2015 IL App (2d) 140864-U
Nos. 2-14-0864, 2-14-1034, & 2-14-1040 cons.
Order filed March 31, 2015
Modified upon denial of rehearing May 5, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF	)	Appeal from the Circuit Court
MICHAEL W. TAMBURO,	)	of Du Page County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 13-D-59
	)	
NINA H. TAMBURO,	)	Honorable
	)	Linda E. Davenport,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Schostok and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: In this dissolution proceeding, the trial court (1) was not personally biased against petitioner or his trial counsel (2) did not err in setting custody, child support, maintenance, or visitation; (3) set a proper value on petitioner's ownership share of a business; (4) did not infringe petitioner's constitutional right of parental autonomy; and (5) properly assessed fees and costs against petitioner.

¶ 2 In this marriage dissolution proceeding between petitioner, Michael Tamburo, and respondent, Nina Tamburo, petitioner appeals the trial court's judgment as to child custody, visitation, child support, valuation of marital property, spousal maintenance, and attorney fees. For the following reasons, we affirm.

¶ 3 We note that this appeal was accelerated under Supreme Court Rule 311(a) (eff. Feb. 26, 2010). In such appeals, the appellate court must, except for good cause shown, issue its decision within 150 days of the filing of the notice of appeal. Ill. S. Ct. R. 311(a)(5) (eff. Feb. 26, 2010). Petitioner's notice of appeal was filed on August 29, 2014. Accordingly, our decision was due January 26, 2015. There is good cause for the delay because, first, the parties' numerous motions during the briefing stage consumed nearly the entire 150 days; appellant's reply brief was not filed until January 15, 2015. Second, the record on appeal is voluminous (the report of proceedings exceeds 1000 pages) and petitioner raises nine separate contentions.

¶ 4 I. BACKGROUND

¶ 5 A. Overview

¶ 6 The parties were married in May 1993. Three children issued from the marriage: one biological child and two adopted children. The parties' biological child is J.T., born in October 1996. The adopted children are M.T. and W.T., who were born, respectively, in September 2000 and February 2002.

¶ 7 Petitioner filed for divorce in January 2013. The petition proceeded to a bench trial in late July 2014. At that time, the ages of J.T., M.T., and W.T. were, respectively, 17, 13, and 12. The parties and the children were still living together in the marital home, though communication between the parties had deteriorated to the point that they communicated exclusively by text messaging and e-mail.

¶ 8 In August 2014, the trial court issued its decision that, *inter alia*, (1) awarded respondent sole custody of all three children and set a visitation schedule for petitioner; (2) valuated petitioner's 50% interest in his business, ConexNet, Inc., at $265,000; and (3) ordered petitioner

to pay child support and spousal maintenance. Subsequently, the court directed petitioner to contribute $10,000 toward respondent's costs and attorney fees.

¶ 9 B. Evidence at Trial

¶ 10 The five witnesses at trial were (1) petitioner; (2) respondent; (3) Richard Imburgia, co-owner with petitioner of ConexNet; (4) Jeffrey Brend, an expert witness retained by respondent to conduct a valuation of petitioner's share of ConexNet; and (5) Dr. Margaret Bongiorno, the court-appointed custody evaluator.

¶ 11 We divide the evidence at trial into the following topics.

¶ 12 1. Custody

¶ 13 a. Petitioner's shifting position on custody

¶ 14 Before proceeding to the evidence on custody, we note that petitioner's stance on that issue has fluctuated considerably throughout this case. In his January 2013 dissolution petition, petitioner asked that "joint care, custody[,] and control of the minor children be awarded to the parties with physical residential custody awarded to [the parties] on an equal (50/50 basis) [*sic*]." However, in his interviews with Dr. Bongiorno during the summer of 2013, petitioner expressed a desire for joint legal custody, and sole residential custody, of all three children, with respondent to receive reasonable visitation. In March 2014, however, petitioner filed a motion to amend his dissolution petition to request "sole custody" of M.T. and "joint custody" of J.T. and W.T. Petitioner later withdrew the motion (he testified at trial that he did so because the trial court remarked at a pretrial conference that it was opposed to splitting up the children between households). In June 2014, petitioner was permitted to file an amended dissolution petition seeking "sole custody" of all three children, with respondent to be granted reasonable visitation.

Finally, in closing argument at the July 2014 trial, petitioner asked the court to grant him "joint custody of the children and 50 percent of the visitation."

¶ 15 b. General history

¶ 16 Petitioner has an undergraduate degree in electrical engineering and a master's degree in business administration. Respondent has a law degree. In 1993, the year the parties were married, respondent was employed full-time as an associate at the law firm of O'Keefe, Ashenden, Lyons, & Ward (O'Keefe). In April 1996, petitioner founded Datatech Software, Inc., which specialized in software development and networking. Petitioner was the sole shareholder, officer, and employee of Datatech. In October 1996, J.T. was born. Respondent went on maternity leave in September 1996 and returned to O'Keefe in February 1997.

¶ 17 In 1998, respondent was promoted to partner at O'Keefe. In June 1999, respondent decided to leave O'Keefe because she had difficulty balancing work and family responsibilities. The parties adopted M.T. in October 2000 and W.T. in April 2002.

¶ 18 In April 2000, petitioner "rolled" Datatech into a new company, ConexNet. Petitioner formed ConexNet with Richard Imburgia, who had done computer programming for Datatech on a contract basis. Like Datatech, ConexNet specialized in software development and networking. Petitioner and Imburgia were the sole shareholders and officers of ConexNet, which in time had several employees. ConexNet's office was in a downtown Chicago condominium that petitioner and Imburgia purchased and rented to the corporation.

¶ 19 Petitioner acknowledged that beginning in 1999 when respondent left O'Keefe, she was the primary caregiver for the children, which included helping them with homework and taking them to school and medical appointments. Petitioner testified that his lower level of involvement

with the children's daily routine did not reflect a lack of interest, but rather an effective division of roles between petitioner as primary breadwinner and respondent as primary caregiver.

¶ 20 Petitioner testified that he currently swims weekly with W.T. and that M.T. occasionally participates, too. Petitioner described two other activities that he enjoys with M.T: firearms and self-defense. In 2012, respondent taught M.T. to use a pellet gun, and in 2013 taught him to use a .22 caliber gun. Petitioner and M.T. have gone to shooting ranges multiple times in the past several months. Petitioner claimed that he has "bonded" with M.T. over firearms. Petitioner is aware, however, that respondent objects to M.T.'s use of firearms.

¶ 21 Petitioner noted that, for the past three years, he and M.T. have trained in Martial Blade Concepts (MBC), a self-defense system using knives, and in Counter-Blade Concepts (CBC), a system for unarmed defense against knives. Petitioner is aware that respondent objects to M.T.'s use of knives in self-defense training.

¶ 22 Petitioner claimed that his work hours "have stayed generally constant" since 2002 when W.T. was adopted. Petitioner was asked specifically about his work schedule since 2009. Petitioner explained that he is typically gone from home for work 12 hours each weekday. On Saturdays and Sundays, petitioner typically works in the morning before the children rise. Petitioner added that, since the divorce action was filed, he has worked more hours at home on weekends. Petitioner gave two reasons for this. First, since there is now more tension in the home, he prefers to remain in his home office. Second, attention to the divorce litigation has drawn him away during normal work hours.

¶ 23 Petitioner introduced into evidence documents reflecting the number of hours he billed to clients through ConexNet from 2002 through the first four months of 2014. The monthly average was 287. (By way of comparison (as the trial court noted in its judgment of dissolution),

a standard 40-hour-per-week work schedule equates to 173 hours per month.) According to petitioner, these billed hours included work at ConexNet's office, work at his home office, and travel to client offices.

¶ 24 Petitioner denied that his work schedule has negatively impacted his relationship with his children. Petitioner also claimed that he could adjust his work schedule to accommodate the custodial arrangement he was seeking, namely joint custody with equal division of time. First, petitioner noted that ConexNet has recently established an office in Lombard, which would dramatically shorten his commute. Second, petitioner can increase the amount of work he does at home rather than at ConexNet's office because, as owner of ConexNet, he is able to delegate work to employees. Moreover, technological advances have made it easier for petitioner to work remotely. Elsewhere in his testimony, however, petitioner stated that a "large part" of the work of ConexNet is done at the client's site. Petitioner also acknowledged testifying at his deposition that "most of what we [ConexNet] do does not involve being at an office."

¶ 25 Respondent testified that, when petitioner started ConexNet, his "[work] days became much longer." Petitioner left early in the morning and returned home at 6 or 7 p.m. After the family ate dinner and the kids went to bed, petitioner would do more work. Usually he remained home in the evening, but sometimes he visited a ConexNet client. Respondent claimed that, beginning in 2005 or 2006, and continuing at the time of trial, petitioner's hours were much longer. Petitioner currently leaves the house by 6 a.m. and returns between 6:30 and 9:30 p.m. Respondent claimed that petitioner has failed to demonstrate, since the filing of this action, any flexibility in his work schedule. Respondent claimed that petitioner has always spent time with the children only "occasionally."

¶ 26 Respondent claimed that she originally scheduled parent-teacher conferences for evening hours when petitioner could attend. Petitioner attended many of J.T.'s early parent-teacher conferences, but when his attendance later dropped off, respondent began to stress her own convenience in scheduling them and did not inform petitioner of the times. Respondent admitted that there were other school appointments, and medical appointments, of which she did not inform petitioner.

¶ 27 c. The parties' disagreements over parenting

¶ 28 i. General disagreements

¶ 29 Petitioner testified that, in 2010 or 2011, his relationship with respondent began to decline because of increased disagreements over parenting. Their communication regarding parenting issues has declined since 2012 and is currently "poor." Petitioner claimed that "in a nutshell" his approach to parenting emphasizes "autonomy" for the children while respondent's emphasizes "control" of them. According to petitioner, respondent has had a daily regimen in place for the children from a young age. Petitioner explained what he meant:

> "The typical regimen, I guess a school day is an easy example, you know. Up at a certain time or called at a certain time. Breakfast at a certain time. Off to school at a certain time. When getting home from school, you know, maybe a little snack, then immediately to homework and in bed at a specific time with as little deviation as possible."

¶ 30 Petitioner stated that respondent's regimen for the children has, in the past two or three years, brought her into conflict particularly with J.T. and M.T., who, as they have grown older, want more independence. M.T. specifically has had difficulty with respondent's insistence that he do his homework in the afternoon shortly after returning from school. In the past few months, M.T. has stopped doing his homework in the afternoons, which causes friction with respondent.

¶ 31 Petitioner described respondent as "negative" and "confrontational" particularly with J.T. and M.T. Respondent's relationship with them is, consequently, "strained." Respondent's relationship with W.T. "goes up and down." Petitioner believed that he is more consistent and predictable in his interaction with the children. He is calmer, less demanding, and "yells" at the children less than respondent does.

¶ 32 Respondent agreed with petitioner that their communication is currently "poor." According to respondent, the decline began in 2007 and has since continued. The parties have agreed to raise the children in the Roman Catholic faith, but respondent doubted that they can reach agreement on issues such as health care and education. The parties cannot agree on "discipline[,] *** homework[,] *** bed times[,] *** [or] curfews." They also cannot agree on "[g]eneral supervision of the children and what is appropriate for each child."

¶ 33 Respondent claimed that, in 2007 or 2008, petitioner began to treat the children more like "peers." Respondent rejected petitioner's claim that her way of parenting is about "control." Rather, she "provide[s] structure for [the] children, which they require." Respondent further noted that, in disciplining the children, she imposes "consequences" that relate to the issue, while petitioner "generally lectures." Respondent believed that petitioner was undermining her relationship with the children, because after spending time with him they are "very emotional and exhausted and very angry with [her]."

¶ 34 Regarding homework, respondent testified that her routine for M.T. differs from her routine for W.T When W.T. returns from school, she has a snack and proceeds to her homework. She typically finishes in an hour. The routine for M.T. differs in that, upon returning home from school, he is permitted a half hour of play time before starting homework. Also, once M.T. begins his homework, he is permitted periodic breaks. This pattern continues

until 6 p.m., at which point respondent permits M.T. to quit for the night, even if he has not completed his assignments. According to respondent, M.T.'s teachers have approved this schedule even if it means that M.T. will not finish his homework.

¶ 35 In what follows, we set forth further evidence as it relates specifically to each child.

¶ 36 ii. J.T.

¶ 37 At the time of trial, J.T., was 17 years old and entering her senior year of high school. In her sophomore year of high school, 2012-2013, J.T. began to abuse alcohol. In December 2012, she was treated in the emergency room for alcohol poisoning. Also during her sophomore year, J.T. was suspended from school for sending a text message suggesting she wanted to purchase marijuana. Despite her suspension, J.T. was permitted to take her final exams in her sophomore year. In 2012, J.T. began seeing a therapist, Dr. Deborah Davero, for anxiety and behavioral issues. J.T. no longer sees Dr. Davero regularly and last had an appointment with her in March 2014. J.T. had academic success her junior year.

¶ 38 Respondent's general complaint about petitioner's attitude toward J.T. was that he assumes she will be responsible—that she "can handle it on her own." Respondent claimed that she, by contrast, is "guarded and protective" toward J.T. According to respondent, she and petitioner disagreed about the proper course of action after J.T.'s alcohol use came to light. Respondent wanted J.T. to have contact with friends only at the Tamburo house, but petitioner disagreed and permitted J.T. to visit friends' homes. Later, when respondent wanted to limit where J.T. could have sleepovers, petitioner was initially supportive, but eventually let J.T. "sleep wherever she wanted." According to respondent, J.T. is still using alcohol.

¶ 39 Respondent noted that, after J.T.'s alcohol problem came to light, petitioner agreed to be responsible for administering to her a home Breathalyzer. To her knowledge, however, petitioner has never administered the test to J.T.

¶ 40 Respondent described three occasions in the past seven months where she observed J.T. under the influence of alcohol. Respondent admitted that she did not inform petitioner of the second two instances, but may have informed him of the first.

¶ 41 Petitioner testified that respondent vacillates in her treatment of J.T. Respondent "sometimes [is] too controlling and sometimes *** gives [J.T.] too much leeway." Petitioner acknowledged that he had responsibility for administering the home Breathalyzer to J.T. but never tested her. Petitioner claimed that, for the past 18 months, there was no time when he "suspected that alcohol was an issue or problem" with J.T.

¶ 42 iii. M.T.

¶ 43 As of trial, M.T. was 13 years old and entering eighth grade. When M.T. was in sixth grade, psychiatrist Khadija Khan saw him for attention difficulties and diagnosed him with Attention Deficit Hyperactivity Disorder (ADHD) and a reading disability. Dr. Khan recommended medication for the ADHD. Respondent concurred with the recommendation but petitioner did not. To date, M.T. has not received any medication for his ADHD.

¶ 44 Petitioner explained that he has opposed medication for M.T. because W.T., who also has ADHD, has displayed mood swings that petitioner is concerned might be caused by her ADHD medication. Petitioner also questioned the need for the medication because M.T. was showing the ability to manage with the ADHD in certain academic subjects. Petitioner was concerned that medication could negatively impact M.T.'s current academic aptitude and believed that alternatives such as diet and exercise should be explored first. Petitioner testified that he made

his concerns known to Drs. Bongiorno and Khan, who both recommended that petitioner seek a second opinion on whether to medicate M.T. Petitioner admitted that, as of trial, he still had not sought a second opinion.

¶ 45 Another area where petitioner and respondent have been at odds is M.T.'s education. Since third grade, M.T. has had a 504 plan in place because of academic struggles. The 504 plan permits him extra time for homework and tests. Respondent wants greater accommodation for M.T. in the form of an individualized education plan (IEP), which she believes will provide him with "more support, more supervision." Petitioner opposes the idea of an IEP.

¶ 46 Petitioner and respondent also disagree on sleeping arrangements and bedtime for M.T. Petitioner, who slept in the basement of the marital home, invited M.T. to sleep there, too. Respondent, however, told M.T. that he should sleep in his own bed upstairs. Petitioner subsequently sent M.T. text messages stating that he did not have to comply with respondent's wishes. Respondent discovered the messages while looking through M.T.'s phone. Petitioner later voiced his resentment to respondent for invading M.T.'s privacy.

¶ 47 Regarding M.T.'s bedtime, petitioner and respondent have agreed on a 10 p.m. bedtime for the school year. This bedtime is relaxed in the summer, but respondent is concerned because petitioner has been permitting M.T. to stay up until 3 or 4 a.m. when he sleeps in the basement with petitioner. Respondent noted that a late bedtime causes M.T. to sleep away much of the next day and miss activities. Petitioner, however, testified that M.T. needs to decide for himself which summer bedtime is best for him.

¶ 48 Regarding M.T.'s participation in MBC and CBC, respondent testified that she first learned the nature of these forms of self-defense during a martial counseling session in 2012.

She knew that petitioner and M.T. had been studying these systems, but was previously unaware of their nature. Respondent does want M.T. studying the combat use of a knife.

¶ 49 Respondent noted that, on one occasion, petitioner returned from a MBC and CBC conference with a T-shirt for M.T. The shirt displayed "MBCisms," including this statement: "I'm not a lawyer; I have too much self-respect for that." Petitioner testified, however, that he had no purpose in obtaining the T-shirt other than to provide M.T. a souvenir.

¶ 50 The parties entered into the following trial stipulation regarding M.T.'s participation in MBC and CBC:

> "16. The parties' minor son, [M.T.], may participate in [CBC] and [MBC] *** with and under the supervision of Petitioner. However, [M.T.] may not train with edged weapons until he commences his sophomore year of high school in August of 2016."

¶ 51 The parties also testified to differences of opinion regarding M.T.'s involvement with firearms. Petitioner testified that he is a hunter, recreational shooter, and firearms collector. At petitioner's encouragement and under his supervision, M.T. has engaged in recreational shooting. Petitioner stated he emphasizes safety and that M.T. has consistently handled firearms responsibly. Petitioner recognized that respondent has continually objected to M.T.'s use of firearms. Petitioner also recognized that Dr. Bongiorno recommended in her custody evaluation that M.T. not use firearms without the approval of both parents. Moreover, petitioner recalled a pretrial conference where the trial court (in petitioner's words) "expressed concern that perhaps [M.T.] shouldn't be exposed to firearms until perhaps his 18th birthday." Petitioner admitted that, despite the trial court's remarks and Dr. Bongiorno recommendation, he obtained a Firearm Owner's Identification Card (FOID) for M.T. and also took him to a firearms safety course.

When respondent confiscated the FOID card, petitioner confronted her and demanded its return. Respondent refused to return it.

¶ 52 Respondent testified that, in her opinion, M.T. is too emotionally immature and forgetful to handle firearms safely. M.T. tends to move to another task without finishing the one at hand. M.T. has difficulty "recall[ing] even the steps of getting ready in the morning," and respondent has to assist him by leaving written reminders in the bedroom and bathroom. Respondent also cited occasions where M.T. let food cook too long in the microwave. She recommended that M.T. not handle firearms until he is 16 years of age.

¶ 53 iv. W.T.

¶ 54 W.T. has been diagnosed with several psychological and psychiatric conditions including ADHD, sensory processing disorder, emotional dysregulation, and depression. She is being treated by Dr. Khan and a psychotherapist, Dr. Stacy Glabach. She receives medication for her ADHD and depression.

¶ 55 Petitioner testified that he initially was in favor of medication for W.T. He has since changed his mind and now believes that the medicine is causing the suicidal ideation that W.T. has been expressing and also exacerbates her mood swings. Petitioner believed that alternatives to medication such as diet regulation should be tried in W.T.'s case. Petitioner admitted that he has not sought a second medical opinion on whether W.T. should be medicated.

¶ 56 Respondent denied that W.T. is experiencing any side effects from her medications. Respondent claimed that she has observed only positive changes in W.T. from the medication.

¶ 57 The parties noted that W.T. has behavioral problems including lying, stealing, hoarding, and acting recklessly. W.T. also runs away from home on occasion. Respondent has doubts about petitioner's ability to provide W.T. the close supervision she needs. Respondent is

particularly concerned about petitioner's retention of guns, knives, and other self-defense weapons in the house given W.T.'s suicidal ideation.

¶ 58 The parties agreed that W.T. first expressed thoughts of suicide two or three years prior to trial. The parties testified specifically to an occasion in 2013 when W.T. stated at school that that she intended to commit suicide with one of petitioner's knives or guns. Based on this occurrence, Dr. Khan recommended that petitioner remove all firearms from the home. Respondent demanded that petitioner comply with the recommendation, but petitioner declined to remove any firearms. Petitioner explained at trial that, at the time of W.T.'s 2013 threat, his firearms were secured in two safes in a basement utility room and that only he had the combinations or keys to the safes. The utility room itself was protected by a combination lock and until recently also housed a refrigerator where drinks were stored. Petitioner testified that, to his knowledge, only he, respondent, M.T., and J.T. have the access code to the utility room. Petitioner was unsure when or how M.T. obtained the code, and also admitted that W.T. possibly has the code as well.

¶ 59 Petitioner noted that W.T.'s 2013 suicide threat did prompt him to remove his Spyderco self-defense knife from his unlocked office drawer and place it in a wall safe in the master bedroom. He and respondent also removed the knives from the kitchen. A couple of weeks later, they returned the knives to the kitchen and petitioner returned his Spyderco knife to his desk drawer. Respondent testified that the knives were returned after W.T. had undergone therapy "and backed off the threats."

¶ 60 Respondent introduced into evidence a series of photographs that she took in January 2014. One photograph was of petitioner's unlocked office drawer, which contained his Spyderco knife. Two other photographs were of unlocked drawers in a tool chest in the basement utility

room where the gun safes were also stored. The photographed drawers contained knives, brass knuckles, and throwing stars. Respondent noted that on 20 occasions in the past year, she has found the door to the utility room unlocked. Respondent offered the photographs as proof of the lax manner in which petitioner stores his weapons despite W.T.'s suicide threats. However, respondent also admitted that, as of trial, cutlery was available to W.T. in the kitchen.

¶ 61 Respondent testified that, in the last ten days, she found a three-page handwritten note in W.T.'s room. She introduced the note into evidence. On the first page is W.T.'s "plan to get out of the house." The second page has the heading "How to kill yourself ideas" and lists the following: "bag strap to hang yourself," "Dad has knifes [*sic*] or guns," "run into street," and "jumping ot [*sic*] playhouse." The third page lists reasons why W.T. dislikes herself. Respondent admitted she did not inform petitioner of the note when she found it.

¶ 62 d. Dr. Bongiorno's evaluation

¶ 63 Dr. Bongiorno completed her report in October 2013—nine months before trial. The report is extensive; we recite only what is strictly necessary for our analysis.

¶ 64 In preparing her report, Dr. Bongiorno interviewed petitioner, respondent, all three children, and Drs. Davero, Glabach, and Khan, who were the children's psychiatrists and psychotherapists. Dr. Bongiorno estimated that she spent 16 hours interviewing the family and 2 hours interviewing third parties. In speaking with Dr. Bongiorno, petitioner expressed a desire for sole residential custody of the children (with visitation for respondent) and for joint legal custody. Respondent likewise wanted sole residential custody as well as joint legal custody on some issues and sole legal custody on others.

¶ 65 In her interview with Dr. Bongiorno, J.T. stated that she has had to tell petitioner not to complain to her about respondent. W.T. told Dr. Bongiorno that she has overheard petitioner speaking to M.T. about respondent "in derogatory ways."

¶ 66 Noting petitioner's opposition to M.T.'s receiving medication for his ADHD, Dr. Bongiorno encouraged petitioner to seek a second opinion on appropriate treatment for M.T., and petitioner "expressed willingness" to seek it (petitioner admitted at trial that he did not follow through on obtaining a second opinion). Dr. Bongiorno noted that petitioner had failed to administer home-based alcohol screens to J.T. as he had promised Dr. Devaro.

¶ 67 Dr. Bongiorno recommended that respondent have sole residential and legal custody of the children. Sole legal custody with respondent, rather than joint custody, would "ensure that major decisions are made in a timely manner and will decrease the children's exposure to parental conflict." Dr. Bongiorno elaborated on why she recommended against joint custody:

> "[Petitioner] and [respondent] each explained that their disagreements regarding parenting decisions, and their inability to resolve them, are major reasons for their divorce. Although they generally agree on the children's education and religious upbringing, they exhibit serious differences regarding their health care and extracurricular activities. [Petitioner] described [respondent] as excessively controlling, and [respondent] characterized [petitioner] as disrespectful. Both parents feel that their arguments have been detrimental to their children. It is unlikely that the divorce will improve their ability to resolve parenting disagreements.
>
> [Petitioner] tends to blame [respondent] for the children's problems and/or view her as exaggerating the seriousness of their symptoms, even when the children's doctors have corroborated [respondent's] perspective. [Petitioner] has not followed through on

his commitment to administer home-based drug screens, has declined Dr. Khan's recommendation for medication for [M.T.], has objected to some of her recommendations related to [W.T.'s] medications and dosages, and has resisted the suggestion that he should remove firearms from the home at a time when [W.T.] was expressing suicidal ideation.

Additionally, [petitioner] would like to train the children in a martial arts system that focuses on self-defense utilizing empty-hand, improvised-weaponry[,] and knives. He would also like to teach the children about gun safety by involving them in hunting and target shooting. [Respondent] views organized martial arts training, such as karate or taekwondo classes, as appropriate for the children, and she would agree to their participation. However, she is strongly opposed to the children's participation in the classes that focus on blade concepts. She is not in favor of hunting or target shooting as activities for the children.

[Respondent] has been primarily responsible for and involved in the children's education, health care and religious upbringing throughout the marriage. She has advocated for the children's best interests, has made good decisions in these areas, and has maintained effective communication with their schools and health care professionals."

¶ 68 On whether the children expressed a preference as to residential custody, Dr. Bongiorno wrote:

"[J.T.] did not express a specific preference for custody or a visitation schedule. Her wishes centered on her desire for her parents to try to get along with one another, for the sake of the children. [M.T.] expressed his wish to continue enjoying time with

> [petitioner]. He described himself as flexible and capable of making transitions back and forth between his parents. [W.T.] expressed her expectation that she will see [petitioner] generally on weekends and [respondent] generally in the middle of the week."

¶ 69 Dr. Bongiorno justified as follows her recommendation that respondent have sole residential custody of the children:

> "[Petitioner] maintained that he is a stable parent, is actively involved with the children and understands their needs. He alleged that [respondent] is excessively controlling and emotionally unstable, but this Evaluator did not corroborate his concerns. [Respondent] maintained that she should have residential custody of the children because she has been their primary caretaker throughout their lives, provides structure and organization for them, and is attuned to their needs. She expressed concerns, which were corroborated during this Evaluation, regarding [petitioner] undermining her parenting.
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> * * *
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> In terms of willingness and ability of each parent to facilitate and encourage a good relationship between the other parent and the children, [petitioner] has exhibited problems in terms of displaying his disparaging attitude about [respondent] directly to the children or in their presence. [Respondent] has been more circumspect in this regard."

Dr. Bongiorno believed that "[t]he approval of both parents should be required before involving the children in any martial arts or firearms training or activities."

¶ 70 Dr. Bongiorno was called by petitioner as a witness at trial. Dr. Bongiorno explained that, in keeping with her general approach to custody evaluations, she did not directly ask the children their custodial preferences. Dr. Bongiorno explained that she favors an indirect approach to eliciting custodial preferences because she wants "to avoid situations where the

children feel they are responsible for choosing one parent over another." Her customary approach is to ask questions that enable the children to tell her "how they envision their future." When she took this approach toward the children in this case, they "[f]or the most part *** did not express direct preferences" as to a custodial arrangement. J.T. and W.T. indicated no custodial preference, and W.T. wavered in her preference.

¶ 71 Dr. Bongiorno had not interacted with the children since October 2013 but was unaware of any changes in their circumstances. She did not speak to any of the children's teachers as part of her evaluation because the parties did not disagree as to the children's academic situations.

¶ 72 Dr. Bongiorno was asked to describe the criteria she applies in judging the propriety of "a 50/50 arrangement." (The term was not defined during her examination, but we infer that she understood it as joint custody and/or an equal split of residential custody.) Her criteria was "whether the parents are capable of putting aside their differences for the sake of the children, whether the parents have compatible parenting styles, whether they are able to convey respect for one another, especially convey that to the children *** [a]nd whether the children's personalities are conducive to such an arrangement."

¶ 73 Applying these standards, Dr. Bongiorno concluded that a "50/50 arrangement" was not realistic in this case. First, petitioner had difficulty setting aside his resentment of respondent in making decisions about the children. Second, the parties' parenting styles were different, with respondent stressing parental involvement and petitioner emphasizing autonomy. Third, the parties were not respectful of each other, and petitioner particularly was dismissive of respondent's input into decisions. Fourth, J.T. was the only child among the three that could tolerate a "50/50 arrangement," though even she would not have been pleased with it. M.T. would have difficulty because of his learning difficulties. W.T.'s problems with emotional

regulation would make it difficult for her to tolerate the "emotional rollercoaster" of switching between parents on such a regular basis.

¶ 74 Dr. Bongiorno admitted that she did not ask the children what specific derogatory remarks or complaints petitioner allegedly made to the children about respondent.

¶ 75 2. Valuation of ConexNet

¶ 76 Respondent retained Jeffrey Brend to render an opinion on the fair market value of petitioner's 50% interest in ConexNet. The data about ConexNet upon which Brend based his valuation came from company financial statements, a "management interview" with petitioner, and a site visit to ConexNet's office. Brend's trial testimony was consistent with his valuation report dated May 20, 2014.

¶ 77 Petitioner's equal co-owner of ConexNet is Imburgia. Both petitioner and Imburgia do administrative tasks and programming, but petitioner as executive of ConexNet does the majority of administrative tasks. ConexNet also has several employees, including two of Imburgia's sons, who provide networking and programming tasks.

¶ 78 Brend testified that, of several valuation methods available for ascertaining fair market value, the one most appropriate for ConexNet was the "capitalization of earnings" method. As Brend stated in his report, this method "applies an appropriate capitalization rate to an average of historical earnings, adjusted for discretionary or nonrecurring items not directly related to operations such officers' compensation, depreciation, interest expense and unrelated income/expenses." Applying this method to ConexNet's balance sheets for recent years, Brend concluded that the fair market value of ConexNet was $530,955. Accordingly, petitioner's 50% interest in ConexNet had a fair market value of $265,000 (rounded downward). The trial court

accepted Brend's analysis and included petitioner's share in ConexNet among the parties' marital assets, ultimately awarding petitioner that asset.

¶ 79 Petitioner contends on appeal that Brend overvalued petitioner's share in ConexNet. Petitioner's contention is not that Brend choose an improper valuation method, but that some of Brend's premises were factually erroneous and resulted in an inflated value for petitioner's share. We set forth only as much of Brend's intricate calculations as is necessary to address petitioner's contentions on appeal.

¶ 80 In broad terms, the three steps of Brend's analysis were to (1) ascertain the ongoing cash flow of ConexNet; (2) multiply the resulting figure by an appropriate capitalization factor, which would yield a provisional operating value for ConexNet; and (3) apply appropriate discounts to arrive at a final company operating value. Petitioner's challenges on appeal relate only to steps (1) and (3) of Brend's analysis.

¶ 81 Brend testified that he began step (1) by reviewing ConexNet's balance sheets for years 2009 through 2013. Brend ascertained ConexNet's cash flow for these years by adjusting company expenses to levels he deemed reasonably necessary. One expense he adjusted was officer compensation. Brend noted that, by petitioner's own description, his role at ConexNet is IT (information technology) executive while Imburgia's is computer programmer. Total compensation paid to petitioner and Richard Imburgia was $430,000 in 2009, $445,000 in 2010, $450,000 in 2011, $454,000 in 2012, and $383,500 in 2013. Brend believed that more appropriate levels of compensation were $150,000 for petitioner's position as executive and $100,000 for Imburgia's position as programmer—a total of $250,000. Brend based this judgment on industry norms, which he derived from two sources. The first was online salary databases, which provide salary ranges for positions based on skills and experience. The second

source was Brend's extensive experience in performing business valuations, by which he was able to "pick up trends and ideas of what people are getting paid in various areas and for various skills."

¶ 82 Brend explained that his conception of reasonable salaries for an IT executive and a computer programmer presupposed that each would work 40 to 50 hours per week. Brend admitted that the salary databases he consulted did not correlate salaries to number of hours worked. Brend testified that, based on his knowledge of the IT field gained by prior valuations, the 40-to-50 hour range was accurate. The IT field is "project-based" and cyclical, with hours ranging from as many as 70 to as few as 20 per week. In his interview with Brend, petitioner claimed that he worked "a lot" of hours at ConexNet, but Brend was unaware, when he prepared his report, of how many hours petitioner actually billed. Shown petitioner's billing records, which reflected average billed hours of 287 per month for 2011 through April of 2014, Brend stated that the claimed hours strained his concept of "realistic billable hours," as they would entail petitioner working essentially "around the clock." Brend emphasized that his valuation model assumed an IT executive who billed for no more than actual hours worked. Brend acknowledged that he never attempted to verify which hours petitioner actually worked and had no independent proof that petitioner's billed hours were inflated.

¶ 83 Brend also noted that, in their interview, petitioner did not claim any incomparable programming skills. Brend presumed from petitioner's billed hours that programming consumed most of his time, despite his having administrative duties as company executive. Brend opined that there were "thousands" of people that could complete the programming tasks that petitioner and Imburgia performed at ConexNet. Accordingly, Brend's salary models did not assume that petitioner or Imburgia had any unique skills.

¶ 84 Brend agreed that *if* his model was flawed such that the actual work of ConexNet could not be completed by an IT executive and a computer programmer, each working 40 to 50 hours per week, then the expenses necessary to pay a third person to complete the work would impact Brend's calculation and diminish ConexNet's value.

¶ 85 Brend testified that ConexNet's cash flow, after adjustment for reasonable expenses, depreciation, taxes, and other considerations, was $131,100. Proceeding to step (2) of his analysis, Brend multiplied the $131,100 figure by the appropriate capitalization rate, which he determined to be 6.25. This yielded a figure of $819,400 (rounded upward) as a provisional operating value for ConexNet.

¶ 86 In step (3) of his analysis, Brend applied appropriate discounts to the $819,400 figure. One of the discounts was the personal goodwill discount. Brend explained that, to determine the value of ConexNet as a marital asset, it was first necessary to discount the value attributable to petitioner's personal efforts. See *In re Marriage of Talty*, 166 Ill. 2d 232, 240 (1995) ("To the extent that goodwill inheres in the business, existing independently of [the spouse's] personal efforts, and will outlast his involvement with the enterprise, it should be considered an asset of the business, and hence of the marriage. In contrast, to the extent that goodwill of the business is personal to [the spouse], depends on his efforts, and will cease when his involvement with the [business] ends, it should not be considered [marital] property."). The personal goodwill discount represented the percentage by which ConexNet's value would be diminished if petitioner, for whatever reason, ceased his involvement in the business. Brend found 10% was an appropriate goodwill discount.

¶ 87 Brend testified that, in reaching this figure, he relied particularly on statements petitioner made during the management interview. A transcript of the management interview was admitted

into evidence. When petitioner was asked in the interview what would occur if he elected to take an extended leave of absence from ConexNet, he initially responded that a "catastrophic" loss of revenue would ensue. Petitioner was then questioned more closely about whether his tasks could be fulfilled by remaining ConexNet manpower or new hires. Petitioner specified two of ConexNet's established clients: the O'Keefe law firm (where respondent had worked) and Medical Specialties Distributors (MSD). Petitioner does the majority of ConexNet's work for O'Keefe while Imburgia does the majority of work for MSD. Petitioner claimed that, over the 10 years that O'Keefe has been a ConexNet client, petitioner has built "trust" with the firm that transcends a mere business relationship. Also during that time, petitioner has gained extensive knowledge of the firm's business practices. Without that background, even the most skilled programmer would be unable to service O'Keefe. Accordingly, "[i]t's not the programming *per se*," but rather "the accumulated knowledge of [O'Keefe's] business." Nevertheless, while petitioner emphasized that it would be burdensome, in the case of his or Imburgia's departure, for the remaining owner to acclimate to serving the other's clients, petitioner acknowledged that the clients would allow ConexNet the opportunity to prove it could still serve them.

¶ 88 Brend also relied on petitioner's assertion in the management interview that Imburgia is the more experienced programmer. Brend inferred from this that Imburgia could acquaint himself in reasonable time with the programming needs of clients that petitioner had been serving mostly or exclusively. Also factoring into Brend's calculation of personal goodwill was his assessment that, generally, changes in business staffing involve a fairly "smooth transition" that does not result in loss of clients. Brend believed that ConexNet could adjust in a week or two, and at most a month, to petitioner's departure. Brend recognized that assigning a figure for personal goodwill is not a mathematical exercise but involves discretionary judgment.

¶ 89 Brend testified that, after adjustment for the 10% personal goodwill and other discounts, ConexNet's operating value was $530,955, 50% of which, $265,000 (rounded downward), represented the value of petitioner's interest in the company.

¶ 90 In his testimony, petitioner disagreed with Brend's analysis. First, he challenged Brend's downward salary adjustment, which assumed that the work of ConexNet's two officers could be performed by two individuals working only 40 to 50 hours per week (and billing the same). Petitioner affirmed that his billing records, showing a monthly average of 287 billable hours, accurately reflected the extent of his work. If petitioner and Imburgia limited their hours to Brend's assumptions, ConexNet would require an additional "one and a half people," costing ConexNet, in petitioner's estimation, an additional $150,000 in salary, which would change ConexNet's value under Brend's analysis.

¶ 91 Petitioner also disagreed at trial with Brend's calculation of personal goodwill. Petitioner testified to two ConexNet clients, O'Keefe and Pewag Chain, each of which has represented approximately 20% of ConexNet's revenue from 2009 through April 2014. During this span of time, petitioner performed all or most of ConexNet's work for these clients. He became closely familiar with their business needs, for which he developed specially tailored software. Petitioner testified that if he departed ConexNet, there would be a "very serious" and "negative" impact. No one could "step into his shoes" and immediately begin serving these clients. Petitioner conceded, however, that it would be "feasible" to impart to his replacement "all that information and expertise associated with [his] customers." Petitioner estimated it would take three years for ConexNet to make such a transition.

¶ 92 In petitioner's estimation, ConexNet was worth between $110,000 and $150,000. Petitioner did not, however, explain how he reached this number.

¶ 93 Imburgia's trial testimony also challenged Brend's conclusions. Imburgia claimed petitioner could not possibly perform his responsibilities at ConexNet while billing only 50 hours per week. As to whether petitioner was indispensable at ConexNet, Imburgia initially claimed that ConexNet would lose Pewag and O'Keefe if petitioner left the company. Neither Imburgia nor anyone else at ConexNet "would *** be able to walk into those projects," as petitioner's servicing of those clients utilized his extensive accumulated knowledge of their businesses. On further examination, however, Imburgia acknowledged that he or others at ConexNet have assisted petitioner in servicing O'Keefe and Pewag, and, further, that Imburgia would have the opportunity to retain these clients if petitioner departed ConexNet. Imburgia believed that ConexNet "possibly" could continue to serve those clients, but "[i]t would take a long time to get up to speed on what is transpiring in those companies as far as knowing their business." Imburgia was sure that the transition would not be complete within two weeks. Asked specifically about O'Keefe, Imburgia stated that he could "[e]ventually" be trained in the applications petitioner designed for that client, but it could take "months, years."

¶ 94 3. Maintenance

¶ 95 Respondent testified that, excluding a period of maternity leave, she worked at O'Keefe from 1991 to 1999, specializing in property tax appeals. Respondent left O'Keefe in 1999 because she had difficulty balancing work and home responsibilities. Respondent became a homemaker and primary caregiver for the children. In late 2009, respondent began to search for work again because she had concerns about the family's finances. She felt that fiscal improvement would heal her strained relationship with petitioner. Respondent introduced her resume into evidence. Initially, respondent claimed that the resume was accurate as of trial. Subsequently, however, respondent admitted that she failed to include two short stints of

employment with family-law firms in 2010. Neither position gave respondent the litigation experienced she hoped. Respondent quit the first job because the work was not meaningful. She quit the second job because her responsibilities at home became too great. She omitted these two positions from her resume because she wanted to avoid the false impression that she obtained litigation experience through them.

¶ 96 Respondent introduced into evidence a bundle of documents associated with her job search in 2012, 2013, and 2014. The documents include letters of application, post-interview thank-you letters, and letters of rejection. Respondent claimed that the batch did not include all documents generated during her 2012-2014 search; specifically, she kept records of online applications only since 2013 or 2014. Respondent estimated that she has submitted more than 50 resumes since 2012. She has applied for positions outside her specialty of property tax and has even applied for non-attorney legal positions. She has contacted her former employer, O'Keefe, but it has no current openings. Since 2012, respondent has had several interviews, but the closest she has come to obtaining employment was with Jeffrey Keller of Keller Legal Services in Wheaton. According to respondent, she spoke with Keller in 2013 about a position with his firm. Before they had agreed on hours or compensation, Keller told respondent that he intended to schedule a training session for a particular date and time. Respondent's assumption was that Keller would confirm with her if he succeeded in scheduling the training for that date and time. When respondent heard nothing and the date passed, Keller sent her a text message stating that she must not be interested in the position because she failed to attend the training. By letter, e-mail, and text message to Keller, respondent explained the miscommunication and reaffirmed her interest in the position. Keller, however, did not respond.

¶ 97 C. The Trial Court's Decision

¶ 98 On August 4, 2014, the trial court issued a letter opinion, which it incorporated into its judgment of dissolution entered the same day. We set forth the relevant aspects of the decision as we discuss each issue on appeal.

¶ 99 D. Subsequent History

¶ 100 While the trial court had the case under advisement, respondent filed a petition under sections 503(j) and 508(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(j), 508(a) (West 2012)) for contribution to her costs and attorney fees. Following a hearing on September 23, 2014, the trial court granted the petition and ordered petitioner to contribute $10,000 toward respondent's costs and attorney fees.

¶ 101 On October 21, 2014, the trial court modified the dissolution judgment with respect to retirement accounts allocated to respondent.

¶ 102 Petitioner filed separate notices of appeal from the August 4, September 23, and October 21 judgments. The notices were assigned case numbers 2-14-0864, 2-14-1034, and 2-14-1040. This court subsequently consolidated the latter two under case number 2-14-0864.

¶ 103 II. ANALYSIS

¶ 104 Petitioner raises nine separate contentions on appeal.

¶ 105 A. The Trial Court's Alleged Bias

¶ 106 We first address petitioner's contention that the trial judge was personally biased against him or his counsel and, thus, prevented him from receiving a fair trial. "A trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice." *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002).

¶ 107 In making this claim of bias, petitioner points to no fact of which he did not become aware during the dissolution trial. Nonetheless, he filed no motion for substitution of judge

while the trial was underway. Petitioner thereby forfeited this contention for appeal. See *F.D.I.C. v. O'Malley*, 163 Ill. 2d 130, 140-41 (1994) (defendant's claim for judicial disqualification was forfeited on appeal; since he did not seek "prospective recusal of the judge" but rather "nullification of the trial," had to "show that he did not know the reason for disqualification or have a reason to know" prior to the judgment); *In re Marriage of Perlmutter*, 225 Ill. App. 3d 362, 381-82 (1992) (respondent's claim of judicial bias was forfeited on appeal for failure to raise the claim below). "To hold otherwise would permit a party to await the outcome of a trial and object only when the outcome is unfavorable." *F.D.I.C.*, 163 Ill. 2d at 140-41.

¶ 108 Even if this claim were not forfeited, we would find no bias. "[T]he party making the charge of prejudice must present evidence of prejudicial trial conduct and evidence of the judge's personal bias." *Eychaner*, 202 Ill. 2d at 280. The evidence must disclose " 'a deep-seated favoritism or antagonism that would make fair judgment impossible.' " *Id.* at 281 (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

¶ 109 Petitioner relies on two types of evidence of judicial bias: unfavorable rulings and unfavorable remarks. "A judge's rulings alone almost never constitute a valid basis for a claim of judicial bias or partiality." *Id.* at 280. "Allegedly erroneous findings and rulings by the trial court are insufficient reasons to believe that the court has a personal bias for or against a litigant." *Id.* Moreover, " 'judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.' " *Id.* (quoting *Liteky*, 510 U. S. at 555). See also *People v. Urdiales*, 225 Ill. 2d 354, 426 (2007) ("The fact that a judge displays displeasure or irritation

with an attorney's behavior is not necessarily evidence of judicial bias against the [party] or his counsel.").

¶ 110 Petitioner claims that, "[t]hroughout the course of the litigation and continuing during the trial, the trial judge repeatedly berated Petitioner's counsel." "Such thrashings," petitioner asserts, "were unwarranted." We consider the alleged manifestations of bias *seriatim*.

¶ 111 First, petitioner claims that the trial judge raised unjustified concern over the fact that petitioner and his counsel were friends before, and remained so during, counsel's representation of petitioner. Petitioner complains that, in one instance, the court "scolded *** counsel for driving with Petitioner to court." Petitioner references the following exchange that occurred when his counsel, in the midst of his direct examination of petitioner, asked that the proceedings break for the day:

> "THE COURT [to petitioner]: So long as you understand, sir, you cannot speak with your attorney at all.
>
> Do you understand that, Mr. Thollander [petitioner's counsel]?
>
> MR. THOLLANDER: Yes, your Honor.
>
> THE COURT: Now, I know, in the past, you are friends with the—with the individual on the stand. I am going to ask you, as a lawyer, as a friend, everything, you may not speak with him.
>
> Do you understand that?
>
> MR. THOLLANDER: Yes, your Honor. About this case.
>
> THE COURT: Did you ride together?
>
> MR. THOLLANDER: We did.

THE COURT: Yeah. That's not a good plan, counsel. It's really blurry. You just are not supposed to be doing this. You make yourself into a potential witness.

So yeah, it's easy to say don't do it. But there is no way to protect the integrity of the process when you are sitting next to him in the car, riding home.

So, I am just going to caution you and tell you that it's absolutely not permitted that you speak about the case, about the children, about Mrs. Tamburo, because these are all elements of the case. So, it looks like you are going to have a half-an-hour conversation about the weather and the White Sox and the Cubs. Okay? That's it.

Now, that's really not a good idea, Mr. Thollander, to do this. So, I will caution you. You are an officer of the court. So, thank you."

¶ 112 Erroneous rulings are not themselves evidence of bias (*Eychaner*, 202 Ill. 2d at 280), but here we cannot see even error. In criminal prosecutions, constitutional guarantees curtail the ability of a trial court to limit communications between the defendant and his counsel. *Stocker Hinge Manufacturing Co. v. Darnel Industries, Inc.*, 61 Ill. App. 3d 636, 647 (1978). However, "the right of a party to counsel in a civil case is quite divergent from the right of defendant in a criminal prosecution." *Id.* "There may possibly be circumstances in civil cases in which extreme orders by a trial court regarding communication between lawyer and client would result in prejudicial error." *Id.* In *Stocker Hinge*, a civil case, the appellate court found no prejudice from the trial court's order disallowing counsel to speak with his client about the case during the several days that the client was on the stand. *Id.* at 647-48. In *Commonwealth Edison Co. v. Danekas*, 104 Ill. App. 3d 907, 914 (1982), another civil case, the reviewing court found no prejudice from trial court's prohibiting counsel to speak with his client over the lunch hour about

the client's morning testimony. Petitioner does not claim any prejudice stemming from the trial judge's order restricting his communication with counsel.

¶ 113 Moreover, the context of the trial judge's admonition dispels any appearance that the trial judge was motivated by personal animus rather than legitimate concern over the integrity of the proceedings. Respondent had filed a motion to disqualify petitioner's counsel because his close friendship with petitioner and interaction with his family made him a potential witness, particularly to petitioner's remarks to the children about respondent. The trial judge denied the motion to disqualify with the proviso that counsel have no contact with the children until further order of court. Evidently, the judge had continuing concerns that petitioner's counsel would be called as a witness in the case. The judge's decision to restrict counsel's communication with petitioner during a break in his testimony was a defensible preventive measure. While petitioner's counsel obviously did not appreciate the judge's on-record chastisement, we look past issues of tact to determine whether the court's conduct betrayed deep-seated antagonism that would prevent a fair trial. See *Eychaner*, 202 Ill. 2d at 281. We find no such evidence in the judge's conduct.

¶ 114 Petitioner claims the judge's personal bias was also shown by her handling of counsel's attempt to elicit from petitioner his own opinion on the value of ConexNet. When respondent objected to petitioner's valuation testimony because it was not previously disclosed as required by Supreme Court Rule 213 (eff. Jan. 1, 2007), the trial judge agreed with respondent's position. Petitioner responded that his opinion was disclosed in his deposition testimony and in his answers to interrogatories. After some discussion, this exchange ensued:

> "MR. THOLLANDER: I believe [petitioner's] disclosures properly lay the foundation for him to offer an opinion as to the value of ConexNet.

THE COURT: And again, I'll ask this time again, can you give me another example somewhere where he gave his opinion and even named the company that he had an opinion of that company in any disclosure that you made pursuant to Supreme Court Rule?

MR. THOLLANDNER: Only in his deposition.

THE COURT: Okay, which is not pursuant to Supreme Court Rule, right?

MR. THOLLANDER: I understand that.

THE COURT: So my question is, again, can you point to any time that you ever followed the rule and gave an opinion of an opinion witness pursuant to Supreme Court Rule? If you didn't, say you didn't, but let's not direct the Court to a document for me to look at when it doesn't even name your client's company.

MR. THOLLANDER: Well, your Honor—

THE COURT: I'll tell you what. Why don't you read the Supreme Court Rules tonight, and we'll start up tomorrow morning, and maybe you will be able to figure something out by then. We're in recess."

¶ 115 Petitioner complains of being "berated" by the judge for suggesting that his valuation opinion was admissible, and then being "sarcastically direct[ed]" to the Supreme Court Rules for instruction on disclosure requirements. Petitioner suggests that the judge's "comments and accusation tainted her opinion and consideration of the facts."

¶ 116 Inexplicably, petitioner fails to acknowledge what transpired the following morning when proceedings reconvened. The judge immediately announced that she had reconsidered the matter and now concluded that petitioner's valuation testimony, as a lay opinion admissible under Rule 701 of the Illinois Rules of Evidence (eff. Jan. 1, 2011), did not require prior disclosure.

Apparently, the personal antagonism of which petitioner accuses the trial judge did not prevent her from admitting she was mistaken. Accordingly, we find no evidence of bias in this instance.

¶ 117 Next, petitioner simply points out that the trial judge admitted into evidence a list compiled by respondent of all firearms owned by petitioner. Petitioner notes that the judge mentioned in her letter opinion that petitioner is an avid collector and owner of 23 firearms. Petitioner adds nothing more to this point, as if it were self-evident that the court's decision betrayed personal animus. We do not find that it does.

¶ 118 Petitioner also points to his exchange with the trial court over his attempt to impeach respondent with her answers to interrogatories. Respondent testified on direct examination that petitioner deposited less of his paycheck into the family bank account since he filed for divorce, and that this forced her to sell jewelry in order to meet expenses. On cross examination, petitioner asked respondent whether she had amended her answers to interrogatories to mention that sale, as her original responses referenced sales of some items but not jewelry. At this point, the trial judge interjected to ask petitioner whether he had inquired about the sale of the jewelry either in supplemental interrogatories or at respondent's deposition. Petitioner replied that he had made no such inquiry at the deposition, but believed that respondent was affirmatively obligated under Supreme Court Rule 213 (eff. Jan. 1, 2007) to supplement her answers to interrogatories if she sold further property. The trial judge disagreed and found that petitioner's inquiry did not constitute impeachment.

¶ 119 Petitioner contends that the judge showed bias by disregarding Rule 213, "abruptly" ruling against petitioner, and "stifling" any attempted impeachment of respondent's claim to have sold jewelry. Besides having received an unfavorable ruling, which in itself does not show bias (*Eychaner*, 202 Ill. 2d at 281), petitioner again objects to the judge's tact and tone. Our

concern, however, is whether the judge showed a deep-seated antagonism (see *Eychaner*, 202 Ill. 2d at 281), and we do not perceive it here.

¶ 120 Last, petitioner cites the judge's handling of respondent's objection when petitioner asked if she was aware of the "side effects that could occur with respect to [the] two drugs" W.T. was taking. Respondent made an unspecified objection, and this exchange followed:

> "THE COURT: Sustained. That calls for speculation. If she knows what they might be to some other population, yeah.
>
> MR. THOLLANDER: With respect to [W.T.], though.
>
> THE COURT: They are all written by lawyers. Let me tell you, there's a lot of side effects that are a potential everywhere. So if—I clearly think it's a wonderful question and I want to know what she has observed with regard to her children as a result of taking the medications. That's important for me to know. But in a general population whether she knows whether nursing mothers who are lactating should not take it, it's really irrelevant to me, okay?
>
> MR. THOLLANDER: Fair enough, your Honor."

Petitioner claims that, "[r]ather than listen to the testimony and determine the weight and relevance of same, the trial court became an advocate for Respondent." We reject this characterization. The judge was not peremptory but entertained what argument petitioner offered, which, as it happened, was not very much. Petitioner complains that the judge would not listen to "the testimony," but fails to explain why the judge needed to listen to respondent's answer before deciding its admissibility.

¶ 121 In conclusion, what petitioner offers as evidence of bias is, ultimately, a handful of unfavorable rulings delivered with a tone that he found objectionable. These are snapshots of a

five-day trial in which respondent, too, lost on certain rulings. Considered in context, neither individually nor aggregately do these instances portray a hostile environment in which he could not receive a fair trial.

¶ 122 B. Custody

¶ 123 We turn to petitioner's challenge to the trial court's custody determination. As noted (*supra* ¶ 14), petitioner's stance on custody fluctuated before trial and even in the midst of trial. In closing argument, petitioner departed from his amended dissolution petition (in which he sought sole residential and legal custody), and asked for "joint custody of the children and 50 percent of the visitation."

¶ 124 The trial court awarded respondent sole custody of the children. First, agreeing with Dr. Bongiorno, the court found joint custody not viable because the parties "ha[d] not shown any ability to co-parent their children." The parties' most significant disagreement was over "each party's effort, or lack of effort, to deal with the children's psychological and physical needs." The parties also "cannot agree on simple decisions, such as bedtimes." The court found respondent "clearly more structured in her attempts to keep two children who have issues with learning focused on their studies, while dealing with a rebellious 17 year old daughter." Disagreement between the parties also extended to the children's extracurricular activities, specifically whether M.T. should use firearms and engage in the self-defense systems MBC and CBC.

¶ 125 Next, the court found sole custody with petitioner inappropriate. The court applied the best-interest factors under section 602(a) of the Act (750 ILCS 5/602(a) (West 2012)). Of "greatest concern" to the court was petitioner's apparent lack of willingness and/or ability to facilitate and encourage a close and continuing relationship between respondent and the children.

See 750 ILCS 5/602(a)(8) (West 2012). The court found that petitioner "leaves the responsibility for the children up to [respondent], only to publically disagree with her and denigrate her to the children later, while offering no positive suggestions of his own." The court also commented that "[s]ometimes it appears *** that [petitioner] does not understand the concept of parents acting as a unified force." The court noted specifically that petitioner "recently purchased a shirt for [M.T.] which denigrates lawyers and he has told the children they need not follow [respondent's] instructions on bedtime or other responsibilities." The court also found doubtful petitioner's claim that, should he receive residential custody, he could adjust his work schedule to effectuate his parenting. Pointing to petitioner's average of 287 billable hours per month from 2011 through the first four months of 2014, the court noted that petitioner failed to show any such flexibility in the past for the sake of parenting. After providing further reasons, the trial court awarded respondent sole custody.

¶ 126 Petitioner attacks the award of sole custody. Consistent with his last stance in the trial court, petitioner seeks an award of joint custody, not sole custody for himself. Therefore, we determine only whether joint custody was a feasible arrangement under the facts of this case.

¶ 127 Section 602(a) of the Act (750 ILCS 5/602(a) (West 2012)) states that "[t]he court shall determine custody in accordance with the best interest of the child," and provides a list of "relevant factors." Section 602.1(b) of the Act (750 ILCS 5/602.1(b) (West 2012)) provides that "[u]pon the application of either or both parents, or upon its own motion, the court shall consider an award of joint custody." The criteria for an award of joint custody are as follows:

> "(c) The court may enter an order of joint custody if it determines that joint custody would be in the best interests of the child, taking into account the following:

> (1) the ability of the parents to cooperate effectively and consistently in matters that directly affect the joint parenting of the child. 'Ability of the parents to cooperate' means the parents' capacity to substantially comply with a Joint Parenting Order. The court shall not consider the inability of the parents to cooperate effectively and consistently in matters that do not directly affect the joint parenting of the child;
>
> (2) The residential circumstances of each parent; and
>
> (3) all other factors which may be relevant to the best interest of the child." 750 ILCS 5/602.1(b) (West 2012).

The trial court's decision on custody will be disturbed only if it is against the manifest weight of the evidence. *In re Marriage of Iqbal*, 2014 IL App (2d) 131306, ¶ 55

¶ 128 Petitioner cites myriad points on which he takes issue with the trial court's decision. First, he claims that, in the following ways, the trial court criticized his parenting while overlooking respondent's deficiencies: (1) the court commented that petitioner failed to fulfill his commitment to administer in-home Breathalyzer tests to J.T., while the court overlooked that respondent failed to take action or inform petitioner when she suspected J.T. was under the influence of alcohol; (2) the court remarked that petitioner resisted Dr. Khan's recommendation, in light of W.T.'s expressed suicidal ideation, to remove all guns and knives from the home, while the court overlooked that respondent has returned the kitchen knives she once removed, and that she failed to inform petitioner of W.T.'s recent note expressing further suicidal thoughts; and (3) the court commented on petitioner's disengagement from the children as shown by his long work hours and failure to attend P-T conferences, while the court failed to acknowledge that respondent admitted that she has failed to share important information with petitioner, such as

J.T.'s use of alcohol, the children's school meetings, and W.T.'s recent note contemplating suicide.

¶ 129 Petitioner also challenges the trial court's finding that he undermines respondent's parenting. Petitioner claims that, in making this finding, the court erroneously relied on Dr. Bongiorno's assertion in her report that J.T. and W.T. each claimed that petitioner spoke negatively to them about respondent in her absence. Petitioner claims that the court "embraced pure speculation," as Dr. Bongiorno conceded at trial that she did not ask either J.T. or W.T. what specifically petitioner said about respondent.

¶ 130 Petitioner insists that respondent's conduct was "far more damning" and detrimental to the family than his conduct. He vigorously criticizes respondent's parenting style, asserting that

> "[her] involvement with the children is confined, rigid and limited, ostensibly defined by taking the children to doctor visits, therapy sessions, implementing a rigid homework routine for 2 of the children that has remained the same for years; and setting rigid rules and dishing out 'consequences' which defines her relationship with the children."

¶ 131 Certainly, the trial court was more critical of petitioner than respondent. However, petitioner's defense of himself and related attack on respondent do not advance the case he must make for joint custody, namely that cooperative parenting is possible. Rather, petitioner paints a consistently negative picture not only of respondent's parenting, but also, more importantly, of his rapport with her. Joint custody requires "the ability of the parents to cooperate effectively and consistently in matters that directly affect the joint parenting of the child" (750 ILCS 5/602.1(c)(1) (West 2012)). While the trial court often singled out petitioner, her ultimate finding to support the denial of joint custody was that "Mike *and* Nina have not shown any ability to co-parent their children" (emphasis added). Petitioner simply does not challenge this

concluding finding, nor the subsidiary finding that the parties cannot agree on "simple decisions, such as bedtimes," nor on "extracurricular activities" for the children (particularly, M.T.), nor (most importantly in the court's mind) on how "to deal with the children's psychological and physical needs." Dr. Bongiorno likewise found that the parties had "serious differences regarding [the children's] health care and extracurricular activities." Petitioner does not challenge this finding, either.

¶ 132 Rather than apply the criteria of section 602.1(b), petitioner's campaign on appeal is one of self-vindication. He is more concerned about who bears the blame for the rift between him and respondent than with whether the rift precludes the possibility of joint custody. There is no mistaking from the record that the parties are so deeply divided as to preclude cooperative parenting. The evidence shows division between the parties on specific parenting issues, particularly regarding M.T. and W.T. They disagree over petitioner's involving M.T. in recreational firearms use and knife-based self-defense, and over whether M.T. should receive medication for his ADHD. They are divided on whether W.T. should continue to be medicated and whether petitioner's retention of guns and knives in the house places W.T. at risk given her suicidal ideation. E-mail correspondence in the record shows that the disagreements have at times risen to bitter clashes.

¶ 133 Ironically, the parties are in agreement on the very subject that, ultimately, precludes the possibility of joint custody. They both recognize that their philosophies of parenting differ profoundly. They agree that petitioner emphasizes autonomy where respondent emphasizes "control" (petitioner's term) or "structure" (respondent's term). "Joint custody requires an unusual level of cooperation and communication from both parties." *In re Marriage of Swanson*, 275 Ill. App. 3d 519, 524 (1995). In her report rejecting petitioner's proposal for joint custody,

Dr. Bongiorno found that it was "unlikely that the divorce will improve [the parties'] ability to resolve parenting disagreements." Petitioner does not oppose this finding.

¶ 134 Petitioner cites *In re Marriage of Hacker*, 239 Ill. App. 3d 658, 661 (1992), for its observation that the parties were capable of cooperating, and thus suited for joint custody, despite their criticisms of each other's parenting. Petitioner, however, does not apply this concept to the case at hand. Here, the parties not only criticize each other's parenting, but admit to having markedly different approaches to parenting. These differences, as we have recounted, have resulted in multiple clashes throughout the marriage.

¶ 135 Finally, petitioner claims that the children's custodial preferences were not sufficiently explored by Dr. Bongiorno or the trial court. The children's preferences, however, cannot prevail over the parties' inability to parent jointly.

¶ 136 We conclude that the trial court did not err in rejecting petitioner's request for joint custody of the children. Again, as petitioner proposed no other custodial arrangement at trial, our analysis ends here.

¶ 137 C. Visitation

¶ 138 Petitioner contends that the trial court awarded him inadequate visitation. "A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health." 750 ILCS 5/607(a) (West 2012). A visitation order will not be disturbed on appeal unless the trial court abused its discretion. *In re K.E.B.*, 2014 IL App (2d) 131332, ¶ 31. An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *Id.*

¶ 139 Here, the trial court ordered visitation during the school year on the following terms: (1) dinner with all three children every Tuesday from 5 p.m. to 8 p.m.; (2) dinner with one child on a rotating basis every Thursday from 5 p.m. to 8 p.m.; and (3) weekend visitation every other weekend from 5 p.m. through the start of school on Monday morning, except that the visitation will be extended where there is no school Friday or Monday. For summers, the court awarded petitioner the foregoing visitation plus the following; (1) the Tuesday dinner visitation would be extended overnight to 9 a.m. Wednesday morning; and (2) two uninterrupted weeks.

¶ 140 Petitioner claims that this award "disregard[s] [his] relationship with his children, his daily involvement and close and loving relationship." Petitioner's contention, however, is based on a misapprehension of the visitation he received. Converting his school-year visitation to hours per month, he calculates that he was given 20% visitation for that period. This is accurate. For his summer visitation, petitioner miscalculates. He claims he was given the equivalent of 18 days, or 20%. Petitioner includes in his computation, however, only his extended Tuesday visitation and his two weeks, inexplicably excluding the Thursday and weekend visitation, which the court clearly meant to continue during the summer and which constitute approximately another 20 days. All periods considered, then, petitioner received substantially approximately 41% visitation in the summer. Notably, petitioner's computation also excludes the holidays that the court awarded him for the summer and school year.

¶ 141 We find no abuse of discretion in the visitation award. The award appropriately balanced the children's need for a stable residence with petitioner's vital interest in maintaining regular and meaningful contact with them.

¶ 142 D. Child Support

¶ 143 Petitioner challenges the trial court's computation of his income for purposes of setting child support. We will not disturb an award of child support absent an abuse of discretion. *In re Marriage of Smith*, 2012 IL App (2d) 110522, ¶ 60.

¶ 144 In calculating child support, the court considered the following sources of petitioner's income: (1) wages from ConexNet; (2) profits from ConexNet; and (3) profit from ConexNet's rental of the office condominium owned by petitioner and Imburgia. For each source, the court took the average of the four full years prior to trial, 2010-2013. The sum of the averages was $252,740. Based on this figure, the court required petitioner to pay $4,874 in monthly child support.

¶ 145 We address first petitioner's wages from ConexNet. The wages were $214,999.92 (2010), $224,999.92 (2011), $226,999.92 (2012), and $191,749.98 (2013). The four-year average was $214,687.

¶ 146 Petitioner claims that, by employing an average, the trial court unfairly inflated his wages. We disagree. "In situations where income fluctuates from year to year, income averaging is an approved method to apply in determining current net income for the purpose of establishing child support." *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1025 (2003). The trial court apparently believed that, given the $10,000 increase in wages from 2010 to 2011, and the $15,000 *decrease* from 2012 to 2013, it was appropriate to average the wages. The only year's wages that petitioner claims were out of the ordinary were those for 2013, but petitioner's claim is that they were uncharacteristically *low*, not uncharacteristically *high*. Their inclusion in the averaging only benefited petitioner.

¶ 147 The more fundamental flaw in petitioner's challenge to the use of an average is that he fails to propose a viable alternative to that methodology. Petitioner contends, first, that the trial

court should have based its wage figure strictly on petitioner's 2014 wages. Petitioner introduced evidence that his wages as of May 2014 were $88,333.33. He claims that this figure "will reflect annual income of $211,999.99." He cites nothing in the record to substantiate this projection, which lands between his wages for 2012 ($226,999.92) and 2013 ($191,749.98). Therefore, we cannot accept petitioner's suggested methodology as more reliable than the computation done by the trial court.

¶ 148 Petitioner alternatively suggests that, if averaging was appropriate, the trial court should have included petitioner's 2009 and 2014 wages. As noted, petitioner leaves his 2014 wages a matter of conjecture. Moreover, to add only petitioner's 2009 wages of $218,678 would result in a five-year average of $215,485—a higher figure than the four-year average used by the trial court. Petitioner surely would not want this result.

¶ 149 Next, we turn to the court's calculation of petitioner's business and rental profits for 2010-13. Petitioner argues that the averaging of amounts for 2010-13 was based on the unfounded assumption that the trend would continue into 2014 and beyond. Petitioner asserts that "projecting a profit for 2014 is speculative, amounting to judicial fortunetelling," because he "will not realize, if at all, any profit from ConexNet until after the conclusion of the 2014 calendar year." "There is no certainty," petitioner claims, "that ConexNet will have a profit and certainly it will not be realized until the financial accounts for 2014 are concluded and tax returns prepared." Likewise, petitioner contends, his rental profit should be "only based upon actual receipt and not averaged into the future." He notes that the business condominium was listed for sale at the time of trial.

¶ 150 Petitioner cites one authority, *In re Marriage of Tietz*, 238 Ill. App. 3d 965 (1992), to show the error of the court's methodology with respect to profits. In *Tietz*, the court held that, in

setting a value for a business, courts must distinguish between accounts receivable and "future earned fees" or contingent fees:

> "Clearly, future earned fees, like contingent fees, are not marital assets because their value is too speculative and because they are fees earned in the future. Accounts receivable, however, are distinguishable because they are assets already earned with a known value but have not yet been collected." *Id.* at 977.

¶ 151 *Tietz* does not serve petitioner here, for under its approach all profits earned by him could be considered in setting his income. The income reported on petitioner's tax returns for 2010 through 2013, which the court used to calculate support, was earned *and* received by petitioner. At bottom, petitioner appears to have an objection in principle to the presumption in child-support calculations that past and present income reflects future income. He cites no authority against the practice. Precisely because income patterns can change, a payor spouse is permitted to move for modification of child support pursuant to section 510(a) of the Act (750 ILCS 5/510(a) (West 2012)). If one or more of petitioner's income sources diminishes or terminates, such as his rental income, he has recourse in section 510(a).

¶ 152 E. Valuation of ConexNet

¶ 153 Next, petitioner challenges the trial court's valuation of petitioner's 50% ownership of ConexNet.

¶ 154 Before marital assets may be distributed, their value must be established. *In re Marriage of Grunsten*, 304 Ill. App. 3d 12, 16-17 (1999). As one court has explained:

> "Placing a fair market value on the professional corporation is an art, not a science, and the court must rely on expert witnesses to assist it in this difficult task. There is no exact formula that can be applied, so the trial court must rely on experts who

> may differ significantly in both methodology and valuation. The trial court must consider the relevant evidence before it; determine the credibility of the experts, the reasonableness of their testimony, the weight given to each of them, and their expertise in the particular area of valuation; and then determine fair market value." *In re Marriage of Gunn*, 233 Ill. App. 3d 165, 183 (1992).

¶ 155 Thus, "[t]estimony concerning the valuation of assets in an action for dissolution of marriage are matters to be resolved by the trier of fact, and as long as the court's valuation is within the range testified to by the expert witnesses, it ordinarily will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Grunsten*, 304 Ill. App. 3d at 17.

¶ 156 As petitioner notes, "the weight of an expert's testimony must be measured by the reasons given therefor and the facts marshaled in support thereof, and an expert's opinion is entitled to little weight where a factual basis is lacking" (*Temesvary v. Houdek*, 301 Ill. App. 3d 560, 568 (1998)). "[A]n expert witness's opinion cannot be based upon mere conjecture and guess." *In re Marriage of Jawad & Whalen*, 326 Ill. App. 3d 141, 152 (2001). Brend's opinion had to meet the foregoing requisites even though petitioner did not call his own expert to challenge Brend. *In re Marriage of Petraitis*, 263 Ill. App. 3d 1022, 1032 (1993).

¶ 157 We are careful to note the scope of petitioner's challenge to Brend's analysis. As in the trial court, petitioner questions the factual premises in Brend's "capitalization of earnings" method as applied to ConexNet but does not attack the validity of the method itself. The thrust of petitioner's challenge is that Brend overstated the value of petitioner's share of ConexNet by, first, unduly diminishing expenses and, second, by attributing inadequate personal goodwill to petitioner.

¶ 158 First, petitioner attacks Brend's finding that historic compensation at ConexNet for its two officers was beyond reasonable levels and that $250,000 represented a more appropriate amount of total officer compensation. Petitioner notes that Brend's salary figure presupposed two officers who each worked 40 to 50 hours week. According to petitioner, Brend merely assumed this number of hours, as he admitted that the salary databases he consulted did not correlate salaries with hours. Petitioner, however, overlooks that Brend testified that salary databases were not his only resource but that he also relied on his prior experience in performing valuations. This allowed Brend to "pick up trends and ideas of what people are getting paid in various areas and for various skills."

¶ 159 Petitioner also asserts that his billing history at ConexNet, where he averaged 287 billable hours per month, demonstrates that the IT officers in Brend's model would have been unable to complete the tasks at ConexNet while working only 40 to 50 hours per week. Petitioner finds it significant that Brend admitted that he prepared his valuation without knowing petitioner's billing history. Brend was, however, given an opportunity at trial to address the billing history, and he expressed skepticism that petitioner's billable hours accurately reflected his work, as they would entail him working "around the clock." Petitioner responded to Brend's testimony by affirming that he was honest in his billing. This was a conflict for the trial court to resolve as arbiter of witness credibility and the weight assigned to the evidence. See *Best v. Best*, 223 Ill. 2d 342, 350 (2006) ("A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn."). The court evidently credited Brend over petitioner, and we cannot say it was error.

¶ 160 Second, petitioner criticizes Brend's selection of 10% as the goodwill discount for petitioner. Notably, while both petitioner and Imburgia initially denied rather firmly that

ConexNet could possibly continue to serve petitioner's clients once he left, they both eventually agreed that client retention was possible though the transition period would be lengthy. Consistent with this, petitioner does deny on appeal that ConexNet could retain his clients, but rather takes issue with Brend's view of the transition time. He claims that the "transition period would take years ***, not days as contemplated by Brend." (To clarify, Brend testified that, if and when petitioner left ConexNet, the company could require up to a month to adjust.) Petitioner proposes a discount of 29.5%, which he apparently derives from the percentage that his billing comprises of ConexNet's yearly revenue. We cannot say, however, that Brend's figure for a goodwill discount was without a reasonable basis. He cited reasons, particularly Imburgia's conceded strength as a programmer, for believing that ConexNet could not only retain petitioner's clients but return to normal efficiency in a month at most. The trial court was, therefore, within its discretion in accepting Brend's opinion on this point.

¶ 161 Finally, petitioner claims it would have been "more consistent and evenhanded" to use his actual compensation from ConexNet to calculate both the value of ConexNet and his child support obligations. Petitioner does not elaborate on why he believes these two inquiries are similar enough to use that same premise. As noted, petitioner has never challenged Brend's choice of methodology, which requires him to adjust expenses to reasonable levels. Petitioner's objection, rather, is that his ConexNet compensation is reasonable. This was a conflict that the trial court appropriately resolved.

¶ 162 F. Maintenance

¶ 163 Petitioner challenges the maintenance award as excessive given respondent's financial needs and employment potential.

¶ 164 Section 504(a) of the Act (750 ILCS 5/504(a) (West 2012)) states that "the court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, in gross or for fixed or indefinite periods of time, and the maintenance may be paid from the income or property of the other spouse." In awarding maintenance, the trial court should consider a number of factors, including, *inter alia*, (1) the income and property, marital or non-martial, awarded to each party; (2) the needs of each party; (3) each party's earning capacity; (3) any impairments to the earning capacity of the party seeking maintenance "due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage"; (4) "the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment"; (5) the standard of living enjoyed during the marriage; and (6) the duration of the marriage. 750 ILCS 5/504(a) (West 2012). The court may also consider "any other factor that [it] expressly finds to be just and equitable." 750 ILCS 5/504(a)(12) (West 2012). No single factor is determinative. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 651 (2008). The propriety, amount, and duration of a maintenance award are within the discretion of the trial court, and we will not reverse unless we find an abuse of that discretion. *In re Marriage of Bratcher*, 383 Ill. App. 3d 388, 390 (2008).

¶ 165 As it is relevant here, we note the property distribution ordered by the court. The marital assets included (1) $315,000 in proceeds from the sale of the marital residence; (2) $265,000 as the value of petitioner's 50% interest in ConexNet; (3) proceeds of $20,520 from the sale of the parties' timeshare; (3) two life insurance policies with respective cash values of $86,000 and $72,187; and (4) a money market with a balance of $831. The court awarded respondent 50.5%,

or $383,538 of the marital assets. Also, the court divided equally the parties' roughly $345,000 in total retirement assets.

¶ 166 The court then reviewed respondent's request for maintenance. The court awarded her monthly temporary maintenance of $3,000, which was reviewable 48 months after entry of the dissolution judgment. The court found as follows:

> "The property awarded to [respondent] will have to be used to acquire a new place to live with the children and is not so substantial as to provide significant income for her to live on. The present case is one for rehabilitative maintenance for [respondent]. She is 51 years old and has not been employed as an attorney for any significant period of time since her children were young. She has sought employment but has been unable to find something that would provide her with a steady income and ability to care for two younger children. She placed her resume into evidence *** and the Court finds her efforts to find employment to be sincere. She worked for two law firms for a few weeks at a time, but nothing significant. Since she is a licensed attorney, the case is not one for permanent maintenance and shall be subject to modification in the event of a change in the circumstances of the parties. [Petitioner] has the ability to pay maintenance of $3,000 per month which results in him having approximately 52% of the combined incomes of the parties and [respondent] will have 48%."

¶ 167 Petitioner claims that respondent, a licensed attorney and former law firm partner, is fully qualified to re-enter the legal field but failed to make a good-faith effort at finding work. "It is clear there is an affirmative obligation on a former spouse *receiving* rehabilitative maintenance to find appropriate employment." (Emphasis added.) *In re Marriage of Courtright*, 229 Ill. App. 3d 1089, 1091 (1992). When respondent began her job search in 2009, she was not receiving

maintenance, and indeed this litigation had not even commenced. She received no temporary maintenance during the pendency of this action. She remained in the marital home and, apparently, continued to perform her duties as homemaker. We express no opinion on whether she was obligated to seek work under these circumstances. Assuming *arguendo* that respondent was so obligated, which she does not contest, we agree with the trial court that she made a good-faith effort to find employment.

¶ 168 Petitioner, tabulating the job-search materials respondent introduced at trial, finds it significant that, "[f]or a period of 18 months, Respondent documented remitting a total of 53 resumes to potential employers, of which a vast majority occurred in July 2013, February 2014, [and] March and April 2014." Petitioner apparently considers 53 resumes a low number for the time span. Respondent, however, testified that her materials did not reflect all the positions for which she applied; specifically she did not include all on-line applications.

¶ 169 Petitioner also claims that respondent cannot claim good-faith efforts when she "personally sabotaged" her job opportunity with the Keller firm by failing to attend the mandatory job training. Respondent testified that this failure resulted from an honest misunderstanding. The trial court evidently believed her, finding her job-search efforts to be "sincere." We are not prepared to overturn that credibility judgment. The court further commented that respondent "is 51 years old and has not been employed as an attorney for any significant period of time." The court apparently had in view here the years that respondent spent tending to domestic duties. A spouse's age and time spent out of the workforce are relevant factors in determining the need for and amount of maintenance. See 750 ILCS 5/504(a)(4) (West 2012)); *In re Marriage of Wade*, 158 Ill. App. 3d 255, 269 (1987).

¶ 170 Petitioner further contends that the property awarded respondent dispensed with the need for maintenance. He notes that, with proceeds from the marital residence and timeshare alone, respondent received cash in excess of $300,000. This figure means little in a vacuum, which is precisely where petitioner leaves it because he fails to apply the governing standard, namely that "[a]n award of maintenance is generally determined by the needs of the spouse seeking maintenance and the ability of the other spouse to pay, *in relation to the standard of living to which they were accustomed during marriage*." (Emphasis added.) *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 209 (2011). Petitioner does not discuss the parties' standard of living during the marriage. Moreover, though he observes that he was awarded a fraction of the liquid assets awarded to respondent, he does not tie this to his ability to pay the maintenance award. Finally, when petitioner claims that the trial court awarded respondent 68% of his present income, he includes only his wages, not his rental income.

¶ 171 For the foregoing reasons, we find no error in the award of temporary maintenance, which was reviewable in 48 months.

¶ 172 G. Petitioner's Parental Autonomy

¶ 173 Petitioner attacks the trial court's requirement that "[n]one of the children shall participate in any activity which uses firearms or other weapons of any kind until that child has attained the age of 16." He claims this prohibition violates "the fundamental constitutional right of parents to make decisions regarding the upbringing of their children" (*Lulay v. Lulay*, 193 Ill. 2d 455,473 (2000)). Only with respect to M.T. does petitioner claim harm from the firearms prohibition. Indeed, M.T. is the only child who the record shows has engaged in, or expressed interest in, firearms activity.

¶ 174 So restricted to M.T., petitioner's contention fails. The reason is that petitioner stipulated that M.T. "may not train with edged weapons until he commences his sophomore year of high school in August of 2016," that is, until he is 16. There is no functional difference between the stipulated prohibition on M.T.'s use of edged weapons and the non-stipulated prohibition on his use of firearms. Both were motivated, evidently, by concerns about M.T.'s current maturity level. In this respect, we note that petitioner does not claim any particular legal protection for firearms possession or usage, such as the constitutional right to bear arms (see U.S. Const., amend. II). Rather, he relies exclusively on the constitutional right of parents to make decisions for their children.

¶ 175 H. Contribution to Attorney Fees

¶ 176 While the trial court had the case under advisement, respondent filed a petition under sections 503(j) and 508(a) of the Act (750 ILCS 5/503(j), 508(a) (West 2012)) for contribution to her costs and attorney fees. Following a hearing on September 23, 2014, the trial court granted the petition and ordered petitioner to contribute $10,000 toward respondent's costs and attorney fees.

¶ 177 Respondent claims that, as of the writing of her brief, petitioner had not made the transcript of the September 23 hearing part of the appellate record. Respondent is correct that the transcript is not part of the record for case number 2-14-0864; it is, however, part of the record for case number 2-14-1034. We proceed, therefore, to the merits of the issue.

¶ 178 Section 508(a) of the Act provides that, "[a]t the conclusion of any pre-judgment dissolution proceeding under this subsection, contribution to attorney's fees and costs may be awarded from the opposing party in accordance with subsection (j) of Section 503 and in any other proceeding under this subsection." 750 ILCS 5/508(a) (West 2012). Section 503(j)(3) of

the Act states that "[a]ny award of contribution to one party from the other party shall be based on the criteria for division of marital property under this Section 503 [750 ILCS 5/503 (West 2012)] and, if maintenance has been awarded, on the criteria for an award of maintenance under Section 504 [750 ILCS 5/504 (West 2012)]." 750 ILCS 5/503(j)(3) (West 2012). Here, where property has been allocated and maintenance awarded, the criteria for judging the propriety of a contribution award includes the property awarded to each party, their incomes and present and future earning capacities, their respective needs, and any other factor the court finds to be just and equitable. 750 ILCS 5/503(a), 504(d) (West 2012). One consideration that falls within the catch-all "just and equitable" factor is a party's use of tactics that unnecessarily increase the cost of litigation. *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 117. "[A] trial court's decision to award or deny fees will be reversed only if the trial court abused its discretion." *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005).

¶ 179 In her petition for contribution, respondent alleged that she had incurred a total of $82,715.79 in attorney fees and costs from January 2013 through August 2014, of which there remained a balance of $32,315.79. She further alleged that she incurred $18,295 in connection with Brend's valuation and still owed him $10,795. Petitioner did not and does not contest the reasonableness of these amounts. Rather, he attacks the fee award on two other grounds.

¶ 180 First, he takes issue with the trial court's finding that contribution was appropriate because his shifts in his position on custody (*supra* ¶ 14) were unreasonable and caused respondent to incur unnecessary fees. (The court also cited petitioner's "sloppy" presentation of evidence on another matter at trial; petitioner does not challenge this finding, which the court did not emphasize as much as petitioner's positions on custody.) Asked at trial to explain his winding stance on custody, petitioner answered, "Some of that was an attempt to get

[respondent] to consider other compromises," because he perceived her as unwilling to reach a settlement. Asked, then, if his shifting positions were meant as a "bargaining chip," petitioner replied, "Not completely, but partly." Petitioner was unable, however, to describe what else motivated him to change his positions. He admitted that that he "may have" felt at one point that he should have custody of M.T. while respondent had custody of J.T. and W.T. (this was the arrangement that petitioner requested in his first motion to amend his dissolution petition, which he later withdrew). Notably, petitioner would change his position one final time at trial. In closing argument, he requested joint custody with 50/50 residential custody. This was instead of sole custody, the arrangement he had most recently requested, in his amended petition.

¶ 181 At the hearing on the contribution petition, the court explained why it found petitioner's various tacks on custody as unreasonable:

> "I *** looked back at the history of the case. And the reason that we proceeded to a custody trial—and I went back and I reviewed the fees that were incurred with regard to the claims for custody.
>
> As Mr. Thollander [petitioner's counsel] knows—and one of the things I said in my opinion was that he initially asked for joint 50/50 time. Then it was changed to: I want custody of all the kids. Then it was changed: I only want custody of the son, not the girls. Then it was: I only want custody of all the kids.
>
> And so there was necessity in the incurring of fees that was unreasonable, I believe, throughout this litigation. Some of the positions that were taken by [petitioner]—and I won't assume they were by Mr. Thollander as an officer of the Court—but by his client were not reasonable [*sic*] advancing at all the interest of getting

> the litigation resolved. So there were fees that were incurred that were clearly unnecessary, were not supported by the evidence at trial."

¶ 182 Petitioner challenges these findings, claiming that the evolution of his position on custody "was an attempt to find common ground and compromise with Respondent." If petitioner was interested in settlement, he could have offered these various custodial arrangements in negotiations rather than embody them in court filings, thereby obliging respondent to expend time and resources in responding to them. Notably, petitioner's trial testimony cast doubt on the sincerity of his mercurial positions on custody. He testified that he was not sure that he ever wanted to split the children between him and petitioner, which was the arrangement he requested in his aborted amendment to the dissolution petition.

¶ 183 Petitioner also maintains that respondent filed "not a single motion *** as result of Petitioner's efforts to reach a compromise." Even if true, this does not mean that respondent did not incur fees. In ordering contribution, the court said that it had reviewed respondent's fees associated with the custody issue; evidently, the court found increased fees due to petitioner's various stances. Petitioner does not establish where the court was mistaken in its interpretation of how much of respondent's fees were allocated to petitioner's vacillation on custody.

¶ 184 Petitioner's second challenge is that respondent failed to show that she lacks the ability to pay her own costs and fees and that petitioner has the ability to pay them. Petitioner cites no authority specifically for the notion that respondent must establish some manner of financial hardship before recouping fees that petitioner foisted on her through unreasonable litigation choices. Sections 503 and 508 subject fee petitions to a multi-factor test, but we acknowledge the following remarks by the supreme court that appear to establish an absolute financial precondition for a fee award:

> "Section 508 of the Dissolution Act allows for an award of attorney fees where one party lacks the financial resources and the other party has the ability to pay. [Citation.] The party seeking an award of attorney fees must establish her inability to pay and the other spouse's ability to do so. [Citation.] Financial inability exists where requiring payment of fees would strip that party of her means of support or undermine her financial stability. [Citation.]" *Schneider*, 214 Ill. 2d at 174.

¶ 185 This criterion was met here. Petitioner is half-owner of a successful and stable company with a reliable client base. From 2010 through 2013, his yearly average salary was $214,000 and his yearly average profits were $34,816. Despite his maintenance ($3,000 monthly) and child support ($4,874 monthly) obligations, petitioner has the ability to pay $10,000 of respondent's costs and fees. Respondent, for her part, has had no meaningful period of employment since 1999 when she left the workforce to care for her family. Despite a diligent search in recent years, she remains without work.

¶ 186 Petitioner claims that the amounts respondent was awarded in the dissolution judgment, including over $300,000 in cash, enable her to pay her own costs and fees. Respondent's single-sum and monthly awards are significant, but so is her need. As the trial court reasonably determined, the cash award was inadequate "to provide significant income for [respondent] to live on," and therefore maintenance was necessary. The trial court made no express finding that respondent was unable to pay all of her costs and fees, but the court was aware of respondent's financial status from the evidence adduced at trial, and we presume the court applied the *Schneider* "ability/inability" standard (see *Hobbs v. Lorenz*, 337 Ill. App. 3d 566, 569 (2003) (presumption that the trial court properly understood the law). The court evidently determined that respondent, who lacked her own means of support, would have no surplus from the

dissolution awards by which to cover all of her costs and fees. We cannot say that no reasonable person would take the court's view of respondent's financial state. Therefore, we uphold the award of costs and fees.

¶ 187 III. CONCLUSION

¶ 188 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 189 Affirmed.