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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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| <i>In re</i> MARRIAGE OF<br>ELIZABETH M. SCARDINO, | ) | Appeal from the Circuit Court<br>of Du Page County. |
|  | ) |   |
| Petitioner-Appellee,                               | ) |   |
|  | ) |   |
| v.   | ) | No. 12-D-1578                                       |
|  | ) |   |
| JOSEPH SCARDINO,                                   | ) | Honorable   |
|  | ) | Timothy J. McJoynt,                                 |
| Respondent-Appellant.                              | ) | Judge, Presiding.                                   |

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PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Zenoff and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* In this dissolution proceeding, the trial court did not err in valuing the marital assets, dividing the marital assets, awarding maintenance, or making a finding of dissipation. The trial court did abuse its discretion in ordering that no further real estate tax payments be made on the marital home until it was sold.

¶ 2 On February 14, 2014, the trial court entered a judgment for dissolution of marriage, dissolving the marriage between the petitioner, Elizabeth Scardino, and the respondent, Joseph Scardino. On appeal, Joseph argues that the trial court erred in: awarding maintenance; classifying and dividing the assets and debts of the marital estate; valuing Joseph's electrical contracting business; finding dissipation; and prohibiting the payment of real estate taxes on the

marital home until it was sold. We affirm in part and reverse in part.

¶ 3

### I. BACKGROUND

¶ 4 The parties were married in Chicago on March 9, 1984. Two children were born to the marriage, Joseph (Joe), born April 10, 1986, and Elizabeth (Lisa Marie), born October 26, 1987. Joseph had two children from a prior marriage, Joleen and Lauren. At the time of the marriage, Joseph worked as a police officer and Elizabeth, who had a bachelor's degree in nursing, worked as an emergency room nurse at Northwestern Hospital. On July 27, 2012, after 28 years of marriage, Elizabeth filed a petition for dissolution of marriage. At that time, the parties' children had attained the age of majority. A hearing was held on the petition on July 19 and 22, September 19 and 20, and November 26, 2013. At the time of the hearings, Elizabeth was 56 years old and Joseph was 61 years old.

¶ 5 Elizabeth testified that at the time the parties married, Joseph had worked as a police officer for 18 months. He ultimately retired after 20 years of service and started to collect a pension of approximately \$35,000 per year. From the time the parties married, Joseph also owned and operated an electrical contracting business, Scardino Electric. Elizabeth worked as a nurse throughout the marriage. At the time the parties married, she worked as an emergency room nurse. However, in 1992, she was attacked by a patient and suffered injuries to her back. She was out of work recovering from those injuries for six months. She never worked as an emergency room nurse after that time. She ultimately received a \$24,000 workmen's compensation award as a result of the attack. In 2003, she applied for social security disability (SSD) because her condition had deteriorated to the point that she had trouble walking. In 2005, she started to receive \$1,823 per month in SSD payments. In 2013, she received a cost of living

adjustment and her SSD payments increased to \$1,918 per month. She testified that she could only earn up to \$1,000 per month before she would start to lose her disability pay.

¶ 6 In 1996 or 1997, she and Joseph purchased vacant land in Burr Ridge. Joseph's aunt had died in 1995 and they inherited her home and several hundred thousand dollars. Joe and Lisa Marie were to be given \$60,000 of that inheritance; however, Joseph never gave it to them. Joseph had stated on more than one occasion that he had no intention of giving Joe and Lisa Marie their inheritance because he had provided them a Catholic education, a car, and a nice roof over their heads. Joseph repeatedly stated that he felt that this more than compensated the children for any money that his great aunt had left them. Instead, Joseph used their \$60,000 to purchase the land in Burr Ridge. The parties started to build a home on the Burr Ridge property in 2007. They moved into the Burr Ridge home (the marital residence) in May 2009. Elizabeth estimated the home to be worth about \$800,000. There were two mortgages: a primary mortgage in the amount of \$400,000 and a home equity line of credit of \$60,000.

¶ 7 In October 2010, she moved out of the marital residence and moved to Nebraska. She lived in a rental apartment. From March 2012 to April 2013, she worked full-time as a nurse at a Lutheran home for \$22 per hour. She quit because her osteoarthritis began to cause her too much pain. Elizabeth testified that she currently received medical insurance through Joseph and that it would terminate upon their divorce. She estimated that it would cost her \$1,000 per month to replace that health insurance. Elizabeth testified that she took out a loan to purchase a new car in 2009, a KIA Sportage. The loan balance was \$8,000, which was about what the car was currently worth. At the time she moved out, the parties had a number of other cars: a Ford F150, a Dodge Durango, and a Hyundai Sonata. Elizabeth testified that Joseph gave the Durango to Lisa Marie and donated the Sonata to charity. In 2011, Joseph purchased a GMC Acadia.

¶ 8 Elizabeth further testified that Joseph had two life insurance policies, one through State Farm and one through the Chicago police department. At the time she left, the parties had \$200,000 in a Charles Schwab IRA account and \$400,000 in a policeman's annuity fund. At the time of the hearing, those accounts were depleted. Through information subpoenaed from Joseph's credit union, Elizabeth learned that Joseph had purchased \$9,000 of stock in an energy company.

¶ 9 In 2001, Joseph began to purchase jewelry. Elizabeth testified that when she moved out, she took about half the jewelry with her. She acknowledged taking a ring that she purchased for Joe for his graduation and she agreed to return it to him. She also took two of Joseph's rings, one with the initials JS and one with a horseshoe on it. She did not take a Raymond Weil watch or any other diamond watch. Joseph never told her that he gave the parties' jewelry to his daughters. When she moved out, she also took some antique furniture because Joseph did not like antiques.

¶ 10 She had opened a Citicorp credit card in the last year and used it for living expenses. It had a balance of \$7,115. She also had a Chase credit card with a balance of \$3,000, which was used to purchase airline tickets to fly back and forth for the litigation. She also had a Nebraska state tax debt of \$732.41. She also paid about \$400 per month on a Pell loan for the first two years of Lisa Marie's college education. She estimated her total monthly living expenses to be about \$4,500 per month, which included \$580 per month in rent.

¶ 11 Joseph testified that he retired from the police department on July 1, 2002, at age 50. Within a couple months, he began to receive pension benefits. Since then, he worked only for Scardino Electric. Scardino Electric did not provide him enough money to support himself and his age, 61, prevented him from working as an electrician elsewhere because he could not "keep

up with the younger guys.” Of the \$369 per month that he currently paid for health insurance coverage, \$132 was paid to cover Elizabeth. He acknowledged that upon dissolution, Elizabeth would be removed and this would no longer be a cost to him.

¶ 12 Joseph acknowledged that since the separation, he had liquidated about \$273,000 of the parties’ assets to make ends meet. In August 2010, he had over \$300,000 in a police 457 deferred compensation plan. However, he rolled over \$200,000 of that into a Charles Schwab IRA account for investment purposes. As shown by Elizabeth’s Exhibit 27, Joseph acknowledged that between August 2010 and July 2011, he withdrew a little over \$100,000 from what was remaining in the 457 deferred compensation account. Joseph further acknowledged that in November 2010, he withdrew about \$100,000 from the Schwab account and invested it in the commodities market. The first investment was in copper ore and he made a profit of \$32,000. He then reinvested the original \$100,000 in iron ore. However, it turned out to be a pyramid scheme. He was notified that the scheme was being investigated by the Securities and Exchange Commission and all exchange of funds was halted. Joseph was not sure if he would ever recover any of the \$100,000 investment. Thereafter, between February 2011 and May 2012, Joseph had withdrawn all the remaining funds from the Schwab account.

¶ 13 Joseph acknowledged that between 2001 and 2005 he purchased investment jewelry with marital funds. He estimated the collection to be worth \$170,000. He produced receipts for all the jewelry except one piece that he had purchased from an estate sale, a rose gold women’s bracelet. The receipts totaled \$56,086.86. Elizabeth took 41 of the 82 pieces of jewelry when she left, but he did not know exactly which pieces or the value of those pieces. Joseph testified that, in 2004, he told his daughter Lisa Marie that she and her half-sisters could have the jewelry. Elizabeth was aware of this gift to his children. Joseph acknowledged that the 41 pieces of

jewelry that Elizabeth left behind were still at the marital home. His daughters had never removed the jewelry from the household.

¶ 14 Joseph testified that when Elizabeth moved out, she took his aunt's high school ring, his grandmother's wedding ring, his son's 14K gold watch, two white gold diamond rings that he gave to his son, and a Raymond Weil Tango watch. Elizabeth also took some antique furniture, china, Christmas china, Lladros, Lauren's diamond pendant earrings, a coin bank that was made by his grandfather, and a rosary that was made from the roses of his aunt's funeral. Many of these items had sentimental value and could not be replaced.

¶ 15 Joseph further testified that his 2010 tax return showed that he earned a \$10,000 salary from Scardino Electric. The 2010, 2011 and 2012 tax returns listed the assets of Scardino Electric to be \$16,980. He acknowledged that in 2010 he deducted about \$10,000 of auto expenses through Scardino Electric. His income from Scardino Electric decreased in 2011. The 2011 return showed a loss of \$4,622 after he deducted all his business expenses, including auto expenses of \$4,000. In 2012, the tax return reported a loss of \$6,000 and auto expenses of \$5,000. Joseph opined that, at the time of the hearing, Scardino Electric's assets were worth \$5,000. He has a scissors lift and some drills and benders. The tools were over 10 years old.

¶ 16 Joseph testified that in 2011 he purchased a 2011 GMC Acadia. He paid about \$43,000 for it, making a down payment of about \$25,000 and financing \$19,133.96. The \$25,000 down payment came from the profits of his original commodity investment in copper ore. Within three months of the car purchase he withdrew funds from his IRA account to pay off the car loan. Joseph acknowledged that he had to pay a \$1,420 penalty for withdrawing funds from his IRA to pay off his Acadia, because he was not yet 59 and a half years old at the time of the withdrawal. Joseph acknowledged that, when Elizabeth moved out, he had three vehicles; but he testified

that, at that time, they were all “shot.” The Sonata, which had 240,000 miles on it, needed a new \$1,000 water pump so he donated it to charity. The 2000 Dodge Durango had 273,000 miles on it. His daughter used it for a while but had since purchased a new car. Finally, his 1995 Ford F150, an old work truck, had 216,000 miles on it and was not operational.

¶ 17 Joseph acknowledged that he had a State Farm life insurance policy that he opened in the 1970s. At age 65, it had a cash value. However, it no longer had value because he withdrew \$25,000 in early 2010 to pay for sod, a French drain, and a sprinkler system for the marital residence. Although he had never repaid the \$25,000, he continued to make the quarterly payments on the policy and it was still active. He also had a life insurance policy through the Chicago police department but did not know if it was still active.

¶ 18 Joseph further acknowledged that there were student loans, for Lisa Marie’s education at DePaul University, in his name. He was currently not able to pay those loans, so Lisa Marie was making the payments. He acknowledged that his 2010 personal tax return showed pension distributions and rollovers of \$278,672. That was the year he rolled \$200,000 over into the Schwab account. In 2010, his adjusted gross income was \$86,074. In 2011, his adjusted gross income was \$159,014, which included his pension and IRA distributions. In 2012, his adjusted gross income was \$108,159, which included IRA distributions of \$79,390. He had not yet filed the 2012 tax return and owed the IRS \$10,538 for his 2012 taxes. Joseph testified that any funds removed from the Schwab IRA or the 457 account were used to pay property taxes, car insurance, house insurance, and other bills of that nature.

¶ 19 Joseph testified that, since the separation, he was making ends meet with the help of his children. He had a first mortgage of \$400,000, a second mortgage of \$60,000, and numerous loans from his credit union. He paid the marital residence’s property taxes, due in September

2012 and 2013, by taking out personal loans of \$11,000 each from Access Credit Union. The first installment of property taxes for the marital residence, due in June 2013, was paid by the parties' son. Joe had taken out an \$11,000 loan on his car to get the funds to make the payment. Joseph had not yet repaid Joe. Joseph testified that on August 25, 2011, he removed \$11,000 from his Schwab account and placed \$10,500 of that in his Access Credit Union checking account. It was used to pay the property taxes due in September 2011. Joseph testified that the property tax payment due in June 2012 was also paid with funds withdrawn from the parties' IRA.

¶ 20 Joseph testified as to Petitioner's Exhibit 30(b)(1), which listed checks written out of his Access Credit Union checking account. There were three checks written to a dermatologist who treated his daughter Lisa Marie. Joseph acknowledged that Elizabeth had not agreed to pay these medical bills. Another check was for the purchase of a John Deere riding lawn mower. There were two checks written in the amount of \$5,000 and \$1,250 for "Compass Energy" stock. Joseph testified that these stocks were purchased for Lisa Marie. A check in the amount of \$2,468.05 was for a trip to Walt Disney World that he took with his daughter and grandson. A check in the amount of \$3,677 was for appliances for his son's kitchen. Joseph testified that Joe paid him back. Joseph testified that a check written to Lisa Marie for \$4,000 was part of the \$30,000 he owed her from his aunt's inheritance. A check for \$1,295 was to pay taxes for a purchase he made of house wares from out of state, which he did not originally pay taxes on. Finally, there was a check written to the United States Treasury for \$15,223, which was for tax penalties due as a result of the IRA withdrawals.

¶ 21 Joe Scardino testified that he was the parties' son. While he was in second or third grade his great aunt passed away and left \$30,000 to him and \$30,000 to his sister Lisa Marie. Over

the course of 2011 and 2012 he received \$25,000 of that from his father. Joe denied that his father ever told him that he was not going to receive the inheritance. When his mother moved out, she took some of his property. Specifically, she took two of his rings, one with the initials JS and another with a horseshoe and diamonds on it, a watch with a rectangular face with diamonds on it, a ring he had received from his parents as a graduation present, and his Raymond Weil watch.

¶ 22 Lisa Marie testified that she was the parties' daughter. She was to receive a \$30,000 inheritance from her great aunt. She had only received \$4,000 of that from her father in 2012. She recalled that, in 2003, her father told her that the parties' jewelry collection was for her and her two half-sisters. She told her father at that time that she preferred to leave the jewelry in his jewelry box. Lisa Marie testified that her father never said that he was not planning to give her the inheritance from her great aunt.

¶ 23 On February 14, 2014, the trial court issued a written letter opinion. The trial court found that the parties' Burr Ridge home was marital property. There was a first mortgage of \$400,000 and a second mortgage of \$60,000. The trial court ordered that the home be sold, as is, immediately. The respondent was to make minimal interest-only payments on the mortgages. The trial court ordered that no more property taxes be paid until closing. At closing, the mortgages were to be paid off as well as a \$10,000 loan taken by the respondent to pay property taxes, an \$11,000 loan from the parties' son, also used for the payment of property taxes, and a \$25,000 life insurance loan. (As to the life insurance, the trial court found that Joseph had taken \$25,000 cash value out of a life insurance policy during the separation. It was to be repaid so that the policy could be reinstated and name Elizabeth as beneficiary so long as maintenance was to be paid.) The trial court also ordered that all outstanding student loan debt should be paid

with the gross proceeds from the sale of the marital home. The balance of the net proceeds from the sale of the home was to distributed, 60% to Elizabeth and 40% to Joseph.

¶ 24 Other than the marital home, the remaining marital assets were split equally between the parties. The trial court ordered that each party was to be responsible for their own debts and tax liability incurred during their separation. Specifically, the trial court found that Joseph was responsible for a \$10,000 tax liability for 2012. The trial court noted that the respondent had expended considerable amounts of marital funds during the separation. Specifically, Joseph had expended \$200,000 from a Charles Schwab account and \$233,000 from a 457 deferred compensation account. While the trial court found that this was not all shown to be dissipation, it was a factor it considered in the division of marital assets. Any remaining funds in the parties' Schwab account or the 457 account were to be divided equally.

¶ 25 The trial court noted that the respondent had invested and lost \$100,000 in the commodities market during the separation. The trial court noted that there was a pending claim for that loss and that if any money was recovered, it was to be split equally between the parties. The trial court found that there was energy stock of \$9,000 that was to be split equally. Elizabeth's pension from Northwestern Hospital was to be split between the parties subject to an approved qualified domestic relations order. The trial court found that, other than one \$11,000 loan from his son, Joseph failed to prove that he had taken any other loans from his children.

¶ 26 As to the parties' jewelry collection, the trial court noted that the respondent opined that it was worth \$170,000, but that receipts produced at trial were not probative. The trial court found that there was "scant evidence" as to the value of what was taken by Elizabeth when she moved out and what was left behind. Elizabeth testified that she took about half. The trial court found that what Elizabeth had taken was about the same value as what was left behind. The trial

court ordered that this would be the final division of the jewelry collection, as it “appear[ed] to be somewhat equal.” The trial court found that the defense offered at trial by Joseph, that he had given the jewelry collection to his daughters, was not proven. The trial court ordered that Elizabeth return Joe’s high school ring and two of Joseph’s wedding rings.

¶ 27 As to furniture and furnishings, the trial court found that Elizabeth had taken china and Lladros when she left. The trial court found that there was no evidence of value of any of the marital furniture and furnishings. The trial court held that when the marital home is sold, Elizabeth would be allowed to enter the home and inventory the furnishings. The parties would each be able to pick, on an alternating basis, 10 single items each wanted from the marital home. The remaining furniture and furnishings were to be sold and the proceeds split evenly between the parties.

¶ 28 As to the parties’ cars, the trial court found that Elizabeth could retain the Kia she purchased in 2009, including its loan obligation. The loan obligation was equivalent to the car’s value, so that the value as a marital asset was \$0. The trial court noted that Joseph had purchased a 2011 GMC for \$43,000, which was owned by Scardino Electric. The trial court found that it was purchased with marital funds and that its current value, \$33,000, was a marital asset.

¶ 29 As to maintenance, the trial court listed and stated that it considered the factors set forth in section 504 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504 (West 2010)). The trial court found that Elizabeth was entitled to \$1,200 per month in reviewable maintenance, to be reviewed when Elizabeth attained the age of 66 years old. The trial court noted that it considered the length of the marriage, Elizabeth’s age, Elizabeth’s health issues, the sum of money Elizabeth would receive from the home equity, and that, upon dissolution Elizabeth would lose secondary health insurance coverage that she currently received

through Joseph. In determining Joseph's income, the trial court noted that many of Joseph's personal expenses were paid by Scardino Electric. The trial court found that Joseph earned \$3,200 per month from his pension and earned, at a minimum, an additional \$3,000 per month from Scardino Electric. As to Elizabeth's income, the trial court found that she received \$2,020 per month in disability income. Additionally, the trial court imputed another \$2,000 per month in income to her.

¶ 30 The trial court found that Joseph had dissipated \$76,503 of the marital assets and ordered that he pay Elizabeth \$38,251.50 from his share of the proceeds of the sale of the marital home. The components of this dissipation finding, relative to the issues raised on appeal, were as follows. With respect to the \$60,000 inheritance Joe and Lisa Marie were to receive from Joseph's aunt, the trial court found that there was no valid promise to pay the children back. Thus, the payments of \$25,000 and \$4,000 made to the children by Joseph without Elizabeth's consent were dissipation. The trial court found that there were three marital vehicles left behind. Joseph had claimed that one was inoperable and that he had given away the other two. The trial court found that there was scant evidence of value offered by the parties and took judicial notice that the value of the vehicles was \$5,000 and that it had been dissipated by Joseph. The trial court found that the withdrawal of \$11,000 from the parties' Schwab account on August 25, 2011, was dissipation. The trial court found that the \$1,400 tax penalty incurred for removing funds from the parties' IRA account to purchase the GMC car was dissipation. The following was also dissipation: Joseph's purchase of \$6,250 of Compass Energy stock for his daughter; \$3,400 for a John Deere riding lawn mower; and another \$1,512 of incurred tax liability.

¶ 31 Finally, the trial court awarded Elizabeth her \$24,500 workman's compensation award. The trial court awarded Joseph the value of Scardino Electric's assets, \$16,000, and the current

value of the GMC, \$33,000. To equalize these asset distributions, the trial court ordered Joseph to pay Elizabeth \$12,250 within 90 days.

¶ 32 On March 17, 2014, Joseph filed a motion to reconsider. The trial court denied most of that motion. However, the trial court did order, based on agreement of the parties, that the John Deere riding lawn mower would be awarded to Joseph and that it would not be counted against his 10 items of personal property to be claimed from the marital residence. Other minor modifications were made that are not relevant to this appeal.

¶ 33

## II. ANALYSIS

¶ 34 On appeal, Joseph argues that the trial court erred in: (1) awarding maintenance to Elizabeth; (2) classifying the assets and debts of the marital estate; (3) valuing the assets of Scardino Electric; (4) finding dissipation; (5) dividing the marital assets; and (6) prohibiting real estate tax payments on the marital home. We will address these arguments in turn.

¶ 35

### A. Maintenance

¶ 36 Joseph's first contention on appeal is that Elizabeth should not have been awarded maintenance. Maintenance awards are governed by section 504 of the Act (750 ILCS 5/504 (West 2010)). In awarding maintenance, a trial court should consider a number of factors, including the income and property of each party, the needs of each party, the parties' respective earning capacities, any impairments, the standard of living the parties enjoyed during their marriage, and the duration of the marriage. 750 ILCS 5/504(a) (West 2010). The trial court is not limited to considering the enumerated factors, and no single factor is determinative. *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10. The propriety, amount, and duration of a maintenance award are within the discretion of the trial court, and a reviewing court will not reverse unless it finds the trial court abused that discretion. *In re Marriage of Bratcher*, 383 Ill.

App. 3d 388, 390 (2008). An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court. *In re Marriage of Arjmand*, 2013 IL App (2d) 120639, ¶ 32.

¶ 37 In the present case, the trial court stated that it considered the statutory factors, particularly the length of the marriage and the needs of each party. The trial court noted that Elizabeth had health restrictions that would limit her future employment opportunities. By setting maintenance at \$1,200 per month, the trial court essentially equalized the parties' incomes. This was not an abuse of discretion. See *In re Marriage of Rogers*, 352 Ill. App. 3d 896, 899-900 (2004) (holding that maintenance award was reasonable in order to equalize incomes of the parties after a 36-year marriage).

¶ 38 Joseph argues that the trial court erred in considering his pension income to be \$3,200 per month because that is his gross income, not his net income. However, when the trial court determined the amount of maintenance, it compared the gross income of each party. Because the trial court made an equitable comparison, it did not abuse its discretion.

¶ 39 Joseph also argues that there was no evidence to support the trial court's finding that he earned \$3,000 per month from Scardino Electric. The trial court's findings regarding net income lie within its discretion and we will not disturb its decision absent an abuse of that discretion, *i.e.*, unless the trial court's ruling is arbitrary, fanciful, or unreasonable or no reasonable person would take the view of the trial court. *In re Marriage of Lindman*, 356 Ill. App. 3d 462, 467 (2005). The credibility of witnesses and weight to be given their testimony is for the trier of fact, here the trial court, to decide. *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 199 (2011). Although Joseph claimed that he earned minimal income from Scardino Electric, the trial court specifically found this testimony not credible. The trial court stated that it had considered the evidence, including tax returns and bank statements. It also considered that Scardino Electric

paid for many of Joseph's personal expenses and that he had been able to live in his house in Burr Ridge for the last three years. Faced with an imputed income that was difficult to determine, the trial court found that, based on both the evidence presented and the credibility of the parties, Joseph, at a minimum, must have earned an additional \$3,000 per month. Based on the record before us, we cannot say that this determination was an abuse of discretion. *Id.*

¶ 40 Joseph also argues that the maintenance award is improper because Elizabeth received a disproportionate share of the assets and she had a college degree. The Act does not preclude a trial court from awarding a spouse both maintenance and a disproportionate share of the marital property; rather, it merely requires the court to consider maintenance when equitably distributing marital property. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 662 (2008). While Elizabeth does have a college degree, the trial court found that Elizabeth's employment opportunities would be restricted due to her health condition. While Joseph's earning capability may also decrease due to his age, he is currently running Scardino Electric and receiving some income from that business. Further, while Elizabeth is not currently employed, the trial court still imputed income to her of \$2,000 per month. Under these circumstances, we cannot say the trial court abused its discretion in awarding petitioner \$1,200 per month in reviewable maintenance. In light of the record before us, the award seems fair and reasonable.

¶ 41 B. Classification of Marital Assets and Debts

¶ 42 Joseph's second contention on appeal is that the trial court erred in its classification of assets and debts of the marital estate. Specifically, Joseph argues that his gold and jewelry collection had been given to his daughters and was not part of the marital estate. He argues that the trial court should have ordered Elizabeth to return jewelry that was his family heirlooms. He also argues that a \$10,000 loan from Access Credit Union was used for marital expenses and

should be considered part of the marital estate. Finally, he argues that he should not be solely responsible for the 2012 tax penalty of \$10,000.

¶ 43 Under the Act, there is a rebuttable presumption that all property acquired by either spouse after the marriage and before a judgment of dissolution of marriage is marital property. 750 ILCS 5/503(b)(1) (West 2008); *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2009). The reviewing court will not disturb a trial court's classification of an asset as marital property unless that decision is contrary to the manifest weight of the evidence, as that determination rests largely on the trial court's evaluation of the credibility of the witnesses. *In re Marriage of Hegge*, 285 Ill. App. 3d 138, 140 (1996). A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or when the trial court's findings appear to be unreasonable, arbitrary, or not based upon the evidence. *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 181-82 (2002).

¶ 44 In the present case, there was no dispute that the gold and jewelry collection was acquired during the marriage with marital funds. Thus, it is presumptively marital property. 750 ILCS 5/503(b)(1) (West 2008). Joseph tried to overcome that presumption by presenting evidence that he had given the collection to his children. "A gift is a voluntary, gratuitous transfer of property by one to another where the donor evidences an intent to make such a gift and absolutely and irrevocably delivers the property to the donee." *In re Marriage of Agazim*, 147 Ill. App. 3d 646, 652 (1986). The trial court found that Joseph failed to prove the jewelry was given to his children. The trial court stated that the testimony of the children was biased and thus not credible. The trial court also implicitly found that Joseph's testimony on this issue was not credible. We note that the trial court is in the best position to weigh the evidence and judge the credibility of the witnesses. *Anderson*, 409 Ill. App. 3d at 199. Additionally, the evidence

indicated that despite the alleged gift, the parties continued to maintain possession of the jewelry. Thus, Joseph had never “absolutely and irrevocably” delivered the jewelry to his children. See *Agazim*, 147 Ill. App. 3d at 652. Based on these circumstances, we cannot say that the trial court’s determination that the jewelry collection was part of the marital estate was against the manifest weight of the evidence.

¶ 45 Joseph argues that Elizabeth has other jewelry that belonged to him and that the trial court erred in not ordering this property to be returned. Specifically, Joseph claims that Elizabeth also has his grandmother’s wedding ring, his aunt’s high school graduation ring, Lisa Marie’s diamond pendant earrings, a coin bank made by his grandfather, and a cross and rosary from Joseph’s aunt’s funeral. Joseph testified that he believed Elizabeth took these items because they were missing after she moved out. However, there was no evidence he ever saw these items in Elizabeth’s possession and Elizabeth did not testify that she in fact had these items. Again, the trial court is in the best position to judge the credibility of the witnesses and resolve conflicts in the evidence. *In re Marriage of Sturm*, 2012 IL App (4th) 110559, ¶ 6. Accordingly, we cannot say that the failure to order the return of these items was against the manifest weight of the evidence.

¶ 46 Joseph next argues that the \$10,000 loan obligation to Access Credit Union should be recognized as part of the marital estate. Joseph testified at trial that he had paid the second installment of 2012 property taxes by taking out a personal loan from the Access Credit Union. He also admitted an account statement into evidence demonstrating the existence of the loan. Nonetheless, the trial court found that there was “scant evidence” as to the personal loan Joseph took out to pay 2012 property taxes and ordered that Joseph was personally responsible for the

loan. Joseph argues that the trial court erred because his testimony and the account statement were sufficient to establish that the loan was taken to pay property taxes.

¶ 47 While we agree that Joseph's testimony and the statement were sufficient to show a personal loan, we cannot agree that they were sufficient evidence that the funds were used to pay property taxes. The evidence indicated that, during the parties' separation, Joseph removed numerous funds from the parties' marital accounts. The property taxes could have been paid with any of these funds. Moreover, the trial court noted that Joseph's testimony on the issue of property tax payments was confusing. Joseph testified that he paid property taxes during the separation by taking a loan from his son, loans from the credit union, withdrawals from the Schwab account, and withdrawals from another IRA account. Accordingly, the trial court found Joseph's testimony on this issue not credible. We decline to disturb the trial court's credibility determinations. Accordingly, because Joseph did not show that the loan was used for marital purposes, it was not improper for the trial court to classify the loan as Joseph's personal debt.

¶ 48 Finally, Joseph argues that the trial court erred in finding him solely liable for a 2012 tax penalty of \$10,000. We note that Joseph includes this argument in the portion of his brief challenging the trial court's dissipation findings. However, because the trial court did not find that the tax penalty was dissipation, we address the argument in the context of property classification. The tax penalty at issue was the result of withdrawing funds from his 457 deferred compensation account. Joseph argues that, to the extent the withdrawals were for legitimate marital expenses, the parties should be equally liable for the tax penalty. Joseph raised this issue in his motion to reconsider. In denying that motion, the trial court found that the tax liability was due to Joseph's failure to preserve and his mismanagement of the marital estate. The trial court noted that Elizabeth did not have anything to do with these transactions; she did

not make any of the withdrawals or use any of the funds. As Joseph unilaterally decided to liquidate the marital retirement accounts, we cannot say the trial court's determination making him liable for the entirety of the related tax penalties is unreasonable.

¶ 49 C. Valuation of Scardino Electric's Assets

¶ 50 Joseph next argues that the trial court erred in the valuation of Scardino Electric's assets. Joseph testified that the value of those assets was \$5,000 and, he argues, he is in the best position to value the company because he owns and runs it. Accordingly, he argues that it was against the manifest weight of the evidence for the trial court to value the business at \$16,000. However, as acknowledged by Joseph, the 2010, 2011 and 2012 tax returns of Scardino Electric valued the assets of the business at \$16,980. As such, the trial court's determination that the assets were worth \$16,000 was supported by the evidence. Joseph cites *In re Marriage of Morrival*, 216 Ill. App. 3d 643, 645 (1991), for the proposition that the value of a business should be determined as of the date of the dissolution. However, the *Morrival* court also noted that a trial court is not precluded from considering the value of the business in the years preceding the dissolution. *Id.* Here, the tax returns were within close proximity of the February 2014 dissolution date and, therefore, it was not improper for the trial court to consider the value of the business as stated in those returns. *Id.* As such, we affirm the trial court because we cannot say its valuation of Scardino Electric's assets was against the manifest weight of the evidence. See *In re Marriage of Cutler*, 334 Ill. App. 3d 731, 735 (2002) (the trial court's determination of the value of an asset will not be disturbed on appeal unless it is against the manifest weight of the evidence).

¶ 51 D. Dissipation

¶ 52 Joseph next argues that the trial court erred in finding dissipation as to the following: an \$11,000 withdrawal from his Schwab account, \$5,000 for the disposal of three vehicles, the purchase of energy stocks, and the “repayment” of \$29,000 to his children.

¶ 53 In determining the distribution of marital property under section 503(d) of the Act, the trial court must consider a number of factors, including “dissipation by each party of the marital or non-marital property.” 750 ILCS 5/503(d)(2) (West 2010). Dissipation refers to the “ ‘use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time the marriage is undergoing an irreconcilable breakdown.’ ” *In re Marriage of O’Neill*, 138 Ill. 2d 487, 497 (1990) (quoting *In re Marriage of Petrovich*, 154 Ill. App. 3d 881, 886 (1987)). Whether a given course of conduct constitutes dissipation depends upon the facts of each case. *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 830 (1994). 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 761, 779 (2007).

¶ 54 As to the dissipation of \$11,000, Joseph testified that he withdrew this amount from the Schwab account on August 25, 2011 and deposited it into his Access Credit Union account. Account statements submitted into evidence supported these assertions. Joseph testified that he then used this amount to pay the second installment of the property taxes on the marital home. In ruling on the motion to reconsider, the trial court stated that Joseph’s testimony on this issue was not credible. The trial court noted that Joseph had “borrowed money all over the place,” and that “his explanation as to where it all went was fairly obfuscated by lack of clarity.” Again, we decline to disturb the trial court’s credibility determinations. *Anderson*, 409 Ill. App. 3d at 199.

Moreover, the record demonstrates that Joseph depleted the parties' retirement accounts during the separation. While Elizabeth was not able to show that all the missing funds were dissipation, there were many withdrawals and expenditures that were left unexplained. As such, we cannot say that the trial court's determination was against the manifest weight of the evidence.

¶ 55 Joseph next argues that the trial court erred when it found Joseph's disposal of three vehicles to be dissipation of \$5,000. The three vehicles in question were a 2002 Hyundai Sonata, a 2000 Dodge Durango, and a 1995 Ford F150. Joseph testified that these vehicles were essentially worthless. Because there was not more evidence of the value of these vehicles, Joseph argues that the trial court was required to accept his testimony as to their value. We disagree. It is well established that "[p]arties should not be allowed to benefit on review from their failure to introduce evidence at trial." *In re Marriage of Smith*, 114 Ill. App. 3d 47, 54 (1983). Likewise, it was the function of the trial court here to make a credibility determination and either accept or reject Joseph's testimony. Here, the trial court reasonably rejected Joseph's testimony based on its assessment that he lacked credibility. Accordingly, we cannot say that it was unreasonable for the trial court to place a minimal value of \$5,000 on these cars and to find that Joseph's disposal of the vehicles was dissipation.

¶ 56 Joseph next argues that the trial court erred by including the value of energy stocks as dissipation and then ordering the stock to be divided equally between the parties. In its letter opinion, the trial court found that there was a recently discovered marital asset of \$9,000 of energy stock and ordered that it be divided equally between the parties. In listing the assets that had been dissipated, the trial court included energy stock gifts from Joseph to his children in the amounts of \$5,000 in August of 2011 and \$1,250 in September of 2012. Joseph argues that these assets are one and the same. However, in its initial letter opinion, the trial court explained that it

found that these were three separate assets. Additionally, the trial court specifically denied Joseph's motion for reconsideration on this issue, again finding that the \$9,000 of energy stock was separate from the energy stock gifts given to his children. Joseph has failed to cite any part of the record to support the proposition that these assets are one and the same, as he claims. See Ill. S.Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (requiring that arguments include, in part, citation to the portions of the record relied on); see also *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 127 (2010) (a reviewing court is not a repository in which appellants may dump the burden of argument and research). Accordingly, we cannot say that the trial court's determination was against the manifest weight of the evidence.

¶ 57 Joseph also argues that his repayment of \$29,000 to his children was not dissipation. He notes that Elizabeth acknowledged in her testimony that Joseph's Aunt Grace had left an inheritance and \$60,000 of it was supposed to be given to their children Joe and Lisa Marie. Instead, the parties used the money for the purchase of the land in Burr Ridge on which the marital residence sits. Elizabeth acknowledged that the \$60,000 was owed to the children and that the children had never been given the inheritance. However, Elizabeth also testified that, prior to the time she moved out in 2010, Joseph had repeatedly stated (even in front of the children) that he had no intention of paying them the \$60,000 because he had given them a Catholic education, a car, and a nice roof over their heads. The trial court found that there had been no valid promises to the pay the children and that the payment of \$29,000 to the children by Joseph after Elizabeth moved out was dissipation. Joseph has failed to cite any authority for the proposition that the facts in this case precluded a finding of dissipation by the trial court and this argument is thus forfeited. See *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23 ("A failure to

cite relevant authority violates Rule 341 and can cause a party to forfeit consideration of the issue”).

¶ 58

E. Distribution of Assets

¶ 59 Joseph next argues that the division of the marital assets was not equitable. Section 503(d) of the Act requires the trial court to divide marital property in just proportions. 750 ILCS 503(d) (West 2010). In so dividing, the trial court is required to consider all relevant factors, including the contributions each party made to the marital and non-marital property; the value of the property assigned to each party; the relevant economic circumstances of the parties at the time of the division of property; factors related to the parties’ age, health, skills, and employability; whether the property division is in addition to or in lieu of maintenance; and the tax consequences of the property division. 750 ILCS 5/503(d)(1)-(12) (West 2010). “The trial court has broad discretion in applying these factors and is authorized to award either property or maintenance, both property and maintenance, or property in lieu of maintenance.” *In re Marriage of Demar*, 385 Ill. App. 3d 837, 853 (2008). We review a trial court’s property division for an abuse of discretion. *In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1113 (2004). “An abuse of discretion is said to have occurred only when no reasonable person would take the view adopted by the trial court.” *Id.*

¶ 60 First, Joseph argues that the division of the parties’ gold and jewelry collection was not equitable. At trial, Joseph testified that he purchased the collection for about \$55,000 and that its current value was \$170,000. He also testified that Elizabeth took about half the collection when she moved out in 2010 and that the half she took was much higher in value than the half that was left behind. The trial court found that there was “scant evidence as to value of what was taken

and what was left behind which leaves that Court with maintaining this division done by the parties in 2010 as a final division, in that it appears to be somewhat equal.”

¶ 61 In the present case, although Joseph testified as to what was paid for the whole collection, he did not indicate what was paid for the half that Elizabeth took or the half that remained in his possession. Accordingly, he cannot now complain that the trial court did not order a more equitable division. *Cf. In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 64 (husband could not fail to present evidence of assets’ value and then complain that the trial court erred in not placing a value on them). Based on the evidence presented, we cannot say the trial court abused its discretion in dividing the gold and jewelry collection.

¶ 62 Joseph next argues that it was inequitable to allow Elizabeth access to the Burr Ridge home to inventory the personal property left to be divided and not order that Joseph be allowed to inventory the personal property Elizabeth had taken when she moved out. The trial court denied Joseph’s motion to reconsider on this issue, finding that neither party had presented evidence of the furnishings in the marital home or their value. The trial court also noted that Elizabeth had left the vast majority of the furnishings behind when she moved out. As stated above, because Joseph did not present evidence of value as to the household furnishings that were taken or that were left behind, he cannot now complain that the division was not equitable. *Id.* As such, we cannot say the trial court abused its discretion in dividing the marital furnishings.

¶ 63 Finally, Joseph argues that the overall division of marital assets was inequitable. He argues that when the division of marital assets is considered in its entirety, he was essentially awarded 30% of the assets while Elizabeth was awarded 70%. Reviewing the facts in this case, we cannot say the trial court abused its discretion. The trial court awarded Elizabeth 60% of the

proceeds from the sale of the marital home and the remaining marital assets were split evenly. The trial court noted that, during the parties' separation prior to the dissolution, Joseph had spent a considerable amount of the parties' marital savings and retirement funds. While all the expenditures were not proved to be dissipation, the trial court noted it was considering this factor in the division of assets. Further, the award of maintenance did nothing more than equalize the parties' incomes after 29 years of marriage. In determining an equitable division of marital property, the record reveals that the trial court considered the relevant section 503(d) factors. We affirm the trial court's determination because we cannot say that the trial court's division of the marital estate so exceeded the bounds of reason that no reasonable person would take the view adopted by the trial court. *Sawicki*, 346 Ill. App. 3d at 1113.

¶ 64

#### F. Payment of Property Taxes

¶ 65 Joseph's final contention on appeal is that the trial court erred in prohibiting the payment of property taxes on the marital home pending its sale and closing. We agree. Generally, a party is required to preserve marital assets pending dissolution proceedings. Such preservation of a marital home usually includes a requirement to stay current on mortgage payments and property taxes. See *In re Marriage of Ryman*, 172 Ill. App. 3d 599, 609 (1988) (failure to pay real estate taxes was characterized as dissipation). Additionally, a failure to pay real estate taxes would risk the imposition of late fees, interest, and a tax lien being placed on the home. Accordingly, we hold that the trial court abused its discretion in ordering that no further property tax payments be made on the marital home until it was sold. *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1042 (2008) (trial court order as to marital assets is reviewed for an abuse of discretion). Elizabeth argues that any late fees or interest charges will be minimal and that the trial court's order to not pay any more real estate taxes acted as incentive for the parties to cooperate in the

sale of the home. Nonetheless, the trial court created incentive to sell the home by ordering that it be sold immediately “as is.” If that does not incentivize the parties to sell the home quickly, the trial court can take other measures such as requiring that the home be listed with a real estate agent by a certain date or that Joseph be required to pay Elizabeth her share of the present equity by a certain date.

¶ 66

### III. CONCLUSION

¶ 67 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed in part and reversed in part.

¶ 68 Affirmed in part and reversed in part.