

2016 IL App (2d) 140381-U
Nos. 2-14-0381& 2-16-0095
Order filed March 25, 2016

NOTICE: This order was filed under Supreme Court Rule 23(b) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
SAMIRA HUSSAIN,)	of Lake County.
)	
Petitioner-Appellee,)	
)	
and)	No. 10-D-79
)	
IQBAL HUSSAIN,)	Honorable
)	Veronica M. O'Malley,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 Respondent, Iqbal Hussain, appeals from a judgment of dissolution of marriage (JDOM) entered by the circuit court of Lake County on March 18, 2014. He contests the court's property division. We affirm in part, vacate in part, and remand.

¶ 2 I. BACKGROUND

¶ 3 Additional facts will be discussed in our analysis as necessary. The parties were married in London, England on August 29, 1993. Three minor children were born to the parties: F.H., now deceased, N.H., and L.H. Petitioner, Samira Hussain, qualified as a nurse and a midwife in England. Iqbal qualified as a physician in England and was working toward a master's degree in

urology. Instead of completing that degree, Iqbal accepted the position of medical director with a pharmaceutical company. After that company was acquired by the American pharmaceutical corporation Pfizer, Iqbal relocated his family to New Jersey in December 2003. Samira's professional qualifications did not transfer to the United States.

¶ 4 In 2005, Iqbal left Pfizer and became the medical director of Astellas, another pharmaceutical company. This job required a move to Illinois. The parties rented a home in Lake Forest, Illinois, but still owned their New Jersey residence. In late 2007, Iqbal was fired from Astellas, and he filed a lawsuit for wrongful termination. He refused to look for other employment, stating that it would jeopardize his lawsuit.

¶ 5 Samira was diagnosed with breast cancer in February 2007. She underwent surgery, chemotherapy, and radiation. Samira chose to have reconstructive surgery, which entailed a lengthy and painful recuperation. Also, the removal of lymph nodes caused chronic swelling in her left arm. Relations between Samira and Iqbal became strained. The tension stemmed from what Samira deemed Iqbal's neglect of her during her illness, his tight-fistedness with the family's finances, his secrecy surrounding the Astellas lawsuit, his refusal to find employment, and his parenting style. In 2010, Samira moved out of the marital home. F.H. chose to live with Samira and have no visitation with Iqbal. By the parties' agreement, L.H. and N.H. rotated residences every other week.

¶ 6 On January 14, 2010, Samira filed a petition for dissolution of marriage. Iqbal filed a counterpetition on February 3, 2010. The parties engaged in extensive pretrial litigation and a trial that culminated in the JDOM. During the pretrial phase, F.H. died. Then the parties entered into an agreement in which Samira had sole custody of L.H. and Iqbal had sole custody of N.H. The JDOM, therefore, dealt only with the property division and attorney fees. The parties agree

that the court divided the assets equally. Iqbal contends, however, that the court then impermissibly gave “virtually all” of his half to Samira in the form of (1) \$100,000 for her attorney fees; (2) retroactive child support in the amount of \$230,117 based upon income the court imputed to Iqbal; and (3) prospective child support for L.H. in the amount of \$193,920 to be paid from a trust the court established. Those awards were related to certain pretrial orders, which we discuss below.

¶ 7 A. Pretrial Rulings Regarding Family Finances

¶ 8 After trial, the court found that the parties enjoyed a lavish lifestyle. They paid \$1.5 million for the New Jersey home. They paid \$5,000 per month in rent on the Lake Forest home. They traveled within the United States and abroad. They held substantial assets in England.

¶ 9 On January 28, 2010, the court entered an agreed order freezing the parties’ foreign and domestic bank accounts. This order resulted from Samira’s petition for injunctive relief alleging that Iqbal withdrew \$200,000 without her knowledge from an account titled in her name. Because neither party was earning any income, during the pendency of the litigation they were using their accumulated marital assets to support themselves. Those assets were held in escrow accounts established by the court, and disbursements were subject to court orders.

¶ 10 On March 22, 2011, the court entered another agreed order providing for monthly disbursements of \$5,000 to each party from an escrow account. That order resulted from Samira’s allegation that Iqbal had refused to agree to any disbursements for Samira’s and the children’s support.

¶ 11 B. The Proceeds of the Astellas Lawsuit

¶ 12 In September 2011, through a search of the circuit court of Cook County’s electronic records, Samira discovered that Iqbal had settled his case against Astellas in August 2011. The

court in the dissolution case ordered that the terms of the settlement be disclosed to Samira and that the settlement proceeds be directed to her attorneys for the establishment of an escrow account. Iqbal then hired an attorney to vacate the settlement and reinstate the case. That effort was unsuccessful. Pursuant to court order, each party received a \$60,000 disbursement from the settlement proceeds. The remainder was placed in an escrow with Samira's attorneys.

¶ 13 C. Order Escrowing the Children's Passports

¶ 14 Samira was born in India, and Iqbal was born in Bangladesh. They both emigrated to England as small children. After Iqbal was terminated from Astellas, he established worldwide business contacts, especially in Bangladesh. Afraid that Iqbal would abscond to Bangladesh with the children, in May 2010, Samira successfully moved to have the children's passports surrendered to the court. However, in 2012, Iqbal obtained possession of the passports for the children to attend F.H.'s funeral in England. After the funeral, Samira returned to the United States with L.H., but Iqbal, without Samira's knowledge or permission, whisked N.H. off to Bangladesh.

¶ 15 In February 2012, the court entered a custody order and an order compelling N.H.'s return to Illinois. Iqbal was arrested in London, and N.H. was returned to Illinois. Thereafter, the court entered multiple visitation orders. However, L.H. refused visitation with Iqbal, and the court's efforts at reunification between Iqbal and L.H. were never achieved.

¶ 16 D. Order for Iqbal to Maintain a Job Search and Diary and Contempt Orders

¶ 17 Iqbal initially did not look for employment after he was terminated from Astellas because he feared it would jeopardize his lawsuit. Then, he stated that he was too distraught over F.H.'s death to look for work. Samira filed two motions seeking to compel Iqbal to obtain employment. On March 22, 2011, the parties entered into an agreed order requiring Iqbal to keep a job diary,

contact at least five prospective employers per week, and provide a copy of the diary to Samira's attorneys on the first of each month. On March 18, 2013, a rule to show cause, which was returnable at trial, was issued against Iqbal for his failure to comply with the March 22, 2011, order.

¶ 18 Other contempt proceedings initiated by Samira eventually resulted in agreed orders. Those proceedings involved Iqbal's failure to obey a court order to pay Samira's monthly expenses; his failure to transfer foreign funds to the United States pursuant to court order; his failure to pay the children's school registration and bus fees pursuant to court order; and his use of marital funds for personal expenses, such as an iPhone and an iPad, in violation of a court order. In addition, the court, upon Samira's emergency petition, ordered Iqbal to accept a reasonable offer for the sale of the New Jersey home.

¶ 19 Iqbal's refusal to timely produce documents in discovery resulted in an order compelling production and, when Iqbal still refused to make the production, a rule to show cause issued.

¶ 20 F. Petition to Establish a Section 503(g) Trust

¶ 21 On September 25, 2013, the guardian *ad litem* filed a petition pursuant to section 503(g) of the Illinois Marriage and Dissolution of Marriage Act (Act) (P.A. 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/503(g) (West 2014)) for the establishment of a trust for the children's educational expenses based on the fact that neither parent was employed. The petition was heard at trial.

¶ 22 G. Trial

¶ 23 Trial commenced on September 30, 2013. Only the parties testified. Samira testified that all three children were born in England. Because of the intense nature of Iqbal's medical studies and the demands of his employment, Samira was the primary caregiver. N.H. was diagnosed

early with a heart murmur and Williams Syndrome, and Samira was responsible for coordinating his care. When Samira developed diabetes as a result of her pregnancy with L.H. in 2001, she discontinued work and cared for the children at home full time.

¶ 24 According to Samira, it was not her decision to leave her parents in England and come to the United States. She testified that Iqbal was “hell bent” on taking the prestigious job with Pfizer. She entered the United States on a travel visa, which meant that she was unable to work here or to obtain credit. Therefore, Iqbal was the sole manager of the family’s finances. Samira testified that she fulfilled the role of the children’s caregiver in the United States, as she had in England. She testified that she also traveled with Iqbal for his work and attended numerous functions with him. In addition, the family traveled extensively around the United States and abroad for pleasure. According to Samira, it was when they moved into the home in Lake Forest that Iqbal became hostile toward her.

¶ 25 Before Iqbal’s termination from Astellas, he was earning approximately \$300,000 per year. Samira testified that, after his termination, she was concerned about the family’s lack of income, and she wanted him to find employment. However, according to Samira, he refused to find work, stating that it would jeopardize his lawsuit against Astellas.

¶ 26 Samira testified that, following a mastectomy and her reconstructive surgery, she was confined to her bedroom while recuperating. She testified that Iqbal degraded and all but ignored her. She relied on F.H., who was 12 years old, to help her with most of her everyday life functions. However, Samira admitted, Iqbal took a month off work, attended doctors’ appointments with her, and hired a nanny and then an au pair during this period. Also, Samira’s parents came from England to help with the household.

¶ 27 Samira testified that if she wanted money, Iqbal told her to get it from the people who loved her, meaning her parents. According to Samira, Iqbal was secretive about his daily comings and goings and the lawsuit against Astellas. Before she had fully recovered from the reconstructive surgery, she accompanied the family on a trip that she described as “traumatic.” Instead of staying in hotels where she would have privacy, they stayed with friends. Samira testified that Iqbal was attentive to her when they were with others but was hostile to her in private.

¶ 28 In February 2009, Samira returned to England for three months to update her licensing so that she might pursue professional employment in the United States. However, Samira testified, because of the chronic swelling in her left arm, she was unable to do the heavy lifting required of a nurse or a midwife, necessitating that she abandon those occupations. She was hopeful that she could find a job in retail.

¶ 29 According to Samira, Iqbal owned a three-bedroom apartment in Bangladesh. She testified that Iqbal showed her photographs of the apartment that he took in December 2007. In 2005, she had seen plans for similar apartments that were priced between \$150,000 and \$200,000 at a Bangladesh property expo held in New Jersey. Samira had never personally seen the apartment. She testified that it was built on land that was owned by Iqbal’s father, and she had “no idea” if Iqbal had invested in the development of that land.

¶ 30 Iqbal testified that he was unemployed. Iqbal admitted that he created a LinkedIn page¹ after he was terminated from Astellas. He also admitted that the page listed him as a senior advisor to Asian Capital Partners since 2008. Iqbal denied that he currently held such a position and testified that some unknown person placed that information on the web page. Iqbal also

¹ LinkedIn is an online business oriented social networking service.

denied current affiliation with numerous other businesses with which he had been involved after he was terminated from Astellas but before Samira filed her petition for dissolution. He denied that those entities had paid him for his services. He also denied being able to obtain information on a pension he had in the United Kingdom. According to Iqbal, he maintained a bank account in Bangladesh with balances in three different currencies for his convenience when he traveled there. Iqbal also identified various other bank and brokerage accounts belonging to the parties.

¶ 31 Iqbal testified that he did not inform Samira or the court when he settled the Astellas lawsuit.

¶ 32 Iqbal testified that he traveled rather extensively both domestically and internationally, although friends loaned him money to do so. He belonged to a tennis club, where he played two or three times per week. He also practiced yoga at the club and elsewhere. According to Iqbal, the yoga helped him cope with F.H.'s death.

¶ 33 Iqbal testified that he had not searched for a job since January 2012 and had no plan to do so "at the moment." He testified that he was not in a "fit state" following F.H.'s death to be employed. Iqbal believed that the Astellas lawsuit settlement proceeds would provide for him and his remaining children. At some unknown point in the future, Iqbal intended to retrain as a physician in the United States. Other than the lawsuit proceeds, which Iqbal considered his source of income, he stated that he had earned no other income since his termination from Astellas.

¶ 34 On March 14, 2014, the trial court made oral findings that were incorporated into the JDOM. The court found that Samira had proved grounds of irreconcilable differences and granted her petition for dissolution. The court found that Samira was 48 years old and had not been employed for 12 years. The parties agreed that Samira would stay home and take care of

the children while Iqbal worked and paid all of the bills. The court found Samira's testimony that she had access to only the money that Iqbal chose to give her "credible and compelling." Iqbal settled the Astellas lawsuit for \$4 million but did not tell Samira or the court about the settlement. Then, when Samira discovered the settlement, Iqbal attempted to vacate it. The court noted that Iqbal apparently had not obeyed a court order to transfer certain of the parties' assets to the United States. The court found that Iqbal's claims that he made the transfers were not documented.

¶ 35 The court found that Iqbal's Bangladesh apartment was marital property worth \$150,000. The court observed that Iqbal never disputed this during the trial and requested that the apartment be given to him in his proposed judgment.

¶ 36 The court found that the \$5,000 per month that Samira was currently receiving did not represent the lifestyle that the family had enjoyed. The court further found that Samira would love to find work but that she had a medical condition that would limit her to a desk job. Samira was uninsured, her CHIP policy through the State of Illinois having lapsed because she could not afford it.

¶ 37 The court found that Iqbal was a 47-year-old medical doctor, a surgeon trained in London, published in his field, and the recipient of many prizes and accolades in his field. The court stated that Iqbal was, "quite simply, *** an impressive man with extensive credentials." Regarding Iqbal's work history since his termination from Astellas, the court found his testimony "not credible." According to the court, Iqbal was "vague, general, and not credible about his job searches." The court found that Iqbal "clearly did not want a job." The court disbelieved his claim that he was paid nothing by Asian Tiger Capital Partners and the other entities in which he had an interest. The court found the evidence "overwhelming" that Iqbal was voluntarily

unemployed or that he was secretly working and withholding that information from Samira and the court. The court further found that Iqbal spent his time playing tennis.

¶ 38 The court found Iqbal's testimony about the breakdown of the marriage to be "demeaning, unsupported personal attacks" on Samira. For example, he admitted that he stated to Samira when she went to London for three months to renew her licensure: "Why would someone with cancer work?" The court found that statement supportive of Samira's assertion that she was not able to work at her profession and could "at best" earn only a meager living.

¶ 39 The court found that Iqbal deliberately hid the Astellas settlement from both Samira and the court in an effort to prevent Samira from sharing in the settlement proceeds. The court also found that Iqbal had insurance policies in England that could provide unemployment compensation but that he failed to access them because he did not want Samira to receive any of the money. The court described Iqbal's testimony regarding his debts as "completely evasive." The court found that Iqbal was fit to work and chose not to, "lest this court order him to pay child support and maintenance" to Samira. The court found that Iqbal had "significantly" dissipated the marital estate by voluntarily choosing not to work.

¶ 40 The court found that Iqbal had engaged six different attorneys, five of whom withdrew, thus increasing the cost of the litigation. With regard to maintenance, the court found that Samira's earning capacity was "impaired" and that Iqbal's present and future earning capacity was "clearly" superior. The court found that "the reservation of maintenance *** is warranted here," given Iqbal's superior earning ability and Samira's poor health and "her inability to become employed at a level commensurate with even a modest lifestyle." The court remarked that it was "confident that [Iqbal] will find employment or divulge his employment in the very near future."

¶ 41 The court divided the marital property equally, subject to Iqbal reimbursing Samira sums that he owed her from his share of the division. Specifically, the court awarded Samira \$100,000 in attorney fees; retroactive child support in the amount of \$230,117 based upon \$300,000 annual gross income that the court imputed to Iqbal; and prospective child support of \$193,920 to be administered in a section 503(g) trust.

¶ 42 The court entered the written JDOM on March 18, 2014. Iqbal filed a notice of appeal on April 15, 2014.

¶ 43 II. ANALYSIS

¶ 44 A. Jurisdiction

¶ 45 Neither party raised a question regarding this court's jurisdiction. However, an appellate court has a duty to consider its own jurisdiction, whether or not the parties have raised it. *Daewood International v. Monteiro*, 2014 IL App (1st) 140573, ¶ 72. Here, the JDOM was entered on March 18, 2014, and the notice of appeal was filed on April 15, 2014. When the notice of appeal was filed, Iqbal's then-current attorney Michael Weiman's motion to withdraw was pending. Also pending was a fee petition filed by Iqbal's former attorneys Grund & Leavitt. On April 21, 2014, an order was entered giving Weiman leave to withdraw, but Grund & Leavitt's fee petition was still pending. On May 28, 2014, Samira filed a contempt petition against Iqbal. Also on May 28, 2014, Grund & Leavitt filed a motion to withdraw its fee petition, which was granted on May 29, 2014. However, Samira's fee petition remained pending and unresolved.

¶ 46 This court dismissed the appeal for lack of jurisdiction pursuant to our holding in *In re Marriage of Valkiunas*, 389 Ill. App. 3d 965 (2008). We held that the notice of appeal was premature, because Grund & Leavitt's fee petition was pending when the notice of appeal was

filed. *In re Marriage of Hussain*, 2015 IL App (2d) 140381-U, ¶ 5. We further held that the notice of appeal remained premature even after Grund & Leavitt's fee petition was resolved, because Samira filed the contempt petition, which remained pending, in the interim. *Hussain*, 2015 IL App (2d) 140381-U, ¶ 5; see *Valkiunas*, 389 Ill. App. 3d at 967.

¶ 47 In his petition for rehearing, Iqbal asserted that this court has jurisdiction pursuant to section 508(c)(2) of the Act (P.A. 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/508(c)(2) (West 2014))), which provides that a petition for setting final fees and costs constitutes a "distinct cause of action." Section 508(c)(2) further provides that a pending but undetermined petition for setting final fees and costs "shall not affect appealability of any judgment or other adjudication in the original proceeding." P.A. 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/508(c)(2) (West 2014)).

¶ 48 We granted the petition for rehearing and ordered Samira to file a response pursuant to Illinois Supreme Court Rule 367 (eff. Jan. 1, 2016). In her response, Samira contended that this court lacks jurisdiction because Iqbal failed to obtain an express written finding that there is no just reason for delaying either enforcement or appeal or both pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). Additionally, Samira maintained that we lack jurisdiction because the JDOM, which reserved maintenance, was not a final order.

¶ 49 On January 15, 2016, Iqbal filed a motion requesting this court to take judicial notice that the trial court made a Rule 304(a) finding with respect to the JDOM on January 6, 2016. Then, on February 8, 2016, Iqbal filed a new notice of appeal, which this court docketed as No. 2-16-0095. On February 19, 2016, Iqbal moved to consolidate No. 2-16-0095 with the present appeal. We grant the motion to consolidate. We also grant the motion to take judicial notice of the 304(a) finding. It is settled that a trial court can take judicial notice of matters in its own

proceedings (*People v. Knight*, 75 Ill. 2d 291, 295 (1979)) and that the appellate court can take judicial notice of any matter of which a trial court can take judicial notice. *People v. Behnke*, 41 Ill. App. 3d 276, 281 (1976).

¶ 50 The Rule 304(a) finding removes one impediment to our jurisdiction. Section 508(c)(2) of the Act cannot confer jurisdiction, because the legislature does not have the power to determine the jurisdiction of the appellate court. *Lentz v. Lentz*, 73 Ill. App. 3d 93, 95 (1979). However, we still must examine whether the trial court's reservation of maintenance rendered the JDOM nonfinal. It is well settled that the mere inclusion of a Rule 304(a) finding in a nonfinal order does not make the order appealable. *Inland Commercial Property Management, Inc. v. HOB I Holding Corp.*, 2015 IL App (1st) 141051, ¶ 23.

¶ 51 Generally, this court has jurisdiction to consider appeals only from final orders. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). A judgment or order is "final" if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy. *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997). A petition for dissolution of marriage advances a single claim, which is a request for an order dissolving the parties' marriage. *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983). The other issues in a dissolution action, such as property disposition and support, are ancillary to the cause of action and are not separate claims. *Leopando*, 96 Ill. 2d at 119. Consequently, until all of the ancillary issues are resolved, a petition for dissolution of marriage has not been fully adjudicated. *Leopando*, 96 Ill. 2d at 119. Thus, generally only a judgment that does not reserve any issues for later determination is final and appealable. *In re Marriage of Susman*, 2012 IL App (1st) 112068, ¶ 13.

¶ 52 However, a trial court's "reservation" of jurisdiction over an issue in a judgment for dissolution of marriage does not necessarily indicate that the order is nonfinal. *In re Marriage of Iqbal*, 2014 IL App (2d) 131306, ¶ 20. When the trial court makes a decision as to each of the ancillary issues, the judgment is final. *In re Marriage of Cannon*, 112 Ill. 2d 552, 556 (1986). Thus, a finding of eligibility for maintenance while reserving the issue because of the responsible party's present inability to pay does not destroy the finality of the order. See *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 167-68 (2005) (a "reserved-jurisdiction approach" to maintenance was appropriate where the trial court determined that the wife was entitled to maintenance but the husband's present ability to pay was doubtful). Where jurisdiction is appropriately reserved, the public policy against fragmented litigation referred to in *Leopando* (*Leopando*, 96 Ill. 2d at 119-20) will not be undercut by giving the judgment finality. *In re Marriage of Lord*, 125 Ill. App. 3d 1, 3-4 (1984).

¶ 53 We must examine the trial court's order as a whole to determine the court's intent in using the term "reserved." *Iqbal*, 2014 IL App (2d) 131306, ¶ 20. Where the order demonstrates that the court did not make a final determination of an issue, the order is nonfinal and nonappealable. *Iqbal*, 2014 IL App (2d) 131306, ¶ 20. Conversely, where the court has determined the issue but merely intends to preserve its ability to enter a modification in the future if necessary, the order is final and appealable. *Iqbal*, 2014 IL App (2d) 131306, ¶ 20. The court's act of reserving the amount of maintenance, without stating a specific time for the determination of the amount, is the equivalent of setting the amount at zero until further order of court. *Iqbal*, 2014 IL App (2d) 131306, ¶ 19.

¶ 54 Here, when we consider the court's extensive oral findings in their entirety, we are convinced that the court decided to grant Samira maintenance, leaving only the determination of

the amount to an unspecified time, that is, when Iqbal became employed or divulged his hidden employment. Under *Iqbal*, this is equivalent to setting the amount of maintenance at zero. The court was clear that Samira's health prevented her from working in her chosen profession and would allow her to eke out only a meager existence. In contrast, the court found that the parties' lifestyle had been lavish, "million dollar homes" and international travel. Consequently, we determine that we have jurisdiction to hear this appeal. We turn now to the issues that Iqbal raises.

¶ 55 B. Whether the Distribution of Assets Was an Abuse of Discretion

¶ 56 Iqbal acknowledges that the court divided the assets equally. However, he argues that the court abused its discretion by then "redistributing" over \$500,000 of his share to Samira. Iqbal maintains that the result was to give "virtually all" of the marital property to Samira while making him solely responsible for the support of the two minor children. Samira contends that the court did not "give back" property to her. Rather, Samira argues, the court adjusted the 50/50 division to reflect Iqbal's liability to her for certain claims that she made over the four-year course of the litigation. Those claims were for retroactive child support, contribution to her attorney fees, and the necessity of a trust for future child support for L.H.

¶ 57 The disposition of property is governed by section 503 of the Act. While this appeal was pending, the legislature revised the Act (P.A. 99-90) (eff. Jan. 1, 2016) (amending 750 ILCS 5/101 *et seq.* (West 2014)). The revisions do not affect this appeal. Section 503(d) (P.A. 99-90 (amending 750 ILCS 5/503(d) (West 2014))) provides that the court shall divide the marital property in "just proportions," considering all relevant factors, including a number of statutory factors. Section 503(g) (P.A. 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/503(g) (West 2014))) provides that the court can set aside a portion of the jointly or separately held estates of

the parties in a separate fund or trust for the support, maintenance, education, physical or mental health, and general welfare of any minor. The touchstone of apportionment of marital property is whether the distribution is equitable. *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 979 (1992). The division need not be mathematically equal to be equitable. *Tietz*, 238 Ill. App. 3d at 979. The distribution of marital property is within the court's sound discretion and will not be disturbed on appeal absent an abuse of discretion. *Tietz*, 238 Ill. App. 3d at 979. An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court. *In re Marriage of Moore*, 307 Ill. App. 3d 1041, 1043 (1999).

¶ 58 Iqbal particularly relies on *In re Marriage of Maczko*, 263 Ill. App. 3d 991 (1992), in urging that the instant division was an abuse of the court's discretion. In *Maczko*, the court's award of approximately 100% of the marital estate to the wife, based upon the husband's supposed dissipation of assets, was an abuse of discretion where the court's finding of dissipation was "inconsistent and unclear." *Maczko*, 263 Ill. App. 3d at 997. The appellate court remarked that the trial court should seek to place the parties in a position from which they can "begin anew," in addition to providing adequate support for the children. *Maczko*, 263 Ill. App. 3d at 997. Iqbal seizes upon the "begin anew" language in *Maczko* to argue that the court abused its discretion in the instant case. He contends that giving most of the marital property to Samira while saddling him with child support destroys his chance to begin anew.

¶ 59 *Maczko* is inapposite for two reasons. Here, the court divided the assets equally. Also, the husband in *Maczko* suffered a job demotion because of arthritis and depended upon a pension, which the appellate court called a "speculative" asset, noting that employers, along with employees' pensions, could disappear in this modern era. *Maczko*, 263 Ill. App. 3d at 998. In contrast, Iqbal is a healthy, highly trained professional—a physician—with business acumen and

the ability to earn large sums of money. As Samira points out, the concept of “begin anew” means that parties should leave the marriage in a self-sufficient status. See *In re Marriage of Lee*, 78 Ill. App. 3d 1123, 1133 (1979). Other than Iqbal’s admitted lack of desire to work, nothing prohibited him from leaving the marriage in a self-sufficient state. Consequently, the court did not abuse its discretion in dividing the marital property equally. The issue, which we address below, is whether the court properly reimbursed Samira for child support and attorney fees from Iqbal’s share of the property division.

¶ 60

C. Retroactive Child Support

¶ 61 On January 14, 2010, Samira filed a petition for temporary maintenance and child support. In the JDOM, the court awarded Samira retroactive child support in the amount of \$230,117 from January 14, 2010, through March 14, 2014. The court reasoned that Iqbal failed to comply with the March 22, 2011, agreed order requiring him to seek employment and keep a job diary, thus forcing the parties to live on assets rather than income. Therefore, the court imputed a gross annual income to Iqbal of \$300,000, or a net yearly income of \$193,936, based upon his last reported income prior to his termination from Astellas. That income was imputed from January 14, 2010, through the date of the judgment. The court then found that Iqbal was voluntarily unemployed and was attempting to evade his child support and maintenance obligations. The court further found that Samira was the residential custodian of the parties’ three minor children from January 14, 2010, until F.H.’s death in January 2012. Then, she was the custodian of N.H. and L.H. from January 2012 through June 2013, when the parties entered the agreed custody judgment. After June 2013, Samira had custody of L.H. Using the support guidelines, the court calculated support at \$230,117, to be paid partially from Iqbal’s share of an

escrow account maintained by Samira's attorneys and partially from other assets he was awarded.

¶ 62 Iqbal argues that this was error for three reasons: (1) it allowed Samira to "double dip" from his income; (2) the amount of support was predicated on outdated documentation; and (3) the retroactive award of support contains support for a 10-month period when Iqbal was living with the family and paying the bills.

¶ 63 The determination of the proper amount of child support lies within the sound discretion of the trial court (*In re Marriage of Butler*, 106 Ill. App. 3d 831, 836 (1982)), and this court will not reverse absent an abuse of discretion. *In re Marriage of Scafuri*, 203 Ill. App. 3d 385, 391 (1990).

¶ 64 1. The Double-Dipping Argument

¶ 65 Iqbal's double-dipping argument is predicated on the nature of his lawsuit against Astellas. He claims that it was a "whistleblower" lawsuit and that the settlement proceeds represent his past and future employment income. Consequently, Iqbal maintains that by awarding Samira support from the settlement proceeds while the dissolution was pending and then requiring him to pay retroactive support from those proceeds, the court actually awarded support in excess of the guidelines "for no discernible reason." Iqbal correctly states that the measure of damages for wrongful termination of an employment contract is based on earnings (*Ashe v. Sunshine Broadcasting Corp.*, 90 Ill. App. 3d 97, 100 (1980)), but he is incorrect that the settlement proceeds represented his earnings. Iqbal and Astellas settled a disputed claim. In a settlement that is reached prior to trial, both liability and the amount of damages recoverable by the plaintiff are uncertain. *Snoddy v. Teepak, Inc.*, 198 Ill. App. 3d 966, 970 (1990). The amount of a settlement might be far different from a damage award resulting from full litigation.

Snoddy, 198 Ill. App. 3d at 970. Moreover, Iqbal was not paying Samira support during the pendency of the dissolution proceedings. Neither party had any income. Both parties withdrew equal amounts from the escrow account for their living expenses. Thus, we reject Iqbal's double-dipping argument.

¶ 66

2. The Outdated Information Argument

¶ 67

Having found that Iqbal was voluntarily unemployed or was hiding employment, the court imputed income to him using his salary when he was last employed at Astellas. Iqbal contends generally that it was error to impute income, which we discuss below. However, for purposes of this argument, Iqbal asserts that the court erred in using his Astellas income, because the income data was more than six years old. Iqbal relies on *In re Marriage of Schroeder*, 215 Ill. App. 3d 156 (1991). In *Schroeder*, the appellate court held that it was error to calculate net income by considering prior years' income going back six years instead of using reliable current income data. *Schroeder*, 215 Ill. App. 3d at 161. The evidence in *Schroeder* established that the respondent operated an ongoing funeral home business and that his most recent yearly business income was \$112,000. *Schroeder*, 215 Ill. App. 3d at 159. Nevertheless, instead of calculating child support based upon the most current figure, the trial court averaged the business's weighted earnings for the prior six years and arrived at a weighted average net income of \$47,767, upon which it based child support. *Schroeder*, 215 Ill. App. 3d at 159. *Schroeder* is distinguishable, because there was no evidence in the present case of any of Iqbal's current earnings. The court in *Schroeder* acknowledged that it is appropriate to consider prior years' documentation to ascertain income trends when future income is uncertain. *Schroeder*, 215 Ill. App. 3d at 161.

¶ 68

3. The Argument that Iqbal Was Paying the Bills for 10 Months

¶ 69 Iqbal contends that, because Samira initiated the divorce in January 2010 but did not move out of the marital residence until October 2010, the court improperly awarded retroactive support for those 10 months. Iqbal asserts that, during those 10 months, “the parties were living together and Iqbal was paying the bills.” The court found that Iqbal paid “some” of the rent on the home, but that Samira paid \$12,000 in back rent when she moved out of the Lake Forest home. The evidence demonstrated that the parties were living off savings during the litigation and that both were receiving equal stipends pursuant to court orders. Even if Iqbal paid certain bills, he did so from the parties’ accumulated assets.

¶ 70 Accordingly, having rejected each of Iqbal’s argument, we determine that the court did not abuse its discretion in ordering retroactive support in the amount of \$230,117.

¶ 71 **D. Imputed Income**

¶ 72 Iqbal argues that it was error to impute income to him, because (1) he was not voluntarily unemployed; (2) he was not attempting to shirk his duty of support; and (3) there was no evidence that he could earn \$300,000 per year. In setting the proper amount of child support, the court must first determine the noncustodial parent’s net income. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009). Courts have the authority to compel obligors to pay child support at a level commensurate with their earning potential. *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 107 (2000). If a party’s present income is uncertain, a court can impute income to the payor. *Gosney*, 394 Ill. App. 3d at 1077. To impute income, the court must find that *one* of the following factors applies: (1) the payor is voluntarily unemployed; (2) the payor is attempting to evade a support obligation; or (3) the payor has unreasonably failed to take advantage of an employment opportunity. *Gosney*, 394 Ill. App. 3d at 1077. The setting of child support is

within the trial court's discretion and will not be reversed absent an abuse of discretion. *Sweet*, 316 Ill. App. 3d at 105.

¶ 73 Iqbal maintains that none of the *Gosney* factors apply. We disagree. The evidence was overwhelming that Iqbal was voluntarily unemployed. True, he did not quit his job with Astellas; he was fired. However, he then refused to work. He told Samira that it would jeopardize his lawsuit if he were to become employed. At trial, he admitted that he had not sought employment in many months and that he had no intention of doing so. He blamed—and still blames—his unemployment on his grief over his son's death. However, Iqbal presented no evidence at trial that he was suffering from a depression so severe that he could not work. Rather, the evidence showed that he spent his time playing tennis, traveling, and practicing yoga.

¶ 74 Iqbal maintains that he was unemployable due to his whistleblower status. The only “evidence” he cites in support of this argument is that Samira expressed concern that he would not find other employment if he brought the irregularities at Astellas to light. Iqbal presented no evidence that he had in fact been blacklisted or that he was turned down for particular jobs because of his activities at Astellas. Moreover, the record indicated that Iqbal was in demand. He was affiliated in a professional capacity with numerous international businesses. While Iqbal denied that he received remuneration, the court found his testimony not credible. In sum, the record supports the court's conclusion that Iqbal had the ability to earn at least what he had made at Astellas. Accordingly, the court did not abuse its discretion in imputing income.

¶ 75 E. The Section 503(g) Trust

¶ 76 Iqbal argues that the court's imposition of a section 503(g) trust for L.H. was an abuse of discretion and against the manifest weight of the evidence. He further contends that the court erred in using the child support guidelines in setting the amount of the trust and in naming

Samira as the trustee. Iqbal also asserts that the court erred in ignoring Samira's duty to support N.H.

¶ 77 Section 503(g) of the Act allows the court to establish a trust for minors when it is “necessary to protect and promote the best interests of the children.” P.A. 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/503(g) (West 2014)). To establish the trust, the court may set aside a portion of the jointly or separately held estates of the parties in a separate fund or trust for the “support, maintenance, education, and general welfare” of the minor. P.A. 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/503(g) (West 2014)). The imposition of a trust is inappropriate in the absence of evidence showing some need to protect the interests of the children. *Atkinson v. Atkinson*, 87 Ill. 2d 174, 179 (1981). The need for such protection arises when the obligor spouse is either unwilling or unable to make child support payments. *In re Marriage of Petersen*, 319 Ill. App. 3d 325, 342-43 (2001). This court's review of the trial court's imposition of the trust is for abuse of discretion. *In re Marriage of Bates*, 141 Ill. App. 3d 566, 573 (1986).

¶ 78 1. Necessity of the Trust

¶ 79 Iqbal maintains that the evidence showed that he was supporting the children and paying the bills at least until October 2010 when Samira and the children moved out of the marital residence. Thus, according to Iqbal, there was no evidence that he was unlikely to provide support. Iqbal also asserts that, while Samira filed numerous contempt petitions, there were no findings of contempt, only a finding that he had offered no reason for his noncompliance with the order requiring him to seek employment and keep a job diary.

¶ 80 Iqbal relies on *Bates*, in which this court held that the imposition of a section 503(g) trust was an abuse of discretion. *Bates*, 141 Ill. App. 3d at 573. Iqbal argues that *Bates* stands for the proposition that the creation of such a trust is inappropriate in the absence of contempt orders. In

Bates, we said that the mere filing of contempt petitions does not demonstrate the willful violation of court orders. *Bates*, 141 Ill. App. 3d at 571. We also detailed the many other reasons that imposition of the trust was inappropriate under the circumstances. *Bates*, 141 Ill. App. 3d at 571-73.

¶ 81 In *In re Marriage of Gocal*, 216 Ill. App. 3d 221, 224-25 (1991), the court recognized that *Bates* stood for the proposition that the lack of a willful contempt order was one factor among others that the court may consider in determining whether to establish a trust. Similarly, Iqbal's reliance on *In re Marriage of Duly*, 89 Ill. App. 3d 304 (1980), is misplaced. In *Duly*, the imposition of a trust was inappropriate, because the respondent supported both the petitioner and his child, and respondent's poor health was not a reason to require the establishment of the fund. *Duly*, 89 Ill. App. 3d at 310-11.

¶ 82 Here, the evidence showed that Iqbal was voluntarily unemployed. Following his termination from Astellas, he decided that obtaining a job would jeopardize his lawsuit. Then, allegedly because of F.H.'s death, Iqbal refused to find employment. Instead, he spent his time pursuing leisure activities. Further, the record showed that he was secretive about the lawsuit settlement and tried to vacate it when Samira found out about it. The court found that the only reason for such a maneuver would be to deprive Samira and his children of support. Most important, Iqbal and L.H. were estranged, and the court's efforts at reunification were unsuccessful. The court found that Iqbal was not supporting L.H., but that Iqbal would support N.H. Under these circumstances, the court did not abuse its discretion in establishing the trust.

¶ 83 2. The Use of Support Guidelines

¶ 84 The court established the amount of the trust using the statutory child support guidelines. Iqbal maintains that this was error, because the parties had split custody. Iqbal relies on *In re*

Marriage of Steadman, 283 Ill. App. 3d 703, 708 (1996), where the court stated that “[w]hen the parties to a dissolution of marriage settlement agreement *** agree to divide the custody of their children, there are no specific guidelines to follow.” However, *Steadman* did not hold that it was in all cases error to apply the guidelines. The court in *Steadman* held that in split custody cases the court *may* disregard the statutory guidelines and *may* instead consider the factors listed in section 505 of the Marriage Act. *Steadman*, 283 Ill. App. 3d at 708. The court in *Steadman* recognized that the cases in which courts did not apply the guidelines involved spouses who were both employed or possessed the skills and education necessary to obtain employment. *Steadman*, 283 Ill. App. 3d at 708. Here, neither spouse was employed, nor was Samira employable because of her medical condition. Accordingly, the court did not err in setting the amount of the trust using the guidelines.

¶ 85 3. Samira’s Duty to Support N.H.

¶ 86 Iqbal argues that the court ignored Samira’s duty to support N.H. We disagree. The court reserved the issue of Samira’s child support obligation because of her present inability to pay support.

¶ 87 4. Samira’s Appointment as Trustee

¶ 88 Citing *In re Marriage of Vucic*, 216 Ill. App. 3d 692 (1991), Iqbal argues that it was error for the court to appoint Samira as trustee of the section 503(g) trust. In *Vucic*, this court held that the trial court’s appointment of the divorced mother to be the trustee for the trust, the corpus of which would be returned to the divorced father upon the trust’s termination, was improper. *Vucic*, 216 Ill. App. 3d at 702. We noted that the mother’s interests were “naturally divergent” from her former husband’s and that to assign her as “gatekeeper” for the trust fund was “wrong on its face and [was] an invitation for future disputes.” *Vucic*, 216 Ill. App. 3d at 702. We

concluded that a “neutral and impartial” third party should have been appointed as trustee. *Vucic*, 216 Ill. App. 3d at 702.

¶ 89 The trial court here was aware of *Vucic* and found it to be distinguishable. We agree. The court ordered that the trust corpus shall be used for L.H.’s and N.H.’s educational expenses upon termination. Unlike *Vucic*, the trust corpus will not be returned to Iqbal. Therefore, Samira’s interests were not in conflict with Iqbal’s, and *Vucic* is inapplicable.

¶ 90 Iqbal also asserts that the trust lacks sufficiently particular terms. Specifically, he argues that there are no guidelines other than “Samira shall distribute the amount of \$3,232 from the trust each month which will be for the support[,] care[,] and education of L.H. and to pay all costs and expenses attendant to same.”

¶ 91 Iqbal relies on *People v. Hobson*, 220 Ill. App. 3d 1006 (1991). In *Hobson*, the court held that the trust’s terms were not sufficiently described where it provided only that a trust “ought” to be established “through a banking institution with trust powers”; that a regular accounting “ought” to be maintained; and that the petitioner “ought” to be allowed to seek reimbursement from the trust for the respondent’s share of the children’s noninsured medical and dental expenses. *Hobson*, 220 Ill. App. 3d at 1015. The court in *Hobson* determined that the trust needed to include provisions: for the payment of the children’s noninsured medical and dental expenses; accounting; termination upon the children’s emancipation; and the distribution of any residue. *Hobson*, 220 Ill. App. 3d at 1015. Here, the trust does not suffer from the deficiencies present in *Hobson*. The trial court in our case provided for the trust’s termination upon L.H.’s emancipation and for the distribution of any residue. The terms dictated the monthly amount to be used for L.H.’s support, and the children’s noninsured medical expenses were provided for separately in the JDOM.

¶ 92 F. Contribution to Samira's Attorney Fees

¶ 93 The trial court found the total amount of attorney fees in this case to be “outrageous” based on Iqbal's six different sets of attorneys having pursued scorched-earth litigation at their client's insistence. As a consequence, the court ordered Iqbal to pay \$100,000 of Samira's fees. The record supports the court's finding that Iqbal was responsible for needlessly increasing the fees. The incident where Iqbal fled with N.H. to Bangladesh and the child had to be returned via international authorities will suffice for illustration.

¶ 94 Iqbal first contends that the record fails to establish Samira's inability to pay her attorney fees or his ability to pay. Generally, it is the responsibility of the party who incurred attorney fees to pay them. *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶ 36. However, section 508(a) of the Act allows for an award of attorney fees where one party lacks the financial resources and the other party has the ability to pay. *Streur*, 2011 IL App (1st) 082326, ¶ 36. Financial inability exists where requiring payment of fees would strip that party of his or her means of support or undermine his or her financial stability. *Streur*, 2011 IL App (1st) 082326, ¶ 36. The allowance of attorney fees and the amount awarded are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *Streur*, 2011 IL App (1st) 082326, ¶ 36.

¶ 95 Iqbal correctly notes that the propriety of an award of attorney fees is dependent upon a showing by the party seeking them of an inability to pay and the ability of the other spouse to do so. *Streur*, 2011 IL App (1st) 082326, ¶ 36. Although awarding fees rests largely in the trial court's discretion, such an award will be reversed when the financial circumstances of both parties are substantially similar and the party seeking fees has not shown an inability to pay. *In re Marriage of Roth*, 99 Ill. App. 3d 679, 686 (1981).

¶ 96 Here, while the court did not make specific findings with respect to Samira's inability to pay fees, the court's detailed findings regarding the large disparity in the parties' ability to generate income fills the gap. Throughout the court's extensive oral findings, the court referenced Samira's inability to become meaningfully employed because of her medical condition. The court also made findings regarding Iqbal's voluntary unemployment and/or his hiding of employment. The record leaves no doubt whatsoever that the parties' financial circumstances were not remotely similar.

¶ 97 Iqbal's argument that contributing to Samira's fees will leave him destitute is unpersuasive. Iqbal correctly quotes Samira's attorney's observation that, because of Iqbal's dissipation of marital assets, the amounts that he will have to reimburse Samira will likely exceed his share of the distribution. However, Iqbal ignores that the attorney also stated that Iqbal's contribution to attorney fees will be offset by the income imputed to him. That is the case. We have determined that the court properly imputed an annual gross income to Iqbal of \$300,000 per year.

¶ 98 Iqbal next argues that in awarding Samira attorney fees, the court impermissibly considered the section 503 factors for making a property division. Iqbal notes that the court had already considered those factors in making the property distribution, the award of retroactive child support, and in imposing the section 503(g) trust. Section 503(j)(2) of the Act (P.A. 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/503(j)(2) (West 2014))) provides that an award of contribution to one party from the other party shall be based on the criteria for division of marital property under section 503. Iqbal relies on *In re Marriage of Schneider*, 214 Ill. 2d 152, 175 (2005), where our supreme court held that contribution was not warranted, because the trial court had taken the husband's greater earning capacity into consideration in giving the wife a

disproportionate share of the marital assets and in setting the amount of child support. *Schneider* is inapplicable. Here, the court did not award Samira a disproportionate share of the marital assets, but split the marital assets 50/50. Because Iqbal dissipated those assets by refusing to become employed, he was then required to reimburse Samira. Consequently, we hold that the court did not abuse its discretion in determining that an award to Samira of her attorney fees was proper.

¶ 99 Iqbal disputes that the court used correct calculations in making the award of fees. In making the award, it was necessary for the court to calculate the amount of fees paid to the attorneys for both parties. On appeal, the parties agree that the court's calculation of the amount of fees paid to Samira's attorneys was incorrect. However, the parties do not agree on the correct calculation. Therefore, we vacate the award and remand this matter to the trial court for a recalculation. We express no opinion on whether the final award will be different.

¶ 100 G. The Bangladesh Apartment

¶ 101 Iqbal contends that the trial court's finding that he owned an apartment in Bangladesh valued at \$150,000 was against the manifest weight of the evidence and was an abuse of discretion. He argues that there was no evidence to support the finding. Samira testified that Iqbal showed her pictures of the apartment in 2007 and told her that he had purchased it. She also testified that she saw plans for similar apartments at a trade show in 2005 and that the apartments were being sold for between \$150,000 and \$200,000.

¶ 102 Iqbal argues that Samira's testimony that he told her that he purchased the apartment was insufficient, because she did not personally see any documents reflecting his ownership. As Samira points out, Iqbal admitted in an interrogatory answer that he owned the apartment. Therefore, the issue is whether there is a basis in the record for the court to value the property.

The valuation of marital property is a factual question that is subject to the manifest weight of the evidence standard of review. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700 (2006). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the determination is unreasonable, arbitrary, and not based on the evidence. *In the Interests of D.W.*, 386 Ill. App. 3d 124, 139 (2008). The owner of land is generally held to be qualified to express his or her opinion of its value. *Department of Transportation v. Harper*, 64 Ill. App. 3d 732, 735 (1978). As Iqbal points out, Samira was not the owner. However, she was not expressing her opinion of the value. She testified that she knew from having seen the plans for similar properties at an expo that they were valued at between \$150,000 and \$200,000. Iqbal did not dispute those figures at trial or offer his own valuation. Accordingly, the trial court's finding that the Bangladesh apartment was worth \$150,000 was not against the manifest weight of the evidence.

¶ 103 Lastly, Iqbal maintains that he lacks sufficient assets to satisfy the judgment. However, we have determined that the trial court correctly imputed a yearly gross income of \$300,000 to him. Consequently, we are unpersuaded by this argument.

¶ 104 III. CONCLUSION

¶ 105 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed in part, vacated in part, and remanded.

¶ 106 Affirmed in part, vacated in part, and remanded.

