2016 IL App (2d) 150666-U
No. 2-15-0666
Order filed September 15, 2016
Modified Upon Denial of Rehearing October 14, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF SUSUN CHANG, Petitioner-Appellee, and DONGWOO JOHN CHANG, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 12-D-4 Honorable Steven L. Nordquist, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in (1) imputing income to respondent; (2) awarding petitioner permanent maintenance; (3) directing respondent to pay 75% percent of the college expenses for the parties' oldest child; and (4) awarding petitioner 60%, and respondent 40%, of the marital estate. Also, respondent's appeal of the award of attorney fees to petitioner is dismissed because respondent failed to serve a copy of the notice of appeal on the law firms who charged the fees.

¶ 2 Respondent, Dongwoo John Chang, raises multiple issues in his appeal of the judgment dissolving his marriage to petitioner, Susun Chang. The issues relate to imputation of income,

maintenance, college expenses, division of the marital estate, and attorney fees. For the following reasons, we affirm.

¶ 3 I. PRELIMINARY MATTERS

¶ 4 The parties raise some preliminary procedural matters. First, petitioner asks that we dismiss this appeal. She claims that respondent has forfeited his right to appeal because of his failure to comply with orders for child support and maintenance and his failure to appear with counsel on some court dates. Petitioner relies on three cases: the supreme court's decision in *Garrett v. Garrett*, 341 Ill. 232 (1930), and the appellate court's decisions in *In re Marriage of Hill*, 2015 IL App (2d) 140345, and *In re Marriage of Timke*, 219 Ill. App. 3d 423 (1991). We are not persuaded.

¶ 5 First, our original opinion in *Hill* did, as petitioner represents, dismiss the respondent's appeal because he was defying the court orders (for child support and spousal maintenance) from which he was appealing. On September 28, 2015, however, this court withdrew that opinion and issued a new opinion reaching the merits of the respondent's appeal. This occurred months before petitioner filed her appellee's brief in this proceeding. Petitioner's failure to ascertain and acknowledge the procedural history of *Hill* is inexcusable.

¶ 6 Second, there are critical factual differences between this case and both *Garrett* and *Timke*. In *Garrett*, the trial court entered a dissolution decree that required the respondent to pay spousal maintenance and attorney fees. He failed to pay and was incarcerated for contempt of court. Upon being released by mistake, he fled Illinois but filed an appeal of the dissolution decree. The court dismissed the appeal:

> "[T]he situation presented *** is that a party adjudged in contempt of the trial court for failure to obey its orders who has removed himself beyond its process and concealed

> himself outside of the state of Illinois, asks this court to entertain a new suit [citation] in which he attacks the final decree of the court which he is defying. *** Obviously, the absence of [the respondent] in the present case hinders and embarrasses the due course of procedure by preventing the court from enforcing its decree ***." *Garrett*, 341 Ill. at 234.

¶ 7 In *Timke*, another dissolution action, the appellate court construed *Garrett* as holding that "a party who is adjudged to be in contempt of the trial court for failure to abide by its orders, and who has removed himself beyond its process and concealed himself outside the State of Illinois and seeks to attack the final decree of the court which he is defying, is not entitled to appellate relief." *Timke*, 219 Ill. App. 3d at 423. The respondent in *Timke* was held in contempt of court for failing to comply with discovery demands and to appear in court. He fled the State while appealing the dissolution judgment. The appellate court, following *Garrett*, affirmed the judgment, noting that "one who purposefully places himself beyond the trial court's writ while seeking at the same time to attack the decree that he defies, is not entitled to appellate relief." *Id.* at 427-28.

¶ 8 Crucial to the holdings in *Garrett* and *Timke* was the respondent's flight from the jurisdiction while he pursued his appeal. The courts in those cases would not permit a litigant to seek the benefit of the appellate process while simultaneously eluding the reach of the trial process by fleeing the jurisdiction. In the present case, though respondent failed to appear in court on some dates, and on at least one occasion his whereabouts were unknown, there is no indication that he fled the jurisdiction and therefore displayed the level of insolence condemned in *Garrett* and *Timke*. Consequently, we hold that these cases do not warrant dismissal of this appeal.

¶ 9 Petitioner suggests that dismissal is also warranted under the "fugitive dismissal rule." A representative statement of this rule, however, is that "an appellate court may dismiss the appeal of a *criminal defendant* who is a fugitive from justice during the pendency of his appeal." (Emphasis added.) *People v. Wicklund*, 363 Ill. App. 3d 1045, 1047 (2006). Petitioner cites no Illinois case applying the rule to a civil litigant or suggesting that such application would be appropriate. We have found no such authority ourselves. Petitioner relies on the court's remark in *Guttierrez-Almazan v. Gonzales*, 453 F.3d 956, 957 (7th Cir. 2006), a federal deportation case, that "[t]he fugitive disentitlement doctrine is a discretionary device by which courts may dismiss criminal appeals or *civil actions* by or against individuals who are fugitives from justice." (Emphasis added.) The doctrine to which the court referred is a federal common-law procedural rule (*Niemi v. Lasshofer*, 728 F.3d 1252, 1257 (10th Cir. 2013)), which is not binding in state-court actions arising under state law (see *Adams v. LeMaster*, 223 F.3d 1177, 1182 n. 4 (10th Cir.2000)). For the foregoing reasons, therefore, we decline to dismiss respondent's appeal.

¶ 10 Next, petitioner claims that respondent has failed to supply an adequate record for our review because the trial exhibits have not been included. Prior to the deadline for his opening brief, respondent filed a motion to supplement the record with the trial exhibits. We initially held the motion in abeyance, but have since granted it, and now the trial exhibits are part of the record.

¶ 11 Finally, petitioner asks us to strike respondent's brief as noncompliant with supreme court rules. Petitioner is correct that, while the brief's statement of jurisdiction identifies by date the orders appealed, there are no record citations to those orders. See Ill. S. Ct. R. 341(h)(4)(ii) (eff. Feb. 6, 2013) ("All facts recited in [the statement of jurisdiction] shall be supported by page references to the record on appeal.") Since, however, this violation does not hinder or preclude

our review, we decline to strike the statement of jurisdiction. See *Hurlbert v. Brewer*, 386 Ill. App. 3d 1096, 1101 (2008). Petitioner also asserts that the argument section of respondent's brief "contains hardly any citations to evidence in the record on appeal." There indeed are many points in his argument where respondent fails to include a citation to support his reference to the record. While the omissions inconvenience us, they do not hinder or preclude our review. We decline, therefore, to strike the argument section, but we admonish respondent that we expect compliance with the supreme court rules.

¶ 12 Respondent, for his part, asks us to strike the appendix to petitioner's brief because "she has repeatedly motioned to submit documents to the reviewing court which this court has denied January 7, 2016 and March 11, 2016." Respondent is correct that we did deny such motions, but he does not identify any improper material in the appendix. Therefore, we decline to strike any part of it.

¶ 13 II. BACKGROUND

¶ 14 The following is a brief statement of the procedural history of this matter. We will supplement the background facts as we discuss each issue.

¶ 15 The parties were married in 1992. They have four biological children. One child, Andrew, was emancipated at the time of trial and was attending college at the Washington University in Saint Louis. Petitioner filed her dissolution petition in January 2012. The petition was tried over several months from April to November 2014. The court issued its judgment of dissolution in December 2014 and entered a supplemental order in June 2015. The court awarded petitioner 60% of the marital estate and respondent 40%. Part of the marital property allotted to respondent consisted of his prior withdrawals and transfers of funds to third parties.

¶ 16 Respondent was unemployed at the time of judgment, but the court imputed annual income to him of $575,000. This figure represented the yearly salary that respondent's employer, OSF Saint Anthony Medical Center (Saint Anthony) in Rockford, had offered him after deciding not to renew his current contract. Respondent failed to accept the offer before it was withdrawn. Based on the imputed figure, the court calculated child support for the three minor children. The court also ordered respondent to pay 75% of Andrew's college expenses and to pay petitioner maintenance. The court determined that the maintenance should be permanent due to petitioner's inability to work because she has Sjogren's disease. Finally, the court ordered respondent to pay petitioner's attorney fees as a sanction for his "repeated violations of the Court's Orders, discovery rules, failure to make timely payments for previous contempt findings and the previous contempt findings [themselves]."

¶ 17 In January 2015, respondent filed his motion to reconsider. The trial court denied the motion in June 2015. Respondent thereafter filed this timely appeal.

¶ 18 III. ANALYSIS

¶ 19 A. Imputation of Income

¶ 20 1. Facts

¶ 21 Respondent challenges the trial court's imputation to him of $575,000 in annual income, which was the yearly salary offered him by Saint Anthony during contract negotiations in late 2014. Respondent disputes the trial court's finding that he unreasonably failed to accept the offer before Saint Anthony withdrew it.

¶ 22 The pertinent evidence on the issue of imputation came from respondent's trial testimony and the evidence depositions of Mark Nafziger and Paul Carynski, both officers of Saint Anthony who were involved in the contract negotiations with respondent.

¶ 23 The following facts are undisputed. In August 2008, respondent signed an employment contract with Saint Anthony to become its chief of neurosurgery. His starting salary was $850,000 per year. In addition to his administrative duties as chief, respondent had medical responsibilities including a clinical practice and on-call emergency care. On May 28, 2014, Saint Anthony sent respondent a notice that that his current contract, due to expire on September 30, 2014, would not be renewed. By this time, respondent's yearly salary had increased to $950,000. Saint Anthony stated in the May 28 notice that it would commence renegotiations with respondent. Negotiations took place in August and September 2014. On September 3, Saint Anthony submitted to respondent an offer for a one-year term of employment at $575,000. Later that month, on the 22nd, Saint Anthony sent respondent a letter withdrawing the offer. Saint Anthony explained that the decision was

> "the result of developments that have occurred since [the offer] was originally proposed including but not limited to, the fact that you have not responded to [the offer] in the three (3) weeks you have had it in your possession (despite multiple inquires by OSF and the impending termination date of your Employment Agreement); your statements to OSF representatives in recent days that you had not even 'opened' the proposed [offer] to date to begin a review of that document; your refusal and/or unavailability to meet with members of OSF's administration (despite multiple efforts by OSF), your refusal to take call and to otherwise be available for your practice the last few weeks, and other concerns."

¶ 24 The evidence diverges over what took place in the talks preceding Saint Anthony's September 22 withdrawal of its offer. We begin with the accounts of Nafziger and Carynski. Nafziger was chief administrative officer of OSF Medical Group and also chief administrative

officer of its neuroscience service line. His role in those capacities included the review and negotiation of physician contracts. According to Nafziger, the decision by the management of Saint Anthony in May 2014 not to renew respondent's current contract was due to a decrease in respondent's productivity over the preceding three years. Nafziger's first meeting with respondent following the May 2014 nonrenewal notice was June 2, 2014. On that date, Nafziger asked respondent to provide information about his administrative duties. They next met on August 1. During this three-hour meeting, they discussed respondent's productivity. Respondent made a reference to a downturn in the market. When Nafziger asked respondent for his thoughts on compensation, respondent proposed that he receive $450,000 per year for 10 days of on-call emergency coverage per month and an additional $25,000 per year "for his position as an officer of the medical staff," which would have its own responsibilities. Nafziger explained:

> "The proposal was $450,000 for ten days a month of call, and then his request was that we do an amendment to his contract making that part of his contract, and then at a later time we could talk about his clinical practice or his office and elective surgery practice."

According to Nafziger, Saint Anthony expected that, if respondent stayed on, he would maintain a full clinical practice as well as on-call availability. After hearing respondent's proposal, Nafziger told respondent that he would convey the proposal to management.

¶ 25 Nafziger testified that, in the days following August 1, he and other managers at Saint Anthony formulated for respondent a counterproposal, which was a yearly salary of $575,000 for a full-time clinical practice and 10 days per month of call. The counterproposal was conveyed to respondent by Carynski. After working on the counterproposal, Nafziger was no longer directly involved in the contract negotiations.

¶ 26 Carynski, president of Saint Anthony, testified that she was involved in formulating an employment offer for respondent in August 2014. She made attempts to contact respondent to present the offer and discuss it. She proposed September 2, but they were not able to meet until September 5. In the meantime, on September 3, Carynski had the offer delivered to respondent's office. The offer was for a one-year term of full-time employment at $575,000. Under this new contract, respondent would no longer have his directorship position. The offer did not state a deadline for respondent's decision, but Carynski testified that Saint Anthony "needed to have [the] document signed and sent to the board [of directors] before [respondent's] prior agreement ended."

¶ 27 Carynski testified that, at their meeting on September 5, respondent reported that he had not opened the envelope containing Saint Anthony's offer. Respondent asked Carynski if she was aware of what he had proposed to Nafziger. She said she was not, and respondent replied that he wanted the contract negotiations to proceed in two stages. The first stage would concern respondent's on-call duties. If the on-call arrangement was acceptable to respondent, then he would stay on with Saint Anthony while, over the next three to six months, they negotiated his responsibilities as to his clinical practice. Respondent proposed 10 days of call per month. Thus, as Carynski understood, respondent's suggestion was that he initially work at Saint Anthony just 10 days per month. Carynski informed respondent that this proposal was unacceptable because Saint Anthony would only accept an employment arrangement with respondent that covered both call and clinical practice. Respondent explained that he needed flexibility because of personal issues, and asked Carynski to strongly consider his proposal. Respondent did not state what compensation he sought for his 10 days of call. Respondent told

Carynski that he was leaving for an overseas meeting, and they agreed to meet as soon as he returned.

¶ 28 Having not heard from respondent by September 16, Carynski sent him a text message on that date to verify that he was home and to arrange another meeting. She received no response, and next saw respondent on September 18 at a physician leadership conference at a hotel in Lake Geneva, Wisconsin. She approached him at a reception and asked when he would like to meet next. Respondent simply replied, "Manana." The next day, September 19, Carynski contacted respondent and arranged to meet with him in the hotel lobby. They spoke in the lobby for 60 to 90 minutes. Respondent stated that he had still not opened Saint Anthony's offer. He then asked if Carynski had considered his proposal. She replied that his proposal would leave "gaps" for Saint Anthony. Respondent then asked her several times if she was withdrawing Saint Anthony's offer, in which case he would go home and shred the document. Carynski remarked that there was a great disparity between respondent's needs and Saint Anthony's needs. She further stated that, even if respondent signed the proposal, she might not recommend that Saint Anthony sign it "based off of [respondent] not even looking at the agreement up to this point." Respondent then asked if it was "[her] way or no way." Carynski reiterated to respondent that Saint Anthony was not interested in just an on-call arrangement with him. According to Carynski, when the meeting ended respondent asked if Carynski would wait until the following Wednesday, September 24, since he was leaving town. Carynski said it made no difference if she waited until the following Monday or Wednesday, but noted that respondent was leaving Saint Anthony without a decision from him.

¶ 29 Carynski testified that Saint Anthony's administrative team met the following Monday, September 22, and decided to withdraw the employment offer because the parties were too far

apart in their positions. Saint Anthony sent its notice of withdrawal that same day. On Wednesday, September 24, Carynski received the following text message from respondent:

> "Paula, I'm inclined to sign a contract with OSF but would like to meet with you on Monday, 9/29, before doing so. I am out of the country until Sunday, 9/28, as I told you previously. Thank you."

¶ 30 Carynski replied by text that the offer was withdrawn. The next day, respondent thanked Carynski for her prompt reply.

¶ 31 Respondent's account of the negotiations differed from the accounts of Nafziger and Carynski. According to respondent, August 1, 2014, was his first follow-up meeting with Saint Anthony's management since the May 2014 notice of nonrenewal. On that date, respondent met with Nafziger for two hours. They discussed how Saint Anthony could increase its business in neurology and neurosurgery. There was mention during the meeting of a salary figure of $701,000, which was drawn from a national salary survey of physicians, but Saint Anthony made respondent no job offer during the meeting. Respondent denied that he proposed during this meeting that Saint Anthony pay him $575,000 per year simply for working 10 days of call per month.

¶ 32 The next meeting, respondent testified, was on September 5 with Carynski. In the interim, on September 3 or 4, respondent received an offer from Saint Anthony. At the meeting, respondent spoke with Carynski about his role at Saint Anthony and about issues of patient safety and loss of business. Respondent did not accept Saint Anthony's offer at this meeting. Rather, he proposed to Carynski that they separately negotiate each of the three areas of his job responsibilities: call coverage, clinical time, and elective surgeries. He proposed this procedure because he needed flexibility due to personal issues. Respondent specifically mentioned to

Carynski that he had long suffered from chronic fatigue syndrome, which, combined with the emotional drain of his ongoing divorce case, was impairing his ability to work. Respondent proposed that they first negotiate call coverage, and he suggested 10 days of coverage per month. Respondent understood, however, that call coverage would be only one part of his job duties, as it was under his expiring contract. Respondent acknowledged telling Carynski on September 5 that he had not had the chance to open Saint Anthony's proposal.

¶ 33 Respondent testified that his next meeting with Carynski was on September 19 at a hotel in Lake Geneva. They revisited many of the same subjects covered in the September 5 meeting. Respondent denied that he told Carynski on this date that he had still not opened Saint Anthony's offer. According to respondent, he first reviewed the offer on September 8. Respondent also denied that he repeatedly asked Carynski if she was withdrawing the offer. The September 19 meeting ended without an arrangement for a further meeting. Carynski also did not set a deadline for respondent's decision. Respondent informed Carynski that he would be travelling the next few days and would inform her in writing on September 24 of his decision regarding Saint Anthony's proposal. When respondent texted Carynski on September 24 asking for additional time, he had not seen Saint Anthony's September 22 withdrawal notice, which arrived while he was away. According to respondent, when he texted Carynski on September 24, he had "the intent to sign, with discussion of particular items," for instance, the issue of patient safety.

¶ 34 In its dissolution judgment, the trial court imputed to respondent the yearly salary offered by Saint Anthony:

> "[Respondent] is now unemployed. However, he was offered continued employment at [Saint Anthony] for an annual sum of $575,000. He did not accept it, and the offer was ultimately withdrawn. I am, however, imputing income to him at that rate,

> namely, $575,000 per year based on my finding that [respondent] is voluntarily unemployed by failing to take advantage of [Saint Anthony's] offer of continued employment at that rate."

¶ 35 2. Discussion

¶ 36 Imputation of income is a device by which courts refuse to countenance a spouse's unreasonable failure to take advantage of an employment opportunity. "In order to impute income to a party, the court must find that the party is voluntarily unemployed, is attempting to evade a support obligation, or has unreasonably failed to take advantage of an employment opportunity." *In re M.M.*, 2015 IL App (2d) 140772, ¶ 44. If no such circumstances exist, the trial court must not impute income. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009). The trial court's decision on imputation of income is reviewed for abuse of discretion. *Id.* A court abuses its discretion only where no reasonable person would take the view adopted by the trial court. *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 52.

¶ 37 The trial court determined that respondent unreasonably failed to accept Saint Anthony's offer of employment before it was withdrawn on September 22. Saint Anthony offered a one-year term of employment at $575,000. Respondent would be expected to maintain a full-time clinical practice plus on-call emergency coverage of 10 days per month. As respondent characterizes the evidence, he negotiated in good faith with Saint Anthony over several days, and had ultimately decided to accept its offer, yet it "was withdrawn as [he] was accepting it." Respondent suggests that, since Saint Anthony set no earlier deadline for his decision on its September 3 offer, he could reasonably presume that he had until September 30, the termination date for his current contract, to act on the offer. Therefore, as respondent sees it, he was not at fault for not having accepted the offer prior to the September 22 withdrawal.

¶ 38 The trial court did not accept respondent's view of the matter, and the record supports its determination. First, contrary to respondent's characterization, his expressions to Saint Anthony never amount to an acceptance of the offer. On September 24, respondent, purportedly unaware of Saint Anthony's withdrawal of the offer two days before, texted Carynski that he was "inclined" to accept the offer but wanted to meet with her first on September 29. This hedged statement was not an acceptance. See *Mike Schlemer, Inc. v. Pulizos*, 267 Ill. App. 3d 393, 395 (1994) ("The acceptance must conform exactly to the offer [citation], and it must be unequivocal."). Consistent with the wording of his September 24 text, respondent testified that he intended to accept Saint Anthony's offer with "discussion" of certain issues.

¶ 39 Second, Saint Anthony was free to withdraw the offer on September 22 even if, as respondent suggests, September 30 was the presumptive deadline for respondent's decision. Prior to its acceptance, an offer may be withdrawn at any time, even within the specific time allotted for acceptance, unless the offeree supplies consideration to keep the offer open. *Corbett v. Cronkhite*, 239 Ill. 9, 15-16 (1909); see also *DiLorenzo v. Valve & Primer Corp.*, 347 Ill. App. 3d 194, 200 (2004) (describing difference between (1) an option contract, which consists of a promise, supported by consideration, to keep an offer open for a specified time or for a reasonable time, and (2) a "continuing offer which may be withdrawn by the offeror at any time before acceptance" (quoting *Hermes v. William F. Meyer, Co.*, 65 Ill. App. 3d 745, 749 (1978)). There is no suggestion that respondent gave consideration to keep the offer open until September 30.

¶ 40 Not only was Saint Anthony legally free to withdraw its offer prior to September 30, the record supports the trial court's implied finding that respondent's failure to negotiate in good faith prompted the early withdrawal of the offer. Carynski testified that, as late as September 19,

respondent told her that he had not even opened Saint Anthony's September 3 proposal. Respondent's indifference to Saint Anthony's proposal was cited in the September 22 notice of withdrawal. Respondent contradicted Carynski's account, creating a credibility issue that the trial court was far better positioned than we to resolve. See *In re Marriage of Manker*, 375 Ill. App. 3d 465, 477 (2007). Moreover, respondent's own proposal, as it was described by Carynski and Nafziger, was unrealistic if not preposterous. According to them, respondent proposed that he initially work at Saint Anthony only 10 days per month, covering emergencies. Nafziger recalled that respondent sought $450,000 per year for the on-call duty alone, plus $25,000 per year for a position as officer on the medical staff. Respondent denied that he asked for such an arrangement, but this, again, was a credibility question for the trial court. We see no basis for disturbing the court's resolution of the conflicting testimony.

¶ 41 Respondent claims that he showed earnestness by commencing a job search shortly after receiving the May 2014 notice of nonrenewal. This diligence does not excuse, however, his failure to take advantage of an immediate opportunity for continued employment by his present employer, Saint Anthony. Respondent presented no evidence that he received other job offers, let alone any comparable to Saint Anthony's. Therefore, the trial court was justified in imputing to him the salary offered by Saint Anthony.

¶ 42 Respondent likens this case to *Gosney*, but the comparison fails. The petitioner in *Gosney* was a partner in an investment management firm. The petitioner and other partners offered to buy the shares of fellow partners who wanted to sell the company. The price demanded was $800,000 per share. The petitioner declined the purchase and offered to work for the company for definitive compensation only. Later, his employment was terminated, and he negotiated a severance payment. *Gosney*, 394 Ill. App. 3d at 1074-75. The appellate court

agreed with the trial court that the petitioner's dismissal from the investment firm was not his fault and therefore could not justify imputation of income. The evidence showed rather that the petitioner "was forced out of the company by [its] unfair and oppressive negotiation tactics and was asked to leave the firm when he failed to agree to the terms." *Id.* at 1078.

¶ 43 Respondent claims that the analogously unfair tactic used by Saint Anthony was its withdrawal of the offer prior to September 30. Respondent is mistaken, as the evidence supports the determination that Saint Anthony withdrew the offer because of respondent's failure to negotiate in good faith. *Gosney*, therefore, is distinguishable.

¶ 44 Respondent also mentions that the trial court struck his March 2015 motion to reduce the existing support order based on his obtaining new employment with a yearly salary of $245,000. The trial court struck the motion because respondent failed to appear in court. As respondent develops no argument that the trial court erred in so ruling, the contention is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Dec. 9, 2015) ("Argument *** shall consist of the contentions of the appellant and the reasons therefor[.]").

¶ 45 For the foregoing reasons, we find that the trial court did not abuse its discretion in imputing income to respondent.

¶ 46 B. Maintenance

¶ 47 Respondent challenges the award of maintenance to petitioner.[1] The trial court awarded permanent maintenance of $5,659 per month, with the following rationale:

[1] As the parties recognize, the evidence in this case was closed, and the trial court rendered its decision, prior to January 1, 2015, the effective date of the new maintenance guidelines (see Pub. Act 98–961 (eff. Jan.1, 2015) (amending 750 ILCS 5/504 (West 2012)).

> "This is a 22 plus year marriage which is a long term marriage. During the parties' marriage four children were born which required [petitioner] to be their primary caregiver. [Respondent] was involved heavily into his medical career which required him to be away from the household during the daytime periods. During the marriage, the parties agreed that [petitioner] would not work but stay home and raise their children. With respect to maintenance, [petitioner] is a woman who has been trained as an accountant, achieving a B.A. in Accountancy prior to the marriage. Her last fulltime job was 23 years ago, making $29,000.00. During the parties' separation, most recently, [petitioner] was employed on a part-time basis at Regal Cutting Tools. She had to quit this job due to her health issues consisting of Sjogren's disease and fatigue. She is now unemployed. During the pendency of the case [petitioner] has been receiving temporary maintenance from [respondent]. I have reviewed her financial affidavit. Pursuant to *** the maintenance statute, *** this case indicates[s] that [petitioner's] standard of living after the divorce would not be comparable to that enjoyed during the marriage without assistance from [respondent]. Further her health prevents her from seeking full-time and arguably part-time employment. Accordingly, she is in need of continued maintenance from [respondent], and, in fact, maintenance shall be permanent."

¶ 48 Respondent concedes that some maintenance was appropriate, but claims the award should have been of rehabilitative, not permanent, maintenance given petitioner's earning capacity based on her education and work experience.

¶ 49 In considering a petition for maintenance, the trial court must examine the factors specified in section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(a) (West 2010)). These factors include the income and property of each party, the

current needs of each party, the present and future earning capacity of each party, the standard of living established during the marriage, the duration of the marriage, and the age and physical condition of each party. *Id.*

¶ 50 "[T]he optimal goal of maintenance is for the dependent former spouse to become financially independent." *In re Marriage of Connors*, 303 Ill. App. 3d 219, 229 (1999). However, 'the goal of financial independence must be balanced against a realistic appraisal of the likelihood the spouse will be able to support herself in some reasonable approximation of the standard of living established during the marriage." (Internal quotation marks omitted.) *Id.* Rehabilitative maintenance is appropriate if evidence shows a potential for future employability at an income that allows approximately the same standard of living established during the marriage. *In re Marriage of Heasley*, 2014 IL App (2d) 130937, ¶ 23. Permanent maintenance, on the other hand, is appropriate where it is evident that the recipient spouse is either unemployable or employable only at an income that is substantially lower than the standard of living during the marriage. *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 18. A trial court's determination on maintenance will be disturbed only if the court abused its discretion. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010).

¶ 51 Respondent's argument on maintenance proceeds in two stages. First, he contends that petitioner has earning potential given her education and work experience in accounting. Second, he challenges the trial court's admission of petitioner's testimony that she has Sjogren's, a connective tissue disease. Respondent has reversed the priority of these points. The trial court found that petitioner's Sjogren's disease permanently prevents her from achieving approximately the same standard of living enjoyed during the marriage. This is the threshold issue for our review, for if the evidence indeed shows that petitioner is physically unable on a permanent basis

to achieve financial independence, then the earning capacity that she otherwise possesses becomes a moot consideration.

¶ 52 We turn first, then, to respondent's second point. He challenges on two bases the admission of petitioner's testimony that she has Sjogren's disease. First, he asserts that petitioner's pretrial disclosure that she has the disease was untimely under the trial court's case management order issued in compliance with Supreme Court Rule 218(c) (eff. Oct. 4, 2002). Rule 218(c) requires the trial court to impose deadlines to insure that discovery is completed no later than 60 days before trial. *Id.* The court set the matter for trial in April 2014 and set December 13, 2013, as the discovery deadline. On March 12, 2014, petitioner submitted a supplemental discovery response in which she disclosed for the first time that she has Sjogren's disease.

¶ 53 Respondent, however, never asked the trial court to bar petitioner's testimony because of the untimely disclosure. Respondent did, as he represents to us, remark to the trial court that petitioner's disclosure was untimely, but he did so only to justify his own subsequent delay in disclosing the subject matter of the expert testimony he anticipated presenting to rebut petitioner's testimony on Sjogren's. Respondent clarified to the court that he was asking, not for exclusion of petitioner's testimony, but for proportionate leniency. The court ultimately delayed part of the trial so that respondent could complete the disclosure of his expert's opinion. Since respondent never moved below to exclude petitioner's testimony because it was not timely disclosed under the case management order, his argument is forfeited on appeal. See *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 15 (arguments raised for the first time on appeal are forfeited).

¶ 54 Respondent's second basis for challenge is that petitioner's testimony on Sjogren's was substantively inadmissible. Respondent notes specifically the following portion of petitioner's direct examination, which contains respondent's objection:

"Q. What is the diagnosis of your health?

A. Um, I have Sjogren's disease.

MR. TENGLER [respondent's attorney]: Judge, I'll move to strike. She's—it's a mental diagnosis. I don't think she can be able to testify to that.

MS. BAILEY [petitioner's attorney]: Judge, a person is entitled to testify to their—

THE COURT: Yeah.

MS. BAILEY: --health.

THE COURT: Overruled.

A. Yeah. Um—

Q. And when were you diagnosed with Sjogren's disease?

MR TENGLER: Judge, for the record, same objection—

THE COURT: All right.

MR. TENGLER: —along with any questions in relationship to this.

THE COURT: Okay, noted. Overruled."

Petitioner proceeded to testify that she was diagnosed with Sjogren's disease in November 2011.

¶ 55 Respondent cites *Robinson v. Wieboldt Stores*, 104 Ill. App. 3d 1021 (1982), to support his claim of error. In *Robinson*, the plaintiff sued a department store for false imprisonment after a security guard physically restrained her on suspicion that she shoplifted. Describing the extent of her injuries, plaintiff testified, over defense objection, that she had high blood pressure prior to

the incident and experienced angina for the first time after the incident. The appellate court held that the admission of this testimony was reversible error:

> "While it would have been proper for plaintiff to describe any symptoms or physical limitations which she did not experience prior to the incident in Wieboldt's [citation], as well as testify to how she felt, it was improper for her to testify concerning special medical conditions such as high blood pressure and angina. Plaintiff was not qualified as an expert and was therefore incompetent to testify regarding specific medical diagnoses.
>
> Since plaintiff's testimony was the only evidence concerning the extent of her injuries, the error in admitting her incompetent medical testimony, which was a substantial portion of the testimony, was prejudicial and mandates reversal of the award of damages." *Id.* at 1026-27.

The plaintiff's opinion in *Robinson* amounted to a self-diagnosis that she, as a layperson, was not competent to render. The situation here was different. First, subsequent to the portion of her testimony cited by respondent, petitioner testified that she received the Sjogren's diagnosis from her family physician, Jocelyn Golim. Second, petitioner introduced into evidence a document entitled "After Visit Summary," which purports to date from petitioner's August 30, 2012, appointment with Golim. The document lists "Sjogren's syndrome" under the heading "Diagnoses." Respondent did not object, *e.g.*, on hearsay grounds, to petitioner's testimonial reference to Golim's diagnosis. He did lodge a hearsay objection to the "After Visit Summary," but it was overruled. In any event, he makes no admissibility challenge on appeal to either piece of evidence. The sources that petitioner cited for her claim to have Sjogren's disease distinguish her testimony from the simple self-diagnosis in *Robinson*. See *People v. Steele*, 2014 IL App

(1st) 121452, ¶ 31 (witness' testimony that he had torn ligaments and bone fragments was incompetent and, hence, inadmissible in the absence of "scans, X-rays, medical reports, or medical testimony, something, to show that diagnosis."). Therefore, we reject respondent's claim of error.

¶ 56 In the midst of his argument on admissibility, respondent makes a reference to the testimony of Dr. Robin Borchardt, whom respondent called to testify generally about Sjogren's disease. Perhaps this is respondent's attempt to argue that, even if the trial court properly admitted petitioner's testimony that she has Sjogren's, we must still reverse because it was error for the trial court, in light of Borchardt's testimony, to conclude that petitioner is unable to work because of Sjogren's. The attempt does not amount to a developed argument, however, for respondent fails to acknowledge the very testimony that Borchardt's testimony was offered to rebut, namely petitioner's testimony about the effect of Sjogren's on her ability to work. Consequently, the point is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Dec. 9, 2015) (arguments without supporting references to the record are forfeited on appeal).

¶ 57 Since the trial court's finding that petitioner cannot work because of Sjogren's is determinative of her need for permanent maintenance, we need not address respondent's separate contention that petitioner has earning capacity due to her education and work experience.

¶ 58 C. College Expenses

¶ 59 Respondent claims that it was excessive for the trial court to order him to pay 75% of Andrew's college expenses. We disagree.

¶ 60 Evidence on the issue was presented at trial and previously at a hearing on petitioner's motion for contribution to college expenses. Total yearly expenses at Washington University were $62,000. The decision for Andrew to attend Washington was made by him and petitioner

following the parties' separation. Respondent had no input in the decision. He claimed that his lack of input was due to petitioner's and Andrew's refusal to communicate with him. Andrew selected Washington University with the intent to major in biology on a premedical path. As of his second year, however, he had not declared a major but was still studying premedicine.

¶ 61 In a dissolution action, responsibility for the educational expenses of children is assigned according to section 513(b) of the Act (750 ILCS 5/513(b) (West 2010)), which states:

> "(b) In making awards ***, the court shall consider all relevant factors that appear reasonable and necessary, including:
>
> (1) The financial resources of both parents.
>
> (2) The standard of living the child would have enjoyed had the marriage not been dissolved.
>
> (3) The financial resources of the child.
>
> (4) The child's academic performance."

A decision on educational expenses will not be disturbed on appeal absent an abuse of discretion. See *In re Marriage of Thurmond*, 306 Ill. App. 3d 828, 834 (1999).

¶ 62 Respondent makes a series of contentions with respect to the award. First, he contends that the award was erroneous because he was unemployed at the time. We dealt above with the issue of income imputation. See *supra* ¶¶ 19-45. Notably, respondent does not make the alternative argument that even his income *as imputed* is insufficient to cover the educational expenses.

¶ 63 Second, respondent asserts that the court erred by failing to make specific findings on the statutory factors, or at least by failing to identify which factors it considered. Respondent cites no dictate in the statutory text or interpretative case law requiring the trial court to set forth its

factual findings. *Cf.* 750 ILCS 5/610(b) (West 2010) ("The court shall state in its decision specific findings of fact in support of its modification or termination of joint custody if either parent opposes the modification or termination."). In the absence of such a requirement, we presume that the trial court considered all requisite factors, unless the record positively shows otherwise. See *In re N.B.*, 191 Ill. 2d 338, 345 (2000) ("The circuit court is presumed to know the law and apply it properly, absent an affirmative showing to the contrary in the record."). Respondent points to nothing, other than an unfavorable result, to show that the trial court failed to consider all requisite factors.

¶ 64 Third, respondent asserts that the award of educational expenses "was excessive considering that Andrew could receive a comparable education at the University of Illinois or another private school, Marquette University." Respondent cites *In re Marriage of Calisoff*, 176 Ill. App. 3d 721, 730 (1988), where the husband successfully appealed the trial court's order that he pay 100% of the college expenses of the parties' two children. The appellate court found the award excessive given the husband's financial situation. Both of the parties' children were attending the University of Southern California. The appellate court directed the trial court to consider on remand "the children's access to less expensive academic institutions comparable to the University of Southern California." *Id.* Respondent also cites *In re Support of Pearson*, 111 Ill. 2d 545, 551-52 (1986), for its statement that "[w]hile in some instances it may be proper for the court to provide for a child's attendance at a private school, the child's access to a less expensive public institution is a factor to be considered."

¶ 65 The evidence here showed that Andrew was accepted at Marquette University and the University of Illinois at Urbana-Champaign in addition to Washington University. The total cost of Washington University was $62,000 per year. The school offered Andrew no scholarships.

The evidence of a total yearly cost for Marquette University ranged from $40,000 and $62,000. Andrew was offered a yearly scholarship at Marquette University of $13,000 to $14,000. With respect to the University of Illinois, a range was presented of $26,000 to $30,000 per year in total cost. The University of Illinois offered Andrew a one-time stipend of $500.

Respondent's argument is focused on the cost of education and leaves the issue of quality undeveloped. He provides no citation to the record for his assertion that Marquette University and the University of Illinois offered programs "comparable" to Washington University's. He similarly fails to provide record support for his assertion that the University of Illinois "offers a superior pre-medical course of study," which is Andrew's chosen course. Contentions without supporting citations to the record are forfeited on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. Dec. 9, 2015). In fact, the evidence at trial on the comparative merits of the programs was mixed. Respondent introduced into evidence a World University Ranking that ranked the University of Illinois at 33 and Washington University at 44. Petitioner, however, referred to other rankings placing Washington University at 14, the University of Illinois at 44, and Marquette University at 74 in the area of biology, which was the major Andrew intended to pursue when he was choosing a school. Respondent claims that petitioner's reference to the rankings was hearsay, but he forfeited this challenge by not bringing it below. *Mabry*, 2012 IL App (1st) 111464, ¶ 15 (arguments raised for the first time on appeal are forfeited).

¶ 66 Finally, respondent points out that Andrew did not work during the summer after his freshman year at Washington University. Respondent thus insinuates that Andrew's failure to contribute financially to his education during that summer diminishes his claim to respondent's aid. Respondent, however, ignores testimony from Andrew and petitioner that Andrew made a

broad search for summer employment and, finding none, enrolled in a YMCA contest called "Internship Challenge," which paid him $100 weekly plus an additional $500 for placing third.

¶ 67 For these reasons, we affirm the allocation of educational expenses for Andrew.

¶ 68 D. Finding of Dissipation and Division of Property

¶ 69 1. Facts

¶ 70 Respondent takes issue with the division of marital property. First, he challenges the trial court's rejection of his claim that certain funds he transferred to his mother, Moon Boo Chang (Moon), and his friend, Paul Kim, were repayment of marital debt. The court's finding, though not labeled as such, was a finding of dissipation. The court allocated the dissipated funds to respondent as part of his share of the marital estate. Second, respondent contests the general fairness of the property division. We reject both challenges.

¶ 71 As respondent notes, the issue of dissipation was "hotly contested" at trial. The assets petitioner alleged were dissipated consisted of two $99,000 transfers from respondent to Moon and two transfers, of $35,103[2] and $9,682, from respondent to Kim. The two $99,000 transfers to Moon were by checks that respondent wrote on January 6 and 10, 2012, from the parties' joint account at Bank of America. The $35,103 transfer to Kim was by check written from the Bank of America account on September 25, 2013. The $9,682 transfer was by check written on September 26, 2013, from an account at Alpine Bank that respondent, unbeknownst to the court or petitioner, opened during the proceedings.

¶ 72 Respondent's position at trial was that the transfers were repayment of sums that Moon and Kim loaned the parties periodically from 1992 to 2008, a period that encompassed not only

[2] The dissolution judgment erroneously refers to this amount as $35,100. The parties, however, do not request a remand for correction of the figure.

respondent's medical education and training but also several years of his subsequent career as a staff neurosurgeon and medical professor at various institutions.

¶ 73 In her case-in-chief, petitioner testified that respondent's parents were "lower middle-class" and lacked the resources to financially support the parties. Petitioner admitted, however, that she did not know how much Moon earned in her employment as a registered nurse. Petitioner recalled that Moon would give the parties gifts, some monetary, on holidays and birthdays, but petitioner remembered no substantial monetary transfers. Petitioner handled the family finances from 1992 to 1999, during which time she saw no indication of loans from Moon. In 1999, respondent decided to open a checking account in his name alone for the deposit of his paychecks. Even then, however, petitioner was still able to see the account statements because they were mailed to the house. She saw no record of loans from Moon.

¶ 74 Petitioner further denied that Moon bought the parties a car. Petitioner testified to only three loans from friends, family, or acquaintances while the parties were married. First, during respondent's neurosurgery residency in Canada from 1994 to 1998, the parties borrowed from petitioner's sister. Second, during respondent's neurosurgical fellowship in Florida in 1998 and 1999, the parties borrowed from respondent's supervisor and from Kim. Petitioner testified that the parties repaid all three loans once respondent took his first staff neurosurgeon position in 1999. Once respondent took that position, the parties "didn't need any [financial] help."

¶ 75 Respondent testified that he funded his undergraduate education through scholarships, grants, student loans, employment, and assistance from his parents, who contributed between $13,500 and $15,000 to his schooling. Respondent graduated from college in 1989 and began medical school that year. Around the time of their marriage in April 1992, respondent advised petitioner that, as the firstborn son in a Korean household, he was obligated to support his

parents in their later years. As part of this obligation, respondent would repay his parents whatever direct or indirect financial support they provided. Respondent testified that he and petitioner had a conversation with Moon in April 1992 in which Moon said she expected respondent to repay later in life whatever financial support she had given. Petitioner and respondent both expressed their assent.

¶ 76 Respondent testified that, during his medical studies in Philadelphia from 1989 through 1993, Moon permitted him and petitioner to live rent-free in one of the units in Moon's triplex. During medical school, respondent accumulated student loans of $200,000, exclusive of interest, but Moon also provided financial support. Respondent told petitioner that they would need financial help even once he graduated and began his residency because his salary as a resident would be inadequate to support them. Petitioner agreed with respondent that her family lacked the resources to help and that they should continue to seek assistance from Moon. They both understood that respondent's parents would expect repayment of their contributions.

¶ 77 In his testimony, respondent described approximately 35 individual transfers from Moon to the parties between May 1992 and July 2008. The transfers were by check or cash. Respondent claimed to recall the amount of the transfers, the year and month they were made, whether they occurred in-person or by mail, and, in some cases, who was present when the payment was received. Respondent claimed that petitioner was present when many of the in-person transfers occurred and was aware of some of the mail transfers. The individual amounts from Moon ranged from $1,500 to $15,000, but most were between $3,000 and $5,000.

¶ 78 Respondent testified that Moon continued to provide the parties financial support even after he finished his training in 1998 and took a staff neurosurgeon position with a salary of $320,000. Moon provided the support because respondent still had expenses and student loans to

repay. In 2008, respondent was involved in a legal dispute with his employer, the University of California, and Moon contributed $15,000 to his legal fees. Moon's transfers between May 1992 and July 2008 totaled $162,000. Also during this period, Moon purchased two cars for the parties and paid off the $15,000 balance on respondent's undergraduate student loans.

¶ 79 Respondent presented no documentation of any transfer from Moon to the parties or any written memorialization of a loan. Respondent claimed that he had no access to the funds that he transferred to Moon in January 2012 and had not asked her to return them. He had not asked Moon for financial assistance following the termination of his position at Saint Anthony. Respondent acknowledged that, for a short time during the proceedings, he and Moon had a joint account at Woori Bank. Respondent denied having a joint account with Moon at PNC Bank.

¶ 80 Respondent also testified to amounts given to the parties by Kim. Between May 1998 and August 2008, Kim transferred, by cash or check, $37,000 to the parties. Respondent produced no documentation of these transfers. He acknowledged that he did not execute a promissory note with Kim, but claimed they had an understanding that respondent would repay Kim. Respondent asserted that he had no access to the funds he transferred to Kim in September 2013.

¶ 81 During the years in which he was receiving the financial support from Moon and Kim, respondent's annual salary was as follows: 1994-1998, $24,000 to $36,000; 1998-1999, $47,000; 1999-2000, $320,000; 2000-2004, $250,000; 2004-2008, $250,000 to $415,000; 2008-2014, $850,000-$950,000.

¶ 82 Moon, called as a witness by respondent, testified that that she has been a registered nurse in Philadelphia for the past 33 years. Her current salary is $110,000. She claimed that, between 1989 and 2013, she provided financial support to respondent in checks and cash totaling

$350,000. In addition to these transfers, Moon purchased two cars for the parties during their marriage and paid the insurance on them. She also allowed the parties to live rent-free in her triplex while respondent was attending medical school. In 1989, when Moon first started providing the parties with funds, she earned $80,000, consisting of $30,000 in base pay and $50,000 in overtime. Moon recalled a conversation she had with respondent and petitioner at 6 p.m. in her living room on a day in May 1990. She told them that, because she had supported respondent in college and would support him in medical school, she expected respondent to support her later in life. Moon also testified, however, that the reason she was asking for repayment of the $350,000 was that the parties were divorcing.

¶ 83 Moon admitted that she did not bring with her to court any documentation of the monetary transfers, and claimed that she was unaware that she was expected to bring such proof. She claimed to have at home a promissory note from 1989 in which respondent agreed to repay her $20,000.

¶ 84 Moon testified that, when respondent gave her in January 2012 the two checks for $99,000 each, she deposited them into her Wells Fargo account. Several months later, Moon opened a joint account with respondent at PNC Bank and deposited the $198,000 into it. Respondent had asked her to do this so that he could access the money. Moon denied that she had returned any of the money to respondent, but added that she would return it at the conclusion of the case if he asked.

¶ 85 In her rebuttal case, petitioner introduced into evidence a financial statement that respondent filed with his undergraduate alma mater, Stanford, in October 1998. The statement had a section entitled "Debt" and had blank spaces for "Credit Cards," "School Loans,"

"Installment Loans," "Personal Loans," and "Judgments." Respondent identified an amount of credit card debt and student loans, but listed no other debts or loans.

¶ 86 The trial court found, contrary to respondent's position, that no marital debt to Moon or Kim existed when respondent made the transfers in January 2012 and September 2013. The court specifically noted Moon's testimony that, when the case concluded, she would return, if respondent asked, the amounts he gave her in January 2012.

¶ 87 2. Discussion

¶ 88 A relevant factor in the distribution of marital property is whether a party dissipated marital funds. See 750 ILCS 5/503(d)(2) (West 2010). Dissipation occurs when one spouse uses a marital asset for his or her sole benefit and for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown. *In re Marriage of Dhillon*, 2014 IL App (3d) 130653, ¶ 36. Once the complaining spouse makes a *prima facie* case of dissipation, the charged spouse has the burden of showing, by clear and convincing evidence, how the marital funds were spent. *In re Marriage of Tabassum and Younis*, 377 Ill. App. 3d 761, 779 (2007). If the charged spouse fails to meet this burden, the trial court is required to find dissipation. *Id.* A finding on dissipation will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id.* A determination on the existence of marital debt is reviewed under the same standard. *In re Marriage of Patel & Sines-Patel*, 2013 IL App (1st) 112571, ¶ 66. A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re Edmonds*, 2014 IL 117696, ¶ 35.

¶ 89 In her case-in-chief, petitioner made a *prima facie* case of dissipation. First, she presented undisputed evidence that the funds in question were transferred to Moon and Kim when the marriage was irretrievably broken. Second, she testified that she saw no indication of

loans from Moon in the parties' banking statements and had no independent recollection of any substantial transfers from Moon. She recalled only one transfer from Kim, which the parties repaid once respondent took his first job as a staff physician. According to petitioner, once respondent began his career, the parties no longer needed financial help.

¶ 90 Petitioner having made her *prima facie* case, respondent had the burden of proving by clear and convincing evidence that the funds were not dissipated. Respondent did not present any written acknowledgement of a loan from Moon or Kim or any documentation of transfers from them. He offered simply his word, and Moon's word, that such loans were made. In rebuttal, petitioner presented evidence that respondent acknowledged only his student loans and credit card debt on a 1998 financial disclosure to Stanford.

¶ 91 There being no compelling documentary evidence from either party, the matter was largely a credibility contest, and the trial court was in a superior position to observe the demeanor of the witnesses, to determine and weigh their credibility, and to resolve any conflicts in their testimony. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 95. The trial court may well have found aspects of respondent's case implausible—for instance, the suggestion that Moon would continue her periodic financial support, and that Kim would also contribute, once respondent began his lucrative medical career in 1999. The court took note of Moon's admission that she was willing to return, at the conclusion of the case, the $198,000 that respondent gave her in repayment of the alleged loans. There were other striking admissions by Moon. She admitted that, at respondent's request, she opened a joint account so that he could access the $198,000. Here she directly contradicted respondent, who denied that he had access to those funds. Moon also admitted that it was because of the parties' divorce that she was asking respondent to repay the $350,000 that she claimed was owed her. Hence the trial court was well

warranted in its implied findings that respondent and Moon lacked credibility on this issue and, hence, that no marital debt to Moon or Kim existed when respondent made the transfers in January 2012 and September 2013.

¶ 92 For these reasons, we see no error in the finding of dissipation and the consequent decision to allocate the entirety of the dissipated funds, $242,785, to respondent as part of his share of the marital estate.

¶ 93 Respondent also generally complains about the property distribution, claiming that he effectively did not receive 40% of the marital estate as the trial court ordered. Respondent acknowledges the individual findings of the trial court that led to the diminution or dilution to which he objects. His complaints about those findings are summarized in the following paragraph:

> "Although [respondent] was awarded 40% of the marital estate, the number is a ruse. By assigning him the value of marital debts he repaid to [Moon and Kim], and awarding him withdrawals from bank accounts from 2012, [respondent] was denied any liquid assets. His interest in the real estate was assigned to [petitioner]. Essentially, [respondent] was only allowed to take his cars *** and personal effects as his award from the marital estate. This is an abuse of discretion as [respondent] did not receive anything close to 40% of the marital estate he was allegedly awarded."

We address these points in turn. We discussed above the issue of dissipation in connection with the transfers to Moon and Kim. See *supra* ¶¶ 67-91. Next, respondent comments that the court found additional dissipation by him in the form of his withdrawals in 2012 from the parties' joint account at Bank of America, and he notes that the court allocated those withdrawals to him as part of his share of the marital estate. However, he makes no attempt to show that the

withdrawals did not constitute dissipation. Consequently, this contention is forfeited for our review. See Ill. S. Ct. R. 341(h)(7) (eff. Dec. 9, 2015) ("Argument *** shall consist of the contentions of the appellant and the reasons therefor[.]").

¶ 94 Respondent further observes that, in its supplemental order of June 2015, the trial court altered its initial distribution of the parties' four real estate properties. Respondent recognizes that the trial court took this action to ensure enforcement of its orders for maintenance and child support, regarding which respondent was $98,000 in arrears. We addressed and rejected above respondent's challenge to the underlying maintenance order. See *supra* ¶¶ 46-56. Moreover, he does not challenge the underlying order for child support. Respondent's only independent quarrel with the trial court's chosen means for enforcing the maintenance and child support orders is that it deprived him of an interest in the parties' real estate. This challenge is not well taken, particularly since respondent does not suggest what other measures the trial court should have used to address the substantial support and maintenance shortfall that he accumulated.

¶ 95 Finally, respondent's comment that he was left only with his cars and personal effects simply begs the question of whether the trial court's actions leading to that consequence were proper. As noted, respondent's challenges to those actions all fail.

¶ 96 E. Order to Pay Petitioner's Attorney Fees

¶ 97 We last address respondent's claim that the trial court erred in assessing against him the fees accrued by petitioner's current and former attorneys. Her former attorneys, Schiller DuCanto & Fleck, sought $74,623.23 in fees, and her current attorneys, WilliamsMcCarthy LLP, $116,884.86 in fees. The court ordered respondent to pay 100% of WilliamsMcCarthy's fees and 50% of Schiller's fees "for repeated violations of the Court's Orders, discovery rules, failure to make timely payments for previous contempt findings and the previous contempt findings

[themselves]." The court entered judgment for the law firms in those amounts. Respondent claims that the trial court erred in awarding fees in excess of the amounts that the law firms specifically ascribed to his noncompliance with court orders.

¶ 98 Although the trial court did not identify the authority under which it imposed the sanction, our analysis proceeds on the reasonable presumption that the court utilized section 508 of the Act (750 ILCS 5/508 (West 2010)), pursuant to which it had made interim awards of attorney fees to petitioner. Subsection (c) of section 508 (750 ILCS 5/508(c) (West 2010)) permits the trial court to award attorney fees incurred by a party due to the opposing party's unjustifiable failure to comply with a court order.

¶ 99 We do not reach the merits of respondent's challenge to the fee award, as we agree with petitioner that this aspect of respondent's appeal must be dismissed for his failure to serve either law firm with a copy of the notice of appeal. While the filing of the notice of appeal in the reviewing court is the only jurisdictional prerequisite in an appeal (Ill. S. Ct. R. 301 (eff. Feb. 1, 1994), the reviewing court may dismiss an appeal because of a failure to serve the notice upon a party of record or a party in interest. See *Wells Fargo Bank, N.A. v. Zwolinski*, 2013 IL App (1st) 120612, ¶¶ 14, 17. Supreme Court Rule 303(c) (eff. Jan. 1, 2015) requires the party filing the appeal to serve a copy of the notice of appeal "upon every other party and upon any other person or officer entitled by law to notice." Petitioner cites case law construing the requirement to mean that "failure to serve a copy of the notice of appeal on parties who may be adversely affected by the appellate court's decision may result in dismissal of the appeal." *Zwolinski*, 2013 IL App (1st) 120612, ¶ 14.

¶ 100 In *Zwolinski*, the appellate court dismissed the mortgagor's appeal of a judgment of foreclosure because the mortgagor failed to serve parties of record—the mortgagee (Wells Fargo

Bank), a junior mortgagee (Harris, N.A.), and a judgment creditor (Corby S. Hagan)—as well as "parties in interest," namely the purchasers (the Nowakowskis) of the foreclosed property. *Id.* at ¶¶ 16-17. The court noted that, while Wells Fargo became aware of the appeal through other means and made an appearance, Harris, Hagan, and the Nowakowskis remained officially unaware of the appeal. The court described the potential prejudice to those parties if the judgment were reversed. Harris and Hagan "would be put in the very unfortunate position of having to repay the surplus funds which they were awarded following the sale of the *** property." *Id.* ¶ 17. The Nowakowskis also would be "greatly disadvantaged" if "the judgment of the trial court were reversed and the sale of the *** property unwound[.]" *Id.*

¶ 101 Here, the Schiller and WilliamsMcCarthy firms are not parties of record, but are surely parties in interest given their stake in the appeal. If the fee award were reversed, the firms would be deprived of a more capable source of payment than petitioner, who is currently unable to work.

¶ 102 The result to which the adverse-impact principle of *Zwolinski* inclines in this case is affirmed by *In re Marriage of Gluszek*, 168 Ill. App. 3d 987 (1988). There, the husband appealed, *inter alia*, a fee award imposed under section 508(c) of the Act (Ill. Rev. Stat. 1985, ch. 40 par. 508(c) (now 750 ILCS 5/508(a) (West 2010))), but the appellate court dismissed that portion of the appeal because the husband failed to serve the notice of appeal upon the law firm in whose favor the award was entered. In providing its rationale, the court observed, first, that section 508(c) of the Act provides (in the court's paraphrase) "that an attorney who is awarded *** fees may enforce the court order in his name." *Id.* at 993; 750 ILCS 5/508(a) (West 2010) ("The court may order that the award of attorney's fees and costs (including an interim or contribution award) shall be paid directly to the attorney, who may enforce the order in his or her

name, or that it shall be paid to the appropriate party. Judgment may be entered and enforcement had accordingly."). The court further observed that an attorney has the right to "defend an appeal from an award of such fees." *Id.* The court concluded from these two premises that "the attorney must be served with a notice of appeal if his fee award is being challenged." *Id.*

¶ 103 The reasoning in *Gluszek*, with which we agree, provides an additional ground for our conclusion that we must dismiss this portion of respondent's appeal because the Schiller and WilliamsMcCarthy firms did not receive notice of the appeal. Accordingly, we affirm the award of attorney fees.

¶ 104 III. CONCLUSION

¶ 105 For the foregoing reasons, we affirm the judgment of the circuit court of Winnebago County.

¶ 106 Affirmed.