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2015 IL App (3d) 130277-U

Order filed January 7, 2015
Modified upon denial of rehearing February 25, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
DARREN A. FREIHAGE,	)	Will County, Illinois.
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-13-0277
v.	)	Circuit No. 11-D-1453
	)	
MARY H. FREIHAGE,	)	Honorable
	)	Robert J. Baron,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's valuation of the marital business and determination of husband's net income were not against the manifest weight of the evidence. The trial court's denial of wife's petition for contribution of attorney fees is affirmed. Money received from various family trusts without expectation of repayment did not constitute marital debt and no portion of the funds distributed from the DAF Trust constitute husband's non-marital property. The matter is remanded for the trial court to re-examine Darren's income and recalculate child support and maintenance, to also increase the value of the marital estate consistent with this court's decision, and then distribute the marital estate appropriately.

¶ 2 Petitioner, Darren Freihage, filed a petition for dissolution of marriage after 23 years of marriage with respondent, Mary Freihage. Following a 12-day trial, the court entered a judgment of dissolution of marriage. On appeal, Mary challenges the trial court's valuation of the business established during the marriage and the court's treatment of distributions from certain trusts as marital debt rather than gifts or distributions to Darren. In addition, Mary claims the trial court committed a mathematical miscalculation when dividing the marital property and erroneously underestimated Darren's gross income for purposes of fixing both maintenance and child support. Further, Mary argues the trial court erred when it failed to order permanent maintenance, required the parties to split the child's uncovered expenses equally, and denied her request for contribution toward her attorney fees. We affirm in part, reverse in part, and remand with directions.

¶ 3 BACKGROUND

¶ 4 On July 25, 2011, after 23 years of marriage and the birth of three children, Darren and Mary became involved in dissolution proceedings when they were 45 years old.[1] Prior to trial, the parties reached an agreement concerning the value and distribution of certain marital assets. In addition, the parties reached an agreement with respect to the custody and visitation of their third and youngest child, Austin, who was a minor at the time of dissolution. However, the parties were unable to reach an agreement concerning the value of the most significant marital asset, the marital business, Darren A. Freihage, LLC (the LLC).

¶ 5 Consequently, beginning on October 2, 2012, the parties submitted evidence to the trial court concerning the valuation of the LLC, the division of marital property, and the future

[1] According to Mary's response to Darren's petition for dissolution, Mary filed a petition for dissolution of marriage in Cook County on July 22, 2011. Mary alleged the court entered an "Agreed Order" on August 4, 2011, transferring Mary's Cook County dissolution case to Will County and was subject to a "Motion to Consolidate."

support for both Mary and Austin. The court found grounds based on irreconcilable differences existed. The contested hearing before the trial court continued over a period of 12 non-consecutive days, until November 5, 2012.

¶ 6 The following facts were elicited during the course of the contested trial. The evidence established that the parties met in 1985. Prior to the marriage, both parties completed two years of college. In 1986, the parties withdrew from school and moved to Chicago, where Darren began working for his father, Alan Freihage, who owned McDonald's restaurants.

¶ 7 Darren and Mary were married on June 25, 1988, in Des Moines, Iowa. Mary was briefly employed as an aerobics instructor and also worked for Lord & Taylor, where she earned less than $5,000. Other than this employment, she did not work outside the home during the course of the marriage.

¶ 8 The couple's first child, Alixandra, was born December 25, 1988, and their second child, Cass, was born September 30, 1991. On February 4, 1994, Darren financed the purchase of his first two McDonald's restaurants by borrowing $430,000 from his grandmother, Dorothy Freihage, and obtaining a loan from a bank for the remainder of the purchase price. After Darren and Mary began this business endeavor, Mary gave birth to a third child, Austin, born on July 10, 1997.

¶ 9 Pursuant to the terms of the $430,000 note to his grandmother, Darren explained he made interest payments on the $430,000 note to his grandmother, but did not make any principal payments. When Darren's grandmother died in 1995, the note passed to Darren's father, Alan. Upon Alan's death in 1996, the note passed to Alan's estate.[2]

[2] At the time of Alan's death in 1996, Alan left most of his estate in three family trusts. Darren's mother, Donna, was the sole beneficiary of the Alan B. Freihage Marital Non-Exempt Trust (the "Marital Trust.") Donna, Darren, Darren's brother, and their respective children were

¶ 10 Over the course of the marriage, the number of McDonald's restaurants grew from two restaurants to seven restaurants in total. The locations for the seven McDonald's restaurants acquired during the marriage included: Tinley Park 1, Tinley Park 2, Oak Forest, Frankfort 1, Frankfort 2, Wilmington, and New Lenox.

¶ 11 On December 4, 2000, Darren created Darren A. Freihage, LLC, a single-member limited liability company owned by Darren, which held the seven McDonald's franchises. In addition, Darren was the president and only shareholder of ACA Management, LLC (ACA), which operated the seven McDonald's restaurants. According to Darren, his annual salary from ACA was approximately $48,000.

¶ 12 The parties stipulated that, as of December 31, 2011, the LLC carried a total of $5,796,100 in debt from the Marital Trust. This $5,796,100 was used to purchase, remodel, and/or build the McDonald's restaurants held by the LLC and operated by ACA.[3]

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the beneficiaries of two additional trusts, specifically, the Alan. B. Freihage Residuary Exempt Trust (the "Exempt Trust,") and the Alan B. Freihage Residuary Non-Exempt Trust (the "Non-Exempt Trust") (collectively, the "Trusts.") Darren, Lawrence Baerson, Darren's accountant and the accountant for Alan and Alan's father, and Steven Baerson, Darren's attorney, were named trustees of all three trusts. The three trustees executed a "Delegation of Trustee Powers" which allowed any one of the trustees to execute documents on behalf of the Trusts without the signature of the other trustees.

In addition to the trusts created upon Alan's death, Darren's mother created a separate DAF Family Trust (the "DAF Trust") in December 1996 naming Darren as trustee and beneficiary. Darren's children and his spouse were also named beneficiaries. Pursuant to the terms of the trust, Mary was no longer a beneficiary of the DAF Trust because she no longer lived with Darren. According to the terms of the DAF Trust, after Donna made the maximum allowable gifts to the DAF Trust, the beneficiaries had 45 days to withdraw their respective gifts. If the beneficiaries elected not to withdraw their gifts, the gifts became DAF Trust assets. As trustee, Darren had the discretion to distribute assets as he deemed necessary for the support of the beneficiaries. In 1999, the maximum allowable gift was $10,000 and in 2011, the maximum allowable gift was $13,000.

[3] According to Steven Baerson, who acted as counsel for both Darren and his mother, Darren made all of the interest payments on the promissory notes owed to the Marital Trust and,

¶ 13 I. LLC Valuation and Financial Experts

¶ 14 A. Darren's Valuation Expert

¶ 15 Martin Magida, Darren's valuation expert, had been employed with his accounting firm for 35 years and worked as a Certified Public Accountant (CPA) for 19 years. Throughout his career, Magida spent approximately 75-80% of his time working with McDonald's operators and franchises and performed between 50 and 100 valuations for McDonald's franchises during his career. Magida was a member of the American Institute of Certified Public Accountants, the Illinois Certified Public Accountant Society, and his accounting firm was a member of the National Franchise Consultants and Accountants ("NFCA.") According to Magida, the NFCA consisted of other accounting firms that conducted business for approximately 3,400 McDonald's franchises. Through the NFCA database, accounting firms shared monthly financial statements, enabling the firms to compare their client's stores with stores of similar sales volumes in the United States.

¶ 16 In order to determine the value of the LLC, including the seven individual McDonald's restaurants, Magida stated that the two "key items" were sales volume and rent. To determine the LLC's value, Magida relied on year-end financial statements, a report published by NFCA, the McDonald's "P&L Opportunity Report" ("opportunity report") for the top 50 stores in the local television market, information concerning future rebuilds and reinvestments of the LLC's restaurants, and his visits to each of the LLC's restaurants. Since the NFCA database had a pool of 3,400 McDonald's franchises, Magida compared each of the LLC's restaurants to between

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in addition, made some payments toward principal. Although a few of the promissory notes matured with the principal due and owing, Steven, as trustee, determined the LLC should not be held in default because Darren continued to make interest payments and they rolled those matured notes into new notes.

200 and 400 other McDonald's franchises with comparable sales volume. In so doing, Magida rejected the use of the opportunity report relied on by Mary's expert, because the opportunity report only allowed Magida to compare the LLC's restaurants to a limited pool of 296 restaurants, rather than 3,400 McDonald's restaurants.

¶ 17 Magida processed the information he gathered and used the "discounted cash flow" ("DCF") method, the same method used by McDonald's. Magida first projected the cash flow out for 10 years using a cash flow statement, and then discounted that amount to present value. According to Magida, the "standard" discount rate was 20%. However, Magida elected to utilize a discount rate of 30% for the Tinley Park 1 restaurant due to its increased risk based on its expected lease expiration in 2016. Additionally, Magida used a sales growth rate of 2% in order to project future sales.

¶ 18 Since capital expenditures were an important consideration for purposes of valuing the LLC, Magida included an average of $20,000 per year in capital expenditures for routine repairs and replacement of equipment at each restaurant. Magida also included $769,000 in future expenses, representing remodeling costs for some of the McDonald's restaurants over the next five years, based on information contained in a letter from McDonald's.

¶ 19 Magida explained that McDonald's owners had three options when financing a rebuild or reinvestment: (1) the owner could pay 100% of the cost and then receive lower rent costs; (2) the owner and McDonald's could split the cost equally; or (3) the owner pays one-third of the cost and McDonald's pays the remaining two-thirds of the cost. Based on information provided by Darren, Magida concluded Darren always paid 100% of the cost to rebuild the restaurants and Darren indicated to Magida he intended to pay 100% of the costs. Accordingly, Magida opined the rebuild of the Oak Forest restaurant in 2014 and the Tinley Park 1 restaurant in 2016, would

have an anticipated cost to Darren of $2.85 million and $2.8 million, respectively. According to Magida, the remodels and rebuilds would result in sales increases.

¶ 20 Based on all of this information, Magida concluded the restaurants had a total value of $9,970,786. Magida deducted $769,000, representing the cost of reinvestments and $7,898,222 in "excess liabilities" in order to determine the LLC's value.[4] Two days prior to the end of trial testimony, the parties discovered a $990,768 error concerning the LLC's long-term debt stated in the 2011 financial statement. Ultimately, the parties stipulated that the long-term debt of the LLC totaled $9,537,177, including $3,741,077 owed to Chase Bank and $5,796,100 owed to the Marital Trust. Therefore, based on the error, Magida reduced his valuation of the LLC, involving the seven operational McDonald stores, to have a net value of $309,232, as of December 31, 2011.

¶ 21 B. Mary's Valuation Expert

¶ 22 Ronald Cressman, Mary's valuation expert, testified he had been a CPA since 2000 and a Certified Valuation Analyst since 2005. 85% of Cressman's business was McDonald's-related and he performed approximately 10 to 12 valuations for McDonald's restaurants each year. Cressman's accounting firm was also a member of the NFCA.

¶ 23 Cressman explained he was hired by Mary to perform a business valuation for the LLC. In order to determine the LLC's value, Cressman reviewed the LLC's financial statements, franchise and lease agreements, five-year sales history, and other financial information, in addition to visiting the restaurants.

¶ 24 When Cressman reviewed the 2011 year-end financial statements for the LLC, he learned of bank debt and trust debt owed by the LLC. Cressman elected to exclude the debt to the

[4] Consequently, in his report, Magida concluded the value of the LLC as of December 31, 2011 was $1,303,564.

Marital Trust, and instead considered that amount as business equity, based on his review of two franchise loan agreements from Chase Bank, which indicated McDonald's treated the trust-related debt as equity for purposes of total business equity.

¶ 25 In order to value the LLC, like Magida, Cressman also employed the DCF method which was used and recommended by McDonald's. Cressman explained that, in his experience, he had seen discount rates of sales by 19% or 20% when determining the value of McDonald's restaurants. Like Magida, Cressman employed a 20% discount rate for some, but not all of the restaurants. Cressman used a 19% discount rate for two restaurants because those restaurants had average sales volumes and an 18% discount rate for one restaurant because it had a less-than-average sales volume. Cressman explained that a restaurant with a lower sales volume had less risk that a competitor would open near the restaurant. Cressman did not find the Tinley Park 1 restaurant to have greater risk as Magida concluded. Therefore, Cressman did not use a higher discount rate of 30% that Magida utilized for that restaurant. Cressman used a 3% sales growth rate because the restaurants had historical sales increases between 2.5% and 3% each year.

¶ 26 In calculating the value of the LLC, Cressman relied on the opportunity report generated by McDonald's that helped owners and operators locate opportunities in their restaurants to increase cash flow. The opportunity report reflected the top 50% of restaurants in the same television market as the LLC's restaurants and included 296 restaurants. Cressman used the opportunity report to compare the LLC's McDonald's restaurants' historical information and project the value of the LLC using other restaurants in the specific market and region. Although Cressman's accounting firm was a member of the NFCA, Cressman did not employ a comparison based on the NFCA database because he felt that comparing the LLC to 3,400

restaurants across the United States would not be "fair" since there were different cost structures across the different regions.

¶ 27 With respect to routine reinvestments, like Magida, Cressman assumed $20,000 in annual reinvestment costs. However, unlike Magida, Cressman excluded approximately $669,000 for additional reinvestment costs from his valuation calculation because he felt the reinvestments were speculative. In addition, Cressman was aware that Darren always paid 100% of the rebuild costs for his restaurants. Unlike Magida, however, Cressman's calculations were based on an assumption that Darren would pay 50% of the cost to rebuild the restaurants. Based on his calculation that the rebuild costs for Tinley Park 1, which Cressman believed would occur in 2013 and, Oak Forest, in 2014, would be $2.5 million each, Cressman opined that the rebuilds would have a cost to Darren of $1.75 million, assuming 50% financing.

¶ 28 Ultimately, Cressman concluded the total assets of the LLC were $16,145,458, approximately $6 million more than Magida's opinion that the total value of the LLC was $9,970,786. From that figure, Cressman deducted $4,889,989 in total liabilities including the debt to Chase Bank, but not including $4,762,544[5] in debt owed to the Marital Trust. Consequently, Cressman valued the LLC at $11,255,469 as of December 31, 2011. Based on the stipulation concerning the error in the long-term debt of the LLC contained in the 2011 financial statement, Cressman did not change his valuation because he did not treat the money owed to the Marital Trust as debt in his original valuation.

¶ 29 C. Additional Financial Experts

¶ 30 Michael Slobodecki, Mary's expert, was employed as a financial analyst with McDonald's and worked for McDonald's for 22 years. Slobodecki explained that when

[5] This figure differs from the amount of debt to the Marital Trust as stipulated by the parties because the stipulation occurred after Cressman performed his valuation of the business.

calculating the total business equity of the LLC, McDonald's elected to exclude the debts to the Marital Trust. Slobodecki acknowledged that McDonald's was aware of the debt to the Marital Trust, but information about the trusts "comforted" McDonald's and, therefore, McDonald's believed it "minimized the risk" by excluding the debt.

¶ 31 Troy Ahrens testified he had been a banker with Chase Bank for 17 years, where he oversaw the process of providing financing to franchise companies, including McDonald's. As part of Chase Bank's decision to provide loans to the LLC, Chase Bank required Darren, both individually and on behalf of the LLC, to subordinate the LLC's debts owed to the Marital Trust to the loans from Chase Bank.

¶ 32 II. Darren's Personal Loans from the Trusts

¶ 33 Steven Baerson, Darren's attorney and one of the co-trustees of all three trusts, and Darren both testified that Darren, personally, rather than on behalf of the LLC, borrowed a total of $550,000 from three separate family trusts, as follows: $350,000 from the Non-Exempt Trust in December 1997, $173,000 from the Non-Exempt Trust in March 1998, and $27,000 from the Exempt Trust in March 1998, in order to construct the parties' marital residence. Steven testified that, as a co-trustee, he expected the loans to be repaid by Darren in full.

¶ 34 Steven and Darren testified that Darren also borrowed a total of $877,750 in personal loans from the DAF Trust between 1997 and 2012. Darren used the $877,750 in order to pay down the home equity lines of credit (HELOCs) against both the Mokena and Wisconsin homes. Steven explained that none of these debts required interest rates or payments of interest because Darren was a beneficiary of the Exempt, Non-Exempt, and DAF trusts. Darren acknowledged that although the loans had not been repaid because they were demand notes, he intended to repay them. According to Darren, he then borrowed $150,000 from the HELOC in order to pay

$75,000 toward Mary's attorney fees and $75,000 toward his own attorney fees. In addition to the other loans, Darren also borrowed $268,800 from the Marital Trust in September 2012 to pay down the HELOC against the marital residence.

¶ 35 III. Parties' Income, Expenses, and Lifestyle

¶ 36 A. Cash Flow and Disposable Income

¶ 37 Lawrence Baerson, a CPA, testified on behalf of Darren. According to his testimony, Lawrence worked with McDonald's owners and operators since 1970. In addition to being a co-trustee of the Exempt, Non-Exempt, and Marital trusts, Lawrence provided both personal and business accounting services to Darren, including completing his personal and business tax returns, advising him on McDonald's restaurant purchases and remodels, and preparing the required monthly financial statements for the restaurants. Lawrence explained that each monthly financial statement included the LLC's debts to the Marital Trust and to Chase Bank. Lawrence also testified he calculated Darren's cash flow from the LLC from 2009 through 2011 and projected Darren's cash flow for 2012. Based on Lawrence's calculations, Darren had available cash flow of $768,790 in 2009 (average of approximately $64,065 per month), $1,113,426 in 2010 (average of approximately $92,785 per month), $622,179 in 2011 (average of approximately $51,848 per month), and projected cash flow of $687,209 for 2012 (average of approximately $57,267 per month).

¶ 38 Stephen Pawlow, a CPA, testified he was hired by Mary to calculate the amount of disposable income generated by the McDonald's restaurants. In order to make this determination, Pawlow reviewed the LLC's financial statements, the promissory notes between the LLC and the trusts, and the amortization schedule of those notes. In his report, Pawlow concluded the disposable income created by the restaurants was $981,958 in 2008 (average of

approximately $81,829 per month), $886,063 in 2009 (average of approximately $73,838 per month), $1,169,657 in 2010 (average of approximately $97,471 per month), and $1,105,569 in 2011(average of approximately $92,130 per month), which included payments to the trusts and taxing authorities.

¶ 39 B. Stipulated Values of Marital Property

¶ 40 The parties stipulated to the value and distribution of certain marital property, including the marital residence, a vacation home in Florence, Wisconsin, unimproved real estate, a number of vehicles and recreational vehicles, and ACA. According to the stipulations, ACA was valued at $197,278.99 as of July 31, 2012. The parties' marital residence in Mokena had a value of $196,327.43, after deducting the remaining $778,672.57 owed to the HELOC. The parties' lake house in Wisconsin had a value of $141,830.53, after a deduction for the remaining HELOC in the amount of $498,169.47.

¶ 41 In addition, the parties agreed Darren would receive vehicles and recreational vehicles valued at $225,140 and unimproved real estate lots in Illinois and Wisconsin valued at $521,400. The parties agreed Mary would receive two vehicles valued at $36,659.

¶ 42 C. Expenses

¶ 43 According to Darren's October 1, 2012, "Amended Income/Expense Affidavit," his monthly expenses totaled $46,747.83, including his maintenance payment to Mary, and his gross monthly income was $50,893.50. The parties had adjusted gross income in the following amounts as reflected on their tax returns: $578,753 in 2008 (average of approximately $48,299 per month), $340,602 in 2009 (average of approximately $28,383 per month), $1,126,050 in 2010 (average of approximately $93,837 per month), and $654,830 in 2011 (average of approximately $54,569 per month).

¶ 44 Darren used a credit card provided by his mother to pay for his travel expenses to Canada to visit his girlfriend, Maciel, while the parties' divorce was pending. Darren acknowledged he charged over $130,657 to the credit card between December 2011 and September 2012. According to Darren, he did not believe it was appropriate to use marital funds to socialize with his girlfriend and his mother offered to help him cover those expenses. Darren explained he did not anticipate using the credit card once the divorce was finalized.

¶ 45 Darren also testified he would continue to pay college tuition and expenses for the parties' son, Cass. Darren testified that although Cass was in his third year of college, Darren believed Cass was still in his second year for purposes of his earned class credits. Darren testified that Cass's tuition was $3,200 per month, and Darren spent $4,700 per month on Cass's expenses, including rent, utilities, car, books, food, and travel. Therefore, Darren's financial affidavit and testimony established Darren incurred $7,900 in monthly expenses for Cass.

¶ 46 Cathy Belmonte-Newman testified, on Mary's behalf, that she was a certified divorce financial analyst who provided services for clients involved in a divorce. Belmonte-Newman explained she completed a "Lifestyle Analysis" report based on her review of bank and credit card accounts. Belmonte-Newman concluded that, from 2008 through 2011, the parties' average monthly expenses totaled $61,802. In addition, during that same time period, the family had total "inflows" into their bank accounts of $2,974,366.48 and total "outflows" from their bank accounts of $2,966,473.19. Belmonte-Newman explained she was unable to determine which expenses were Mary's personal expenses because of the nature of the joint accounts.

¶ 47 Pursuant to an agreed order, Mary moved out of the marital residence and into a rental home in Homer Glen in August 2012. At the time of trial, two of the parties' children, Alixandra and Austin, resided with Mary in her rental home. The rental home cost $2,800 per month and

Mary explained she intended to perform $20,000 in sound-proofing renovations to the basement of the home so Austin could play his drums without disturbing anyone.

¶ 48 According to Mary's "Income/Expense Affidavit (as of 10/1/12)," Mary's fixed monthly expenses totaled $60,181.16. Mary explained that the amounts listed for many of her expenses reflected the family's average monthly spending since January 1, 2008. Mary testified a number of her expenses were obtained from the "Lifestyle Analysis" report prepared by Belmonte-Newman for purposes of trial. In addition, Mary's affidavit reflected $6,246.44 in expenses relating to the parties' marital residence despite the fact that Mary had been living in a rental home for a few months when she completed the affidavit. Based on Mary's testimony that many of the expenses were averaged over a period of more than four years and included expenses for a family of five, the court stated it would not take the affidavit as a true reflection of Mary's current expenses.

¶ 49 The parties submitted written closing arguments, along with responses and replies. On December 7, 2012, both parties filed petitions requesting contribution toward their attorney fees and costs. In her petition, Mary asserted she had an outstanding balance of $104,872 in attorney fees and costs and an additional outstanding balance of $48,483.76 for her expert fees and costs.

¶ 50 IV. Trial Court's Ruling

¶ 51 On February 1, 2013, the trial court presented its decision to the parties and entered a "Judgment of Dissolution of Marriage."

¶ 52 A. Value of the LLC

¶ 53 With respect to the value of the restaurants, the court stated it "heard from two, well qualified experts with very divergent views as to the factors making up the discounted cash flow valuation approach." The court continued, it "agrees with some factors from each expert," but

found "the use of the [NFCA] criteria is more reasonable as a bench mark for valuation purposes than others proposed and used." In addition, the court concluded that "other factors used by Martin Magida were more credible." The court concluded the "value" of the LLC as of December 31, 2011, was $10.6 million, less debt.

¶ 54 When addressing the "major dispute between the parties" concerning the debt of the LLC, the court noted Mary's contention that the money from the trusts constituted gifts to the marriage, rather than loans, since the trusts were established by Darren's parents. The court, however, found "by clear, convincing and overwhelming evidence that these were [business] loans and were not ever intended to become gifts to the marital estate." Based on the stipulated amounts of the Chase Bank debt in the amount of $3,741,077, and the debt to the Marital Trust in the amount of $5,796,100, after subtracting the stipulated total business debt in the amount of $9,537,177, the court concluded the "value" of the LLC, "net of debt," was $1,062,824 as of December 31, 2011.

¶ 55 B. Marital Debt

¶ 56 The court determined the parties owed the following marital debt: $877,500[6] to the DAF Trust, $268,600 to the Marital Trust, $27,000 to the Exempt Trust, and $523,000 to the Non-Exempt Trust, for a total of $1,696,100. In addition, the court ordered Darren to be responsible for all debts remaining on the HELOCs on the two homes in the amount of $1,276,842.04. The court also awarded Darren his 25% non-marital ownership interest in the DAF Trust, equal to $219,437.50.

[6] The actual amount owed to the DAF Trust was $877,750.

¶ 57 C. Marital Assets

¶ 58 The court concluded the net value of the marital estate was $928,678 and awarded Mary that entire amount. The court held Mary responsible for certain debts associated with three credit cards and an existing car loan. The court ordered Darren to pay Mary $867,019 as her share of the marital estate, after crediting her with the vehicles valued at $36,659, a payment from Darren for $5,000 for one of the recreational vehicles, and her pre-distributions of $20,000.

¶ 59 The court awarded Darren the parties' home in Mokena, with equity of $196,327.43 and the lake house property in Florence, Wisconsin, with equity of $141,830.53. In addition, Darren was awarded the unimproved real estate lots located in Illinois and Wisconsin, worth a combined value of $521,400, the LLC, valued at $1,062,824, ACA, valued at $197,278.99, and a number of cars and recreational vehicles, as stipulated, totaling $225,104 in value. In all, Darren received $2,344,764.95 in property, including the value of the LLC.

¶ 60 D. Maintenance

¶ 61 The court found the question of maintenance to be a "difficult one" and concluded Darren's "disposable cash flow" was $694,000 per year, with approximately $36,000 in monthly net income. Accordingly, the court ordered maintenance to begin on February 1, 2013, in the amount of $15,400 per month "reviewable by either party after 3 years." The court stated it considered both Mary and Darren's needs and noted the maintenance award would not allow either party to enjoy the lifestyle experienced during the marriage, but the amount was "more than sufficient to meet Mary's needs and affordable luxuries." The court commented that the "lifestyle the parties did enjoy is illusory in this case since the parties were using cash flow from the business, loans and gifts to live beyond their means, and not paying much on debt except the interest when due and occasional principal reduction." In addition, the court found Mary would

not have the ability to live a reasonable standard of living from her own earnings upon entry into the job market, and would likely require permanent maintenance in "some amount less than currently set, but the amount of permanent maintenance cannot be determined at this time."

¶ 62 E. Child Support

¶ 63 The court set child support for Austin at $3,800 per month (which calculates to be approximately 10% of Darren's net monthly income), noting it was "below [statutory] guidelines but more than is necessary to meet his needs and the items he would have enjoyed had his parents not divorced." The court commented it did not receive any evidence to suggest Austin was "anything but a normal high school student" with any special needs or expensive extracurricular activities except his music. The court also ordered the parties to split equally all medical, psychological, and dental expenses for Austin which were not covered by insurance, and all of his extracurricular activities.

¶ 64 F. Attorney Fees

¶ 65 With respect to attorney fees, the court noted that the $326,285 paid for Mary's attorney fees and the $47,999 paid for her expert costs were not part of her share of the marital estate. The court ordered the parties' petitions for contribution to be set for hearing.

¶ 66 V. Motion to Reconsider

¶ 67 On March 1, 2013, Mary filed a motion requesting the court to reconsider its judgment for dissolution of marriage. In her motion, Mary alleged the trial court "erred in its application of the law" concerning: (1) the determination of Darren's income; (2) the amount and duration of maintenance awarded to Mary; (3) the allocation of Austin's expenses; (4) the classification of debt; and (5) the distribution of marital property.

¶ 68 After Darren filed a response to Mary's motion to reconsider, the court conducted a hearing on Mary's motion and the parties' respective petitions for contribution to attorney fees on March 6, 2013. During the hearing, the parties engaged in lengthy discussions with the court concerning the issues raised in Mary's motion to reconsider. During the discussion concerning the method the court employed when calculating the value of the marital estate, the court commented, "To be honest with you, I can't answer the detail because all of my notes as far as the calculations, I probably was calculating on machines and how it came to that, I thought I was coming to the right conclusion at the time. I just don't recall any more specific than that."

¶ 69 The court later observed it may have erred when it deducted the entire $877,500 debt to the DAF Trust as a marital debt, since Darren owned a one-quarter interest in that trust. Consequently, the court discussed with the parties whether it should have deducted Darren's one-quarter interest from the total amount owed to the DAF Trust.

¶ 70 In addition, Mary asserted an argument concerning the application of section 13-206 of the Code of Civil Procedure (the Code) (735 ILCS 5/13-206 (West 2012)) as it related to the validity of certain trust debts. Since Mary did not raise an issue based on section 13-206 in her original motion to reconsider, the court granted Mary leave to file an amended count to include that argument.

¶ 71 The trial court denied Darren's request that Mary contribute toward his attorney fees. Mary's counsel asserted that Mary owed a total of $144,578.72 for attorney and expert fees and costs. The court took the matter under advisement and Mary filed an amended motion to reconsider on March 12, 2013. Mary's amended motion argued section 13-206 of the Code time-barred the trustees of the trusts from collecting the $550,000 in money owed to the Exempt and Non-Exempt trusts. 735 ILCS 5/13-206 (West 1996).

¶ 72 Darren filed a response and memorandum on March 20, 2013, and attached three separate documents entitled "Renewal of Promise to Pay," signed by Darren on March 11, 2013. According to the "Renewal of Promise to Pay," Darren renewed his obligation to pay the existing promissory notes concerning the $550,000 in personal loans borrowed against the Exempt and Non-Exempt Trusts. On March 25, 2013, the trial court entered an order denying Mary's motion to reconsider the judgment of dissolution of marriage and her petition requesting contribution toward her attorney fees after it considered the factors in sections 503(d) and 504(a) of the Illinois Marriage and Dissolution of Marriage Act (the Act), 750 ILCS 5/503(d), 504(a) (West 2012). Mary appeals.

¶ 73 ANALYSIS

¶ 74 Mary raises a number of contentions on appeal. First, Mary contends the trial court erred when it relied on Darren's expert, Martin Magida, to determine the value of the LLC. Second, Mary argues the trial court incorrectly treated $550,000 disbursed from the Exempt and Non-Exempt Trusts and applied by Darren to construct the marital home, as a marital debt. Third, Mary asserts the trial court committed a mathematical error when it valued and divided the marital estate. Fourth, Mary alleges the trial court erred when it awarded her reviewable maintenance in the amount of $15,400 per month. Fifth, Mary contends the trial court erred when it set child support for Austin at $3,800 per month and when it ordered the parties to equally split all of Austin's expenses not covered by insurance. Finally, Mary argues the court erred when it failed to require Darren to contribute toward her attorney fees and costs.

¶ 75 I. Valuation of the LLC

¶ 76 We first address Mary's argument that the trial court's valuation of the LLC constituted error. Darren responds the trial court properly determined the value of the LLC which owned

seven McDonald's franchises. This court reviews the trial court's valuation of marital assets using the manifest weight of the evidence standard. *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 203 (2005). A decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent or the court's findings are unreasonable, arbitrary, or not based on the evidence. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 44.

¶ 77 When determining the fair market value of a business, the trial court must rely on the experts for assistance, consider the relevant evidence before it, and determine the credibility of the witnesses, the reasonableness of their testimony, and the weight to be given to their testimony. *In re Marriage of Gunn*, 233 Ill. App. 3d 165, 183 (1992). Generally, as long as the trial court's valuation of marital assets is within the range testified to by expert witnesses, it will not be disturbed on appeal. *Blackstone v. Blackstone*, 288 Ill. App. 3d 905, 910 (1997); *In re Marriage of Cutler*, 334 Ill. App. 3d 731, 736 (2002). Moreover, conflicts in testimony concerning the value of marital assets in an action for dissolution are matters for the trier of fact. *In re Marriage of Olson*, 223 Ill. App. 3d 636, 646 (1992).

¶ 78 In this case, the trial court heard a substantial amount of testimony concerning the valuation of the LLC. Both of the experts utilized the same discounted cash flow approach for purposes of valuing the LLC. Both experts agreed that certain improvements would be required for the restaurants. In other areas, the experts' opinions diverged about whether certain reinvestments and rebuilds would occur, and disagreed regarding the discount rate to be used for projected cash flow and the percentage rate to be employed when calculating growth in sales

¶ 79 For example, Darren's expert projected cash flow out for ten years and then discounted the cash flow by 20% for six restaurants and 30% for the seventh. Darren's expert projected

growth in sales at 2% and Mary's expert projected growth in sales to be 3%. Mary's expert also projected cash flow, but applied a discount rate between 18% and 20% for all seven restaurants.

¶ 80 In addition, the experts did not agree on the necessity or impact of rebuild projects being considered for the restaurants over the next five years. Darren's expert felt that future rebuild projects totaling $5.65 million were in order and the costs would be paid by Darren at 100%. On the other hand, Mary's expert opined the costs to Darren for the anticipated rebuilds would be $1.75 million, rather than $5.65 million.

¶ 81 Finally, the experts offered divergent views of the amount and treatment of the debt owed by the LLC. Ultimately, the parties assisted the court by stipulating the LLC had long-term debt to the Marital Trust and Chase Bank totaling $9,537,177. Based on this long-term debt, Darren's expert opined that the LLC had a pre-debt value of $9,970,786. In contrast, Mary's expert concluded the LLC's pre-debt value was $16,145,458.

¶ 82 Without articulating the basis for its conclusion, the trial court found that the LLC had a pre-debt value of $10.6 million. The trial court's failure to specify for this court or the parties the basis for its conclusion concerning the pre-debt value of the LLC has provided many challenges for the parties, as well as for this court, on appeal. Both parties have provided this court with their best attempts to discern the trial court's methodology. In addition, this court has spent a significant amount of time and effort reviewing the record to discover the mathematical formula utilized by the trial court. Despite the combined best efforts of this court and appellate counsel, we are unable to duplicate the right combination of mathematical calculations to support the exact pre-debt value of $10.6 million for the LLC as determined by the trial court in its judgment.

¶ 83 Yet, after careful consideration of the record, we conclude the figure selected by the trial court was not an arbitrary amount randomly selected by pinpointing a number somewhere between the lower pre-debt value of $9,970,786 as established by the testimony of Darren's expert and the higher pre-debt value of $16,145,458 as determined by Mary's expert. Based on our careful review of the record, it appears to this panel that the trial court did not accept Cressman's opinion that the stipulated $5,796,100 debt to the Marital Trust should be treated as business equity. Consequently, it appears to this court that the trial court reduced Cressman's $16,145,458 pre-debt value of the LLC by subtracting $5,796,100, the stipulated amount of the LLC's debt to the Marital Trust, from Cressman's pre-debt value. The net result would be an adjusted pre-debt value of $10,349,358. This figure is approximately $250,000 less than the trial court's determination that the LLC had a pre-debt value of $10.6 million and we cannot come any closer to determining how the trial court arrived at its pre-debt value of the LLC.

¶ 84 Our review of the record causes us to conclude the trial court then properly deducted $3,741,077, representing the debt to Chase Bank from the pre-debt value of $10.6 million. The trial court also treated the $5,796,100 in distributions from the Marital Trust as business debt and subtracted this amount to determine the LLC had a value "net of debt" of $1,062,824. Based on our best attempt to duplicate the trial court's calculation, and our review of this record, we conclude the trial court's decision to treat the $5,796,100 in distributions from the Marital Trust as business debt was not contrary to the manifest weight of the evidence, since some payments on interest and payments on principal supported the court's conclusion that this amount should not be treated as business equity, but rather as debt. Therefore, we conclude the $1,062,824 valuation of the LLC was not against the manifest weight of the evidence.

¶ 85 II. Valuation of Marital Estate and Classification of Money Borrowed

¶ 86 A. $550,000

¶ 87 We next address Mary's argument on appeal that the trial court improperly concluded the marital estate owed $550,000 to the Exempt and Non-Exempt Trusts and then reduced the value of the marital estate by this amount. By way of review, we note that it is undisputed that Darren received $350,000 from the Non-Exempt Trust in December 1997, $173,000 from the Non-Exempt Trust in March 1998, and $27,000 from the Exempt Trust in March 1998. It is also undisputed that Darren applied the total amount of $550,000 received from the Trusts to pay construction costs for the Mokena marital residence.

¶ 88 Mary contends the $550,000 originating from the Exempt and Non-Exempt Trusts constitutes an illusory and unenforceable debt. Darren argues the collective amount of $550,000 constituted a loan from the Exempt and Non-Exempt trusts, memorialized in separate personal demand notes that remain outstanding.

¶ 89 The trial court's valuation of marital assets is subject to a manifest weight of the evidence standard of review. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699 (2006). A trial court's distribution of marital property should not be reversed on review absent a showing the trial court abused its discretion. *In re Marriage of Schmidt*, 242 Ill. App. 3d 961, 966 (1993). Similarly, a trial court's decision to deny a motion to reconsider will be upheld absent an abuse of discretion. *In re Marriage of Epting*, 2012 IL App (1st) 113727, ¶ 24.

¶ 90 First, Mary argues at least $200,000, of the $550,000, distributed from the Exempt and Non-Exempt Trusts does not constitute an enforceable debt, even assuming, *arguendo*, that the trial court correctly viewed the distributions from the trusts as loans. Mary relies on section 13-

206 of the Code, arguing that the trustees[7] are time-barred from collecting on the $173,000 debt to the Non-Exempt Trust and the $27,000 debt to the Exempt Trust due to the age of those debts. Consequently, Mary contends the trial court erred by viewing the $173,000 debt to the Non-Exempt Trust and the $27,000 debt to the Exempt Trust as viable, enforceable, marital debt.[8]

¶ 91 Alternatively, Mary argues the entire $550,000 Darren personally received from the Exempt and Non-Exempt Trusts and applied to the construction of the parties' marital residence constituted gifts Darren obtained and delivered to the marital estate. In support of this contention, Mary points out that during the course of the marriage the parties did not make any interest payment or payment towards the principal. Darren does not dispute he has not paid interest or any amount of principal on these amounts since the construction of the Mokena home. We note that the Mokena home was not secured by a lien for this amount and was subsequently encumbered by HELOCs which Mary agrees properly represents marital debt reducing the equity in this asset.

¶ 92 While the distributions from the trusts were memorialized by three promissory notes dated in 1997 and 1998, these notes did not require Darren to actually repay the trusts any amount for interest or principal during Darren's lifetime. Further, these notes were not recorded by the trusts for purposes of securing the purported lender's interests by creating a lien against the marital home. Other than Darren's testimony and the testimony of one of the co-trustees that Darren intended to repay the $550,000, there is no independent evidence supporting the view that Darren has an enforceable, contractual obligation to reimburse the trusts during his lifetime.

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[7] Steven Baerson, Lawrence Baerson, and Darren are co-trustees of the trusts.

[8] Mary raised this issue for the first time in her amended count II of her motion to reconsider and Darren argued the merits without raising a contention of forfeiture.

¶ 93 Perhaps the purpose of the promissory notes was to document the distribution of funds to a named beneficiary or served another purpose to discourage a determination that the $550,000 distribution to Darren should be viewed as marital income. Nonetheless, the notes do not create an expectation or requirement for repayment. This characteristic does not support the trial court's view that the $550,000 represents an ongoing, valid marital debt based on the unique circumstances of this case. Based on this record, we conclude the trial court's finding that the $550,000 was structured as a loan at the time of distribution constituted error. We reverse this determination by the trial court and direct the trial court to increase the value of the marital estate by $550,000 on remand.

¶ 94 B. $877,750

¶ 95 Similarly, Mary asserts the trial court committed another mathematical error when it concluded the marital estate had a net value of only $928,678. We have already determined the value of the marital estate should be increased by $550,000, due to illusory debt to the Exempt and Non-Exempt Trusts. However, in addition, Mary argues, based on the trial court's valuation of the LLC, the trial court must have concluded the marital estate had liabilities in the amount of $1,365,237 ($2,293,915 (assets) - $928,678 (value) = $1,365,237 (liabilities)). Mary contends the trial court only determined the marital estate had liabilities in the amount of $830,372, resulting in a net value of the marital estate of $1,463,543, rather than the $928,678 found by the trial court. Darren responds the trial court properly calculated the net marital estate. In his brief to this court, Darren sets forth a chart showing what he believes to be the trial court's calculation of the net value of the marital estate.

¶ 96 While Mary contends the trial court "double-counted" the $877,750 owed to the DAF Trust because that money was used to pay down the HELOCs, we cannot adopt this construction.

It appears to this court that the $887,750 does not constitute marital debt at all. Here, it is undisputed Darren, as trustee, distributed $877,750 from the DAF Trust and used those funds to pay down the HELOCs on the parties' residences. Pursuant to the terms of the DAF Trust, as trustee, Darren had the discretion to distribute assets as he deemed necessary for the support of the beneficiaries. It appears the DAF funds were distributed according to the terms of the trust. However, once distributed by Darren as trustee, there is no indication that the terms of the trust required any beneficiary to repay any portion of the $877,750 distributed for the benefit of the named beneficiaries. The use of these funds, without expectation of repayment, was consistent with the purpose of the DAF Trust created solely from contributions constituting gifts to the trust from Darren's mother and the children's grandmother. We conclude the distributions from the DAF Trust to Darren's family were unconditional and did not require repayment. Hence, the trial court should not have required Darren or any other beneficiary to repay any portion of the funds properly distributed prior to the date of dissolution. Consequently, the court should not have considered the amount of $877,750 as existing marital debt or reduced the value of the marital estate by any amount representing distributed DAF funds.

¶ 97 Further, the court determined Darren should retain his one-quarter nonmarital interest (valued at $219,437) in the DAF Trust. We conclude that, once Darren withdrew the DAF Trust funds to support his family, the DAF Trust funds became part of the marital estate and should not have been treated, in part, as Darren's nonmarital asset in the amount of $219,437. Since the distributions from the DAF Trust did not constitute a viable debt, the DAF trust did not have any assets on the date of dissolution. The trial court should not have allowed Darren to retain a one-quarter interest in the distributed DAF funds as his non-marital property. Therefore, we conclude that, on remand, the trial court should increase the value of the marital estate by

$877,750 and refrain from also treating one-quarter of the distributed DAF Trust funds as Darren's non-marital property.

¶ 98 In accordance with this order and the directives set forth above, we direct the trial court to increase the value of the marital estate by adding back in $1,427,750, representing the $550,000 and $877,750 allegedly owed to the various trusts as purported marital debt. In addition, the trial court should not treat Darren's one-quarter interest in the DAF Trust fund (valued at $219,437) as Darren's nonmarital property. Once the trial court makes these adjustments to the value of the marital estate, the court should divide the marital estate pursuant to the relevant provisions of the Act, 750 ILCS 5/101 *et seq*. (West 2012).

¶ 99 III. Net Income and Maintenance

¶ 100 Mary next contends the trial court's award of monthly maintenance in the amount of $15,400 constituted an abuse of discretion. First, Mary asserts that the trial court incorrectly calculated Darren's net income for purposes of determining the maintenance award by failing to consider all potential sources of income, including Darren's salary from ACA, his personal expenses paid by ACA, his draws from the LLC, and substantial financial gifts from his mother. Second, Mary contends that, in order to continue the standard of living she enjoyed during the marriage, she requires approximately $50,000 in monthly maintenance.

¶ 101 We will not disturb the trial court's finding of net income absent an abuse of discretion. *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1024-25 (2003). The amount of a maintenance award lies within the sound discretion of the trial court, and a reviewing court will not reverse that decision unless it constitutes an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *Id*. The trial court's factual findings made in determination of the

maintenance award will not be disturbed unless they are against the manifest weight of the evidence. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 294 (2010).

¶ 102 Here, the trial court did not set forth how it determined Darren had a "disposable cash flow" of $694,000.[9] Our review of the record reveals that Lawrence Baerson, Darren's witness, opined that Darren's average cash flow between 2009 and 2012 was $797,901 per year (average of 66,491 per month). In contrast, Mary's witness, Stephen Pawlow, opined that Darren's annual disposable cash flow was substantially higher and averaged $1,035,811 (average of $86,317 per month) between 2008 and 2011. Finally, the parties' income tax records documented an average adjusted gross income for income tax purposes between 2008 and 2011 to be $675,058 (an average of $56,254 per month).[10] In addition, the trial court reviewed Darren's "Amended Income/Expenses Affidavit," which showed Darren earned $654,830 in adjusted gross income for 2011 (average of $54,569 per month) and paid $189,784 in taxes. It is undisputed that Mary did not contribute to the family income.

¶ 103 Based on our careful review of the detailed financial information in this record, we conclude the trial court relied heavily on the couple's 2011 reported adjusted gross income figure of $654,830 when fixing Darren's "disposable cash flow" in the amount of $694,000 for purposes of calculating his annual child support and maintenance obligations. However, the trial court's determination of Darren's "disposable cash flow" at $694,000 was below the couple's

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[9] A disposable annual cash flow of $694,000 would result in a disposable monthly cash flow of $57,833. However, the court determined Darren's monthly "disposable cash flow" for purposes of child support and maintenance would be $36,000.

[10] The couple reported adjusted gross income in the following amounts: $578,753 in 2008 (average income of approximately $48,229 per month), $340,602 in 2009 (average income of approximately $28,383 per month), $1,126,050 in 2010 (average income of approximately $93,837 per month), and $654,830 in 2011 (average income of approximately $54,569 per month).

2011 reported adjusted gross income for tax purposes, but slightly above the income estimates offered by Darren's experts.

¶ 104 Mary filed a petition for rehearing with this court after our original decision dated January 7, 2015. After considering the issues raised in Mary's petition for rehearing, we note that it is unclear from this record whether the trial court considered all sources of income when calculating Darren's net income for purposes of child support and maintenance. Therefore, we remand the matter to the trial court to recalculate, if necessary, Darren's net income as of the date of dissolution on February 1, 2013.

¶ 105 We direct the trial court to determine whether additional funds received by Darren, beyond the $694,000 of "disposable cash flow" as determined by the trial court, should be added to achieve an accurate determination of Darren's net income, rather than "disposable cash flow," for the purpose of calculating statutory child support and maintenance. Without indicating any opinion regarding what, if any, amounts qualify as additional income, we direct the trial court to determine whether distributions from the DAF and other trusts, gifts received from Darren's mother and other sources, or any other amounts qualify as Darren's income beyond the $694,000 "disposable cash flow" as previously determined by the trial court.

¶ 106 Next, we consider Mary's argument that the award of maintenance should have been permanent, rather than reviewable in three years. Darren responds that the trial court did not abuse its discretion when it set Mary's award of maintenance for review in three years. Generally, maintenance is intended to be rehabilitative to allow a dependent spouse to become financially independent, but permanent maintenance is appropriate when a spouse is unemployable or employable only at an income substantially lower than the previous standard of living. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 652 (2008).

¶ 107 In this case, the trial court specifically found that even "after reentry into the job market, Mary will not have the ability to live a reasonable standard of living from her own earnings and will likely require permanent maintenance in some amount less than currently set, but the amount of permanent maintenance cannot be determined at this time." At the time of the dissolution, the court seemed to recognize that Mary was a healthy 46-year-old woman with the ability to pursue full-time employment in order to contribute her own earned income to meet her needs. Under these circumstances, we conclude the trial court's decision to impose reviewable, rather than permanent, maintenance pending Mary's re-entry into the job market did not constitute an abuse of discretion.

¶ 108 IV. Child Support Award

¶ 109 The trial court awarded monthly child support in the amount of $3,800, which represented approximately 10% of Darren's monthly "disposable cash flow" of $36,000 as originally calculated by the trial court. However, the statutory guidelines require Darren to pay 20% of his net income to support one child. 750 ILCS 5/505 (West 2012). We note Darren admits he is voluntarily contributing $4,700 per month for the living expenses of the parties' other child, Cass, a college student. Darren has not indicated this payment, together with Cass's college tuition, creates a hardship or inability for Darren to contribute 20% of his income as required, for Austin's current living expenses. For purposes of remand, after recalculating net income, we also direct the trial court to set child support at the rate of 20% or provide a detailed order stating the reason for its downward deviation from the statutory guidelines following the court's recalculation of Darren's net income.

¶ 110 We now turn to Mary's argument that the trial court abused its discretion when it ordered Mary and Darren to split Austin's uncovered medical, psychological, dental and extracurricular

expenses after setting Austin's child support in a reduced amount. Although there are few guidelines concerning contingent medical expenses not covered by insurance, it is within the trial court's discretion to order the payment of uncovered and extraordinary expenses. *In re Marriage of Raad*, 301 Ill. App. 3d 683, 688 (1998). When the court made this determination, the court was aware of the financial position of both parties and could reasonably conclude each of the parties could bear half of these expenses. Accordingly, the court did not abuse its discretion when it ordered the parties to equally split these expenses.

¶ 111 VI. Contribution to Attorney Fees

¶ 112 Mary also contends the court abused its discretion when it denied her request to order Darren to contribute toward her unpaid attorney fees. While attorney fees are generally the obligation of the party who incurred them, a trial court can require one party to pay a "reasonable amount" for the other party's attorney fees if the party seeking fees demonstrates her inability to pay and the other party's ability to do so. *In re Marriage of Pond and Pomrenke*, 379 Ill. App. 3d 982, 987 (2008); *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005); but see *In re Marriage of Haken*, 394 Ill. App. 3d 155, 162 (2009) (disagreeing that a contribution award requires a spouse to prove inability to pay). A party has the financial inability to pay attorney fees if payment of the fees would strip that party of his means of support or undermine the party's financial stability. *In re Marriage of Patel and Sines-Patel*, 2013 IL App (1st) 112571, ¶ 113.

¶ 113 Section 508(a) of the Act provides, at the conclusion of the case, "contribution to attorney's fees and costs may be awarded from the opposing party in accordance with subsection (j) of [s]ection 503." 750 ILCS 5/508(a) (West 2012). Pursuant to section 503(j) of the Act, any "award of contribution to one party from the other party shall be based on the criteria for division

of marital property under this [s]ection 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under [s]ection 504. 750 ILCS 5/503(j)(2) (West 2012). The criteria includes the property awarded to each spouse, their incomes and present and future earning capacities, the needs of each party, and any other factor the court finds to be just and reasonable. 750 ILCS 5/503(d), 504(a) (West 2012). Whether the attorney fees of one spouse should be paid by the other spouse is a decision that lies within the sound discretion of the trial court, and that decision will not be disturbed absent an abuse of that discretion. *In re Marriage of McGuire*, 305 Ill. App. 3d 474, 479 (1999).

¶ 114 The order denying Mary's request for contribution toward Mary's balance of unpaid attorney's fees stated the trial court considered the factors set forth in sections 503(d) and 504(a) of the Act. 750 ILCS 5/503(d), 504(a) (West 2012). In this case, it is undisputed that, prior to the judgment of dissolution, Mary's attorney's received a total of $326,285 for attorney fees and costs and $47,999 for her expert fees and costs from the existing resources of the marital estate. The court noted in its judgment that it was not assigning any portion of those previously paid fees to be paid by Mary from her share of the marital estate. Therefore, we conclude the trial court intended these amounts of previously paid attorney fees and costs to be first deducted from Darren's share of the marital estate before the court's distribution of the remainder of the marital estate between the couple. We direct the trial court to take these amounts into consideration on remand when determining the proper distribution of the marital estate.

¶ 115 Finally, we would be remiss if we did not acknowledge that the evidence established that the parties did not create a designated savings account during the course of the marriage and both parties will be required to draw from their portion of the marital estate in order to pay their

remaining respective unpaid attorney fees. Under these circumstances, the trial court's denial of Mary's request for contribution to her attorney fees did not constitute an abuse of discretion.

¶ 116 CONCLUSION

¶ 117 In conclusion, we affirm the trial court's valuation of the LLC and denial of Mary's request for contribution toward her attorney fees. In addition, we affirm the trial court's decision to require the parties to split equally the uncovered and extracurricular expenses for Austin.

¶ 118 We reverse the trial court's determination that the $550,000 in trust debt constituted marital debt to be deducted from the marital estate. Further, we reverse the trial court's decision to treat $877,750 allegedly owed to the DAF Trust as debt to be deducted from the marital estate. We also reverse the trial court's decision to award Darren a one-quarter nonmarital interest in the DAF Trust.

¶ 119 We remand for the trial court to increase the value of the marital estate according to the terms of this order and then to divide the marital estate as the court deems appropriate. We also remand the matter to the trial court to reconsider whether Darren's annual "disposable cash flow" of $694,000 should be increased by other amounts constituting income prior to the date of dissolution. Once the trial court adjusts, if necessary, the amount of Darren's annual net income, and makes the necessary adjustments to the marital estate consistent with the terms of this order, we direct the trial court to recalculate, if necessary, the amount of maintenance. Finally, the matter is remanded to the trial court with directions for the trial court to follow the statutory guidelines when setting child support or include findings supporting any downward deviation in child support ordered by the court.

¶ 120 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed in part, vacated in part, and remanded in part, with directions.

¶ 121 Affirmed in part, vacated in part, remanded in part, with directions.