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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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In re MARRIAGE OF	)	Appeal from the Circuit Court
JAMES A. BOWEN,	)	of Du Page County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 12-D-1410
	)	
SUSAN R. BOWEN,	)	Honorable
	)	Timothy J. McJoynt,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices Jorgensen and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* Although trial court erred in finding petitioner had not dissipated certain expenditures, the error was harmless given the amount was trivial in relationship to the value of the marital estate; the trial court did not abuse its discretion in allocating bonuses; and the trial court did not abuse its discretion in denying the petition for an accounting. Affirmed.

¶ 2 Respondent, Susan R. Bowen, appeals portions of the judgment of dissolution of her marriage to petitioner, James A. Bowen. She raises three issues on appeal surrounding dissipation, bonus income, and her petition for an accounting. We affirm.

¶ 3

I. BACKGROUND

¶ 4 The parties were married on August 12, 1978. Of the parties' five children, all were emancipated by the time of this appeal.

¶ 5 At the time judgment was entered on September 3, 2014, Susan was 57, had no income or job, and primarily had been a homemaker the entire marriage who raised the children. The parties presented an extensive amount of testimony and evidence at the trial, which began on January 14, 2014.

¶ 6 James was 58 and worked primarily for an entity known as First Trust Portfolios (First Trust). In 2012, his gross income was in excess of \$8 million. James established and expanded multiple business entities in the investment industry, which have been quite successful economically, and the marital estate was of considerable worth. The parties did not raise any questions regarding the classification of property, and the trial court found that "the entire estate is marital property."

¶ 7 The parties' primary source of income and one of their largest assets was James' interest in First Trust, and related entities. James is the sole owner of AJM Ventures, LLC. AJM Ventures is the sole shareholder of Charger Corporation. Charger is the general partner for Grace Partners of Du Page, LLC, which is a holding company for the various First Trust entities. James was one of 69 limited partners, owning 25 of the 125.75 limited-partnership units directly. James' limited partnership interest was 19.88% of the total limited partnership units.

¶ 8 Through their seed companies, the First Trust entities offer investment products, including products called Unit Investment Trusts (UITs). A UIT is a fixed portfolio security that does not change over time and matures. First Trust earns its money on the difference between the front-end sales charge for the UITs and the brokers' commissions. When James testified in

January 2014, First Trust had approximately \$3 billion in UIT sales as of the end of November 2013.

¶ 9 The parties owned interests in many other businesses that had stipulated values. Two other relevant interests included Wheaton Property Partners, LLC, and AJM Ventures. James testified at trial that he owned a 50% interest in Wheaton Property Partners. This is a holding company for the building and property located at 120 E. Liberty in Wheaton, Illinois, where James' primary businesses are located. James testified that the rental income received by Wheaton Property Partners was fair, and that he personally paid 50% of the mortgage and other expenses of owning the property. Neither party valued Wheaton Property Partners. Susan did not question James about the rental income he received.

¶ 10 AJM Ventures is the holding company for Charger. Both parties' experts provided an opinion of the value for Charger but could not agree on a value for AJM Ventures. The parties' experts testified at length regarding Charger. Susan never requested any AJM Ventures' bank account statements before trial and did not request them in her motion *in limine* to compel.

¶ 11 James' attorneys informed the court and opposing attorneys on the last day of trial, April 17, 2014, that he was to receive a \$2 million gross bonus payable over five pay periods. The court ordered proofs closed after the last day of trial and ruled an end to the evidence at that time.

¶ 12 In the judgment of dissolution, the trial court ordered the parties to equally divide that bonus. James paid \$555,828, which was half of the net bonus, to Susan on September 3, 2014, the day the court entered judgment. The court ordered that James keep all future and other bonuses he received or earned in 2014 after the close of proofs, aside from the bonus disclosed by James on April 17, 2014.

¶ 13 Susan was awarded permanent maintenance of \$47,000 per month, modifiable with a substantial change of circumstances. Susan had made a substantial dissipation claim, and the court awarded Susan \$131,879.97 in dissipation.

¶ 14 Although the court had ordered the proofs closed, the court did provide the parties the opportunity to exchange account statements for certain accounts listed in the judgment for the period of February 1, 2014, through the date of the entry of the judgment on September 3, 2014, to determine whether there were any significant changes to an account during that time period. The court stated that it would reserve jurisdiction to resolve any issues regarding this matter.

¶ 15 Susan submitted statements for accounts requesting that (a) James be responsible for the parties' 2013 income taxes; (b) she be awarded 50% of monies James is reimbursed from his business, First Trust, which she claimed was a dissipation; (c) she be awarded 50% of any amounts James used to pay down his line of credit from the close of proofs through September 3, 2014; (d) she be awarded 50% of a \$23,500 payment received from First Trust; (e) she be awarded 50% of bonuses that James received after proofs were closed other than the already divided \$2 million gross bonus; and (f) she be awarded 50% of money received from Wheaton Property Partners and AJM Ventures. Susan further argued that the documents received from James were insufficient disclosures.

¶ 16 On March 3, 2015, the trial court issued findings, denying both parties' petitions for accounting. The court ruled there was sufficient disclosure for the limited purpose of the accounting. The trial court further ruled as follows:

1. Income Taxes: The trial court ordered James to pay the parties' outstanding 2013 income tax liabilities and the parties' 2014 income taxes arising from their LP Units in Grace Partners.

2. Reimbursements to First Trust: Susan argued that James' post-proof reimbursements to First Trust for personal travel and entertainment expenses were dissipation. The court held that the sums paid out for travel and entertainment and lifestyle activities, although clearly excessive for many people, were not excessive in the case of this marriage and these parties. The court further found that the "late claim" of dissipation was "just that—late. And it is not part of the purpose of the post judgment accounting that the Court sought." Accordingly, the court found that these expenses were not different from those that had been presented prior to the close of proofs.

3. Amounts Paid Toward Line of Credit: During the trial, James testified that he used bonuses and other income to pay down his line of credit throughout the marriage. In its opinion and order, the court noted that paying down his line of credit was a "typical activity throughout the marriage." The court further noted that, "[i]f the Petitioner favored paying down his line of credit that the Court ordered him to pay, and this was post proofs," there was no harm in that, "just like there was no harm in post proofs investments the Respondent participated in."

4. \$23,500 Received from First Trust: James received an additional \$23,500 from First Trust between the close of proofs and the entry of the judgment. The court found that this sum was "not substantial" and that James would keep it and all bonuses other than the \$2 million gross bonus he received in five installments from April 15 through June 30, 2014.

5. Other 2014 Bonuses: In ruling on Susan's amended motion to reconsider and petition for accounting, both of which requested half of James' bonuses received between the close of proofs and entry of judgment, the court ruled that James alone would retain

bonuses he received after proofs closed. The court clarified that it determined the close of proofs was an appropriate time to value assets and end the sharing of James' income between the parties. It noted that, while Susan may never have the same income as James going forward, she would receive \$47,000 a month in maintenance and James alone was being ordered to pay substantial income tax liabilities on the parties' 2013 and 2014 income.

6. Wheaton Property Partners and AJM Ventures: The court denied Susan's request for half of the money James had received from Wheaton Property Partners and AJM Ventures.

7. Disclosures: Finally, as to Susan's argument that James had failed to provide her the disclosures ordered in the judgment for the accounting, the court found "there was enough disclosure for the limited purpose of this accounting activity."

¶ 17 Susan timely appeals.

¶ 18 II. ANALYSIS

¶ 19 A. Dissipation

¶ 20 Susan first argues that the trial court erred in denying portions of her notice of claim for dissipation because James had not proved by clear and convincing evidence that the assets of which Susan complained had been reimbursed to First Trust.

¶ 21 Dissipation is a concept derived from the provisions of section 503(d)(2) of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/503(d)(2) (West 2014). A party claiming dissipation is required to file a notice of dissipation. 750 ILCS 5/503(d)(2) (West 2014). If the person claiming dissipation makes a *prima facie* showing that the questioned expenditures were for a purpose unrelated to the marriage, the burden of proof shifts to the

alleged dissipater. *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d 761, 779 (2007). We apply a manifest weight of the evidence standard of review to a trial court's determination as to whether dissipation occurred. *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 205 (2005).

¶ 22 James has an American Express credit card through First Trust. Some of the expenses he incurred on the card were personal, and he testified that he had reimbursed First Trust for those expenses by writing checks from his Bank of Wheaton account. Prior to trial, Susan filed a notice of claim of dissipation, alleging numerous checks were written from this account for purposes unrelated to the marriage. Susan argues that the trial court erred in failing to find that James dissipated marital assets in the amount of \$119,578 through James' reimbursements to First Trust.

¶ 23 Specifically, James testified that several of the checks represented expenditures which he believed were spent on personal living expenses (check numbers 1010, 1012, 1017, 1047, 1055, 1079, and 1136). Reasonable living expenses can be found to not constitute dissipation. See, e.g., *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 984 (1992) ("When the funds are spent for legitimate family expenses, and necessary and appropriate purposes, there is no dissipation"). Additionally, the trial court certainly could have chosen to believe James. See *McBride v. McBride*, 2013 IL App (1st) 112255, ¶¶ 43-45.

¶ 24 However, James could not explain the expenses for check numbers 1025, 1043, 1107, 1117, 1152, and 1163, and the trial court found these expenditures were dissipated. The problem here is that James could not explain the expenses for check numbers 1005, 1031, 1032, and 1118, but the court found that these expenses were not dissipated. We agree with Susan that finding no dissipation when James could not explain these expenses was error.

¶ 25 Despite this error, we deem the error harmless in light of the trial court's distribution of the parties' substantial marital estate valued at approximately \$120 million, not including unvalued assets. Here, the disputed checks amounted to a little over \$40,000. Susan's share would have been about \$20,000. This amount is an insignificant portion of the total marital property accumulated by the parties during their marriage, and had no special effect on the trial court's distribution of the estate. See, e.g., *In re Marriage of D'Attomo*, 2012 IL App (1st) 111670, ¶ 37 ("Errors that are trivial in relationship to the value of the marital estate may be deemed harmless"); *In re Marriage of Nord*, 402 Ill. App. 3d 208, 302-03 (2010) (miscalculation as to total acres comprising husband's 10% interest in nonmarital farmland immaterial, or harmless error, for purposes of determining wife's spousal maintenance award); *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 664 (2008) (even if error, error harmless given court's distribution of marital estate); *In re Marriage of Toole*, 273 Ill. App. 3d 607, 617 (1995) (and the cases cited therein).

¶ 26 B. Allocation of Bonus Income

¶ 27 Susan next contends that the trial court erred in its allocation of marital bonus income James received as a result of his employment. The trial court split the \$2 million bonus James received in 2014 for work done in 2013, but it awarded James any other bonuses he received in 2014. Susan contends that these other bonuses were for work done in 2013 and should therefore have been considered marital property.

¶ 28 1. 2014 Bonuses

¶ 29 Other than the \$2 million bonus, the parties disagree on whether the trial court characterized the 2014 bonuses as marital or non-marital property. Susan concedes the bonuses were divided as part of the marital estate but argues they should be reviewed as a classification



issue. James responds that neither party raised any claim of non-marital property at trial. James also points out that the account into which he deposited his bonuses between the close of proofs and the entry of judgment was indeed marital property. Regardless, we do not find the classification of the bonuses is the crux of the problem in this case. What matters here is how the trial court allocated or distributed the bonuses.

¶ 30 The touchstone of proper apportionment is whether it is equitable, and each case rests on its own facts. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 121; *In re Marriage of Bentivenga*, 109 Ill. App. 3d 967, 971 (1982). An equitable division does not necessarily mean an equal division, and one spouse may be awarded a larger share of the assets if the relevant factors warrant such a result. *Romano*, 2012 IL App (2d) 091339, ¶ 121.

¶ 31 “A reviewing court applies the manifest weight of the evidence standard to the factual findings of each factor on which a trial court may base its property disposition, but it applies the abuse of discretion standard in reviewing the trial court’s final property disposition \*\*\* .” *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 205 (2005). A trial court abuses its discretion only where no reasonable person would have distributed the property as the trial court did. *In re Marriage of Henke*, 313 Ill. App. 3d 159, 175 (2000).

¶ 32 The trial court initially classified all the property as marital. Later, in the March 3 letter opinion, the court intimated that the 2014 bonuses were “post-judgment.” However, it is clear throughout the opinion that the court took into consideration James’ receipt of these bonuses in ordering him solely responsible for substantial 2013 and 2014 tax liabilities. The court stated that “[i]n ordering the Petitioner to be responsible for all of the 2013 tax liabilities of the parties once again the Court took into consideration \*\*\* the control and retention of all bonus monies received in 2013 and 2014 by the Petitioner to the exclusion of the Respondent.” The court

further stated that it reallocated “some of the parties’ tax liabilities to now be on the shoulders of the Petitioner and so the unfair argument offered by the Respondent is without merit.” Thus, it is apparent that the trial court provided Susan benefits to offset the allocation of James’ bonuses to him. James was ordered to pay about \$2 million for the parties’ 2013 income taxes and their 2014 taxes arising from income received from the parties’ largest income-producing asset, Grace Partners. The court noted that “now that the 2014 Grace tax liability is now solely the responsibility of the Petitioner[,] this ruling as to speculative future bonuses is even more equitable.” We find the trial court’s distribution or allocation was not an abuse of its discretion.

¶ 33 The trial court also was well within its discretion to value the parties’ assets as of the last day of trial. See, e.g., *In re Marriage of Benkendorf*, 252 Ill. App. 3d 429, 443 (1993); *In re Marriage of Davis*, 215 Ill. App. 3d 763, 776 (1991). As the court stated, the case was complex, and distribution of James’ post-proof bonuses would have required the trial court to reopen proofs.

¶ 34 Susan claims that the trial court’s order ignores evidence of James receiving substantial income tax distributions for the same time period. Susan notes the amount of income tax distribution James received for tax years 2013 and 2014, but she fails to cite to the record where there is evidence of such distributions. As such, Susan does not provide a record sufficient to support the argument of which she complains, and it is therefore forfeited. See *In re Marriage of Cerven*, 317 Ill. App. 3d 895, 900 (2000) (failure in argument section of brief to cite to record so as to direct appellate court to those places where claims could be substantiated on appeal of dissolution judgment, was violation of supreme court rules, and made review more onerous); see also *People v. Sprind*, 403 Ill. App. 3d 772, 778-79 (2010) (failure to provide proper citations to the record on appeal is a violation of supreme court rules, the consequence of which is the

forfeiture of the argument lacking citations); *Mikrut v. First Bank of Oak Park*, 359 Ill. App. 3d 37, 51 (2005) (failure to provide relevant citations to the record is a violation of supreme court rules and results in waiver).

¶ 35

## 2. 2013 Bonuses

¶ 36 Susan claims that the trial court erred in allocating James' 2013 bonuses. However, the evidence shows that all the 2013 bonus money was placed in James' Wheaton Bank account, and an order entered September 3, 2014, states that James tendered to Susan a check from his Wheaton Bank account representing half of James' after tax payment for his \$2 million bonus paid over five pay periods from April 2014 to June 2014. Accordingly, because the court divided the 2013 bonuses, there is no need under the circumstances to address these bonuses separately.

¶ 37

## C. Accounting

¶ 38 Susan last contends that the trial court erred in denying her postjudgment petition for accounting and reallocation of funds. The parties disagree over the appropriate standard of review. We agree with James that the abuse of discretion standard is the appropriate standard for review of the trial court's accounting for two reasons.

¶ 39 First, the trial court had no obligation in the first place to perform the postjudgment accounting. Thus, the entire proceeding was in the trial court's discretion.

¶ 40 Second, the trial court, recognizing that there would be a delay between the close of proofs and the entry of the judgment, allowed for a request for accounting should the financial documents show a substantial change in the account values during the time period between the close of proofs and the date of the judgment. The trial court included this provision to ensure against large sums of marital monies being diverted by either party. As James points out, the

trial court wanted to make certain that its division of marital assets remained equitable and in just proportions. Moreover, the transactions questioned in the petition for accounting concern those accounts that the trial court had allocated between the parties. Because this involves the trial court's final property disposition, the abuse of discretion standard applies. See *In re Marriage of Vancura*, 356 Ill. App. 3d at 205.

¶ 41 Susan's petition for accounting concerned transfers in and out of the Wheaton Bank and Trust account. In its letter opinion, the trial court addressed each claim and determined that the amounts Susan identified were: (1) already accounted for in previous orders; (2) adequately explained by James; (3) not unusual in light of how the parties always had conducted their financial affairs; or (4) insignificant. Based upon the limited reason that the trial court ordered the postjudgment exchange of account information, and in light of the information it received, we find the trial court did not abuse its discretion in denying Susan's petition for an accounting.

¶ 42 Susan argues that the denial of her petition for an accounting resulted in an inequitable division of the marital estate. Because we find that the trial court did not abuse its discretion in denying Susan's petition for an accounting, it could not result in an inequitable division of the marital estate.

¶ 43

### III. CONCLUSION

¶ 44 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 45 Affirmed.