizes, the new notice provisions of section 503(d)(2) did not apply to these proceedings.

¶ 63 Additionally, petitioner argues the trial court erred by finding he committed dissipation by (1) paying his father rent on the marital rent and outbuildings, (2) expending money from Brock's account, and (3) exposing respondent to payment of attorney fees to defend

petitioner's father's eviction action. While under ordinary circumstances such payments would likely not be dissipation, the trial court in this case found petitioner tried to hide his assets and income during the dissolution proceedings and caused unnecessary expenses. The court went so far as to label the payment of rent to petitioner's father as a "deliberate fabrication and fraud upon the court." As to Brock's alleged $14,512.43, the court found it was actually petitioner's income. Last, the court expressly found it did not believe petitioner's father acted independently in filing the eviction action and concluded petitioner's legal expenses in defending the action were unnecessary. Accordingly, we find the trial court's factual findings that the aforementioned payments were dissipation were not against the manifest weight of the evidence.

¶ 64 E. Maintenance

¶ 65 Petitioner next argues the amount of the trial court's maintenance award ($5,700 per month) was improper because respondent did not present evidence her needs were that great and the evidence showed he lacked the ability to pay such a sum. Respondent asserts the maintenance amount was proper considering respondent's past income.

¶ 66 The amount of a maintenance award lies within the trial court's sound discretion, and this court will not disturb that decision absent an abuse of discretion. *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 619, 814 N.E.2d 152, 161 (2004). In determining an amount of maintenance, the court considers the factors of section 504(a) of the Dissolution Act (750 ILCS 5/504(a) (West 2008)), which are the following: (1) each party's income and property, including apportioned marital property; (2) each party's need; (3) each party's earning capacity; (4) impairments of earning capacity due to time devoted to domestic responsibilities during the marriage; (5) the time the party seeking maintenance needs to begin supporting himself or herself through appropriate employment; (6) the standard of living shared during the marriage; (7) the

marriage's duration; (8) each party's age and his or her physical and emotional condition; (9) tax consequences of property division; (10) the party seeking maintenance's contributions to the education, license, training, or career potential of the other spouse; (11) a valid agreement by the parties; and (12) other factors the court expressly finds are just and equitable. The court need not give equal weight to the aforementioned factors, " 'so long as the balance struck by the court is reasonable under the circumstances.' " *Selinger*, 351 Ill. App. 3d at 619, 814 N.E.2d at 161 (quoting *In re Marriage of Miller*, 231 Ill. App. 3d 480, 485, 595 N.E.2d 1349, 1353 (1992)). Additionally, the benchmark for a determination is the spouse's reasonable needs in view of the standard of living established during the marriage as well as the marriage's duration, the ability to become self-supporting, and the lack of an income-producing spouse. *Selinger*, 351 Ill. App. 3d at 620, 814 N.E.2d at 161.

¶ 67 The trial court's order indicates it considered the aforementioned factors set forth in section 504(a) of the Dissolution Act. The court expressly rejected petitioner's evidence he was working as a farmhand earning less than $15,000 a year, noting petitioner had diverted funds to his father and his sons to avoid the appearance of income. The court further explained how petitioner's loss of his road-repair business to his manager was a "ruse." It concluded petitioner had considerable earning potential both as a farmer and a businessman. The parties' tax returns showed income of $391,877 in 2008; $948,587 in 2009; and $426,900 in 2010, all of which was primarily attributable to petitioner. Thus, the court's finding petitioner had a "tremendous future ability to pay as he has the ability to gain significant income" was not against the manifest weight of the evidence.

¶ 68 As to respondent's needs, the trial court found her current income based on working 35 hours a week was sufficient to meet "most of respondent's basic needs." However, if

her hours are reduced, her income would not be sufficient to meet "even a significant portion of her basic needs." Additionally, it noted respondent's minimum-wage job was insufficient to pay the basic expenses of her home and also meet her other basic needs. The court further found "[h]er current income [would] not even remotely come close to supporting her in the standard of living established in the marriage." The court explained the parties had a comfortable lifestyle that allowed them to frequently travel and pursue their hobbies and recreational activities. Respondent testified she was working 35 hours per week at a bank until another employee returned to work, at which time her hours would be reduced to 25 hours per week. The bystander's report states respondent also testified to her financial needs as set forth in her financial affidavits. Last, we note the court did recognize respondent had the ability to generate income from her 33.5 acres but found it would be inadequate to maintain the marital standard of living. Accordingly, we find the trial court's conclusion respondent's income was insufficient to both meet all of her basic living and housing needs and maintain the marital standard of living was not against the manifest weight of the evidence.

¶ 69 Since petitioner had the ability to generate significant income and respondent did not and the parties had a high standard of living during the marriage, the trial court did not abuse its discretion by ordering petitioner to pay respondent $5,700 in monthly maintenance.

¶ 70 F. Postnuptial Agreement

¶ 71 Last, petitioner asserts the trial court erred by rejecting the parties' postnuptial agreement. Respondent asserts the trial court acted properly. We review *de novo* a trial court's determination of whether a postnuptial agreement is valid. *Iqbal*, 2014 IL App (2d) 131306, ¶ 33, 11 N.E.3d 1. "However, to the extent that we consider factual findings in our analysis, we will use a manifest weight of the evidence standard." *Tabassum*, 377 Ill. App. 3d at 777, 881

N.E.2d at 412.

¶ 72 In this case, the trial court found the postnuptial agreement was unenforceable because its terms were not definite and certain. Specifically, the court found a key aspect of the parties' agreement was the list of each party's respective property, but the list of property pages for each party was left blank. Additionally, the court found the waiver of maintenance without a provision for respondent's well-being when such a significant difference existed in the parties' earning capacities was unconscionable.

¶ 73 "[F]or a valid contract to be formed, an offer must be so definite as to its material terms or require such definite terms in the acceptance that the promises and performances to be rendered by each party are reasonably certain." *In re Marriage of Murphy*, 359 Ill. App. 3d 289, 300-01, 834 N.E.2d 56, 66 (2005). Moreover, an enforceable contract must also include a meeting of the minds or mutual assent to the terms of the contract. *Murphy*, 359 Ill. App. 3d at 301, 834 N.E.2d at 66.

¶ 74 Petitioner cites *Tabassum*, 377 Ill. App. 3d at 777, 881 N.E.2d at 412, where the Second District questioned whether financial disclosures were required in postmarital reconciliation agreements. Regardless of whether they were required, that court concluded the lack of such disclosures would not invalidate the agreement in that case because (1) the parties were sufficiently aware of each other's assets and liabilities; (2) the parties expressly waived any right to further disclosure of assets and liabilities; and (3) the respondent, against whom the agreement was sought to be enforced, admitted he did not subsequently learn anything new about the petitioner's assets. *Tabassum*, 377 Ill. App. 3d at 777-78, 881 N.E.2d at 412.

¶ 75 However, in this case, respondent was unaware of petitioner's actual interest in the marital residence property when she signed the postnuptial agreement. Moreover, the

agreement states, "[e]xcept as herein otherwise provided, each Party shall own as their separate property the property, as listed in their respective schedules attached hereto and made a part hereof as Exhibits 'A' and 'B,' together with any property which they may have omitted inadvertently therefrom, and any property they may hereafter acquire." Thus, with the postnuptial agreement at issue, what each party considered as his or her own and separate property was a material part of the agreement, and the exhibits were left blank. Even if the trial court erred in finding the agreement invalid, we have nothing to enforce under the agreement as separate property because the exhibits are blank.

¶ 76 Further, we note petitioner does not challenge the trial court's unconscionable finding as to the waiver of maintenance. Thus, we do not address that issue. We also do not address whether the postnuptial agreement's severance clause would permit the enforceability of the separate property provision since we have found that provision unenforceable.

¶ 77 Accordingly, we find the trial court did not err by rejecting the parties' postnuptial agreement.

¶ 78 III. CONCLUSION

¶ 79 For the reasons stated, we affirm the judgment of the Woodford County circuit court.

¶ 80 Affirmed.