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SIXTH DIVISION
April 24, 2015

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> THE MARRIAGE OF)	Appeal from the
)	Circuit Court of
BOZENA WUNDERLICH,)	Cook County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 08 D 230502
)	
JAKUB WUNDERLICH,)	The Honorable
)	Patricia M. Logue,
Respondent-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶1 *HELD:* Respondent forfeited review of the propriety of the circuit court's entry of a bifurcated judgment for the dissolution of the parties' marriage. The circuit court's findings relative to respondent's dissipation of marital funds was not against the manifest weight of the evidence. The circuit court did not abuse its discretion in ordering respondent to contribute to the payment of petitioner's attorney fees.

¶2 Respondent, Jakub Wunderlich, appeals the circuit court's bifurcated judgment for the dissolution of his marriage to petitioner, Bozena (Bonnie) Wunderlich. Respondent contends the circuit court's dissipation findings were against the manifest weight of the evidence. Respondent additionally contends the circuit court abused its discretion in ordering him to contribute \$25,000 toward petitioner's attorney fees. Based on the following, we affirm.

¶3 **FACTS**

¶4 The parties were married on March 9, 1993. No children were born to the marriage. Both parties had sons from prior marriages. Petitioner filed her petition for the dissolution of the marriage on September 9, 2008, citing irreconcilable differences that caused an irretrievable breakdown of the marriage. Petitioner stated that she was 52 years old at the time and respondent was 59 years old at the time. In her petition, petitioner accused respondent of mental cruelty. Petitioner further stated that both she and respondent were employed, but that she was unable to provide for her support or attorney fees without contribution by respondent. On October 12, 2008, respondent filed a counter-petition for the dissolution of the parties' marriage, alleging that he was entitled to support and contribution for his attorney fees from petitioner.

¶5 On November 2, 2009, petitioner filed a petition to join Mark Wunderlich, respondent's son, as a third-party defendant pursuant to section 2-406 of the Code of Civil Procedure (735 ILCS 5/2-406 (West 2008)), alleging that respondent transferred certain marital property to Mark including his interest in the marital home. On December 3, 2009, respondent filed an answer and affirmative defenses to the petition to join Mark as a third-party defendant. In relevant part, respondent asserted that, on or about July 1, 2008, he conveyed his one-half interest in the marital residence to his son as part of his estate planning because respondent was seriously ill

and about to have surgery. On March 9, 2010, the circuit court granted petitioner's petition to add Mark as a third-party defendant over respondent's objection.

¶6 On October 7, 2011, the parties entered an agreed order granting the exclusive use and possession of the marital home located at 1871 Summerton in Northbrook, Illinois, to petitioner.

¶7 The case proceeded to trial on three separate dates, namely, September 18, 2012, January 23, 2013, and April 19, 2013.

¶8 Petitioner testified that she was 56 years old and lived alone in the marital residence. Petitioner stated that she graduated from high school in Poland in 1975 and attended one year of cosmetology school in Poland. Petitioner moved to the United States in September of 1976. Petitioner then attended the Ippolito Beauty School in Chicago from 1978-79 to obtain her license in Illinois. Petitioner testified that she was employed by Sisely Cosmetics USA (Sisely) and worked as a counter manager at Saks Fifth Avenue (Saks) in Highland Park, Illinois. According to petitioner, she had worked for Sisely for nearly 18 years with 11 of those years at Saks. Petitioner also owned an employment agency beginning in 1985 through about 2004. Petitioner testified that her employment with Sisely was terminating on December 31, 2012, because the Saks location was closing. Petitioner was not being transferred to another store location and did not have any reasonable prospects for employment as of the date of trial.

¶9 Petitioner testified that her salary was \$33.99 per hour and she worked approximately 30 hours per week. Petitioner added that she occasionally earned bonuses. Petitioner earned a bonus in 2011, but not in 2012. According to petitioner, she and respondent always filed separate income tax returns during their marriage. Based on her tax returns, petitioner's adjusted gross income for 2009 was \$48,245, for 2010 was \$47,650, and for 2011 was \$52,144.

¶10 Petitioner testified that, as a benefit of her employment with Sisely, she received health, dental, and optical insurance. Petitioner stated that respondent was a beneficiary on her insurance policy. Respondent contributed \$494 monthly toward the \$559 monthly health insurance premium. Once her employment with Sisely terminated, petitioner would be eligible for COBRA insurance.

¶11 Petitioner testified that respondent moved out of the residence in late April 2010. According to petitioner, however, the marriage began to break down in 1998 when she learned of respondent's extra-marital affairs. Petitioner stated that she could not file a dissolution petition at that time because her son was living in the marital residence finishing high school with plans to attend college and petitioner was unable to support herself and her son. Petitioner testified that the catalyst for filing the underlying petition in September 2008 was respondent's dissipation of a home equity line of credit (HELOC) the parties had opened at Charter One bank in November 2007. According to petitioner, respondent withdrew \$9,203.32 from the HELOC on July 14, 2008, while he was in Florida visiting his mother in order to pay for renovations to his mother's home. Shortly thereafter, petitioner discovered a quitclaim deed dated July 2, 2008, in which respondent conveyed his 50% interest in the marital home to his son, Mark, without petitioner's knowledge. Petitioner added that respondent had inherited property in Evanston, Illinois from his mother that he had conveyed to Mark as well.

¶12 According to petitioner, the parties purchased the marital home as joint tenants in September 1993 for \$100,000. Both petitioner and respondent contributed \$5,000 toward the \$10,000 down payment. Petitioner testified that the property remained in joint tenancy until July 2008.

¶13 Petitioner testified that the HELOC opened in November 2007 on the marital home was for \$100,000. According to petitioner, \$40,000 of the new HELOC was used to pay off a prior HELOC. Petitioner testified that she personally did not withdraw any money from the HELOC until August 2008 when she learned that respondent had withdrawn \$9,200. Because she feared respondent would withdraw all of the remaining HELOC funds, petitioner withdrew \$60,000. Petitioner opened a bank account at the same bank, Charter One, and placed the \$60,000 in that account. According to petitioner, on a monthly basis, she transferred 2% of the amount she had withdrawn from the HELOC to respondent to pay for the interest on the funds. As of the date of trial, petitioner stated that \$2,200 remained in the Charter One account. Petitioner never deposited any additional funds into the account after initially opening it. Petitioner stated that she used the HELOC funds to pay \$3,500 to her former counsel, \$10,000 to her current counsel, \$29,000 for a 2009 Toyota Avalon, two instances of lawn care for the marital residence, and household bills.

¶14 Petitioner testified that, throughout the marriage, respondent paid the HELOC or mortgage for the marital home, the utilities, and the real estate taxes through company funds. Petitioner said she paid for food costs, home renovations, and decorating the home. Petitioner stated that respondent continued to contribute to the repayment of the HELOC despite moving from the marital home from 2010 until the summer of 2011. Petitioner testified that Mark had never contributed to any household expenses, utilities, or payment of the HELOC. After 2011, petitioner paid the HELOC. Petitioner further stated that she paid the 2009 real estate taxes by borrowing \$7,200 from a friend, Iga Trubowicz, in order to avoid a tax sale. In addition, petitioner paid approximately \$6,900 for the 2010 real estate taxes using the funds from the HELOC. Petitioner testified that she paid \$5,919.49 for the 2011 real estate taxes using funds

from the HELOC. According to petitioner, her net monthly income was \$3,097.22 and her expenses were \$4,416.30. Petitioner deposited her pay checks into a Chase checking account. Petitioner testified that she paid her expenses from her checking account and used HELOC funds to compensate for the monthly deficit between her income and expenses. Petitioner said she had a Chase savings account with a balance of about \$450, but did not have any retirement accounts.

¶15 Petitioner said respondent owned Wunderlich Diamond Tool, which manufactures electroplated diamond tools for cutting. Respondent opened the business before the parties' marriage. Petitioner testified that respondent's former wife, Barbara Wunderlich, had previously been employed by Wunderlich Diamond Tool, but had not worked for the business since the parties were married. Nevertheless, Barbara received a monthly income from the company of \$1,200, as well as medical insurance costing "over \$400" per month. During the marriage, petitioner was unaware that Barbara was receiving a salary and benefits from Wunderlich Diamond Tool. In addition, respondent's mother received medical insurance and long-term care benefits costing approximately \$500 monthly from Wunderlich Diamond Tool despite not being an employee. Petitioner was also unaware that respondent's mother received these benefits during the parties' marriage.

¶16 Petitioner testified that she was in good health except for her eyes in which she had optical nerve damage. Petitioner was legally blind in her right eye and her eye sight was worsening in her left eye. Petitioner stated she was unable to drive at night. During the course of trial, petitioner underwent a number of surgeries but her vision did not improve. Petitioner owed \$3,100 for the surgeries.

¶17 Petitioner updated the court that she continued employment with Sisely through February 2013 and had since been given free lance opportunities with the company. She continued to

receive \$32 per hour and approximated that she was earning \$1,200 to \$1,300 per month.

Petitioner continued to seek full time employment.

¶18 Respondent testified that he was 63 years old and suffered from chronic medical conditions. On April 10, 2010, respondent suffered a stroke. His health continued deteriorating since that time. Respondent testified that he had been hospitalized for low oxygen levels, fluid collection in his organs, a diabetic ulcer, heart arrhythmia, and pulmonary hypertension.

Respondent stated that he underwent several surgeries.

¶19 Respondent testified that in 2013 he applied for disability benefits and expected to receive two-thirds of his salary. Respondent did not apply for social security benefits. Prior to applying for disability benefits, respondent was employed by Wunderlich Diamond Tool and received "occasional paycheck[s] depending on the cash flow which my son would decide." Respondent started Wunderlich Diamond Tool on August 19, 1982. He and his previous wife, Barbara, were the officers of the company. Petitioner did not contribute to the company. Respondent owned 100% of the shares of the company. Prior to his stroke in 2010, respondent "tried to do as much" as he could with Wunderlich Diamond Tool, including meeting with customers and performing as the product manager. After his 2010 stroke, respondent still spent his time at the Wunderlich Diamond Tool office, but was not actively involved in the company's management. Rather, respondent provided advice when asked and signed checks. According to respondent, Mark had taken over the management role of the company. Respondent stated that he always received a salary from the company, which, in 2012, was equal to \$35,000.

¶20 According to respondent, he paid all the expenses associated with the marital home during the marriage up until his stroke. These expenses included the mortgage, utilities, insurance, landscaping, and repairs. Petitioner did not contribute to the household expenses.

Respondent, however, did not pay real estate taxes on the marital home in 2011 or 2012 and had not made payments toward the HELOC since his 2010 stroke. Respondent testified that he lived in the Wunderlich Diamond Tool office, having converted some space into living quarters with a foam bed, shower facilities, and a washer and dryer. Respondent had personal belongings that remained at the marital home, including a china cabinet that contained crystal "from the old country," a recliner, a bed, a wrist watch, a tie pin, and some clothes.

¶21 Respondent testified that he obtained loans from Wunderlich Diamond Tool as the sole shareholder of the company. Respondent acknowledged a loan of approximately \$44,000 on his 2008 tax returns. According to respondent, he borrowed money from the company when he was "in financial dire, like mortgage payment or utility or tax on real estate, this amount would fluctuate, money would go both ways throughout the year." Respondent testified that he would repay the shareholder loan by not cashing his payroll checks.

¶22 Respondent stated that he withdrew money from the HELOC in 2009 to pay real estate taxes.

¶23 According to respondent, he began paying for his mother's long-term health care insurance in the late 1990s. Initially, he paid for the coverage himself, but then changed the source of the payments to automatic withdrawal from the Wunderlich Diamond Tool company account. The company also automatically paid respondent's mother's supplemental health insurance policy on a monthly basis. Respondent testified that he reimbursed the company for both policies with his wages. The policies cost approximately \$450 per month. Respondent testified that his mother passed away during the course of trial. Respondent added that his former wife, Barbara, received a salary of \$12,200 per year from Wunderlich Diamond Tool, as

well as health insurance coverage. The cost of Barbara's monthly health insurance was approximately \$400. Respondent admitted that Barbara did not do much work for the company.

¶24 Respondent testified that, in 2008, after undergoing three lower back surgeries, he transferred the property located at 2114 Keeney Street in Evanston, Illinois, which he had inherited from his father, and his interest in the joint tenancy of the marital home to Mark. Respondent stated that he was unaware petitioner intended to file a dissolution petition when he transferred the properties. Respondent added that he personally obtained a mortgage on the Evanston property in 2006 or 2007 in order to pay off a \$55,000 company line of credit and outstanding company bills. According to respondent, he could not live in the Evanston house because the mortgage costs were too high. Respondent testified that Wunderlich Diamond Tool paid the mortgage and real estate taxes for the Evanston property, considering the payments to be "a company expense." The mortgage payment for the property was about \$1,500 per month and the real estate taxes were approximately \$500-\$550 per month. Respondent testified that Mark lived in the Evanston property and paid rent of \$1,050 per month.

¶25 According to respondent, his monthly living expenses were \$1,058 and his net income was approximately \$1,616 per month. Respondent stated that he had an outstanding balance on his credit card of \$15,000 or more. Respondent had \$17,000 in an individual retirement account (IRA) at the Community Bank of Rock Falls; \$33,000 in a Roth IRA at American Funds; and a mutual fund with a balance of \$7,960 as of July 31, 2012, at UVest, First American.

¶26 Mark Wunderlich testified that he lived in the Evanston property, which was entirely owned by him. Mark admitted that from July 2008 through June 2011 he did not pay any expenses related to the property. Rather, respondent paid all expenses related to the Evanston property despite having no ownership interest therein. Mark testified that he did pay \$1,050 cash

in monthly rent to respondent. When Mark obtained a roommate, the pair split the rental costs. According to Mark, respondent deducted the real estate taxes and mortgage interest from the Evanston property on respondent's taxes. Mark stated that he received respondent's one-half interest in the marital home via quitclaim deed, but he had never contributed to any of the property-related expenses. Mark admitted that he would be prepared to return the marital home to respondent if directed by respondent. Mark testified that respondent transferred 50% of the marital home and the Evanston property to Mark to ensure petitioner did not have any interest in the event of his "untimely demise."

¶27 Mark testified that he worked at Wunderlich Diamond Tool and was self-employed for Mark Wunderlich Computers, Incorporated. Mark had worked for Wunderlich Diamond Tool since 2009.¹ Mark, however, had received medical benefits from Wunderlich Diamond Tool prior to 2009. He did not contribute any payments to his medical benefits. Mark testified that he was learning the aspects of the business, but respondent maintained ownership of Wunderlich Diamond Tool. Although Mark did not know whether his mother, Barbara, had received medical insurance benefits through Wunderlich Diamond Tool prior to 2009, she was receiving those benefits at the time of trial. Mark stated that his employment agreement with Wunderlich Diamond Tool was a verbal agreement between himself and respondent. According to the oral agreement, Barbara, though not an employee of Wunderlich Diamond Tool, received a monthly paycheck based on an hourly rate. Wunderlich Diamond Tool paid social security for Barbara and Barbara received a W-2 for income taxes. Mark received \$7.50 per hour and Barbara received \$7.50 per hour for 30 hours per week. Mark testified that he received approximately \$11,000-\$12,000 per year as an employee of Wunderlich Diamond Tool and earned approximately \$10,000 per year from Mark Wunderlich Computers, Incorporated. Mark stated

¹ Mark later testified that he began working at Wunderlich Diamond Tool in 2007.

that he slept on a futon in the company warehouse from 2008-2011 because his work schedule required that he do so.

¶28 According to Mark, the property where Wunderlich Diamond Tool is located, namely, 1330 Howard Street in Elk Grove Village, Illinois is owned by him. Mark purchased the property in 1999 for \$350,000. He paid 10% of the purchase price and secured a mortgage for the remaining purchase price. Mark testified that he was "owed a substantial amount of rent that Wunderlich Diamond Tool could not pay in past years." Mark approximated that he was owed \$150,000 in back rent. The monthly rent was \$5,400.

¶29 On May 3, 2013, petitioner filed a motion for bifurcated judgment, alleging respondent was "in very grave health, with a less optimistic prognosis given his recent hospital stays and multitude of serious medical conditions." According to the motion, petitioner feared "irreparable harm" if the judgment for the dissolution of the marriage was delayed and respondent died before entry thereof where the respondent transferred his 50% interest in the marital home to Mark. On May 8, 2013, the circuit court entered a bifurcated judgment for the dissolution of the parties' marriage. The judgment reserved the following issues: (1) classification of marital and non-marital property and the disposition of all property; (2) any issue of dissipation claims and debt allocation; (3) any issue of maintenance/spousal support; and (4) any issue of allocation, reimbursement, and/or contribution to attorney fees and other fees incurred in connection with the matter.

¶30 On July 17, 2013, the circuit court entered its written order on the issues reserved in the bifurcated judgment. The circuit court ordered the following: (1) respondent owed petitioner \$160,996 representing her 50% share of dissipated marital funds, specifically finding "the court has taken this into consideration, as well as the parties' respective income streams, and all other

factors under Section 503(d)(1) in allocating the marital property and debt disproportionately between the parties, and by requiring [respondent] to replace dissipated funds;" (2) Wunderlich Diamond Tool was assigned to respondent as his sole and separate property; (3) Diamond Plating Company & Machinery was assigned to respondent as his sole and separate property²; (4) the Evanston property was assigned to respondent as his sole and separate property for which respondent was solely responsible for all mortgage, tax, utility, and other outstanding or future debt or payments due on the property; (5) respondent was awarded his individual accounts at Bank of America and Charter One, as well as the business accounts at Charter One, First American, and BB Checking as his sole and separate property; (6) the Northbrook marital home and all equity therein was awarded to petitioner as her sole and separate property for which, except the HELOC debt, petitioner was solely responsible for all mortgage, tax, utility, and other payments; (7) petitioner solely was responsible for the \$7,300 debt to Iga Trubowicz for the 2009 real estate taxes; (8) respondent was responsible for paying 100% of the outstanding balance on the Charter One HELOC and repayment was required with nonmarital funds; (9) petitioner was awarded as her sole and separate property respondent's IRA at Community Bank of Rock Falls, his Roth IRA at American Funds, and his IRA at UVest and/or First American Investment Services; (10) petitioner was awarded her Toyota Avalon as her sole and separate property; (11) petitioner's accounts at JP Morgan Chase and Charter One were awarded to her as her sole and separate property; (12) respondent was ordered to make \$60,000 available from Wunderlich Diamond Tool to petitioner as partial restoration of the dissipated marital property within 14 days; (13) respondent was awarded the mementos from his father and his clothing that were in the marital home; (14) respondent was ordered to pay \$300 per month toward petitioner's health, dental, and vision insurance coverage; (15) respondent was not entitled to maintenance and the

² Listed on respondent's 13.3.1 Disclosure Statement as a separate business interest.

court's property distribution and monthly health insurance payment were in lieu of maintenance to petitioner; (16) respondent was solely responsible for his \$17,272.03 debt to the Internal Revenue Service from 2004; and (17) each party was solely responsible for all credit card debt.

¶31 On August 16, 2013, respondent filed a motion entitled "Motion After Judgment," requesting that the circuit court vacate the bifurcated judgment for dissolution of marriage and reconsider the dissipation rulings. The motion was denied.

¶32 Petitioner filed a petition for attorney fees and costs, requesting a total of \$71,159.55 in fees and costs. On October 16, 2013, the circuit court entered an order awarding \$25,000 in attorney fees to petitioner. In its written order, the circuit court reasoned:

"The first step in establishing responsibility for fees is to establish whether the fees sought to be paid were reasonable. Counsel from Berger Schatz [petitioner's counsel] represented their client with vigor, were well-prepared throughout the proceedings and performed their duties admirably despite many trying twists and turns in the case that are referenced in the Judgment. The court has reviewed the firm's time records for this case and finds that the bulk of the time spent was reasonable, and the attorneys' rates are not excessive within the Cook County market, but that there was unnecessary duplication of effort by the attorneys in many instances, each of whom was capable of handling these work responsibilities on his/her own.

[] The court finds that the reasonable amount of attorney's fees for Berger Schatz's work in this case, after accounting for duplication of effort, was \$54,000.

[] The court previously considered and applied the Section 503(d) factors in dividing and allocating the marital property and debt in this case, and

endeavored to give [petitioner] a firmer financial footing from which to move forward in the wake of the substantial dissipation engaged in by [respondent]. [Respondent] still has substantial nonmarital assets, income, and benefits that [petitioner] lacks. Further, his financial shenanigans and fraudulent acts are largely responsible for [petitioner] having had to incur higher fees."

¶33 Respondent appeals the May 8, 2013, bifurcated judgment for dissolution of the marriage, the July 17, 2013, order on the issues reserved from the bifurcated judgment, the October 10, 2013, order denying his "Motion After Judgment," and the October 16, 2013, order requiring him to pay \$25,000 toward petitioner's attorney fees.

¶34 ANALYSIS

¶35 I. Bifurcated Judgment

¶36 Turning to the first contention, respondent acknowledges that he failed to timely appeal the entry of the bifurcated judgment. The issues reserved after entry of the bifurcated judgment have since been resolved *vis a vis* the circuit court's July 17, 2013, order, thus rendering moot a challenge to the entry of the bifurcated judgment. See *In re Marriage of Bogan*, 116 Ill. 2d 72, 76 (1986) ("[a]llowing a litigant to appeal the bifurcation of a judgment, where timely objection was made before the trial court, does not encourage piecemeal appeals involving the dissolution itself or the ancillary issues. Furthermore, if we refuse to allow a litigant to appeal the propriety of a bifurcated judgment until all of the ancillary issues have been resolved, the issue would be moot and appeal on that issue would therefore be foreclosed. In this case petitioner has no recourse, and no reviewing court will be able to determine whether the trial court correctly ordered a bifurcated judgment, unless she can appeal.") Review of the propriety of the bifurcated judgment, therefore, is foreclosed.

¶37

II. Dissipation

¶38 Respondent next contends the circuit court's order awarding petitioner \$160,996 in dissipated funds was against the manifest weight of the evidence.

¶39 A circuit court's decision regarding the dissipation of marital assets is reviewed under the manifest weight of the evidence standard. *In re Marriage of Foster*, 2014 IL App (1st) 1230778,

¶ 107. A court's determination is against the manifest weight of the evidence where the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based on the evidence. *Id.*

¶40 Pursuant to section 503(d)(2) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/503(d)(2) (West 2008)), a circuit court shall divide the marital property without regard to marital misconduct in just proportions considering the dissipation by each party of marital and non-marital property. A circuit court will find a dissipation of assets where a spouse uses marital property for his or her own benefit for a purpose unrelated to the marriage when the marriage is undergoing an irreconcilable breakdown. *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 108. The party charged with dissipation bears the burden of establishing by clear and convincing evidence how the funds were spent. *Id.* Whether a spouse's course of conduct constitutes dissipation depends on the facts of the particular case. *In re Marriage of Patel & Sines-Patel*, 2013 IL App (1st) 112571, ¶ 71.

¶41 Respondent admits in his brief that "although [Wunderlich Diamond Tools] and the [Evanston] property are [his] non-marital property, income received from these properties during the marriage are arguably marital if [he] engaged in personal efforts to earn it. Therefore, its use for non-marital purposes may be dissipation." Pursuant to section 503(a) of the Marriage Act, "marital property" is defined as all property acquired by either spouse subsequent to their

marriage, while "non-marital property" includes "income from property acquired by a method listed in paragraphs (1) through (7) of this subsection if the income is not attributable to the personal efforts of a spouse." 750 ILCS 5/503(a)(8) (West 2008). In other words, income from the Evanston property would be considered non-marital property under section 503(a)(1) as property acquired by gift, legacy or descent and income from Wunderlich Diamond Tool would be considered non-marital property under section 503(a)(6) as property acquired before the marriage so long as the income from both sources was "not attributable to the personal efforts of the spouse." 750 ILCS 5/503(a)(1), (a)(6), (a)(8) (West 2008). The record, however, demonstrates that income generated from the Evanston property and Wunderlich Diamond Tool resulted from respondent's personal efforts during the parties' marriage, thereby making that income marital property.

¶42 The circuit court presided over three days of trial, after which it found petitioner's testimony to be credible, respondent's testimony to be incredible, "particularly as to property and financial matters," and Mark's testimony to be "somewhat more credible." Based on the testimony, the circuit court concluded that the irretrievable breakdown of the parties' marriage approximately began on January 1, 2004, when the parties moved into separate bedrooms. Respondent does not challenge this date. At issue are the following four bases of dissipation found by the circuit court: (1) money paid to respondent's former wife, Barbara, in the form of salary and health insurance; (2) money used to pay respondent's mother's medical insurance and long-term care benefits; (3) money used to pay the mortgage and real estate taxes on the Evanston home; and (4) rental income generated by the Evanston home. We discuss each in turn.

¶43 First, based on the testimony, the circuit court concluded that respondent paid his former wife, Barbara, \$12,200 per year in salary and \$4800 per year for health insurance using Wunderlich Diamond Tool funds from 2007 to 2014 despite the fact that she did not work for the company during those years. During those years, respondent also paid Barbara's social security taxes. The evidence demonstrated that petitioner did not agree to the payment of Barbara's salary or benefits. The court concluded that a "conservative calculation of this dissipation would be \$17,756/year for 7 years *** or \$124,292." The court found petitioner was entitled to 50% of that amount or \$62,146. We conclude that these findings were supported by the manifest weight of the evidence.

¶44 Respondent argues that the funds were not dissipated marital assets because they were diverted to Barbara from Mark's paycheck pursuant to an oral agreement between the individuals. The circuit court, however, found "no credible evidence of the agreement." The court further noted that the alleged agreement, which provided for social security contributions for a phantom employee, was a violation of federal law that respondent could not "agree" to. The circuit court was in the superior position to observe the demeanor of the witnesses, determine and weigh their credibility, and resolve any conflicts in their testimony. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 95. We will not disturb the trier of fact's credibility finding. Based on the record, respondent did not establish by clear and convincing evidence that the challenged funds were not dissipated. See *In re Marriage of Foster*, 2014 IL App (1st) 1230778, ¶ 108.

¶45 Second, the trial evidence demonstrated that respondent paid \$500 per month for his mother's medical insurance and long-term care benefits using Wunderlich Diamond Tool funds until she passed away on January 14, 2013, without the permission or knowledge of petitioner.

The circuit court concluded that respondent dissipated marital assets at a rate of \$60,000 per year from January 1, 2004, until January 1, 2013, for his mother's insurance benefits for a total of \$54,000. The court found petitioner was entitled to 50% of that amount or \$27,000. We conclude that these findings were supported by the manifest weight of the evidence.

¶46 Respondent argues that he had been providing for his mother's health care long before the irretrievable breakdown of the marriage; therefore, the payments could not be considered dissipation, citing *In re Marriage of Aud*, 142 Ill. App. 3d 320 (1986), for support. Contrary to the facts in *In re Marriage of Aud*, the facts in this case undisputedly show that petitioner did not acquiesce in the payment of respondent's mother's medical insurance. 142 Ill. App. 3d at 332. As a result, respondent did not establish by clear and convincing evidence that the challenged funds were not dissipated. See *In re Marriage of Foster*, 2014 IL App (1st) 1230778, ¶ 108.

¶47 Third, the circuit court found that respondent used marital assets in the form of Wunderlich Diamond Tool funds to pay the mortgage and real estate taxes for the Evanston house. Although respondent inherited the property from his father, respondent obtained a mortgage in 2006 or 2007 on the property to pay off a \$55,000 line of credit from the business, along with other business debts. Thereafter, respondent paid \$1660 per month for the Evanston property's mortgage and real estate taxes using funds generated by Wunderlich Diamond Tool from at least July 2008 through June 2011. Once Mark moved into the property and began paying \$1050 rent to respondent by himself or in combination with a roommate, respondent retained those rental payments and continued using company funds to pay the mortgage and real estate taxes "for the last 24 months." Accordingly, the circuit court concluded that respondent dissipated marital assets by using company funds to pay the Evanston property's mortgage and

real estate for a total of \$99,600. The court found petitioner was entitled to 50% of that amount or \$49,800. We conclude that this finding was supported by the manifest weight of the evidence.

¶48 Fourth, also in relation to the Evanston property, the trial evidence demonstrated that respondent did not use the rents he received from the property for the marital estate or to pay the mortgage or real estate taxes for the property. Instead, the rental payments were given "back to the company to pay what it owe[d] him," which referred to the revolving debt/credit situation respondent had with the company. For the tax year 2010, respondent reported \$12,600 in rents received on the Evanston property. The circuit court concluded that respondent likely received the same monthly amounts in 2008, 2009, and the first half of 2011. The court stated that the rents received during that time period were generated as a result of respondent's personal efforts to modify the nonmarital asset into a rental business property during the marriage, thus making the income marital property. The court found that respondent dissipated the rental payments which totaled \$44,100, and petitioner was entitled to 50% of that amount or \$22,050. We conclude that this finding was supported by the manifest weight of the evidence.

¶49 Respondent did not provide any evidence to contradict the circuit court's findings related to the Evanston property. *Cf. In re Marriage of Booth*, 255 Ill. App. 3d 707, 710-11 (1993) (finding the respondent's property acquired before marriage did not become marital property where the rental stream that had been established prior to the marriage was used to pay the mortgage on the property). Respondent did argue that the circuit court improperly speculated as to the amount of rents generated by the Evanston property. The record, however, reveals that Mark testified he lived in the Evanston home from July 2008 through June 2011 expense free except for the rental payments he provided to respondent. We find the circuit court's assumption that respondent received the same amount in rent from the same "renter" during the years in

question as had been reported for the 2010 tax year was not against the manifest weight of the evidence. Based on the record, respondent did not establish by clear and convincing evidence that the challenged funds were not dissipated. See *In re Marriage of Foster*, 2014 IL App (1st) 1230778, ¶ 108.

¶50 Overall, the circuit court's order thoroughly detailed the "personal efforts" respondent engaged in related to Wunderlich Diamond Tool and the Evanston property, such that the income generated by those pieces of non-marital property during the marriage constituted marital property for which petitioner was entitled to compensation. Respondent, however, did not contribute all of the income resulting from his personal efforts related to Wunderlich Diamond Tool or any of the income resulting from his personal efforts related to the Evanston property to the marital funds. Instead, respondent dissipated assets from Wunderlich Diamond Tool by using company funds to pay his former wife's salary and medical benefits for seven years, his mother's medical insurance and long-term care for nine years, and the Evanston property's mortgage and real estate taxes for approximately five years. In addition, respondent decided to make the Evanston property an income-generating property and began collecting rent, but did not use the proceeds to pay the property's mortgage or real estate taxes. Instead, respondent contributed the rents received to the fund of uncashed paychecks and revolving loans he took as the sole shareholder of the company. In sum, we conclude the circuit court's finding that respondent dissipated assets and that petitioner was entitled to \$160,996 as a result was not against the manifest weight of the evidence. In other words, an opposite conclusion was not clearly evident nor was the circuit court's finding arbitrary, unreasonable, or not based on the evidence. See *In re Marriage of Foster*, 2014 IL App (1st) 1230778, ¶ 107.

¶51

III. Attorney Fees

¶52 Respondent finally contends the circuit court abused its discretion in ordering him to contribute \$25,000 to petitioner's attorney fees. Respondent maintains that the circuit court improperly ordered his contribution to petitioner's attorney fees without making a finding that petitioner lacked the ability to pay her own fees and he had the ability to contribute to those fees.

¶53 Section 508 of the Marriage Act provides that "[t]he 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 2008). The party seeking an award of attorney fees must establish his or her inability to pay and his or her spouse's ability to do so. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). The supreme court has stated that financial inability is demonstrated where requiring one of the parties to pay the fees would strip that party of his or her means of support or undermine his or her financial stability. *Id.* We review a circuit court's decision to award or deny fees for an abuse of discretion. *Id.* A circuit court abuses its discretion only where no reasonable person would take the view adopted by the court. *Id.* at 173.

¶54 In this case, the circuit court reviewed petitioner's attorney's request for \$71,159.55 in fees and costs. The circuit court concluded that a reasonable amount for petitioner's attorney's fees was \$54,000 and ordered respondent to contribute \$25,000 to the payment thereof. The circuit court reasoned:

"[t]he court previously considered and applied the Section 503(d) factors in dividing and allocating the marital property and debt in this case, and endeavored to give [petitioner] a firmer financial footing from which to move forward in the wake of the substantial dissipation engaged in by [respondent].

[Respondent] still has substantial nonmarital assets, income, and benefits that [petitioner] lacks. Further, his financial shenanigans and fraudulent acts are largely responsible for [petitioner] having had to incur higher fees."

¶55 The circuit court's October 16, 2013, order makes it clear that the court considered the factors set forth in section 503 of the Marriage Act, as well as the parties' respective ability to pay petitioner's fees pursuant to section 508(a) of the Marriage Act. More specifically, the circuit court concluded that petitioner lacked the ability to pay the entirety of her attorney fees where the allocation of marital property was intended to provide her future financial support. In other words, the purpose of the circuit court's allocation of marital property would be frustrated without respondent's contribution to petitioner's attorney fees by stripping her of her means of support and undermining her financial stability. See *Id.* at 174. It was not necessary for the circuit court to find that petitioner was destitute in order to award fees or for petitioner to be required to liquidate her assets in order to receive an attorney fee award. *In re Marriage of Pearson*, 236 Ill. App. 3d 337, 353 (1992).

¶56 Moreover, the circuit court's order demonstrates a consideration of respondent's ability to contribute to petitioner's attorney fees in noting respondent's nonmarital assets, income, and benefits. In addition, the circuit court found respondent was responsible for petitioner's incurrence of higher attorney fees due to his conduct during the dissolution proceedings. *Cf. In re Marriage of Schneider*, 214 Ill. 2d at 174-75 (upholding the denial of an attorney fee award where the court found there was no demonstration the petitioner was unable to pay her fees, especially where she had been awarded a disproportionate share of the marital assets, nor a demonstration of the respondent's ability to pay and where both parties were equally unreasonable, litigious, and quarrelsome during the proceedings). We cannot say the circuit

court's abused its discretion in ordering respondent to pay less than half of petitioner's attorney fees in this case.

¶57

CONCLUSION

¶58 Based on the foregoing, we affirm the circuit court's bifurcated judgment for the dissolution of the parties' marriage and circuit court's order on issues reserved in the bifurcated judgment. We additionally affirm the circuit court's attorney fee award.

¶59 Affirmed.