2015 IL App (2d) 140502-U
No. 2-14-0502
Order filed August 24, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF STACY E. BARKULIS, Petitioner-Appellant, and NICHOLAS P. BARKULIS, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Lake County. No. 09-D-2413 Honorable Jay W. Ukena, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court did not err: (1) by allowing petitioner's counsel to withdraw before trial; (2) by not granting a trial continuance; (3) in its award of attorney fees; (4) in the nature and amount of the maintenance award; (5) by failing to find that respondent dissipated marital assets; (6) by denying evidence and motions on "[t]echnical" grounds; (7) by finding that various assets were respondent's non-marital property; (8) by requiring respondent to pay only part of a marital credit card debt and requiring petitioner to pay attorney fees to respondent's attorney; or (9) by allowing respondent to retain all furniture and personal property in the residence. Petitioner's argument that the trial court should have granted an evidentiary hearing to vacate the joint parenting agreement was moot, and, by failing to cite authority, she forfeited her argument that the trial court erred by denying her posttrial motions. Therefore, we affirmed.

¶ 2 Petitioner, Stacy E. Barkulis, and respondent, Nicholas P. Barkulis, were married on September 21, 1996. Their son, Alexander, was born on March 19, 1997. The parties' marriage was dissolved on October 8, 2013, and petitioner appeals, *pro se*, from the dissolution judgment. She argues that the trial court erred: (1) by allowing her counsel to withdraw shortly before trial; (2) by failing to grant a trial continuance; (3) by failing to award additional interim attorney fees both before and after her attorney's withdrawal; (4) in the nature and amount of the maintenance award; (5) by failing to find that respondent dissipated marital assets; (6) by denying evidence and motions on technical grounds; (7) by failing to grant an evidentiary hearing to vacate the joint parenting agreement (JPA); (8) by finding that various assets were respondent's non-marital property; (9) by denying her posttrial motions seeking the reopening of discovery and a new trial; (10) by requiring respondent to pay only $7,000 of a $31,000 marital debt and requiring her to pay attorney fees to respondent's attorney; and (11) by allowing respondent to retain all furniture and personal property in the residence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Proceedings where Petitioner was Represented by Lake Toback

¶ 5 Petitioner filed a petition for dissolution of marriage on December 4, 2009. She alleged that she was 47 years old and had been a homemaker and a stay-at-home mother for the entirety of the parties' marriage. She alleged that respondent was 62 years old and self-employed. The case proceeded before Judge Jay Ukena.

¶ 6 On March 15, 2010, the trial court entered an agreed order that respondent would pay petitioner's law firm, Lake Toback, $10,000 for prospective attorney fees. A few months later, he was ordered to pay the firm another $30,000.

¶ 7 Respondent filed a counter-petition for dissolution of marriage on April 12, 2010.

¶ 8 At respondent's request, the trial court appointed a child representative for Alexander on May 20, 2010. The same day, the trial court ordered respondent to pay petitioner $2,500 monthly for temporary support. The parties were still living in the same residence at this time. On June 3, 2010, both respondent and petitioner filed emergency petitions seeking, among other things, exclusive possession of the residence.

¶ 9 On June 16, 2010, the trial court entered an order for a custody evaluation under section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/604(b) (West 2010)).

¶ 10 B. Proceedings where Petitioner was Represented by Kalcheim Haber

¶ 11 On November 8, 2010, Lake Toback was granted leave to withdraw. Later that month, the firm Kalcheim Haber appeared on petitioner's behalf. Michael Kalcheim was petitioner's lead attorney. In January 2011, respondent was ordered to pay Kalcheim Haber $20,000 for interim and prospective attorney fees.

¶ 12 On February 25, 2011, the trial court ordered that petitioner vacate the residence, that respondent pay her $6,500 per month for temporary maintenance, and that respondent pay the security deposit on her rental property. Respondent was also ordered to pay for petitioner's health and auto insurance. The trial court entered an order on March 3, 2011, stating that once petitioner vacated the residence, she would have alternating weekends and one weekday overnight visitation with Alexander.

¶ 13 On March 18, 2011, a case management order was entered setting the trial for various dates in June. The contested issues listed included custody, visitation, and child support, along with various financial issues.

¶ 14 On May 26, 2011, respondent was ordered to pay Kalcheim Haber $60,000 for past and

prospective attorney fees.

¶ 15 On June 8, 2011, Kalcheim Haber filed an emergency motion to continue the trial dates due to a biking injury suffered by attorney Kalcheim. On June 10, 2011, the trial court ruled that the matter was not an emergency, and it awarded respondent's counsel and Alexander's representative three hours of attorney fees for their appearance that day.

¶ 16 On July 7, 2011, respondent was ordered to pay $10,000 for petitioner's third party costs and $7,500 for her attorney fees. The order stated that no additional fees would be awarded before trial (which was scheduled to begin at the end of the month) without a petition for contribution under section 503(j) of the Marriage Act (750 ILCS 5/503(j) (West 2010)). The order further barred two of petitioner's experts from testifying because their opinions had not been disclosed.

¶ 17 On July 25, 2011, the trial commenced, and grounds and jurisdiction were proved up. The same day, petitioner filed a petition for contribution to attorney fees and costs. The parties were continuing settlement negotiations. On July 26, 2011, the trial court entered an order stating that petitioner would have until 9 a.m. on the following day to sign the JPA based upon the trial court's recommendations. It stated that if she did not agree to the JPA, trial on the custody issue would commence on July 28, 2011. [1]

¶ 18 On July 27, 2011, Kalcheim Haber filed a motion to withdraw.

¶ 19 On July 28, 2011, petitioner filed an emergency motion to vacate the July 26, 2011, order and to continue the custody portion of the trial. She alleged that based on the trial court's comments, discovery, depositions, the parties' actions, and settlement negotiations, the trial had been set to begin with the issue of finances. She further pointed out that a 604(b) custody

[1] The order was corrected to reflect these dates on September 16, 2011.

evaluation had been ordered but had not yet taken place.

¶ 20 The same day, attorney Kalcheim represented to the court that a JPA had been signed, and therefore he no longer sought to withdraw from the case. Petitioner withdrew her emergency motion to vacate the July 26, 2011, order.

¶ 21 The following day, the parties stipulated to the admission of the majority of the trial exhibits. The trial was continued to dates beginning in August.

¶ 22 On August 11, 2011, petitioner filed a petition for substitution of judge for cause, or recusal. Petitioner alleged as follows in relevant part. On August 8, 2011, the matter was set for a trial conference. Without any prior notice, respondent gave the trial court an *ex parte* pretrial settlement discussion memo. The memo was designed to prejudice the court against petitioner because it included extra-judicial statements about alleged prior unsuccessful settlement negotiations.

¶ 23 Petitioner later filed an amended motion for substitution, which does not appear in the record. She apparently raised two other court actions allegedly showing prejudice. The first alleged that the trial was supposed to begin on the subject of finances, yet the court ordered her to either sign the JPA or begin trial on custody the next day. The second action was the trial court's award of sanctions based on its determination that the emergency motion to continue based on attorney Kalcheim's injury was not an emergency.

¶ 24 An evidentiary hearing took place on count II of the amended petition for substitution, which sought to remove Judge Ukena for cause. On September 14, 2011, the trial court, through Judge Rossetti, granted respondent's motion for a directed finding on petitioner's motion for substitution of judges. The trial court stated, in relevant part, as follows. The case was set for trial on March 28, 2011, and the issues marked for trial included finances and custody. There

was no subsequent order limiting the trial to one specific issue. Kalcheim Haber had filed an emergency motion to continue the trial based on attorney Kalcheim's bike accident, and Judge Ukena found that it was not an emergency. Still, he did not set a trial date until Kalcheim reappeared, and the trial did not actually begin until July, after Kalcheim had appeared in the case several times. Judge Ukena was involved in settlement discussions and heard information from both sides. Respondent's attorney presented him with a settlement letter only in the hopes of settling the case. The parties attempted to settle the case on both finances and custody, even after the trial began. It was petitioner's attorneys' choice to prepare for trial only on financial matters. The trial court did not coerce petitioner to sign the JPA, because both sides were attempting to settle all issues. The fact that the discussions fell apart and there was disagreement regarding the JPA did not equal coercion.

¶ 25 On October 12, 2011, the trial court, through Judge Ukena, denied count I of petitioner's amended petition for substitution, which sought his recusal. The next day, the trial was set for various days in March and May 2012.

¶ 26 On November 2, 2011, respondent sought Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)) sanctions against Kalcheim Haber relating to the petition for substitution of judges. Years later, respondent withdrew this petition based on a settlement with the firm.

¶ 27 Meanwhile, on February 14, 2012, Kalcheim Haber filed another motion to withdraw. The motion stated that attorney Kalcheim believed that it would be in petitioner's best interests to accept the trial court's pre-trial conference recommendations for global settlement, but petitioner had expressed to the court that she would not accept the settlement offer and wanted to proceed to trial because she had not received " 'justice and truth.' " Kalcheim Haber stated that it believed that petitioner was not acting in her own best interests, which made it unreasonably

difficult for the firm to carry out its employment effectively. It stated that for ethical and professional reasons, it could not continue to represent petitioner.

¶ 28 A hearing on the motion to withdraw took place on February 21, 2012. The trial court stated that respondent had offered petitioner $5,500 monthly tax-free maintenance for four years, $47,000 for an MBA, $12,000 for half of her credit card debt, $3,000 for the deposit on her residence, and insurance for six months. The trial court stated that petitioner did not agree but had never stated what she wanted in the way of a settlement. Petitioner responded, "I wish I understood the value of our marital estate." The court stated that the information it had seen in trying to settle the case indicated that everything was non-marital, and both firms representing petitioner never "tied down" any property as marital, even after doing all discovery possible. Petitioner stated that her attorneys' pretrial memorandum said that respondent would have the burden of proving that the estate was non-marital, and she discussed their standard of living. The trial court stated that it was clear that petitioner was having a problem understanding the situation and that it had reviewed the motion to withdraw and would grant it.

¶ 29 Petitioner asked the trial court why it was allowing the firm to withdraw, and the trial court asked, "Do you want them in the case?" Petitioner stated, "I am saying I need productive representation. I need to trust that the trial is going or the case is going in the right direction." Petitioner stated that she had taken a lot of time to research the costs of the standard of living during the marriage, and the settlement offer kept getting "whittled down." The trial court stated that the issue was not just the parties' standard of living, it was also respondent's ability to live a comparable lifestyle and pay the expenses. The trial court stated that in about 10 years, the entire non-marital estate would be gone, and then nobody would have anything to live on. Petitioner repeated that respondent had the burden of proof, and the trial court replied that if

respondent presented documents that traced the property, he would meet his burden of proof, and if he could not trace everything, he would not meet his burden of proof in some aspects of the estate.

¶ 30 Petitioner asked if the trial court thought that the case had gone in a "productive direction" in terms of what had been done given the attorney fees and time. The trial court stated that it could not give her an answer. It stated that since petitioner was arguing for herself, it seemed that her relationship with her attorney had been irreparably damaged. The trial court stated:

> "It doesn't seem like you want to listen to him or follow his direction. So it seems like that has been broken. And it would seem like it would be fruitless to go ahead and have Mr. Kalcheim, who apparently you don't want to listen to, continue to represent you."

Petitioner asked how she could get ready for trial by March 15 if she had to get new counsel. She said that her prior attorney withdrew because he was not getting paid. The trial court stated that Lake Toback received a total of $40,000 and withdrew before asking for more money.

¶ 31 The trial court stated that petitioner could talk to Kalchiem about continuing to represent her or obtain another attorney. It continued the case for 21 days, until March 12, for the status of petitioner's new attorney. It stated that at that time they would review "setting dates." Petitioner again asked why the trial court was letting Kalcheim Haber withdraw. The trial court stated that there seemed to be an irreparable breakdown in their relationship, and there were other "things" listed in the motion. Petitioner stated that she disagreed and asked what her rights were. The trial court stated that she had 21 days to seek out a new attorney. Petitioner asked about interim fees, and the trial court stated that she would have to talk to her new attorney or Kalcheim. Petitioner stated that if she was employing a new attorney, the case needed to go in a "productive

direction." The trial court stated that it had been doing so until at least August 2011, and both sides had complied with discovery through that date. Petitioner stated that the trial court was granting her attorney's motion to withdraw when she had not had an irrevocable breakdown of the relationship. She said that she was told they were not getting paid attorney fees. The trial court stated that that was not accurate because they had received $60,000 and would receive more after trial, after filing a petition for contribution. The trial court's order stated that the trial dates of March 15 and 16 and May 4, 2012, still stood.

¶ 32 C. Proceedings where Petitioner Appeared *Pro Se*

¶ 33 On March 12, 2012, attorney Larry Starkopf appeared with petitioner, but he did not file an appearance. There is no report of proceedings from this date.

¶ 34 On March 15, 2012, the trial was continued until the next day. On March 16, petitioner entered a *pro se* appearance. She filed a motion requesting interim fees to continue the case. The trial court denied the motion without prejudice for being improperly noticed, for not referencing the proper statute, and for not setting forth a sufficient basis. It denied her oral motion to continue the trial, stating that the motion needed to be in writing. It further stated that the case had been continued at least three times over the previous nine months, and most of the delays were due to petitioner's attorneys. The trial court heard testimony that day. The trial was continued to April 13, 2012.

¶ 35 On March 26, 2012, petitioner filed a motion requesting $50,000 in prospective attorney fees and a continuation of the trial date. On April 20, 2012, the trial court denied the motion, without prejudice, as defective. Petitioner filed a similar motion on April 23. The same day, the trial court entered an order stating that an attorney could petition the court for fees "up to but not exceeding" $15,000 for interim and prospective fees related to petitioner's trial representation.

The trial court then proceeded to hear additional testimony. The trial court also heard evidence on May 14 and 16, 2012.[2]

¶ 36 On May 7 and 22, 2012, petitioner filed motions stating that the amount of fees was insufficient to retain counsel for trial. She further requested a continuation of trial dates. The trial court denied the motions on June 1, 2012. It heard evidence that day and on June 4 and 8, 2012.

¶ 37 On June 4, 2012, petitioner filed an emergency motion requesting that the trial court vacate the JPA, order a custody evaluation for Alexander's best interests, and continue the trial dates. The same day, respondent filed a petition requesting contribution to attorney fees.

¶ 38 The trial date was subsequently continued to June 28. That day, the trial court concluded the evidentiary portion of the trial. The parties were to submit written closing arguments.

¶ 39 On July 10, 2012, petition filed a motion "to reconsider." She requested that respondent pay for trial transcripts and that the dates for submitting closing arguments be extended. On July 20, 2012, the trial court granted additional time to submit closing arguments. It ordered that respondent pay two-thirds of transcript costs and that petitioner pay one-third of the costs.

¶ 40 On February 11, 2013, the trial court denied petitioner's motion to vacate the JPA. It stated as follows. In 2011, summer visitation was the only issue left regarding custody. Alexander's representative did a very good job at interviewing everyone involved. At some point, there was a last-minute request to have an evaluation under 604(b), but it was not required to be ordered. Petitioner's attorney represented that petitioner had voluntarily signed the agreement. At the hearing on the substitution of judges for cause, Judge Rossetti found that he

[2] Evidence may also have been heard on May 31, 2012; it is unclear from the record, which contains only a portion of the trial transcripts.

had not forced her to sign the JPA, and "that basically bec[ame] res judicata for the case." Petitioner also indicated that attorney Kalcheim had thought that the trial had been set for financial matters only, but Judge Rossetti ruled that the attorneys knew that the case was set for trial and chose to focus on the financial issues.

¶ 41 On March 1, 2013, petitioner filed a motion seeking a variety of relief, including a vacation of the JPA and the appointment of a custody evaluator. The trial court struck the motion on March 5 but gave her leave to file an amended motion that day, which she did. The trial court struck the amended motion on March 7 for failure to comply with the Code of Civil Procedure (735 ILCS 5/2-101 *et seq.* (West 2012)).

¶ 42 On March 14, 2013, petitioner filed a cross-petition for contribution to attorney fees. On May 21, 2013, the trial court denied it as untimely, among other reasons. Petitioner filed a motion on March 19, 2013, seeking to, *inter alia*, hold an evidentiary hearing on the JPA's validity, obtain a greater amount of interim attorney fees, reopen the record for additional proofs, and postpone the final ruling. On April 30, 2013, the trial court granted respondent's request to strike and dismiss the motion.

¶ 43 On April 3, 2013, petitioner filed a second motion to postpone the final ruling.[3] The trial court denied the motion on May 3, 2013.

¶ 44 At a hearing on April 5, 2013, the trial court stated that it had advised petitioner at virtually every hearing to get an attorney because she needed representation. Petitioner indicated that she had last talked to an attorney before the trial. The trial court barred petitioner from filing any future pleadings without leave from the court.

¶ 45 D. Dissolution Judgment

[3] This motion is not contained in the record.

¶ 46 The trial court entered a judgment of dissolution of marriage on October 8, 2013, finding as follows, in relevant part. Petitioner was 51 years old and respondent was 65 years old. They were married on September 21, 1996. Long before the marriage, in 1977, respondent and his brother, James, started a business called Barkulis Brothers, Inc. Respondent testified that James invested all of the capital into the business, and they orally agreed that respondent would repay him later. In 1990, they sold the business to Edy's Grand Ice Cream. Respondent's share of the sale was $4,325,000, although he still owed James money. Respondent never returned to full-time work after 1990. He did not meet petitioner until years after the business was sold.

¶ 47 Respondent opened his BMO Harris Bank account in 1990 with the proceeds of the company's sale. Thus, he had proven by clear and convincing evidence that the account, which had a value of $624,309.21 as of April 1, 2012, was his non-marital property. The E-Trade account with a value of $722,708.69 and his E-Trade Roth IRA account with a value of $4,145.25 were similarly his non-marital property, as were two other accounts in which he no longer had an interest.

¶ 48 Respondent and James incorporated a second company, also called Barkulis Brothers, Inc., (BB2) on February 2, 1995, prior to the marriage. BB2 was not profitable and was funded by money borrowed from respondent's non-marital assets, which was used to pay respondent's nominal income and pay for the family's health insurance and gas expenses. As of 2006, BB2 existed as a conduit to pay the brothers' families' health insurance, and respondent presented evidence that it had zero value.

¶ 49 In 1992, before he met petitioner, respondent purchased the property where the parties had resided. He built a home there, and an occupancy permit was issued in May 1995. At the time of trial, the residence had no mortgage. Respondent started dating petitioner at the end of

the construction. There was no merit in petitioner's claim that she participated in building the residence, as any such participation was nominal at best. The construction costs were paid solely from respondent's non-marital property, including the proceeds of the sale of respondent's prior home. During the marriage, the mortgage, upkeep, and improvements were paid from respondent's non-marital property. Respondent testified that the home was worth between $1.2 and $1.5 million, and this testimony was credible; petitioner presented no evidence as to the property's value. Respondent had proven by clear and convincing evidence that the residence was his non-marital property.

¶ 50 Vacant land in Port St. Lucie, Florida, acquired in 1971 and titled to respondent and his siblings was worth $13,600 and was respondent's non-marital property, as was a life insurance policy with a nominal value and a 1990 Corvette (worth about $6,000), a 1998 Mercedes SUV, a 2002 Mercedes SUV, and a 2009 Hyundai Sante Fe (worth about $22,000).

¶ 51 Petitioner was unemployed throughout the marriage by choice, and respondent had worked part-time or not at all. Respondent's testimony about his health was credible, but based on his education and work experience, it was reasonable for him to engage in gainful employment, and he had the ability to earn a far greater income than petitioner. His income had averaged about $93,000 for the five years preceding the trial, primarily from investments and dividends, but he had the ability to earn additional money through a start-up business.

¶ 52 Petitioner had no income except temporary support, and she had no non-marital assets. Respondent had a vocational expert testify as to petitioner's ability to work. The expert opined that upon taking some refresher computer courses, petitioner could get a job paying between $34,000 to $50,000. The expert's testimony was credible, and petitioner presented no contradictory evidence. Petitioner had not made any reasonable efforts to find a job, nor had she

taken any steps to return to the workforce.

¶ 53 Petitioner had received $138,439.56 in attorney fees and costs. She had been awarded an additional $15,000 to retain a new attorney for trial, but she refused to use that money. As of September 1, 2012, responded had paid petitioner $182,187 in maintenance, health insurance, and auto insurance. As of May 2012, he had incurred $338,492.49 in litigation expenses, including $135,139.35 to petitioner's attorney and $29,650 to Alexander's representative. Petitioner had not contributed to any litigation expenses. Respondent's non-marital assets had been depleted by more than $500,000 from having to finance both sides of the case and pay temporary maintenance. Petitioner had filed five motions to vacate the JPA and numerous frivolous pleadings regarding fees during trial which caused unnecessary delay and needlessly increased litigation costs by $4,914 and $3,709, respectively.

¶ 54 The trial court ordered that respondent pay for Alexander's health insurance and that the parties divide any uncovered expenses, with respondent paying 75% and petitioner paying 25%. Respondent was to pay for Alexander's auto insurance, and the parties would divide his extracurricular expenses 75% - 25%. Petitioner was to receive maintenance in gross of $172,500, paid in $7,500 monthly increments and taxable to her. In arriving at this figure, the trial court took into account the factors set forth in section 504 of the Marriage Act (750 ILCS 5/504 (West 2012)), including the value of the non-marital assets that respondent was giving petitioner and the $230,500 in temporary support that he had already paid her. Respondent was responsible for petitioner's health and auto insurance for 30 days. Based on petitioner's maintenance, she was to pay $1,000 per month to respondent for child support, which was the 20% guideline amount. Respondent was awarded his non-marital assets (the accounts, residence, land in Florida, life insurance policy, personal property at the residence, and three cars), and he

was responsible for all liabilities in his name, including a commercial line of credit of $155,000. Petitioner was awarded the 2009 Hyundai Santa Fe, all personal property in her possession, and any financial accounts in her name. Petitioner was responsible for all liabilities in her name, including her income taxes on her individual returns for the years 2010 to 2012 and her United Mileage Credit Card, though respondent was to contribute $7,000 to the credit card balance. Respondent was also to contribute up to $12,000 for petitioner's educational and training costs payable directly to the institution. Alexander's college costs were to be paid first from any college accounts in his name, then pursuant to section 513 of the Marriage Act (750 ILCS 5/513 (West 2012)). Finally, respondent was to pay Kalcheim Haber $20,000 pursuant to their petition for contribution, and petitioner was to pay $8,613 of respondent's attorney fees, to be deducted from her maintenance.

¶ 55 On November 4, 2013, petitioner filed a motion to reconsider the dissolution judgment. The trial court denied the motion on April 23, 2014. Petitioner timely appealed.

¶ 56 II. ANALYSIS

¶ 57 A. Kalcheim Haber's Motion to Withdraw

¶ 58 Petitioner first argues that the trial court denied her due process of law and abused its discretion by allowing attorney Kalcheim to withdraw shortly before trial. Petitioner cites Illinois Supreme Court Rule 13(c)(3) ((Ill. S. Ct. R. 13(c)(3) (eff. Feb. 16, 2011)), which states that the "motion [to withdraw] may be denied by the court if the granting of it would delay the trial of the case, or would otherwise be inequitable." Petitioner argues that the trial court should not have allowed attorney Kalcheim to withdraw after he had already been paid over $97,500, especially considering the trial court's refusal to continue the scheduled trial date and its allowance of only $15,000 of additional attorney fees. Petitioner maintains that Kalcheim

presumably used the fees he obtained to become intimately familiar with the case's facts, and that the withdrawal imposed an untenable financial burden on her, as a new attorney would have to be paid to do the same work Kalcheim had already done. Petitioner argues that she could not even find an attorney willing to represent her when the trial began. She argues that her decision not to sign the proposed marital settlement agreement did not present good cause to withdraw, as there were genuine disputes with respect to four financial matters that needed to be resolved, namely: (1) whether respondent dissipated funds by transferring them without consideration; (2) the value of respondent's business entities; (3) whether and by how much the value of respondent's premarital assets increased during the marriage; and (4) the value of the residence where the parties lived. Petitioner argues that she had already been "bullied" into signing the JPA and understandably did not want to be "bullied" into signing another agreement.

¶ 59 Petitioner cites *Ali v. Jones*, 239 Ill. App. 3d 844, 850 (1993), where the appellate court held that the trial court should have granted the plaintiff's request for a continuance to obtain counsel where 21 days had not yet passed since the former counsel withdrew. Petitioner also cites *In re Marriage of Miller*, 273 Ill. App. 3d 64, 69 (1995), where the appellate court similarly stated the trial court erred in not giving the party 21 days after granting her attorney's motion to withdraw in which to find another attorney to represent her. The appellate court stated, "If the trial court was not inclined to continue the trial, it simply should have not granted the motion to withdraw." *Id.* Ultimately, the appellate court held that the party had forfeited appeal of the error because her new attorney did not seek a continuance of the trial. *Id.*

¶ 60 Respondent argues that petitioner forfeited her argument by failing to object to Kalcheim's withdrawal in the trial court. Respondent argues that, even otherwise, the trial court acted within its discretion in allowing counsel to withdraw. Respondent notes that Kalcheim

alleged that he was seeking to withdraw because petitioner was not acting in her best interests, and that it became "unreasonably difficult for [him] to carry out his employment effectively." Respondent argues that the irreparable breakdown of the attorney-client relationship is good cause to withdraw from representation under the rules of professional conduct. Respondent maintains that it was clear on February 21, 2012, and even prior to this date, that petitioner and attorney Kalcheim could not effectively communicate.

¶ 61 Respondent additionally argues that the upcoming trial date did not require a denial of the motion to withdraw because the date was after the 21 days required by Rule 13. Respondent also argues that petitioner does not cite any authority to support her claim that the cost of obtaining new counsel for an impending trial justified forcing an attorney to remain on the case, and that her argument is further speculative and should be disregarded. Respondent maintains that discovery and depositions were complete, exhibits were exchanged, and stipulations were entered, so the case was ready for trial.

¶ 62 We will not disturb a trial court's ruling on an attorney's motion to withdraw absent an abuse of discretion. *In re J.D.*, 332 Ill. App. 3d 395, 404 (2002). An abuse of discretion occurs where the ruling is arbitrary, fanciful, or unreasonable. *K&K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 22. Rule 13 governs motions to withdraw as counsel. *In re J.D.*, 332 Ill. App. 3d at 405. Counsel must inform his or her client that, within 21 days after the entry of an order of withdrawal, the client should retain other counsel or file an appearance. Ill. S. Ct. R. 13(c)(2) (eff. Feb. 16, 2011). During those 21 days, nothing should occur in the trial court that prejudices the client's rights. *In re Marriage of Heindl*, 2014 IL App (2d) 130198, ¶ 22. Rule 13 allows a trial court to deny a motion to withdraw only if granting the motion would improperly delay the trial or would otherwise be inequitable. *In re J.D.*, 332 Ill. App. 3d at 405.

¶ 63 Beginning with respondent's assertion of forfeiture, we find that petitioner sufficiently questioned the withdrawal, thereby preserving the issue for review. Still, petitioner's argument that she was denied due process when the trial court allowed attorney Kalcheim to withdraw is without merit, as there is no constitutional right to counsel in a dissolution proceeding. *In re Marriage of Heindl*, 2014 IL App (2d) 130198, ¶ 23. Further, this case is distinguishable from the cases that petitioner cites because there the trial courts did not give the parties 21 days in which to find new counsel, whereas here the trial court did. The trial was also scheduled beyond this 21-day period, so the trial court acted within its discretion in determining that granting the motion would not improperly delay the trial, especially considering that it could have chosen to continue the trial further at any point, such as upon the request of the new attorney.

¶ 64 On the question of the financial burden imposed on petitioner by allowing the motion to withdraw, we agree with respondent that this argument is purely speculative, particularly given that the case was ready for trial and that respondent had been paying all of petitioner's litigation costs. *Cf. In re Marriage of Heindl*, 2014 IL App (2d) 130198, ¶ 25 (wife's argument that the trial court erred in allowing attorney to withdraw because it was " 'doubtful' that another attorney would assume representation when he or she became aware that [wife] had limited funds and a looming, firm and final trial date" was "pure speculation."). We more fully address petitioner's assertions regarding insufficient interim attorney fees and the denial of her requests to continue in conjunction with the second argument she raises on appeal.

¶ 65 Attorney Kalcheim stated that it was unreasonably difficult for him to carry out his employment effectively because petitioner would not accept a settlement that he thought was in her best interests. Under the Illinois Rules of Professional Conduct, a lawyer is to abide by the client's decisions about the representation's objectives and whether to settle a matter. Ill. Rs.

Prof. Conduct R. 1.2 (eff. Jan. 1, 2010). However, the rules also state that an attorney has a duty to act in the client's best interests (Ill. Rs. Prof. Conduct R. 1.4 (eff. Jan. 1, 2010)), and an attorney is allowed to withdraw if, among other things, the representation has been rendered unreasonably difficulty by the client (Ill. Rs. Prof. Conduct R. 1.6 (eff. Jan. 1, 2010)). In a case respondent cites, *Kannewurf v. Jones*, 260 Ill. App. 3d 66, 73 (1994), the appellate court held that where the plaintiffs put their attorney in a position where, according to his professional judgment, they were not acting in their own best interests regarding settlement parameters, it was unreasonably difficult for him to carry out his employment effectively. See also *McGill v. Garza*, 378 Ill. App. 3d 73, 76 (2007) (firm withdrew based on fundamental disagreement about whether to accept settlement offer). Therefore, here the disagreement regarding whether to accept the settlement was an appropriate basis on which attorney Kalcheim could seek to withdraw.

¶ 66 Further, it is clear from reviewing the hearing on the motion to withdraw (see supra ¶¶ 27-31) that petitioner had communication problems with attorney Kalcheim and did not trust him. Despite the lengthy settlement negotiations, petitioner stated that she did not understand the marital estate's value; indicated that she did not think that her representation was "productive" or that the case was "going in the right direction"; and insisted that attorney Kalcheim and her previous attorney sought to withdraw because they were not being paid, despite evidence to the contrary. While petitioner ultimately ended up proceeding *pro se*, this result was not reasonably foreseeable by the trial court, which provided her with sufficient time to find a new attorney. Therefore, we cannot say that the trial court abused its discretion in granting Kalcheim Haber's motion to withdraw.

¶ 67 B. Trial Continuance and Interim Attorney Fees

¶ 68 Petitioner next argues that the trial court denied her due process and abused its discretion by failing to continue the trial and failing to award sufficient interim attorney fees. Petitioner maintains that after attorney Kalcheim withdrew, she brought attorney Starkopf, who was one of the many attorneys she sought to have represent her, before the court. Petitioner contends that attorney Starkopf told the court the same thing that all of the other attorneys had told her, namely that he would not undertake her representation unless the trial was continued and he was paid substantially more than the $15,000 the trial court had allowed for fees.

¶ 69 Petitioner argues that a continuance was necessary because the case had been pending for over two years and had complicated facts, including three business entities and many transfers of substantial sums of money. Petitioner maintains that a review of proceedings indicates that the court withheld a continuance in order to force her to settle the case, as it had done when it refused to continue the custody trial, resulting in her signing the JPA.

¶ 70 As for the $15,000 of interim fees, petitioner argues that at a $400 per hour billing rate, that money would pay for only 37.5 hours of work, which would not even cover court time, much less the hours for pretrial preparation and posttrial motions. Petitioner argues that respondent incurred fees of $400,726.01 as of March 1, 2013, not including additional fees that he subsequently "dissipated," as compared to her total fees of $137,500. According to petitioner, this resulted in "about as fair a fight as Bambi versus Godzilla."

¶ 71 Respondent argues that because petitioner does not have a constitutional right to counsel (*In re Marriage of Heindl*, 2014 IL App (2d) 130198, ¶ 23), she does not have the corollary right of additional time for counsel to prepare. We agree. Notably, the case on which petitioner relies is a criminal case where the defendant was entitled to counsel.

¶ 72 As far as a continuance, litigants do not have an absolute right to a continuance. *ICD Publications, Inc. v. Gittlitz*, 2014 IL App (1st) 133277, ¶ 88. Rather, it is within the trial court's sound discretion to grant or deny a motion for a continuance, and its decision will not be disturbed on appeal unless it has resulted in a palpable injustice or constitutes a manifest abuse of discretion. *Id.* Once the case has reached the trial stage, the party seeking the continuance must assert " 'especially grave reasons' " for the trial's continuance. *K&K Iron Works, Inc.*, 2014 IL App (1st) 133688, ¶ 23.

¶ 73 Here, as stated, the trial was set beyond the 21-day period required under Rule 13. Although petitioner argues that attorney Starkopf told the trial court that he would need additional time to prepare for trial, there is no report of proceedings reflecting these statements, so we do not consider them. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (the appellant has the burden to provide a sufficiently complete record of trial proceedings to support his or her claims of error, and the reviewing court will resolve any doubts that arise from the incompleteness of the record against the appellant). The day before the testimony was to start, petitioner filed a motion seeking to continue the case, but the trial court denied it without prejudice because it was not properly noticed, did not reference the proper statute, and did not set forth a sufficient basis. While we understand that petitioner was *pro se*, courts do not apply more lenient standards to *pro se* litigants (*In the Interest of A.H.*, 215 Ill. App. 3d 522, 529-30 (1991)), and petitioner does not dispute that the motion was defective. The trial court also pointed out that the trial had already been continued many times over the previous nine months by petitioner's attorneys.

¶ 74 Moreover, although the trial court began hearing witness testimony on March 16, 2014, the next trial date was not until about one month later, and the trial continued into dates in May

and June. Thus, petitioner had additional time during the trial in which to obtain an attorney and was repeatedly advised by the trial court to do so, but she did not. See *K&K Iron Works, Inc.*, 2014 IL App (1st) 133688, ¶ 26 (an important consideration for a trial court in determining whether to grant a continuance due to counsel's actions is the degree of diligence of the party seeking the continuance).

¶ 75 Last, there is no support for petitioner's contention that the trial court refused to continue the case as a means to coerce her, for, as respondent points out, the March 2012 trial dates had been set in October 2011, and there were numerous settlement conferences that ultimately failed. It was only logical for the issues to proceed to trial once it was clear that there would be no settlement. For all of these reasons, with the most basic being the motion to continue was not legally adequate, we conclude that the trial court did not abuse its discretion in denying petitioner's motion to continue.

¶ 76 On the subject of interim attorney fees, we review a trial court's decision to grant or deny such fees under an abuse-of-discretion standard. *In re Marriage of Heindl*, 2014 IL App (2d) 130198, ¶ 28. Petitioner's citation to the record does not support her assertion that respondent incurred fees of $400,726.01 as of March 1, 2013, as compared to her total fees of $137,500. The trial court found that as of May 2012, respondent had incurred $338,492.49 in litigation expenses, including $135,139.35 to petitioner's attorney and $29,650 to Alexander's representative; this would leave respondent's attorney fees at $173,703.14 at that time, which included amounts to defend allegedly sanctionable pleadings, a matter on which Kalcheim Haber subsequently settled.

¶ 77 Petitioner's argument that the $15,000 for interim fees was grossly inadequate is without merit as it is entirely speculative. Petitioner could have, for example, obtained affidavits from

attorneys stating that they would take the case if additional fees were offered, but she did not do so. *Cf. In re Marriage of Heindl*, 2014 IL App (2d) 130198, ¶ 30 (party did not present an affidavit from an attorney stating that he or she would represent her for a specified retainer). Again, although petitioner claims that attorney Starkopf made this representation to the trial court, we may not consider this because it does not appear in the record. See *supra* ¶ 71. Further, the trial court could have amended its order limiting the interim fees to $15,000 at the request of new counsel, and it could also have allowed a petition for contribution, as it did for Kalcheim Haber, which received additional attorney fees after the trial's conclusion. Accordingly, we find no abuse of discretion in the trial court's order regarding interim attorney fees.

¶ 78 C. Additional Interim Attorney Fees

¶ 79 In a related argument, petitioner maintains that the trial court abused its discretion in failing to award additional interim attorney fees both before and after attorney Kalcheim's withdrawal. As we have already addressed the $15,000 interim fee award, we do not discuss that issue further.

¶ 80 Petitioner also refers to the trial court's July 7, 2011, order which required respondent to pay $10,000 for petitioner's third party costs and $7,500 for her attorney fees to Kalcheim Haber. The order stated that no additional fees would be awarded before trial without a petition for contribution under section 503(j) of the Marriage Act. Petitioner argues that the trial court subsequently refused to lift its "ban" on additional interim attorney fees even though circumstances changed. Petitioner maintains that by "the time the motions for additional fees were filed," respondent had incurred legal fees and costs far in excess of her own, which allowed him to retain two experts.

¶ 81 Petitioner argues that the trial court's actions were contrary to section 501(c-1)(3) of the Marriage Act (750 ILCS 5/501(c-1)(3) (West 2010)), which discusses interim fees. Under this section, the trial court is to first determine whether the petitioning party lacks the ability to pay attorney fees and whether the other party has such a financial ability. *Id.* If so, the trial court is to award fees "in an amount necessary to enable the petitioning party to participate adequately in the litigation," and it is to consider whether the party who is not in control of assets or relevant information requires additional fees. *Id.* Petitioner notes that the trial court had previously found that she lacked the resources to pay her own legal fees and that respondent had sufficient assets, and she argues that she needed even more attorney fees than respondent because he possessed all of the financial information. Petitioner argues that the trial court failed to "level the playing field," as required by section 501(c-1)(3). See *In re Stella*, 353 Ill. App. 3d 415, 419 (2004) (discussing the purpose of section 501(c-1)(3)).

¶ 82 We note that when the trial court entered the July 7, 2011, order, the trial was set to begin at the end of the month. At that point, respondent had already paid Lake Toback $40,000 and had paid $80,000 to Kalcheim Haber. In conjunction with the July 7 order, respondent was to pay Kalcheim Haber another $7,500 and pay $10,000 for petitioner's expert fees. Thus, contrary to petitioner's argument, she was well-able to retain her own experts, and two of the ones she sought to have testify were barred only because their opinions were not timely disclosed. Further, the July 7 order did not serve to "ban" additional attorney fees to Kalcheim Haber, but rather required them to seek such fees through a petition for contribution. Additionally, Kalcheim Haber could and did seek to modify the order, in 2012. As respondent points out, petitioner never personally pursued the first motion to modify and Kalcheim Haber lacked standing to file the second motion, because it was filed after the firm had already withdrawn.

Kalcheim Haber was ultimately awarded an additional $20,000 per its petition for contribution. Therefore, the trial court did not abuse its discretion in entering the July 7 order.

¶ 83 D. Maintenance

¶ 84 Petitioner next argues that the trial court abused its discretion with respect to the amount and nature of the maintenance award.

¶ 85 Whether to award maintenance, and the amount and duration of a maintenance award, are within the trial court's discretion. *In re Marriage of Troske*, 2015 IL App (5th) 120448, ¶ 38. Considerations for determining maintenance are set forth in section 504(a) of the Marriage Act (750 ILCS 5/504(a) (West 2012)), as follows: each party's income and property; each party's needs, earning capacity, and impairment of earning capacity due to the marriage; the time necessary for the party seeking maintenance to obtain the appropriate education and employment; the standard of living established during the marriage; the marriage's duration; the parties' ages and physical and emotional conditions; the tax consequences of the property division; the contribution of the party seeking maintenance to the other party's education or career; any valid agreement by the parties; and any other factor the trial court finds to be just and equitable. No single factor is determinative, and the trial court is not limited to just the section 504(a) factors in determining a maintenance award.

¶ 86 Petitioner argues that looking at the section 504(a) factors, it is clear that the trial court abused its discretion in ordering her lump sum maintenance of $172,500; petitioner argues that permanent or other long-term maintenance was justified. Petitioner notes that the trial court found almost all property to be respondent's non-marital property, and she argues that this justifies a higher amount of maintenance. Petitioner argues that it would be a "stretch" for her to earn the income of between $34,000 and $50,000 opined by respondent's expert given her age,

the many years she had not worked, and the lack of funding for graduate school. She argues that even if she obtained this income, it would not enable her to live close to the parties' standard of living during the marriage, which she argues respondent still enjoys. Petitioner notes that they lived in Lake Forest in a house the trial court found to be worth between $1.2 and $1.5 million. She also points out that the trial court found that respondent had the potential to earn a far greater income than she did.

¶ 87 Petitioner notes that the maintenance is to be paid in monthly installments of $7,500 and that payments will end around August 2015. She further points out that from this money, she is to pay respondent $1,000 per month in child support, pay 25% of Alexander's expenses, and pay $8,613 in attorney fees for respondent. She argues that she was not awarded any property that could be liquidated to generate income and had to deplete her own retirement funds during litigation. She maintains that with the current maintenance, she will be unable to purchase any house, much less the "$2+ million" Lake Forest house that respondent owns. Petitioner argues that once her maintenance payments end, she will have a hard time funding her basic living needs even if she is able to secure employment. Petitioner cites *In re Marriage of Morse*, 240 Ill. App. 3d 296, 311 (1993), where the court stated that the wife, who was legally blind, did not have much time to devote to developing career skills because she was a homemaker and a mother.

¶ 88 Petitioner argues that respondent has the ability to pay maintenance given his brokerage accounts and the fact that he has no mortgage on the Lake Forest residence; petitioner argues that respondent could take out a mortgage to pay her maintenance. Petitioner argues that the trial court should have awarded maintenance in an amount that would replicate a somewhat similar standard of living as that during the marriage.

¶ 89 Respondent argues that petitioner forfeited her arguments by failing to cite proper authority. We disagree, as petitioner has cited the relevant statute and some related case law.

¶ 90 Respondent also argues that the trial court did not abuse its discretion in its maintenance award. He argues that the fact that petitioner married him after he acquired his estate and that he was entitled to keep his non-marital property does not justify a long-term maintenance award. Respondent maintains that the trial court actually took the parties' respective property into consideration in awarding petitioner some of his non-marital property, namely the 2009 Hyundai and various furniture.

¶ 91 On the subject of earning capacity, respondent notes that the trial court found that petitioner was unemployed during the marriage by choice and had "not made reasonable efforts to find employment or taken any steps to return to the workforce." Respondent cites to his testimony that he was concerned about finances during the marriage and had asked petitioner to work, but she refused. He notes that the trial court found his vocational expert's testimony credible that petitioner could earn between $35,000 and $50,000 per year. Respondent argues that the trial court also took into account that he had already paid about $230,500 in temporary support to petitioner, for which he was required to pay the taxes. Respondent also argues that although petitioner complains that she did not receive money for graduate school, the trial court did award her $12,000 in educational costs from him.

¶ 92 Respondent argues that while petitioner ignores the facts relating to her own earning capacity, she focuses on the trial court's finding that his ability to earn income was superior to hers. Respondent disputes this finding, arguing that his income was from interest and dividends on his non-marital estate, which had been diminished as a result of the proceedings, and that

there was no evidence that he, a 65-year-old man, could earn income from a start-up business. Respondent argues that even then, the award of $172,500 was reasonable.

¶ 93 Regarding the standard of living, respondent argues that the Marriage Act specifically references "the standard of living established *during* the marriage" (emphasis added) (750 ILCS 5/504(6) (West 2012)), whereas here he had already established his standard of living before the marriage. Respondent argues that if petitioner's assertion that she was entitled to assets commensurate to his non-marital assets, like the house, just because she used them during the marriage, it would blur the lines between marital and non-marital assets and render section 504's language, "established during the marriage," meaningless. He further disputes the trial court's finding that they lived an upper middle class lifestyle, citing his testimony that their travel, department store purchases, and restaurant choices were modest.

¶ 94 Respondent argues that there are similarities between this case and *In re Marriage of Patel*, 2013 IL App (1st) 112571. There, the husband earned about $475,000 per year. *Id.* ¶ 5. The trial court ordered him to pay the wife a total of $210,000 over 30 months as maintenance in gross. *Id.* ¶ 50. On appeal, the wife argued that she should have received periodic maintenance (*id.* ¶ 86), but the appellate court held that the award of maintenance in gross was not an abuse of discretion. (*id.* ¶ 96). The appellate court stated that a spouse requesting maintenance has an affirmative duty to seek and accept appropriate employment and may not use self-imposed poverty as a basis for claiming maintenance. *Id.* ¶ 87. The appellate court noted that, among other things, the trial court found that the wife had made no effort to use her advanced degrees to obtain full-time employment. *Id.* ¶ 92. The trial court also awarded maintenance in gross to support the wife while eliminating the prospect of ongoing and future litigation between the

parties, which the appellate court found appropriate. *Id.* ¶¶ 93-94. Respondent argues that these considerations are analogous to this case.

¶ 95 We conclude that the trial court acted within its discretion in awarding petitioner maintenance in gross rather than periodic maintenance. The parties had been married about 13 years when petitioner filed a petition for dissolution. Petitioner had a job prior to marriage and has a bachelor's degree from Northwestern University. Petitioner was awarded $12,000 in the dissolution judgment for further job training, and respondent's expert opined that she could make between $35,000 and $50,000 per year. Although petitioner disputes that she can make this amount of money, the trial court found that petitioner had not presented any evidence to the contrary and had not made any reasonable efforts to find employment. We agree with respondent that, as in *In re Marriage of Patel*, evidence that petitioner would be able to find a job and the parties' litigiousness supported an award of maintenance in gross. The case cited by petitioner, *In re Marriage of Morse*, 240 Ill. App. 3d at 299, 308, is readily distinguishable because there the parties were married over 25 years, the wife did not have a college education or formal training in job skills, the parties had four minor children, and the wife was permanently disabled.

¶ 96 We also find no abuse of discretion in the amount of the maintenance in gross award. While we agree with petitioner that respondent's non-marital property was a consideration in determining the maintenance amount (see 750 ILCS 5/504(a) (West 2012)); *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 122 (trial court is required to consider each party's property in determining maintenance, including non-marital property)), the statute specifically references the "marital property apportioned and non-marital property assigned to the party seeking

maintenance." 750 ILCS 5/504(a) (West 2012). Thus, the trial court could consider respondent's non-marital assets that petitioner received, which it explicitly did. See *supra* ¶ 54.

¶ 97 We further agree with respondent that section 504(a) does not seek to equalize the property distribution through maintenance, as this would eliminate the distinction between marital and non-marital property. Petitioner also emphasizes the parties' standard of living, but, as respondent points out, section 504(a) speaks to the standard of living the parties "established" during the marriage (750 ILCS 5/504(a) (West 2012)), whereas in this case respondent had achieved the standard of living before the parties married. Even otherwise, both the non-marital property and standard of living are just a couple out of many factors the trial court is to consider in determining the amount of maintenance. See *id.* Here, the trial court arrived at the figure of $172,500 after taking into account that respondent had already paid petitioner $230,500 in temporary support and that petitioner received non-marital property from respondent, including a 2009 Hyundai worth about $22,000. As stated, the trial court also awarded petitioner $12,000 in education expenses. We recognize that the trial court required petitioner to pay child support for Alexander, but the amount was based on her monthly maintenance, and respondent was responsible for the majority of the child's expenses. We address the subject of respondent's attorney fees later in the disposition. See *infra* ¶ 122. In the end, we find no abuse of discretion in the trial court's maintenance award.

¶ 98 E. Dissipation

¶ 99 Petitioner's fifth argument is that the trial court's failure to find dissipation of "Marital Assets" was against the manifest weight of the evidence.

¶ 100 In determining the distribution of marital property under section 503(d) of the Marriage Act, the trial court must consider a number of factors, including "dissipation by each party of the

marital or non-marital property." 750 ILCS 5/503(d)(2) (West 2012). Dissipation refers to the " 'use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time the marriage is undergoing an irreconcilable breakdown.' " *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497 (1990) (quoting *In re Marriage of Petrovich*, 154 Ill. App. 3d 881, 886 (1987)). "Once a *prima facie* case of dissipation is made, the charged spouse has the burden of showing, by clear and convincing evidence, how the marital funds were spent." *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d 761, 779 (2007). In determining whether dissipation occurred, the trial court must determine the credibility of the spouse charged with dissipation. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 50. The trial court's factual findings of whether dissipation has occurred are reviewed under the manifest weight of the evidence standard. *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d at 779. A factual finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident, or if the finding is arbitrary, unreasonable, or not based on the evidence. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 86.

¶ 101 Petitioner argues that while the marriage was breaking down, respondent gave his brother James $900,000 as an alleged repayment of funds James advanced to start Barkulis Brothers, Inc. Petitioner argues that respondent did not produce any writing to support the alleged loan or bring James to trial to testify about the loan. Petitioner also maintains that the logical time to repay James would have been in 1990 when respondent received over $4 million from the sale of the company. Petitioner argues that respondent further transferred large sums of money out of his brokerage accounts at a time of marital breakdown, which he did not account for in his testimony or closing argument.

¶ 102 Respondent argues that petitioner's argument fails because she claims that he dissipated "marital" assets, but the trial court found that his brokerage accounts were his non-marital property. We agree. See *infra* ¶¶ 108-14 (affirming trial court's finding that brokerage stocks were respondent's non-marital property). While we recognize that the dissipation of non-marital assets is also a factor to consider in the distribution of property (750 ILCS 5/503(d)(2) (West 2012)), petitioner has not presented argument or authority on this issue, thereby forfeiting it for review. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued [in the opening brief] are waived and shall not be raised in the reply brief"); see also *People v. Olsson*, 2014 IL App (2d) 131217, ¶ 16 (the failure to clearly define issues and support them with authority results in forfeiture of the argument).

¶ 103 F. Evidence and Motions

¶ 104 Petitioner's sixth argument is that the trial court violated her due process rights when it denied evidence and motions on "[t]echnical" grounds. She cites as an example that the trial court allowed respondent's testimony that the residence where the parties lived was worth $1.2 to $1.5 million, but it would not allow her to introduce into evidence her appraiser's report valuing the house at $2.4 million. Petitioner argues that the trial court should have made some accommodation for her *pro se* status.

¶ 105 "[*P*]*ro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys." *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). Therefore, the trial court was not required to treat petitioner differently than an attorney. While petitioner faults the trial court for denying her motions and not allowing in evidence on "technical" grounds, the trial court was simply applying the law, as it was required to do. In the

example petitioner cites, the trial court did not allow the appraiser's report into evidence because petitioner provided no foundation for it to be admitted, such as calling the expert as a witness. See *Anderson v. Human Rights Comm'n*, 314 Ill. App. 3d 35, 42 (2000) (the basic rules of evidence in Illinois require a proponent of documentary evidence to lay a foundation to introduce the document into evidence). We agree with respondent that while petitioner cites federal cases for the proposition that *pro se* litigants are held to a lesser standard, those cases involve federal procedural rules that are not controlling in state court. We also agree with respondent that the record reveals that the trial court was very patient with petitioner throughout the proceedings.

¶ 106 G. JPA

¶ 107 Petitioner next argues that the trial court erred in failing to grant an evidentiary hearing on her request to vacate the JPA as entered under duress. Respondent counters that this issue is moot because Alexander turned 18 in March 2015. An issue is moot where no actual controversy exists between the parties or where, due to the circumstances, the court is unable to grant effectual relief. *Ballard RN Center, Inc. v. Kohll's Pharmacy & Homecare, Inc.*, 2014 IL App (1st) 131543, ¶ 55. Reviewing courts do not generally decide moot questions, write advisory opinions, or consider issues where the ultimate result will not be affected. *Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 27. We agree with respondent that the issue is moot, as Alexander is now an adult, and the JPA is no longer effective.[4]

¶ 108 H. Respondent's Non-marital Property

[4] The JPA did not address college expenses; that subject was covered in the dissolution judgment.

¶ 109 Petitioner's eighth argument on appeal is that it was against the manifest weight of the evidence for the trial court to find that the residence, BB2, and all bank and brokerage accounts in respondent's name were his non-marital property.

¶ 110 Petitioner does not dispute that these assets were acquired prior to marriage but rather argues that they were commingled and therefore marital property. She alternatively argues that the property should be equitably distributed based on the marital time respondent spent on these endeavors, or that she should be reimbursed for the marital time respondent spent working to increase the value of the assets.

¶ 111 Respondent maintains that we should find petitioner's argument forfeited because she fails to cite the record. We note that petitioner largely cites her closing argument, rather than specific trial court testimony, which makes review of this issue difficult. In any event, we conclude that petitioner's argument is without merit.

¶ 112 Non-marital property is transmuted into marital property if the "marital and non-marital property are commingled by contributing one estate of property into another resulting in a loss of identity of the contributed property." 750 ILCS 5/503(c)(1) (West 2012). This principle is based on the presumption that the non-marital property's owner intended to gift the non-marital property to the marital estate. *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 74. However, there is no gift presumption where the account is not a joint account, and there is not even a presumption that commingled property is always transmuted into marital property. *Id.* ¶ 75. For property to be transmuted into marital funds, it must be commingled such that it resulted in the loss of identity of the contributed fund. *Id.* ¶ 76. A trial court's determination of whether property is marital or non-marital will not be disturbed unless it is against the manifest weight of the evidence. *In re Marriage of Dhillon*, 2014 IL App (3d) 130653, ¶ 29.

¶ 113 Here, petitioner does not point to any evidence indicating that the residence, BB2, and accounts in question were commingled with marital property. The trial court's determination that they remained non-marital property is not against the manifest weight of the evidence, as respondent offered testimony showing that they remained his individual property. To the extent that petitioner may have provided testimony to the contrary (which she does not reference on appeal), the trial court was in the best position to assess the parties' credibility. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 62.

¶ 114 On the subject of respondent's personal efforts to increase the value of the non-marital property at issue, such an effort could be subject to reimbursement only if the effort was significant and resulted in substantial appreciation to the non-marital property. 750 ILCS 5/503(c) (West 2012). Petitioner again fails to specify what personal efforts respondent allegedly made, and she provided no admissible evidence as to the home's and business's value before and after the alleged efforts, or that the accounts increased in value because of respondent's individual efforts. See *In re Marriage of Morse*, 143 Ill. App. 3d 849, 855 (1986) (the appreciation in value must result from significant personal effort rather than inflation or factors external to the marriage). Accordingly, we find no basis on which to disturb the trial court's findings on this issue.

¶ 115 I. Post-trial Motions

¶ 116 Petitioner next argues that the trial court erred in denying her posttrial motions seeking the reopening of discovery and a new trial. She argues that they were denied "either based on a technicality or without sound reasoning."

¶ 117 Petitioner's entire argument on this issue consists of only four sentences and lacks adequate authority. Therefore, we conclude that it is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Olsson*, 2014 IL App (2d) 131217, ¶ 16.

¶ 118 J. Credit Card Debt and Respondent's Attorney Fees

¶ 119 Petitioner's tenth argument on appeal is that the trial court abused its discretion in requiring respondent to pay only $7,000 of her $31,000 credit card debt and in ordering her to pay respondent's attorneys. She argues that the evidence showed that the credit card was closed after she petitioned for divorce, making that debt marital. She argues that the trial court also should not have ordered her to pay respondent's attorney over $8,000 in attorney fees due to the alleged unnecessary emergency motion; respondent argues that the motion was the result of a real medical emergency, that being her attorney's bicycle accident.

¶ 120 Respondent argues that petitioner has forfeited these arguments by failing to cite authority. However, as forfeiture is a limitation on the parties and not on the court (*In re Estate of Lasley*, 2015 IL App (4th) 140690, ¶ 14), we choose to address the issues, as they are at least factually sufficient.

¶ 121 The distribution of marital assets and debts is within the trial court's discretion. *In re Marriage of Brackett*, 309 Ill. App. 3d 329, 337 (1999). "The source of a marital debt, the party who signed for the debt, and the overall circumstances of the parties are appropriate considerations in apportioning debt." *In re Marriage of Moll*, 232 Ill. App. 3d 746, 756 (1992). Here, given that petitioner incurred the credit card debt, and considering the property and maintenance awarded, along with the finding that petitioner did not sufficiently seek additional education or employment during the dissolution proceedings, we conclude that the trial court acted within its discretion in requiring petitioner to pay $24,000 of her $31,000 credit card debt.

¶ 122 On the subject of attorney fees, whether to award attorney fees and the amount awarded are within the trial court's discretion. *In re Marriage of DeLarco*, 313 Ill. App. 3d 107, 111 (2000). The trial court ordered petitioner to pay $8,613 of respondent's attorney fees. However, this award must be viewed in light of the approximately $135,000 respondent had paid to petitioner's attorneys and the approximately $30,000 he had paid to Alexander's representative. More importantly, the amount is directly tied to the expenses respondent incurred as a result of petitioner's frivolous pleadings[5], rather than the emergency motion, as petitioner asserts. Accordingly, we find no abuse of discretion.

¶ 123 K. Furniture and Personal Property

¶ 124 Last, petitioner argues that the trial court abused its discretion by allowing respondent to retain all furniture and personal property in the residence. Petitioner argues that, during their marriage, the parties accumulated enough possessions to fill an over 8,000 square-foot home. Petitioner argues that the trial court did not analyze whether the property was marital but rather "took the easy way out" and allowed respondent to keep everything except for what he unilaterally decided she could take with her to her small residence.

¶ 125 Respondent again argues that petitioner has forfeited this argument by failing to cite authority. We agree that petitioner has failed to cite authority, thus forfeiting the argument, but we choose to briefly address it. See *In re Estate of Lasley*, 2015 IL App (4th) 140690, ¶ 14.

[5] The trial court found that petitioner's five motions to vacate the JPA were frivolous and added $4,914 to respondent's litigation costs. It similarly found that her pleadings during the trial regarding fees were frivolous and added $3,709 to respondent's litigation costs. These two amounts add up to $8,623, which is $10 more than the trial court ordered petitioner to pay for respondent's attorney fees.

¶ 126 We will reverse a trial court's division of marital property only where it constitutes an abuse of discretion, meaning that no reasonable person would take the view adopted by the trial court. *In re Marriage of Roberts*, 2015 IL App (3d) 140263, ¶ 13. As respondent points out, petitioner fails to cite evidence to support her claim that the majority of the possessions were collected during the parties' marriage. Rather, respondent testified that most of the furnishings came from the five-bedroom house he sold prior to building the current residence, and that all of the personal property in the residence was purchased with his non-marital funds. Respondent further testified that he gave petitioner furniture, kitchenware, and accessories for her new residence; the trial court awarded petitioner all of this property. As respondent points out, the trial court also addressed petitioner's request, in her posttrial motion, to obtain additional pictures and videos from the residence. Based on the record before us, the manner in which petitioner litigated the issue below, and the manner in which petitioner has presented her argument on appeal, we find no abuse of discretion in the trial court's division of furniture and personal property.

¶ 127 III. CONCLUSION

¶ 128 For the reasons stated, we affirm the judgment of the Lake County circuit court.

¶ 129 Affirmed.