2017 IL App (2d) 160390-U
No. 2-16-0390
Order filed February 23, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF DANIEL CHAPA, III, Petitioner-Appellee, and NANCY CHAPA, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 9-D-395 Honorable Neal W. Cerne, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court acted within its discretion when it ordered that a monetary judgment owed by the wife to the husband be enforced by temporarily reducing the wife's maintenance award. However, the court erred as to the amount owed when it misallocated mortgage debt on the marital residence and awarded post-decree attorney fees without sufficient evidence. To correct for the court's misallocation of the mortgage debt, and to correct for a portion of the post-decree attorney-fee award, we shorten the maintenance offset period from 43 months to 29 months. Affirmed as modified.

¶ 2 In a post-decree order, the trial court enforced a $101,361 judgment owed by *pro se* appellant, Nancy Chapa, to appellee, Daniel Chapa III, by reducing Nancy's monthly maintenance award by $2,357 for 43 months. (This court previously projected Nancy's monthly

maintenance to be near $32,000. *In re Marriage of Chapa*, 2013 IL App (2d) 120745-U, ¶ 34 (*Chapa I*).) The court also permitted Daniel to offset the full amount of any bonus payment owed to Nancy, which would result in a reduction period of less than 43 months.

¶ 3 On appeal, Nancy argues that the trial court exceeded the scope of its authority by enforcing the judgment in the manner that it did. She essentially argues that the court did not so much enforce a judgment as it did add a new obligation. Nancy also challenges the amount of the judgment, arguing as to its component parts that: (1) she has no obligation to satisfy the $13,787 dissipation judgment, nor the $20,000 attorney-fee award set forth in the dissolution judgment for *pre*-decree work, because, in her view, the dissolution judgment specified that she was to pay those amounts from the proceeds of the sale of the marital residence, and there were no proceeds from the sale of the marital residence; (2) the dissolution judgment's real estate provision did not require her to pay 60% of the remaining mortgage necessary to close the sale on the marital residence, and, thus, there should be some reduction of the $49,667 judgment; and (3) the evidence did not support all of the *post*-decree attorney fees incurred to lift the stay on the sale of the marital residence in bankruptcy court, and, thus, there should be some reduction in that $33,396 judgment.

¶ 4 For the reasons that follow, we affirm the trial court's enforcement method of securing the monies owed by temporarily reducing maintenance. Nancy's obligation to satisfy the $13,787 dissipation judgment and the $20,000 attorney-fee award set forth in the dissolution judgment remains in place and is unaffected by the later circumstance of there being no proceeds from the sale of the marital residence. However, we reduce the amount of the judgment from $101,361 to $68,715. The trial court erred by $8,278 when it ordered Nancy to pay 60%, as opposed to 50%, of the remaining mortgage. It erred by $24,368 when it issued an attorney-fee

award that was not supported by the evidence. Accordingly, we shorten the maintenance off-set period from 43 months to 29 months. Should Daniel offset the full amount of any bonus owed to Nancy, the reduction period will be less than 29 months. Affirmed as modified.

¶ 5 I. BACKGROUND

¶ 6 This court has previously issued two dispositions concerning the Chapa divorce. See *Chapa I,* 2013 IL App (2d) 120745-U (affirming the terms of the dissolution judgment), and *In re Marriage of Chapa,* 2013 IL App (2d) 121285-U (*Chapa II*) (affirming the court's contempt finding while amending the purge order to allow for a current valuation of the marital residence).

¶ 7 A. The Dissolution Judgment

¶ 8 We first review the terms of the 2012 dissolution judgment, entered by Judge James J. Konetski. As to property division, the court's stated intent was to divide equally the marital estate's assets and debts, with the exception of the marital residence: "This court is attempting to effectuate an equal division of marital assets other than the marital residence."

¶ 9 The dissolution judgment's real estate provision read:

> "A. Real Estate. That the marital residence located at 318 South Garfield, Hinsdale, Illinois shall be promptly listed for sale and sold.
>
> 1. That the Parties shall cooperate to accomplish the immediate listing and sale of the marital residence. The Parties shall select a listing price and agent(s). The property shall be sold "as is" unless the Parties agree in writing to any maintenance, construction[,] or repairs. Upon closing of the sale of the residence the 'net proceeds' shall be divided sixty percent (60%) to [Nancy] and forty percent (40%) to [Daniel]. 'Net proceeds' is defined as the total proceeds realized by the parties less the first mortgage and home equity loan obligations[,] unpaid

> real estate taxes not yet due, and the usual and customary expenses incurred in the sale of the residential real estate. Any capital gain tax incurred shall be shared equally by the parties."

The real estate provision further provided that, prior to the sale, Nancy would maintain exclusive possession of the residence, and Daniel would pay all associated costs, including the monthly mortgage.

¶ 10 As to maintenance and child support, the judgment set forth different terms depending upon whether the marital residence had sold. Before the sale of the marital residence, Daniel would pay $1,360 in monthly child support and $2,000 in monthly maintenance. After the sale of the marital residence, Daniel would begin a 48-month term of maintenance payments. During the term, Daniel would pay Nancy $3,400 per paycheck, or approximately $7,366 per month, representing 50% of his base net income. In addition, Daniel would pay Nancy an amount equal to one-half of the net of his annual bonuses. Because Daniel historically earned an annual $600,000 bonus, Nancy's total anticipated maintenance was $32,366 per month ($600,000 divided by 2 is $300,000; $300,000 divided by 12 is $25,000; and $25,000 plus $7,366 is $32,366).[1] Because the parties shared an equal income during the 48-month term, there would be no separate child support. During the 48-month term, the youngest child would reach age 18. At the end of the 48-month term, Nancy could move to review and/or extend the maintenance term.

[1] The record indicates that Daniel changed employment on September 28, 2015, with an annual salary of $325,000 and with a different bonus scheme, which was guaranteed to be at least $100,000 per year.

¶ 11 As to dissipation, the dissolution judgment ordered that Nancy pay Daniel $13,787. The judgment stated: "That for dissipation, [Nancy] shall pay to [Daniel] the sum of $13,787 from her share of proceeds of the marital residence or as agreed upon the parties from another source(s)."

¶ 12 As to attorney fees, the dissolution judgment ordered that Nancy pay Daniel $20,000. It stated that Daniel had incurred $235,000 in attorney fees, and Nancy had incurred $275,000 in attorney fees. It further stated: "[S]ince this court is attempting to effectuate an equal division of the assets other than the marital residence, theoretically each party would have received $255,000 in additional funds had no payments been made to counsel. *** [Nancy] has received an additional $40,000 [out of the marital estate, because her attorney fees exceeded Daniel's fees by that amount.] Therefore, from her share of the sale of the marital residence, [Nancy] shall pay to [Daniel] $20,000 or by agreement of the parties, from another source(s)."

¶ 13 B. Interim Post-Decree Proceedings

¶ 14 In 2013, this court affirmed Judge Neal W. Cerne's contempt finding against Nancy for failing to sign the listing agreement for the marital residence. *Chapa II*, 2013 IL App (2d) 121285-U, ¶ 28. Nancy had argued that she should not have to sign the listing agreement where she was currently appealing the immediate sale of the residence and wished to live there two more years until their daughter finished high school. *Id*. If the residence sold, that portion of her appeal would become moot. *Id*. We understood Nancy's argument, and we stated that it was "a very close call," but we ultimately deferred to the trial court's courtroom management. *Id*. We did, however, modify the purge order in light of the passage of time, to allow for a current valuation of the marital residence. *Id*. ¶ 29.

¶ 15 Following our decision, on November 4, 2013, the parties entered into an agreed order to set the listing price at $1,599,000. On March 24, 2014, petitioned for rule to show cause and an adjudication of contempt, alleging that Nancy was interfering with the sale of the marital residence by leaving it in a messy condition. In June 2014, the court granted Daniel's petition.

¶ 16 On February 6, 2015, Daniel moved to allocate the payment of liens that had been placed on the residence. At the time, Nancy had placed liens on the residence for her attorney fees.

¶ 17 On March 27, 2015, Daniel moved to compel Nancy to respond with a counter-offer to a $1,025,000 offer to purchase the marital residence. Nancy believed the offer was too low and would result in a shortfall. Following a status hearing, the parties agreed to meet on April 10, 2015, at the realtors' office and try to come to an agreement. Nancy did not come to the meeting. (Nancy states in her brief that she and Daniel later countered at $1,250,000, and the prospective purchasers responded with an offer of $1,100,000).

¶ 18 On April 17, 2015, as is relevant to this appeal, the court ruled on Daniel's motion to allocate liens. The April 17, 2015, order stated:

> "Daniel shall do all acts reasonably necessary to extinguish and satisfy liens attaching to the [marital residence] so that the existing contract to purchase said residence will provide to prospective purchasers clear title to the said real property.
>
> Nancy shall be obligated to and shall pay to Daniel any and all costs and expenses Daniel incurs, including but not limited to costs to sell or liquidate assets[,] pre-payment penalties[,] income tax incurred[,] by Daniel in paying and satisfying Nancy's liens, encumbrances, and obligations that she owes in order to complete the sale of the said residence."

The order further specified that Nancy's resulting payments to Daniel would be satisfied through a reduction in her maintenance payments.

¶ 19 On May 8, 2015, Nancy filed for Chapter 7 bankruptcy. The bankruptcy court placed a stay on the sale of the marital residence. The pending contract for sale of the marital residence, which we infer was for approximately $1,100,000, fell through. Daniel retained counsel to lift the stay on the sale of the marital residence in bankruptcy court. On August 27, 2015, the marital residence was removed from the bankruptcy estate.[2] Counsel also performed other work relative to the bankruptcy, such as responding to discovery requests concerning the stock Daniel was to distribute to Nancy.

¶ 20 On November 4, 2015, the marital residence sold to different buyers for $1,075,000. Daniel paid a lump-sum $82,777 for the outstanding mortgage debt in order to close the sale.

¶ 21 C. Daniel's Petition for Reimbursement

¶ 22 On December 17, 2015, and in a subsequent motion, Daniel petitioned for reimbursement and for other relief. He sought: (1) payment of the $13,787 dissipation award and $20,000 attorney-fee award set forth in the dissolution judgment; (2) 60% of the $82,777 mortgage debt advanced at closing, amounting to $49,667; and (3) post-decree attorney fees incurred to lift the stay of the sale of the marital residence in bankruptcy court. Daniel based this request on the April 17, 2015, order, which directed that Daniel was to remove any encumbrance from the residence and Nancy was to reimburse him. Although the encumbrance at issue in April 2015 pertained to liens for attorney fees and had since been resolved, Daniel believed that the April

[2] The August 27, 2015, date is as represented in Daniel's pleading. However, an order lifting the stay is dated December 3, 2015, strangely, a month after the sale of the marital residence.

17, 2015, order broadly covered any encumbrance. In Daniel's view, the timing of the bankruptcy filing obstructed the sale of the residence and caused the sale to fall through, so Nancy should have to pay all of the costs associated with lifting the stay on the sale. Further, as originally set forth in the April 17, 2015, order, Daniel requested that the monies owed be satisfied through a temporary reduction in maintenance.

¶ 23 On February 18, 2016, Nancy, through counsel, responded with a motion to dismiss. She argued that the dissolution judgment did not provide for an offset of maintenance payments, nor did it say that she was obligated to pay 60% of the costs associated with the sale of the marital residence. On March 1, 2016, the court denied the motion, and it granted Nancy's attorney's motion to withdraw *instanter*.

¶ 24 From March 1, 2016, forward, Nancy proceeded *pro se*. She moved to reconsider the trial court's denial of her motion.

¶ 25 On April 8, 2016, Nancy petitioned for contribution for attorney fees, so that she could be represented both at the upcoming hearing on Daniel's three-point petition for reimbursement and in her motion to reconsider. The court denied her request.

¶ 26 On April 25, 2016, Nancy sought discovery from Daniel regarding his bonus. Daniel had not paid Nancy a 50% share of his bonus as part of her maintenance. Nancy filed an emergency motion to continue the hearings, explaining that she wanted to use evidence of the withheld bonus at the hearing. The court denied the motion, stating that it was not an emergency. However, Daniel admitted that he, through counsel, chose to withhold the bonus monies due Nancy as part of her maintenance, because Nancy owed him money, and the April 17, 2015, order authorized that monies owed could be satisfied through a temporary reduction in maintenance. The court determined that the net value of the amount withheld was $15,480.

¶ 27 Also on April 25, 2016, the court held a hearing on Daniel's three-point petition for reimbursement. As is relevant to Daniel's request that Nancy pay 60% of the mortgage obligation, the court stated:

> "As [to] what [the dissolution judgment's real estate provision] means is that—I think it's clear. It was not Mr. Chapa's obligation to pay 100 percent of the mortgage or to pay off—to pay off the mortgage. Because it says right here. It says that they'll pay the first mortgage. Now, by the way, they're dividing it, that means 60[%] of the payoff was owed by Mrs. Chapa; 40[%] is owed by Mr. Chapa. That's clear. 40[%]—because they're splitting the proceeds 60/40, they're splitting the expenses 60/40, and the expenses are clearly defined."

¶ 28 As is relevant to Daniel's request for post-decree attorney fees, Daniel submitted exhibit Nos. 9 and 10 as evidence of his attorney fees incurred to lift the stay on the sale of the marital residence in bankruptcy proceedings. Nancy objected to exhibit No. 10 in particular, arguing that the services described therein had nothing to do with the stay on the sale of the marital residence. Daniel testified that he incurred $33,396 in attorney fees to lift the stay of the sale of the marital residence in bankruptcy court. Daniel also requested compensation for fees incurred to pursue his petition for reimbursement, but he did not introduce separate evidence. (As we will discuss below, it appears that exhibit Nos. 9 and 10 also include those fees.)

¶ 29 On May 10, 2016, the trial court granted Daniel's petition for reimbursement in a written order. It stated in part:

> "A. By virtue of the terms of the Judgment of Dissolution of Marriage, Nancy owed Daniel for reimbursement the sum of $83,445 ($13,787 [dissipation] + $20,000

[pre-decree attorney fees] + 60% of $82,777.59 [lump-sum mortgage payment]) at the time of closing of the residence, November 4, 2015.

B. By virtue of the April 17, 2015, order [requiring Nancy to reimburse Daniel for removing encumbrances on the marital residence], Nancy owes Daniel $33,396 for the attorney costs he incurred to get the house sold.

C. Nancy owes Daniel a total of $116,841. Daniel will be allowed to offset the [withheld] maintenance bonus of $15,480 to the amount owing by Nancy to Daniel. This leaves a balance of $101,361.

D. Commencing May 1, 2016[,] and for the next 43 months, Daniel will be allowed to offset his monthly maintenance obligation by $2,357, and offset the full amount of any bonus payments he owes Nancy, until the $101,361 is satisfied.

E. All other relief sought by Daniel is denied."

It also stated: "Daniel incurred $33,396 in attorney fees relative to the bankruptcy. Petitioner exhibits 9 and 10. This is a cost that Daniel incurred selling the residence." Nancy appeals.

¶ 30 II. ANALYSIS

¶ 31 On appeal, Nancy argues that the trial court exceeded the scope of its authority to enforce the dissolution judgment, the April 17, 2015, post-decree order, and the resulting $101,361 monetary judgment against her by reducing her maintenance by $2,357 for 43 months, until the judgment was satisfied. Nancy also argues that, even if the trial court acted within its discretion to secure the payment against her, the amount of the judgment is incorrect. Nancy challenges the: (1) $13,787 dissipation award and the $20,000 attorney-fee award stemming from *pre*-decree representation; (2) $49,667 reimbursement stemming from the trial court's 60/40 split of

the mortgage debt; and (3) $33,396 attorney-fee award stemming from *post*-decree representation in bankruptcy court to lift the stay on the sale of the marital residence.

¶ 32 As a threshold matter, Daniel contends that Nancy's brief violates Supreme Court Rule 341(h)(3), (6) (eff. Feb. 6, 2013), in that it fails to cite adequate authority and contains argument in the statement of facts. We do not believe that the shortcomings in Nancy's brief warrant its dismissal. In our discretion, we choose to overlook Nancy's occasional misplaced argument. Regardless of her *pro se* status, she appears to have written her brief in good faith, and her brief meets the minimum requirements. We will address the merits of each argument.

¶ 33 A. The Court did not Exceed its Authority

¶ 34 Nancy argues that the trial court exceeded the scope of its authority to enforce the dissolution judgment and the April 17, 2015, order when it ordered that the monetary judgment against her be secured by temporarily reducing her maintenance award. Nancy contends that, by securing payment in this manner, the court improperly imposed a new and different obligation, specifically, that it modified maintenance without considering the statutory factors set forth in sections 504(a) and 510(a-5) of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/504, 510(a-5) (West 2014).

¶ 35 A trial court retains jurisdiction to enforce the terms of a judgment of dissolution of marriage. *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1017 (2011). However, the court exceeds the scope of its authority to enforce a judgment if it imposes a new and different obligation. *Waggoner v. Waggoner*, 78 Ill. 2d 50, 53-54 (1979). A court enforces the terms of the judgment if it makes a determination of the parties' rights and obligations with respect to the terms, as opposed to the imposition of new rights and obligations. *In re Marriage of Figliulo*,

2015 IL App (1st) 140290, ¶ 12. A court's enforcement of the judgment is reviewed for an abuse of discretion. *In re Marriage of Irvine*, 215 Ill. App. 3d 629, 634 (1991).

¶ 36 We determine that the court's decision to secure the monetary judgment by temporarily reducing maintenance constitutes enforcement, rather than the imposition of a new obligation. The three components of the monetary judgment at issue arose either directly or indirectly from the dissolution judgment. The dissolution judgment set forth the $13,787 dissipation award and the $20,000 pre-decree attorney-fee obligation. The dissolution judgment contained a real estate provision ordering the immediate sale of the marital residence, and, thus, required the court to address the consequences of the lump-sum mortgage payment. Additionally, the April 17, 2015, order required Daniel to remove encumbrances and Nancy to reimburse Daniel, also implicating the allocation of the lump-sum mortgage payment. Nancy's obligations relative to the post-decree attorney-fees incurred in bankruptcy court to lift the stay on the sale of the marital residence also arose from the April 17, 2015, order to remove encumbrances. These obligations are not new. They are derived from prior orders. Relatedly, Nancy's maintenance has not changed. The $2,357 monthly payment is subtracted from a non-modified maintenance amount. The appealed-from payment method merely enforces Daniel's existing right to receive the monies owed from Nancy.

¶ 37 Nancy appears to concede that, if the trial court merely enforced an existing obligation rather than created a new one, it did not abuse its discretion. In any event, equity has the power to allow or compel a set-off. *Dudek Inc. v. Shred Pax Corp*., 254 Ill. App. 3d 862, 874 (1993). Courts have approved maintenance set-offs before. See, *e.g.*, *In re Marriage of Martino*, 166 Ill. App. 3d 692, 695 (1988). Here, the court did not abuse its discretion in fashioning the instant payment method. Nancy will continue to receive a reasonable maintenance amount, even with

the deduction. Also, the court reasonably doubted Nancy's ability to satisfy a more traditional payment method, where she is engaged in bankruptcy proceedings and has demonstrated dilatory and contemptuous behavior.

¶ 38 B. Challenges to the Judgment Amount

¶ 39 Nancy next argues that, even if the trial court acted within its discretion to secure the payment against her, the amount of the judgment is incorrect. Nancy challenges the: (1) $13,787 dissipation award and the $20,000 attorney-fee award stemming from pre-decree representation; (2) $49,667 reimbursement stemming from the trial court's 60/40 split of the mortgage debt; and (3) $33,396 attorney-fee award stemming from post-decree representation in bankruptcy court to lift the stay on the sale of the marital residence. In her first two challenges, Nancy takes issue with the trial court's interpretation of the dissolution judgment.

¶ 40 The rules of contract interpretation apply to the terms of a dissolution judgment. *Figliulo*, 2015 IL App (1st) 140290, ¶ 13. The primary objective when interpreting a dissolution judgment is to carry out the intent of the court at the time of entry. *Id.* The intent of the court is to be determined only by the language of the dissolution judgment, absent an ambiguity. *Hendry*, 409 Ill. App. 3d at 1017. A court shall not depart from the plain language of the written document by reading into it exceptions, limitations, or conditions that conflict with the expressed intent. *People v. Martinez*, 184 Ill. 2d 547, 550 (1998). The document is to be interpreted as a whole, giving meaning and effect to every provision when possible, and a court will not interpret the document in a way that would nullify provisions or render them meaningless. *Coles–Moultrie Electric Cooperative v. City of Sullivan*, 304 Ill. App. 3d 153, 159 (1999). A court shall avoid reading the document in a manner that would produce absurd, inconvenient, or unjust results. See, *e.g.*, *Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire*

Insurance Co., 215 Ill. 2d 121, 134 (2005). The interpretation of a dissolution judgment is subject to *de novo* review. *Hendry*, 409 Ill. App. 3d at 1017.

¶ 41 1. $13,787 Dissipation Award and the $20,000 Attorney-Fee award

¶ 42 Nancy argues that the dissolution judgment's $13,787 dissipation and $20,000 attorney-fee awards no longer apply. Under her interpretation of the dissolution judgment, she has no obligation to satisfy the judgments where there were no proceeds from the sale of the marital residence.

¶ 43 We disagree with Nancy's interpretation. The dissolution judgment ordered as to dissipation: "That for dissipation, [Nancy] shall pay to [Daniel] the sum of $13,787 from her share of proceeds of the marital residence *or as agreed upon by the parties from another source(s).*" (Emphasis added.) It ordered as to attorney fees: "[Nancy] has received an additional $40,000 [out of the marital estate, because her attorney fees exceeded Daniel's fees by that amount.] Therefore, from her share of the sale of the marital residence, [Nancy] shall pay to [Daniel] $20,000 *or by agreement of the parties, from another source(s).*" (Emphasis added.)

¶ 44 According to its plain language, the dissolution judgment allows for satisfaction of the dissipation and attorney-fee awards to come from a source other than the sale proceeds. It states that the payment may come from the proceeds *or* "as agreed upon the parties from another source(s)." Where Nancy did not avail herself to the opportunity to agree to another source, the court acted within its discretion to choose the source for her. See, *e.g.*, *In re Marriage of Schmidt*, 292 Ill. App. 3d 229, 239 (1997) (upon enforcement of a marital settlement agreement that required the father to contribute one-half of the child's college expenses, where the parties later could not agree on a reasonable tuition limit, the court acted within its discretion to determine a reasonable limit and order the father to pay no more than one-half of that amount).

Here, the court chose maintenance to be the source of payment. As discussed above, this was reasonable under the circumstances. The absence of proceeds does not free Nancy of her obligation to satisfy the dissipation and attorney-fee awards.

¶ 45 2. The Real Estate Provision and the Allocation of the Lump-Sum Mortgage

¶ 46 Nancy argues that the trial court misinterpreted the dissolution judgment's real estate provision when it ordered that Nancy pay 60% of the lump-sum mortgage payment necessary to close the sale of the marital residence. Again, the real estate provision states:

> "A. Real Estate. That the marital residence located at 318 South Garfield, Hinsdale, Illinois shall be promptly listed for sale and sold.
>
> 1. That the Parties shall cooperate to accomplish the immediate listing and sale of the marital residence. The parties shall select a listing price and agent(s). The property shall be sold 'as is' unless the parties agree in writing to any maintenance, construction or repair(s). Upon closing of the sale of the residence, the 'net proceeds' shall be divided sixty percent (60%) to [Nancy] and forty percent (40%) to [Daniel]. 'Net proceeds' is defined as the total proceeds realized by the parties less the first mortgage and home equity loan obligations; unpaid real estate taxes not yet due, and the usual and customary expenses incurred in the sale of the residential real estate. Any capital gain tax incurred shall be shared equally by the parties."

¶ 47 Nancy contends that the trial court misinterpreted the real estate provision, because the court: (1) went against the intent at entry that half, or greater than half, of the marital estate be awarded to Nancy (citing *Chapa I*, 2013 IL App (2d) 120745, ¶ 41); and (2) improperly added a new provision to the document when it determined that Nancy be responsible for more than half

of the debt associated with the marital residence.

¶ 48 We agree with Nancy that the trial court misinterpreted the real estate provision. Looking to the dissolution judgment as a whole, we note that it elsewhere states: "This Court is attempting to effectuate an equal division of the marital assets *other than the marital residence*." (Emphasis added.) We do not believe that the trial court intended for the special treatment of the marital residence to result in Nancy receiving a *smaller* share of the overall estate. The marital residence was the most significant asset in the marital estate, and it was also subject to market fluctuations prior to its sale and distribution. To read the real estate provision to allow for the weight of the martial residence to swing against Nancy is to believe that, at the time it entered the judgment, the court intended the possibility that Nancy receive less, or even significantly less, than half of the overall estate. Given the circumstances noted in the dissolution judgment, where the parties enjoyed a long-term marriage with children, where Daniel had considerably greater earning power, and where Nancy's maintenance term is subject to review four years after the sale of the marital residence, we cannot believe that the court intended for Nancy to receive a smaller share, and possibly a significantly smaller share, of the overall estate. Rather, as we stated in *Chapa I*, "Nancy was awarded more than 50% of the marital estate. The court divided assets and debt equally, with the exception of the proceeds of the marital residence. Nancy received the greater share of this value." *Chapa I*, 2013 IL App (2d) 120745, ¶ 41. We determine that the intent at entry was that the special treatment of the marital residence produce, if not a neutral, a favorable result for Nancy.

¶ 49 We agree with Nancy that the trial court simply did not envision, at the time it entered the dissolution judgment, that the sale of the marital residence would result in zero proceeds and a corresponding need to bring a lump-sum mortgage payment to the closing. Rather, the

dissolution judgment specified that, prior to the sale, during the term of the divorced parties' co-ownership, *i.e.*, joint tenancy, Daniel would pay all of the costs of ownership, including monthly mortgage payments, and Nancy would have exclusive possession. The dissolution judgment further specified that, *after* the sale, *i.e.*, after joint tenancy terminated, the proceeds would be split 60/40. The dissolution judgment did not specify in what proportion the parties would pay the lump-sum mortgage to effectuate the sale, *i.e.*, to effectuate the end of the joint tenancy. Where the judgment was silent, the court should not have imposed a 60% obligation upon Nancy. See, *e.g.*, *Martinez*, 184 Ill. 2d at 550 (1998).

¶ 50 Where the dissolution judgment is silent on an issue and does not reserve it for later consideration, we look to the law. See, *e.g.*, *In re Marriage of Sanders*, 2016 IL App (1st) 143681, ¶ 22 (dividing a pension). Common law holds that, generally, where divorced spouses own a marital residence as joint tenants prior to a voluntary or court-ordered sale, they are equally liable for the costs of ownership, even if only one tenant is in actual possession. *Gilmore v. Gilmore*, 28 Ill. App. 3d 36, 40 (1975). Accordingly, we equally divide the $82,778 lump-sum payment. This means that Nancy was responsible for $41,389, rather than $49,667. We reduce the judgment by $8,278.

¶ 51 We reject Daniel's argument that we should simply defer to the trial court's interpretation, because the provision at issue is contained within a dissolution judgment drafted by the court, rather than a marital settlement drafted by the parties. The court's intent at entry is paramount, but this does not mean that we simply defer to its later, four-corner interpretation. See, *e.g.*, *Figliulo*, 2015 IL App (1st) 140290, ¶ 13. In many instances, the judge who drafts and enters the order (here, Judge Konetski) is not the same as the judge who, years later, interprets it (here, Judge Cerne). Daniel makes no argument and cites no authority in support of his

interpretation of the dissolution judgment; he merely quotes the trial court's explanation. We have rejected that interpretation.

¶ 52 We also reject Daniel's implicit argument that any misinterpretation of the real estate provision is harmless, because Nancy obstructed the sale and dissipated the value of the marital residence. A divorce court is not permitted to consider a party's misconduct when distributing property. *In re Marriage of Parker*, 216 Ill. App. 3d 672, 680 (1991) (the court could not consider the husband's purposeful understatement of stock value). In any event, the court already properly accounted for Nancy's obstructive behavior when it awarded post-decree attorney fees incurred to lift the stay on the sale of the marital house in the bankruptcy proceedings. Additionally, the court made no post-decree finding of dissipation of the assets still held in the marital estate, such as the marital residence prior to its sale. That issue was not before the court. The issue before the court was simply the interpretation of the real estate provision and an enforcement of its terms. We cannot use the trial court's misinterpretation of the real estate provision as a backdoor means to sanction Nancy or make a dissipation finding against her in the first instance.

¶ 53 Lastly, we reject Daniel's alternative argument that Nancy does not raise an issue of interpretation, but merely of enforcement. It is true that Daniel initiated proceedings with a motion to enforce the real estate provision. However, resolution of that motion required the trial court to interpret the real estate provision.

¶ 54 C. The $33,396 Post-Decree Attorney Fees

¶ 55 Nancy challenges the trial court's determination that Nancy is responsible for $33,396 in post-decree attorney fees that Daniel incurred relative to the bankruptcy to lift the stay on the sale of the marital residence. Nancy argues that: (1) the trial court erred in relying on the April

17, 2015, order as a basis to order the fees; and (2) the evidence did not support the fee amount. We review the trial court's decision on attorney fees for an abuse of discretion. *In re Marriage of Davis*, 292 Ill. App. 3d 802, 812 (1997).

¶ 56 1. The April 17, 2015, Order as a Basis to Order Fees

¶ 57 Nancy argues that the trial court erred in relying on the April 17, 2015, order as a basis to order attorney fees relative to the bankruptcy to lift the stay on the sale of the marital residence. The April 17, 2015, order stated in part:

> "Daniel shall do all acts reasonably necessary to extinguish and satisfy liens attaching to the [marital residence] so that the *existing contract* to purchase said residence will provide to prospective purchasers clear title to the said real property.
>
> Nancy shall be obligated to and shall pay to Daniel any and all costs and expenses Daniel incurs, including but not limited to costs to sell or liquidate assets[,] pre-payment penalties[,] income tax incurred[,] by Daniel in paying and satisfying Nancy's liens, encumbrances, and obligations that she owes in order to complete the sale of the said residence." (Emphasis added.)

¶ 58 Nancy argues that the April 17, 2015, order became obsolete when the referenced "existing contract" fell through. We disagree that Daniel's obligation to free the home from any encumbrance and Nancy's obligation to reimburse him for "any and all" associated costs ended when the "existing contract" fell through. This is particularly true where Nancy herself interfered with the sale by temporarily encumbering the home in bankruptcy court. Rather, the parties had a continuing obligation to effectuate the sale of the marital residence, and this could not be accomplished until encumbrances were lifted.

¶ 59 A court may award attorney fees for expenses incurred in connection with a proceeding to enforce the provisions of the dissolution judgment, even if that proceeding occurs in a court other than the court in which the dissolution proceeding was brought. *Davis*, 292 Ill. App. 3d at 810. The court used the April 17, 2015, order as a basis to do just that. The April 17, 2015, order provided a valid basis to order attorney fees incurred to lift the stay on the sale of the marital residence in bankruptcy court.

¶ 60 2. The Evidence Did Not Support the Fee Amount

¶ 61 Nancy next argues that, even if fees incurred to lift the stay on the sale of the marital residence in bankruptcy court were generally warranted, the evidence did not support the fee amount. When, as here, a trial court awards attorney fees for expenses incurred to enforce the dissolution judgment, those fees come within the purview of section 508 of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/508 (West 2014); *Davis*, 292 Ill. App. 3d at 811. In seeking fees, the usual practice is for the attorney to submit detailed records as to the hours spent and the work performed. *In re Marriage of Jacobson*, 89 Ill. App. 3d 273, 277 (1980). The granting of fees is improper where there is insufficient evidence of the services rendered and the fees associated with those services. *Id.*

¶ 62 Here, the scope of the fee award included fees incurred in bankruptcy court to lift the stay and allow the house to be sold. Daniel offered exhibit Nos. 9 and 10 as evidence of those fees. The trial court expressly relied upon exhibit Nos. 9 and 10 as the basis for the $33,396 fee amount.

¶ 63 Nancy contends that, after generally deciding in favor of Daniel, the trial court simply accepted the $33,396 amount set forth in exhibit Nos. 9 and 10 without proper consideration. She asserts that many of the services described in the exhibits do *not* pertain to bankruptcy work

performed to lift the stay on the sale of the house. She notes that much of the work was performed *after* the sale closed, and, therefore, that work cannot have pertained to lifting the stay on the sale of the house.

¶ 64 We agree with Nancy that exhibit Nos. 9 and 10 do not support that Daniel incurred $33,396 in attorney fees for bankruptcy work to lift the stay on the sale of the marital residence. Exhibit No. 9, representing $20,175 of the award, shows work performed by the Burns law firm. The first pages of exhibit No. 9 contain copies of three checks dated *before* the sale of the marital residence, from May 28, 2015, to September 29, 2015, plus one check dated *after* the sale, from December 8, 2015. Together, the May 28, 2015, to December 8, 2015, checks total the awarded $20,175. However, there is no corresponding description of services rendered. Rather, the subject line of the checks merely state "retainer" or "invoice." Per *Jacobson*, conclusory testimony as to the amount of the fees without evidence of services rendered and the fees associated with those services is insufficient. *Jacobson*, 89 Ill. App. 3d at 277.

¶ 65 In the next pages of exhibit No. 9, there is a chart describing services rendered. *All* of the described services occurred *after* the sale of the marital residence. Moreover, the services rendered do not pertain to the bankruptcy, but to other post-decree proceedings, such as the response to Nancy's motion to dismiss Daniel's petition for reimbursement. Exhibit No. 9 is not evidence of bankruptcy work to lift the stay on the sale of the marital residence.

¶ 66 Exhibit No. 10, representing $13,221 of the award, shows work performed by the Lewis Brisbois law firm. The first pages of exhibit No. 10 contain copies of five checks dated from November 20, 2015, to April 11, 2016, totaling the awarded $13,221. However, there is no corresponding description of services rendered. Rather, the subject line of the checks merely

state "invoice." Again, conclusory testimony as to the amount of the fees without evidence of services rendered and the fees associated with those services is insufficient.

¶ 67 In the next pages of exhibit No. 10, there is a chart describing services rendered. *All* of the described services rendered occurred *after* the sale of the marital residence. The services rendered *do* pertain to the bankruptcy, an improvement *vis a vis* exhibit No. 9. Nevertheless, exhibit No. 10 is not evidence of bankruptcy work *to lift the stay on the sale of the marital residence.*

¶ 68 As a basis for the fees, the trial court expressly referenced the April 17, 2015, order, which concerned removing encumbrances on the marital residence to ensure its sale. The court also stated that the fees were incurred "to get the house sold." If the court wanted to award attorney fees for other work in bankruptcy court or for work in connection with the petition for reimbursement, which Daniel did seek, it could have stated as much. Instead, it stated: "All other relief sought by Daniel is denied."

¶ 69 Having determined that the exhibit Nos. 9 and 10 do not support the $33,396 fee award, we now turn to remedy. Nancy appears to concede that Daniel incurred approximately $9,028 for bankruptcy work to lift the stay on the sale of the marital residence. We do not necessarily agree with Nancy's basis for the $9,028 figure, but, certainly, Daniel incurred *some* fees for bankruptcy work to lift the stay on the marital residence. In the context of a case involving high-income, litigious parties, we deem it inefficient to remand to decide whether the fees should be $9,028 or some figure between $9,028 and $33,396. Because Daniel is the party who introduced misleading evidence and who failed to prove the fee amount, we modify the post-decree fee award to the figure conceded by Nancy, $9,028. See Ill. S. Ct. Rule 366(a)(1), (5) (eff. Feb. 1, 1994) (a court of review may, in its discretion, exercise all or any of the powers of amendment of

the trial court and enter any judgment and make any order that ought have been given or made). Thus, we reduce the judgment by another $24,368.

¶ 70 We reject Daniel's argument that the doctrine of forfeiture precludes relief. Daniel incorrectly asserts that Nancy did not object at trial. Nancy objected at trial to exhibit No. 10: "Yes, it *doesn't have anything to do with the house*. He's just trying to get me to pay the fees he incurred by meddling in my bankruptcy, and hiding the HFG [shares]. So this has *nothing to do with the house*, but we can argue that later I guess." (Emphasis added.) Also, Daniel incorrectly posits that Nancy was required to file a motion to reconsider. A litigant does not need to file a motion to reconsider to preserve issues in a civil non-jury case. Ill. S. Ct. Rule 366(b)(3)(ii).

¶ 71 III. CONCLUSION

¶ 72 In sum, the trial court acted within its discretion to temporarily reduce Nancy's monthly maintenance by $2,357 as a means to satisfy the judgment against her. However, the court erred in determining the judgment amount as to the real estate provision, resulting in an $8,278 error, and in awarding post-decree attorney fees where the evidence did not support the fees, resulting in a $24,368 error. We reduce the judgment by $32,646 ($8,278 + $24,368). The modified judgment amount is $68,715 ($101,361 - $32,646). It will take 29 months ($68,715/$2,357), rather than 43 months ($101,361/$2,357), for the judgment to be satisfied. Should Daniel offset the full amount of any bonus payment that he owes Nancy, as allowed for in the May 10, 2016, order, the reduction period will be less than 29 months.

¶ 73 Affirmed as modified.