2015 IL App (1st) 141940-U

Nos. 1-14-1940, 1-14-2874 & 1-15-0124 (consolidated)

Fourth Division
December 31, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IN RE THE FORMER MARRIAGE OF:	)	Appeal from the
JACQUELINE E. EDELBERG,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellant,	)	
	)	No. 11D9432
v.	)	
	)	Honorable
ANDREW SLOBODIEN,	)	Andrea M. Schleifer,
	)	Judge Presiding.
Respondent-Appellee.	)	

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

O R D E R

¶ 1 *Held:* Trial court did not abuse its discretion when it awarded the petitioner maintenance in gross or when it ordered her to contribute to respondent's attorney's fees; its valuation of marital assets was not against the manifest weight of the evidence; it did not err in partially denying petitioner's motion to reconsider; its *nunc pro tunc* order was proper.

¶ 2 On January 24, 2014, the trial court dissolved the marriage of petitioner, Jacqueline E. Edelberg and respondent, Andrew Slobodien. Jacqueline appeals from the judgment of dissolution. Specifically, she contends that the trial court: (1) abused its discretion when it

awarded her maintenance in gross of $28,800; (2) erred in its valuation of marital assets; (3) erred in partially denying her motion to reconsider; (4) entered an improper *nunc pro tunc* order; and (5) erred in ordering Jacqueline to pay any of Andrew's attorney's fees.

¶ 3 BACKGROUND

¶ 4 Jacqueline and Andrew met in Chicago in December 1993. At the time, Jacqueline was completing her PhD in political science at the University of Chicago and Andrew was attending law school at Chicago-Kent College of Law. The parties were married in Baltimore, Maryland on October 23, 1994. After obtaining her PhD, Jacqueline received a Fulbright Scholarship to teach political philosophy in Germany for a year. Andrew took a sabbatical from his legal position in Chicago to join her and also teach law classes in Germany. Upon returning to Chicago, they bought a condominium located at 3400 North Lake Shore Drive, Unit 4F. Two children were born to the parties during the marriage, Maya, born December 9, 1998, and Zach, born November 13, 2000. Jacqueline filed a petition for dissolution of marriage against Andrew on September 27, 2011.

¶ 5 During the marriage, Andrew practiced labor and employment law and eventually became a partner at a large law firm, where he earned approximately $270,000 annually. Andrew resigned in September 2011 because of mental health issues, and received gross severance payments of $16,500 per month, which terminated at the end of that year. He also received money from a disability policy from January 2012 until about May 2012. During 2012, the parties lived on the liquidation of assets, including Andrew's life insurance policy; cash balance retirement account; and 401(k). Andrew formed a corporation, Labor Lawyers Group, P.C and reported that its value in April 2013 was $9,450. He currently works as an attorney for Chicago Public Schools, earning $97,500 per year. Andrew resided in the marital residence after his

separation from Jacqueline and received rental income of $620 per month for two parking spaces. The condominium included an indoor space, and he paid $30,000 for an outdoor space. The outstanding mortgage balance is $140,000 and the assessment fee is approximately $700 per month. Andrew testified that it was his understanding that the range of values of the condominium went from $345,000 up to about $400,000.

¶ 6 During the marriage, Jacqueline did not earn a significant income. Prior to receiving the Fulbright Scholarship, she worked as an adjunct professor, teaching political science at DePaul University, Loyola University, and the University of Chicago. Jacqueline co-authored a book about her experience "fixing" her neighborhood school, which has provided modest royalties. She also earned money from speaking engagements, produced freelance pieces for Redbook magazine and the Huffington Post, and maintains a blog about education and personal issues. Jacqueline started a small business designing "Ketubot," which are decorative Jewish marriage contracts, but she "never turned a profit." Recently, Jacqueline has been involved with a start-up company called Youtopia, where she serves as Director of Strategic Partnerships. Jacqueline testified that Youtopia has a value of $1.5 million, and that she owns a 3% equity interest in the company. She does not currently receive wages or a salary from the company, but stated that she had received about $2,000 for approximately 100 hours of work.[1] Jacqueline anticipated that her involvement in Youtopia would eventually generate enough money to "keep the lights on and keep [her family] solvent;" however, she noted that "most start-ups take about five years to turn a profit." When asked at trial whether the downward turn in Andrew's income prompted her to look for employment, she responded, "it's prompted me to be an even more vigilant stay-at-home

[1] Jacqueline's bank statement reflected additional checks for $5,550 from a holding company of Youtopia.

mother." When asked about her efforts to find a job that would pay her a living wage, she responded "I have a job, sir." She further explained that she was gainfully employed, although she brings in minimal income. At the time of her testimony, Jacqueline was receiving maintenance from Andrew in the amount of $2,250 a month. She was also receiving government assistance in the form of $526 per month in food stamps. On a number of occasions, Jacqueline had petitioned the trial court for additional funds and she had received them. Jacqueline moved out of the marital residence during the spring of 2011, but believed that its current value was $400,000. After leaving the residence, she rented a two-bedroom apartment one block away at 3270 North Lake Shore Drive. The rent is $2,250 per month plus electric. When Jacqueline is out of town she rents the unit through an online rental service called AIRBNB. She testified that she has lupus and currently has medical insurance through Andrew's employer, but noted that the disease was in remission and does not interfere with her ability to work.

¶ 7 Andrew presented the expert testimony of David Hammer, a certified residential real estate appraiser. Counsel for Jacqueline objected to the testimony because Hammer was not disclosed as a witness. Her counsel also stated that he had no reason to believe that Hammer's appraisal would be used at trial as it was a year and a half old. Counsel for Andrew responded that Hammer’s appraisal report was tendered to Jacqueline over a year ago and also entered as a trial exhibit; therefore, Jacqueline was put on notice that it may be used at trial. The court took the objection under advisement, stating that both parties certainly knew that the value of the property would be an issue at trial. The trial court allowed the testimony, but stated that Hammer could be cross-examined.

¶ 8 Hammer testified that he has held a certified residential appraisal license for 20 years. In April 2012, he completed an appraisal of the marital residence using a "sales comparison

approach," and opined that the value of the unit was $345,000 as of April 26, 2012. Hammer testified that he was not sure of the specific changes in the real estate market in the area where the unit is located, but believed that the market for a similar unit had increased 5 to 10 percent since his appraisal. Counsel for Jacqueline moved to strike the testimony, indicating that the market had changed since the date of the appraisal, and therefore, the appraisal was no longer valid. The court denied the motion. On cross-examination, Hammer testified that at the time that he performed the appraisal of the unit, he observed that Unit 6F in the same building was listed for $349,000. The listing was a factor that he considered in his appraisal. He did not know whether or not the unit ever closed, and conceded that the best indicator of the value of the unit is its sale price. Counsel for Jacqueline asked Hammer if his valuation of the unit would change if he knew that 6F sold for $398,500,[2] and Hammer responded that the valuation would change based on that information. In his appraisal, Hammer stated that the Multiple Listing Service (MLS) statistics indicated that the average sale price for a similar two bedroom, two bathroom unit in Lakeview was declining by 10.24%; however, he acknowledged at trial that the decrease would not apply today. Hammer's appraisal only included one parking space, for which he made an adjustment of $25,000 according to the "range of what parking spots [were] going for at that time." He was not aware that Andrew had bought an outdoor parking space; therefore, it was not included in his appraisal. Hammer noted that an uncovered deeded space would result in an appraisal adjustment of about $10,000 to $15,000.

¶ 9 On January 24, 2014, the trial court entered a written judgment for dissolution of marriage. The court acknowledged that the custody judgment provided for joint parentage with

[2] The actual sale price of Unit 6F was never admitted into the evidence.

an equal split of the children's time with each parent. After considering the factors set forth in section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504 (a) (West 2012)), the court found that some maintenance should be awarded to Jacqueline. In awarding maintenance, the court noted:

> "Jacqueline has the education, experience, talent, skill and connections sufficient to earn a minimum of $50,000 net income, but despite the family's severe reduction in income resulting from Andrew's health problems, and the increase in expenses resulting from the maintenance of two households, she is righteous and resolute in refusing to engage in any serious job search or significant contribution to the family since long before the separation of the parties. Rather, she has elected to devote her time and efforts to pursuing interests which she believes are of superior value to society, which are clearly satisfying to her ego, and which may, someday, become remunerative, but which do not now assist in supporting *** herself, nor, more importantly the children. She is receiving State Aid in the amount of $526 in food stamps. Even a minimum-wage full time job would produce more than twice that, and there is little doubt that she is capable of earning many times more than minimum wage.
>
> Moreover, after this action was filed (by her) in 2011, the parties were required to liquidate assets in order to pay bills, and Jacqueline has been receiving unallocated maintenance and child support by court order for almost a year, while she has the children only half the time.
>
> Therefore, any additional maintenance that she receives should be of very limited duration."

¶ 10 The trial court then ordered Andrew to pay Jacqueline unallocated maintenance and child support in the amount of $2,400 per month for one year. Andrew was awarded the marital residence and ordered to pay Jacqueline half of the value of the equity in the home "less $22,500 which is one-half the value of Jacqueline's interest in Youtopia." The court found that the value of the marital condo was $345,000 based on the testimony of Mr. Hammer, plus $25,000 for the additional parking space that he did not account for, amounting to a total of $370,000. The court further found that the condominium had a mortgage of $139,248.86.[3] The court also ordered that Jacqueline and Andrew each receive half of the value of any money left in Andrew's Mesirow retirement account, which had a stipulated value of $305,413.33. Andrew was required to pay for medical insurance coverage for both children and to maintain coverage for Jacqueline for three years. The court set future child support payments at the difference between 28% of the greater earner's income and 28% of the lesser earner's income, acknowledging that this was a deviation from the statutory amount. The court added that if Jacqueline had not obtained full-time employment after one year, "an additional gross annual income of $42,000 shall be imputed to Jacqueline's income and added to her income from all other sources. This is because of Jacqueline's resistance to seek employment which would provide a substantial stream of income to her."

¶ 11 Both Jacqueline and Andrew filed a motion to reconsider. In Jacqueline's motion, count I alleged that the court did not have authority to order non-modifiable and non-reviewable maintenance; count II alleged that the court did not have authority to enter a self-executing child

[3] On April 9, 2014, the court entered an agreed order which clarified that the principal balance of the mortgage was $137,510, resulting in equity of $232,490 and thus, Jacqueline would receive a buyout payment from Andrew for her share of the equity in the amount of $116,245.

support order; count III alleged that the court erred in admitting testimony of Mr. Hammer, an undisclosed witness; count IV alleged that the court erred in admitting portions of a child custody evaluation made pursuant 604(b) of the Act where custody was not at issue; and count V alleged that the court was silent in its judgment on Jacqueline's suggestion that Andrew guarantee her lease at her current residence. In Andrew's motion, he contended that the court's award of maintenance must be reviewable, and thus should be revised. In order to avoid the issue of reviewability, he suggested that the court "quantify the net value of the award intended to Jacqueline, and require [him] to pay this additional amount in a lump sum while denying Jacqueline's request for maintenance."

¶ 12 On May 12, 2014, the trial court held a hearing on the parties' motions to reconsider. The court conceded its error in entering the maintenance and child support awards, and awarded Jacqueline maintenance in gross of $28,000, stating, "I believe that from that lump sum of maintenance [in] gross, plus her other income, she has sufficient income to support the children half of the time." The court reserved a determination of child support for one year, and stated that, "should she have made any effort, could be earning at least $75,000 a year." The court explained it was clear from Jacqueline's testimony that, "even though she knew that Andrew was sick and he was out of work because of his illness, and they had to drawdown whatever savings or retirement that they had, she did not make a significant or any real effort to obtain a job." It further explained, "[b]oth parties have an obligation to support the children." With respect to the distribution of the marital estate, the court awarded Jacqueline half of the funds resulting from the refinance of the marital residence, half of Andrew's Mesirow retirement account, and noted that Jacqueline would retain her $45,000 interest in Youtopia. Counsel for Andrew noted that the

marital residence had already been refinanced and that Jacqueline had been paid her $116,245 share of equity from the marital residence.

¶ 13 On May 22, 2014, the trial court memorialized its ruling on the motions to reconsider in a written order. The court first acknowledged that it had erred in entering an unallocated maintenance and child support order as well as a self-executing child support order. The court then stated that, "Jacqueline is awarded the total marital interest in Youtopia, and there will be no set off for Andrew's interest in Youtopia against the division of the equity in the marital home." The court also found that the marital estate (excluding checking accounts) was $590,413, and "Jacqueline will be receiving $340,206 or close to 58% of a marital estate and Andrew would be receiving $250,706 or 42% of the marital estate." The court awarded Jacqueline maintenance in gross in the amount of $28,800, finding that the amount "plus her own earnings are sufficient to support Jacqueline and the children (while they are in her possession) for a year." Jacqueline is well able to support herself thereafter." The court also denied counts III, IV, and V of Jacqueline's motion to reconsider. In regard to count III, the court found that Jacqueline was not ambushed at trial by Mr. Hammer's testimony because she was given a copy of the appraisal during discovery. The court further noted, "[w]hile the appraisal was not *** absolutely current, the attorneys for both parties were given the opportunity to examine the appraiser as to the market fluctuations and the current value of the property," and "[t]here was no other evidence offered as to the value of the marital home." In respect to count IV, the court stated that the 604(b) report was not part of the evidence at trial, and therefore, was not relied on by the court in its judgment. As to count V, the court found that Jacqueline was attempting to bring to the court an issue which was not presented at trial. Jacqueline filed her first notice of appeal on June 19, 2014.

¶ 14 On July 9, 2014, the trial court entered a "Revised Order on Motion to Reconsider," and it was entered *nunc pro tunc* as of May 22, 2014. The court made the following changes: (1) it deleted the statement, "Jacqueline is awarded the total marital interest in Youtopia, and there will be no set off for Andrew's interest in Youtopia against the division of the equity in the marital home;" (2) it added language that "Jacqueline shall receive one-half of the equity in the marital home, and the Mesirow account, as well as her equity in Youtopia;" (3) it deleted the language that Jacqueline should receive half of the value of the equity in the home "less $22,500 which is one-half the value of Jacqueline's interest in Youtopia;" (4) it added language that Andrew had limited ability to support the children, and also updated the record with Jacqueline's financial disclosure statement which revealed that, although Jacqueline had not sought employment, she had earned nothing in 2011, $17,247.84 in 2012, and had a projected income of $21,866 in 2013, which combined with her interest in Youtopia, amounted to $66,866 for the year; (5) in the language that reads Jacqueline's "own earnings are sufficient to support Jacqueline and the children (while they are in her possession) for a year," the court deleted the words "for a year;" (6) it added language that the parties shall share the cost of lessons and extracurricular activities of the children; and (7) it provided that Jacqueline was receiving approximately 54% of the marital estate and Andrew was receiving 46% of the estate.

¶ 15 Jacqueline filed a motion to vacate the revised order and Andrew filed a petition for interim attorney's fees. On August 29, 2014, the court held a hearing on Jacqueline's motion as well as Andrew's petition. In regards to Jacqueline's motion, counsel for Jacqueline argued that the order contained new computations and numbers that were not addressed in its May 22, 2014, order. He also noted that the previous order stated that Jacqueline was receiving close to 58% of the marital estate and the revised order stated that she was receiving 54%. Additionally, counsel

pointed out that the *nunc pro tunc* order should have been completed before Jacqueline filed her notice of appeal and that the court is required to disclose its basis and provide notice to the parties prior to entering the order, which was not done in this case. In response, the court stated:

> "Let me say that when I did the *nunc pro tunc* order, it was upon reviewing my order, I noticed that my figures were wrong and that my paragraphs were marked wrong. And it was for that -- if I put in the findings that Jacqueline would get $1 and Andrew would get $1, and therefore, a total estate of $3 have been divided, that wouldn't be accurate. And I think my intention, and what I hope I accomplished by doing the *nunc pro tunc* order was to correct the calculations that I had used. It wasn't 58% and 42%. It was fifty -- my order reflects the distributions that is reflected in the *nunc pro tunc* order, and not in the prior order."

The court further stated that it "had no knowledge and no ability to know that an appeal had been filed." It concluded that the *nunc pro tunc* would stand because the revised order contained only clerical corrections to the previous order.

¶ 16 Andrew then testified in support of his petition for interim attorney's fees to defend his appeal. The basis of his petition was that he had given all of the liquid assets to Jacqueline. He informed the court that there had been no material change in his income, but his mortgage had increased by $700 per month. The Labor Lawyer's Group account balance was currently zero. Andrew had been making monthly payments to Jacqueline toward her maintenance in gross award, which had a balance of $22,000. He receives $3,750 every two weeks, and after paying his monthly expenses, essentially nothing is left. Andrew was not sure of the present balance of his checking account, but noted that it was less than the $3,992 indicated in his financial disclosure statement from April 4, 2013. On cross-examination, Andrew revealed that he had

about $8,000 in available credit. He also testified that he took out an additional $30,000 when he refinanced the marital residence. Andrew had paid his attorney $30,000 for his work on the trial. The court found:

> "[b]ased on the distribution of the income, the availability of the liquid assets and the ability of each of the parties -- strike that. We don't have any information -- any current information as to [Jacqueline's] income. I have no reason to believe that it's any less than it was. It is, for the most part, liquid. Each of the parties was given a split of the retirement funds. And again, she was given a greater share of the marital assets. I am going to order attorneys' fees in defense of an appeal in the amount of $7,500."

¶ 17 Analysis

¶ 18 *Nunc Pro Tunc* Order

¶ 19 As an initial matter, we address Jacqueline's argument that the trial court's revised order entered on July 9, 2014, was not a proper *nunc pro tunc* order, and therefore, the judgment rendered therein is void. Andrew responds that the revised order simply added language to conform the order to the actual judgment of the court as rendered from the bench on May 12, 2014.

¶ 20 "Whether an order satisfies the legal criteria for a *nunc pro tunc* order is reviewed *de novo.*" *In re Aaron R.*, 387 Ill. App. 3d 1130, 1139 (2009). Generally, once a notice of appeal is filed, the trial court is divested of jurisdiction to enter any order involving a matter of substance and the appellate court's jurisdiction attaches immediately. *In re Marriage of Price*, 2013 IL App (4th) 120422, ¶ 11 (citing *In re Marriage of Petramale*, 102 Ill. App. 3d 1049, 1052 (1981)). "Thus, the trial court is prohibited from entering any order which would change or modify the judgment or its scope or which would interfere with review of the judgment." *Price*, 2013 IL

App (4th) 120422, ¶ 11. Nevertheless, a court is allowed to enter a *nunc pro tunc* order to correct the record of a judgment, a clerical error, or a matter of form so that the record conforms to the judgment actually rendered by the court. *Beck v. Stepp*, 144 Ill. 2d 232, 238-39 (1991). Clerical errors are "those errors, mistakes, or omissions which are not the result of the judicial function. Mistakes of the court are not necessarily judicial errors. The distinction between a clerical error and a judicial one does not depend so much upon the source of the error as upon whether it was the deliberate result of judicial reasoning and determination." *Dauderman v. Dauderman*, 130 Ill. App. 2d 807, 810 (1970). An amendment sought by an order *nunc pro tunc* must be premised upon some note, memorandum or memorial remaining in the files or upon the records of the court. *In re Marriage of Gingras*, 86 Ill. App. 3d 14, 16 (1980)."A purported *nunc pro tunc* entry of judgment is erroneous where it fails to disclose the ground on which the court acts or what the entry is intended to *correct*." (emphasis included). *In re Marriage of Breslow*, 306 Ill. App. 3d 41, 54, (1999).

¶ 21 We find that the trial court's *nunc pro tunc* order was intended to correct clerical errors to reflect the judgment that the court actually rendered, and these corrections are supported by the trial court's May 12, 2014, hearing on the parties' motions to reconsider.

¶ 22 During the hearing, the trial court acknowledged its error in awarding the maintenance award and clarified the distribution of property. The court explained that Jacqueline would be awarded half of the funds from the refinance of the marital residence, half of Andrew's Mesirow retirement account, and that she would retain her $45,000 interest in Youtopia. The court also noted that because Jacqueline retained her full interest in Youtopia, her share of the marital residence would not be reduced by $22,500, or half of the value of her share in the company. The

first three corrections to the order properly reflect the court's actual judgment regarding distribution of property.

¶ 23 The court also acknowledged Andrew's limited ability to support the children due to his health issues, and after considering Jacqueline's earnings, which the court provided in its *nunc pro tunc* order for reference, the trial court stated that the maintenance in gross award and Jacqueline's own earnings were sufficient to support the children while they are in her care. The court's finding is properly reflected in the *nunc pro tunc* order, and the court's decision to remove the words "for a year" at the end of this sentence in its written order does not prevent Jacqueline for seeking child support after one year, but merely emphasizes that Jacqueline would no longer receive maintenance payments after a year. Additionally, the trial court noted that it was the responsibility of both parties to support the children, and this presumptively included any lessons or extracurricular activities, which the court reflected in its *nunc pro tunc* order.

¶ 24 As to the court's correction to the distribution percentages, the trial court explicitly stated that upon reviewing its previous order it noticed that the "figures were wrong" and that its intention was to "correct the calculations that [it] ha[d] used." Further, it is clear from the record that the marital estate included $232,490 in equity from the marital residence, $305,413.33 from the Mesirow account, and a $45,000 interest in Youtopia, for a total of $582,903.33. Based on the court's distribution of assets, this amounts to $313,951.67 or approximately 54%, of the marital estate to Jacqueline and $268,951.67, or approximately 46%, to Andrew. The court corrected this error in its *nunc pro tunc* order. Thus, we find that the corrections in the *nunc pro tunc* order are clearly supported by the record, and does not alter the judgment of the court.

¶ 25 Nonetheless, Jacqueline cites *In re Marriage of Takata*, 304 Ill. App. 3d 85 (1999), and *Robinson v. Point One Toyota, Evanston*, 2012 IL App (1st) 111889, for the contention that the

trial court's revision to the distribution percentages was a judicial error that could not be corrected in a *nunc pro tunc* order. However, we find these cases distinguishable. In *Takata*, the trial court made a mathematical error in determining a spouse's income for the purpose of setting child support. *Takata*, 304 Ill. App. 3d at 89. This court found that this was not a clerical error, but rather a judicial error, because "the judge employs a certain amount of discretion in determining an appropriate and reasonable amount." *Id.* at 92. Similarly, in *Robinson*, the trial court erred in its calculation of the attorneys' fees award based upon an "inadvertent omission" of a number of hours. *Robinson*, 2012 IL App (1st) 111889 at ¶ 21. The court then entered a *nunc pro tunc* order drastically increasing the amount of the award of attorneys' fees in favor of the plaintiffs against the defendants. *Id.* at ¶ 19. This court held that, like the error in *Takata*, the trial court's miscalculations of the attorneys' fees were judicial errors that could not be corrected after expiration of the 30-day period following entry of final judgment. *Id.* at ¶ 21. In both *Takata* and *Robinson*, the trial court's correction altered the "substantive rights" of the parties. See *Dauderman*, 130 Ill. App. 2d at 809. In other words, the parties were put in a different financial position by the trial court's ruling. In this case, the trial court's error did not involve a deliberate judicial determination like the errors identified in *Takata* and *Robinson*. As the trial court indicated, it simply corrected the orders to reflect the actual figures that it used in its calculations. Moreover, its corrections did not result in a material change in the financial positions of either Jacqueline or Andrew. As the record clearly reveals, regardless of the court's error, Jacqueline is only entitled to 54% of the marital estate. Thus, we reject her argument that th*e nunc pro tunc* award was improper.

¶ 26 Lastly, we note that defendant is correct that the trial court should have provided notice to the parties prior to entering the *nunc pro tunc* order; however, because we find that no substantial

changes were made in this order, we do not believe this misstep to be fatal. Moreover, we fail to find a case where this court has found a *nunc pro tunc* order invalid solely based on the fact that the court failed to give the parties proper notice. Thus, we decline to invalidate the order based on lack of notice alone.

¶ 27 *Maintenance In Gross*

¶ 28 Finding the *nunc pro tunc* order valid, we now address Jacqueline's contention that the trial court abused its discretion in awarding her maintenance in gross of $28,800. Specifically, she contends that maintenance in gross denies reviewability, which is required by these facts. She also argues that the amount and duration of the maintenance awarded were inadequate. Andrew responds that the trial court acted within its authority when it awarded her maintenance in gross and the amount and duration of the maintenance was adequate.

¶ 29 Because maintenance awards are within the sound discretion of the trial court, we will not disturb a maintenance award absent an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). In determining whether an abuse of discretion occurred, we bear in mind that "[u]nder the abuse of discretion standard, the question is not whether this court might have decided the issue differently, but whether any reasonable person could have taken the position adopted by the trial court." *In re Marriage of Patel & Sines-Patel*, 2013 IL App (1st) 112571, ¶ 95. It is the burden of the party challenging the maintenance award to show an abuse of discretion. *Schneider*, 214 Ill. 2d at 173.

¶ 30 In determining whether an award of maintenance is warranted, the trial court must determine whether one party needs maintenance and whether the other party has the ability to pay. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 651 (1993). The court may award maintenance "[o]nly if it finds that the spouse seeking maintenance lacks sufficient property to

provide for her reasonable needs and is either unable to support herself through appropriate employment or is otherwise without sufficient income." *Id.* "In awarding maintenance, either periodic or in gross, the trial court considers the following factors: (1) the income and property of each party; (2) the respective needs of the parties; (3) the present and future earning capacity of each party; (4) any impairment to the parties' present or future earning capacity, resulting from domestic duties or delayed education or employment opportunities due to the marriage; (5) the time necessary for the party seeking maintenance to acquire the necessary education or training, whether that party can support himself or herself through appropriate employment or whether as the custodial parent, it is not appropriate for the party to seek employment; (6) the standard of living during the marriage; (7) the duration of the marriage; (8) the age and physical and emotional condition of both parties; (9) the tax consequences of the property division; (10) the contributions by the spouse seeking maintenance to the education and career of the other spouse; (11) the valid agreement of the parties; and (12) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504 (a) (West 2012); *Patel*, 2013 IL App (1st) 112571, ¶ 83. The trial court is not required to give equal weight to each factor so long as the court's balancing of the factors is reasonable. *In re Marriage of Reynard*, 344 Ill. App. 3d 785, 790 (2003).

¶ 31 Generally, absent exceptional circumstances, periodic maintenance is the judicially preferred form of maintenance. *Patel*, 2013 IL App (1st) 112571, ¶ 85 (citing *Musgrave v. Musgrave*, 38 Ill. App. 3d 532, 534 (1976)). However, our supreme court has held that section 504(a) of the Act "authorize[s] the trial judge to award maintenance in gross if he finds it to be appropriate in a particular case." *In re Marriage of Freeman*, 106 Ill. 2d 290, 298 (1985). As a general rule, "a trial court's determination as to the awarding of maintenance is presumed to be correct." *In re Marriage of Donovan*, 361 Ill. App. 3d 1059, 1063 (2005).

¶ 32 Here, the trial court, after considering the factors in section 504(a) of the Act, awarded Jacqueline maintenance in gross in the amount of $28,800, finding that the amount "plus her own earnings are sufficient to support Jacqueline and the children (while they are in her possession)." The trial court's findings were based on the evidence presented at trial that Jacqueline had been receiving unallocated maintenance from Andrew for the past year but had made little effort to use her advanced degree, skills, and professional network to obtain full-time employment despite the family's severe reduction in income resulting from Andrew's health problems. See *In re Marriage of Schuster*, 224 Ill. App. 3d 958, 970 (1992) (holding that the Act creates "an affirmative duty on a spouse requesting maintenance to seek and accept appropriate employment"). Instead, Jacqueline elected to pursue interests that gratified her, but did not necessarily provide her with sufficient income to support herself and her children, although she had the potential to earn a significant income. See *Id.* (finding that "a spouse cannot use self-imposed poverty as a basis for claiming maintenance when he has the means of earning more income.") Additionally, the record reveals that the court also considered Andrew's drastic reduction in income and his ability to provide Jacqueline maintenance given his financial obligations and the fact that Jacqueline was awarded more than half of the marital estate. Based on our review of the record, we do not find that the trial court's decision amounted to an abuse of discretion.

¶ 33 Jacqueline cites *In re Marriage of Smith*, 150 Ill. App. 3d 34 (1986), for the contention that the trial court abused its discretion when it ordered her maintenance in gross award; however, we find *Smith* distinguishable. In *Smith*, the parties had been married for 28 years. The husband earned a net income of approximately $82,000, and the wife had "no income to speak of." *Id.* at 36. Under the judgment, the husband received $120,000 in assets, and the wife

received $81,465 in assets and was awarded $1,200 per month for 12 years as maintenance in gross. *Id.* at 35. The husband, who suffered from hypertension, endogenous depression and anxiety, appealed the decision. *Id.* at 34. On appeal, the reviewing court found that the trial court abused its discretion when it awarded maintenance in gross because both parties were "approaching financial and professional crossroads," which could rapidly change their financial circumstances. *Id.* at 36. Specifically, although the wife had no income at the time of dissolution, her background indicated that she had the potential to become gainfully employed within "a reasonably short period of time," and the evidence adduced at trial indicated that the husband's health was failing and his business was declining. *Id.* The court concluded that the maintenance in gross award "left no room for the innumerable combinations and permutations of factors which might have changed in the upcoming years," such as the wife obtaining employment or the husband's inability to work due to his health problems. *Id.* at 36-37. In the instant case, the trial court found that Jacqueline's need for support was limited because it was evident that her education, skills, and professional network would enable her to support herself without Andrew's assistance whereas the parties in *Smith* were at a "financial and professional crossroad," which necessarily dictated that any award of maintenance be reviewable under those particular set of facts. Thus, the same concern that existed in *Smith* does not apply here.

¶ 34 We find *Patel*, 2013 IL App (1st) 112571, instructive on this issue. In *Patel*, the trial court ordered the husband to pay the wife an award of maintenance in gross of $210,000 over a period of 30 months, noting that the wife "had no experience in using her degrees and had no real job experience." *Id.* ¶ 50. The court stated that it considered the factors set forth in section 504(a) of the Act (750 ILCS 5/504(a) (West 2012)), including the wife's "failure to seek out appropriate employment in order to become self-supporting." *Id.* ¶ 51. The court determined that

maintenance in gross was appropriate since it would provide the wife with an additional period of support "while she develops and implements a realistic plan for employment and self-sufficiency." *Id.* On appeal, this court affirmed the award noting that "the trial court found that [the wife] had made no effort to use her advanced degrees to obtain full-time employment," and instead "chose to pursue another advanced degree not necessary for her current employment." *Id.* ¶ 92. Similarly, in the instant case, the court found that although Andrew's health problems resulted in a "severe reduction" in income for the family, Jacqueline, having both the skills and capacity to become gainfully employed and self-sufficient, "was righteous and resolute in refusing to engage in any serious job search or significant contribution to the family."

¶ 35 We also note that the court in *Patel* cited the wife's litigious nature in their decision to uphold the award of maintenance in gross, finding that "the trial court properly sought to limit future opportunities for litigation in this case by awarding maintenance in gross." *Id.* ¶¶ 93-94. Similar to the court's reasoning in *Patel*, Jacqueline's history of requesting revisions to her maintenance awards and on-going refusal to seek gainful employment suggest that she would likely continue to seek maintenance from Andrew without any legitimate effort to secure employment on her own, and the trial court's award ensured a degree of finality to the litigation. Therefore, we believe that the trial court's award of maintenance in gross was supported by the evidence and was fair and reasonable under the circumstances of this case.

¶ 36 Jacqueline further contends that the amount and duration of maintenance awarded were inadequate and that the court erred when it speculated on whether she could obtain employment. She argues that instead, the court should have analyzed whether realistically it is likely that she would be able to support herself in some reasonable approximation of the standard of living established during the marriage.

¶ 37 First, we believe that the trial court's finding that Jacqueline could obtain employment was not mere speculation, but is amply supported by the record. In *In re Marriage of Mittra*, 114 Ill. App. 3d 627, 633 (1983), this court held that "[o]ne of the appropriate considerations which should govern the duration of the maintenance award is the extent to which the receiving spouse is shown to have either the present ability to become self-sufficient or the future ability to acquire skills which would allow entry into the job market." Here, evidence adduced at trial reveals that Jacqueline holds a PhD in political science from the University of Chicago, is a former Fulbright Scholar who has experience teaching college-level political science courses in Chicago and abroad, co-authored a book detailing her experience "fixing" a Chicago public school, produces freelance articles for both print and online media, and is actively involved with a network of powerful friends and acquaintances. She currently utilizes her talents as Director of Strategic Partnerships for a start-up company worth $1.5 million, and also holds a 3% interest in the company. Thus, contrary to Jacqueline's contention, the trial court's determination that she could obtain employment was not speculative, but based on evidence that reasonably demonstrates Jacqueline's ability to become gainfully employed if she attempted to seek employment.

¶ 38 Nonetheless, Jacqueline cites *In re Marriage of Carpenter*, 286 Ill. App. 3d 969 (1997), *In re Marriage of Lenkner*, 241 Ill. App. 3d 15 (1993), and *In re Marriage of Gunn*, 233 Ill. App. 3d 165 (1992), for the contention that her maintenance award is insufficient to support her standard of living established during the marriage. However, in both *Carpenter*, 286 Ill. App. 3d at 973, and *Gunn*, 233 Ill. App. 3d at 174, this court found a permanent maintenance award appropriate in light of the fact that each payee devoted her time to domestic duties, foregoing any educational and professional experience. As a result, the payees had not developed marketable

skills that would enable them to secure employment which would allow them to maintain their standard of living established during the marriage. Similarly, in *Lenkner*, 241 Ill. App. 3d at 18-20, although the payee was occasionally employed during the marriage and had made an effort to secure gainful employment after the marriage, this court found that permanent maintenance was proper because the payee did not have "the benefit of a college education or master's degree" to enable her to support herself in any reasonable approximation of the standard of living established during the marriage. Contrary to the cases cited above, as previously discussed, the record reveals that Jacqueline is highly educated, skilled, and well-connected, and thus could have reasonably secured a substantial paying position with some effort. Thus, we find that the trial court did not abuse its discretion in determining the amount and duration of the maintenance award.

¶ 39 Next, we note that because the trial court found that Jacqueline resolutely refuses to seek employment that would provide a substantial stream of income to her, we do not believe that the court abused its discretion when it decided to impute income to Jacqueline for purposes of determining her contribution to supporting the parties' children. See *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009) (holding that the trial court may impute income if the parent is voluntarily unemployed). Moreover, we do not believe that the court's ultimate imputation of $75,000 was unreasonable given Jacqueline's skills and experience and the court's findings that, based on Jacqueline's financial disclosure statement for 2013, her projected income was $21,866, which combined with her interest in Youtopia, amounted to $66,866 for the year. See 750 ILCS 5/505 (West 2012); See also *Id.* (quoting *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 107 (2000) (noting that "[i]t is well established that courts have the authority to compel parties to pay child support at a level commensurate with their earning potential))."

¶ 40 Lastly, we reject Jacqueline's argument that the 604(b) report had a prejudicial impact on her the maintenance award. The trial court specifically noted in its order that "it was not relied on by this Court in its judgment." We find no evidence to rebut the court's statement. See *Buckner v. Causey*, 311 Ill. App. 3d 139, 145 (1999) (holding that absent evidence to the contrary, a judge is presumed to have considered only competent evidence in making his finding).

¶ 41 Valuation of Marital Assets

¶ 42 Jacqueline's next contention is that the trial court committed error in the valuation of both the marital residence and her equity interest in Youtopia. Andrew responds that the court's valuation of the marital estate was not against the manifest weight of the evidence.

¶ 43 We will not reverse a trial court's value determination unless it is against the manifest weight of the evidence. *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 203 (2005). A decision is considered to be against the manifest weight of the evidence "where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on any of the evidence." *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946 (2007).

¶ 44 As a general rule, the proper valuation date of the property being distributed subsequent to a dissolution is the date the judgment of dissolution was entered. *In re Marriage of Rubinstein*, 145 Ill. App. 3d 31, 35 (1986). In order to correctly evaluate marital assets, the trial court must have before it competent evidence of value and its determination of value must be supported by that evidence. *In re Marriage of Malters*, 133 Ill. App. 3d 168, 180 (1985). Further, it is the obligation of the parties in a dissolution proceeding to present the court with sufficient evidence of the value of the property. *In re Marriage of Deem*, 123 Ill. App. 3d 1019, 1023 (1984). The valuation of assets in an action for dissolution of marriage is a question of fact for the trial court

to determine, and any conflicts in testimony concerning a valuation are matters to be resolved by the trier of fact. *Schneider*, 214 Ill. 2d at 171.

¶ 45 Initially, we address Jacqueline's argument that Andrew violated the trial order regarding disclosure of trial witnesses; therefore, barring Hammer's testimony was the most reasonable sanction. The issue of sanctions is within the discretion of the trial court. *Brooke Inns, Inc. v. S & R Hi-Fi & TV*, 249 Ill. App. 3d 1064, 1082 (1993). In making a determination of whether and which sanctions should be imposed the court must look to several factors: (1) surprise of the testimony; (2) the prejudicial effect of the testimony; (3) the diligence of the opposing party in seeking discovery; (4) timely objection to the testimony; (5) and good faith of the party calling the witness. *Id.* In this case, Jacqueline had been given a copy of the appraisal report during discovery and it was included in the exhibit list; therefore, she was not ambushed at trial by the testimony, as it was more than reasonable to expect Hammer to testify at trial to establish the foundation for his valuation. She was not prejudiced by the testimony because her attorney was also able to cross-examine Hammer, and she had ample opportunity to provide the court with an up-to-date appraisal to rebut Hammer's report. In fact, counsel for Jacqueline failed to offer any objection to the proffered appraisal until after trial commenced, although he was aware during discovery that the only appraisal of the unit was Hammer's 2012 report. Additionally, we find no evidence that Andrew called the witness in bad faith; Jacqueline was put on notice of Hammer's appraisal and the fact that the value of the marital residence would be an issue at trial. Finding that the court did not err in admitting Hammer's testimony, we now turn to whether the trial court erred in its valuation of the marital residence.

¶ 46 Here, evidence at trial regarding the valuation of the marital residence consisted of the testimony of real estate expert Hammer that, based on his April 2012 appraisal of the unit, the

condominium was worth $345,000. Andrew testified that it was his understanding that the range of values of the condominium went from $345,000 up to about $400,000. Jacqueline, who has not lived in the residence since the spring of 2011, testified that she believed the value of the unit was $400,000. Although we acknowledge that generally property should be valued at the time of dissolution, the only professional appraisal of the unit submitted to the court was Hammer's 2012 report. See *Blackstone v. Blackstone*, 288 Ill. App. 3d 905, 910 (1997) (holding that generally, as long as the trial court's valuation of marital assets "is within the range testified to by expert witnesses, it will not ordinarily be disturbed on appeal"). Jacqueline neither submitted an appraisal nor did she render an expert opinion regarding the valuation of the unit. The court reached its determination on the evidence presented and we hold that it was not error to use Hammer's valuation.

¶ 47 Nonetheless, Jacqueline contends that the trial court should have taken into account Hammer's statement that he believed market values had increased 5-10% and the sale price of 6F, the comparable unit that Hammer considered in his appraisal. However, a review of the record reveals that Hammer stated that he was not sure of the specific changes in the area where the unit was located and the actual sale price of 6F was never entered into evidence. Therefore, we do not believe it was error for the trial court not to increase its valuation of the unit in light of these factors. Furthermore, although Jacqueline argues that the trial court erred in assigning a $25,000 valuation to the outdoor parking spot for which Andrew paid $30,000, we note that Hammer testified that an uncovered deeded parking spot would only increase a valuation by $10,000 to $15,000. Thus, we find that the trial court was more than fair in its assessment of the additional parking space.

¶ 48 Next, we address Jacqueline's argument that the trial court erred in its valuation of Youtopia because it did not apply a discount for lack of control and lack of marketability. We find no indication in the record that Jacqueline raised these issues either before or during trial nor did she include it in her motion to reconsider. Arguments not raised in the trial court are waived on appeal. *In re Marriage of Minear*, 181 Ill. 2d 552, 564 (1998). Nonetheless, the trial court's valuation of Jacqueline's equity interest in Youtopia was derived from her own testimony that the company had a 1.5 million valuation, and that she owned a 3% share. See *Deem*, 123 Ill. App. 3d at 1023 (finding that reviewing courts have refused to reverse and remand dissolution cases wherein the complaining spouse "gave or suggested the valuation evidence)." It was not unreasonable for the court to value Jacqueline's share at $45,000 based on the figures she provided the court. Additionally, Jacqueline did not present any evidence regarding the valuation of her share in Youtopia or any discount to be applied to her interest in the company. See *In re Marriage of Schlichting*, 2014 IL App (2d) 140158, ¶ 74 (holding that an appellate court will not remand for an evidentiary hearing on value when a party had ample opportunity to present valuation evidence and failed to do so). Thus, we do not believe that the trial court's valuation was against the manifest weight of the evidence.

¶ 49 Motion to Reconsider

¶ 50 Jacqueline contends that the trial court erred in partially denying her motion to reconsider. The purpose of a motion to reconsider is to bring to the court's attention a change in the law, an error in the court's previous application of existing law, or newly discovered evidence that was not available at the time of the hearing. *In re Gustavo H.*, 362 Ill. App. 3d 802, 814 (2005). Here, Jacqueline offers no specific facts from the record, citation to relevant authority, or sufficient argument in support of her contention. Failing to cite to relevant facts and authority

violates Supreme Court Rule 341 and results in the party forfeiting consideration of the issue. See *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2) 111151, ¶ 12 ("[t]he failure to provide proper citations to the record is a violation of Rule 341 (h)(7), the consequence of which is the forfeiture of the argument." Il. S. Ct. R. 341 (h)(7)); see also *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 72. Accordingly, we find that Jacqueline's argument is forfeited.

¶ 51 Attorney's Fee's

¶ 52 Finally, Jacqueline argues that the trial court compounded its errors when it ordered her to contribute to Andrew's attorney's fees. Andrew responds that the trial court did not err in ordering Jacqueline to contribute to Andrew's attorney's fees.

¶ 53 A trial court's decision to award attorney fees in a dissolution case is a matter of discretion and will not be disturbed on appeal absent an abuse of that discretion. *In re Marriage of Awan*, 388 Ill. App. 3d 204, 214 (2009). Where one party lacks the financial resources and the other party does have the ability to pay, fees may be awarded. *In re Marriage of Bentivenga*, 109 Ill. App. 3d 967, 975 (1982). "Financial inability exists where payment would strip the person of the means of her support and undermine her economic stability." *Id.*

¶ 54 Here, we do not find that the trial court abused its discretion in awarding Andrew's attorney's fees. During the hearing on Andrew's petition for interim attorney's fees, Andrew testified that after paying his monthly expenses, including maintenance payments to Jacqueline, he was essentially left with nothing. The court noted that Jacqueline was awarded the greater share of the marital assets, and also indicated that her assets were largely liquid, as Andrew was ordered to buy out Jacqueline's equity in the marital residence, resulting in a cash payment to Jacqueline of $116,245. The court then weighed "the distribution of the income and the availability of the liquid assets," and ordered Jacqueline to contribute to Andrew's legal fees in

defense of Jacqueline's appeal.[4] Based on Andrew's unrebutted testimony that he did not have an ability to pay further legal fees and the court's findings that Jacqueline had the ability to pay because of her access to liquid assets and the distribution of the marital estate in her favor, we do not believe it was an abuse of discretion for the trial court to order Jacqueline to contribute $7,500 toward Andrew's attorney's fees.

¶ 55 CONCLUSION

¶ 56 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 57 Affirmed.

---

[4] Pursuant to section 5/508(a)(3) of the Act, an award of attorney's fees may be made in connection with the defense of an appeal of any order or judgment under the Act. Jacqueline filed her first notice of appeal on June 19, 2014.