2018 IL App (1st) 163333-U
No. 1-16-3333

SECOND DIVISION
May 22, 2018

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF JOHN TOMPKINS,	)	Appeal from the Circuit Court
	)	of Cook County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 11 D 433
	)	
CYNTHIA TOMPKINS,	)	
	)	The Honorable
Respondent-Appellee.	)	John T. Carr,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Where the husband's business treated his withdrawals from his business as a loan, the trial court did not err in also classifying them as a loan for purposes of valuing the business, and the trial court's simultaneous conclusion that the marital estate, at most, would be liable for the taxes on those withdrawals as if they were a shareholder distribution was not against the manifest weight of the evidence, given that the actions of the husband and the business were inconsistent with a claim that the monies must be repaid. The trial court did not abuse its discretion in its award of maintenance and life insurance to the wife where other financial obligations imposed on the husband were temporary and his business paid a large portion of his monthly expenses. The trial court's award of attorney's fees to the wife was affirmed where the husband failed to present an adequate record for review.

¶ 2 Petitioner, John Tompkins, appeals from the amended judgment of dissolution of marriage in this case, arguing that the trial court erred in characterizing his withdrawals from a closely held corporation as a corporate asset in the valuation of the corporation; ordering him to pay 40% of his income as maintenance to respondent, Cynthia Tompkins; ordering him to maintain a $3,000,000.00 life insurance policy for the benefit of respondent; and ordering him to pay $69,877.00 in respondent's attorney's fees. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 The record in this case is extensive. We recite only those facts necessary to our disposition of the issues presented on appeal.

¶ 5 Prior to trial, respondent filed a petition for interim and prospective attorney's fees. On December 7, 2015, following a hearing, the trial court ordered petitioner to pay $79,877 in interim attorney's fees to respondent's attorney within 21 days of the order. A transcript of that hearing was not included in the record on appeal. Petitioner's motion to reconsider that order was unsuccessful. In January 2016, respondent filed a petition for rule to show cause, alleging that petitioner had failed to pay the attorney's fees as ordered. In response, the trial court issued an order on the rule to show cause, directing petitioner to appear and show cause why he should not be held in contempt for failing to pay the ordered fees. The parties later entered into an agreed order under which petitioner agreed to pay $10,000.00 of the ordered attorney's fees. The parties also agreed to continue all pending motions, including the return on the rule to show cause, until trial and have them adjudicated as part of the judgment for dissolution of marriage.

¶ 6 The evidence presented at trial tended to establish the following. The parties were married in 1973 and had three children, all of whom were emancipated by the time petitioner filed for divorce in 2011. Over the course of the parties' marriage, petitioner, through his

interest in NewsMedia Corporation (a holding company for Rochelle Newspapers, Inc. (collectively, "Rochelle")), acquired a 78.2% ownership interest in Rochelle, a business started by him, his parents, and three other employees in 1975. Although respondent occasionally worked outside the home during the marriage, the income she earned was limited and intermittent.

¶ 7 At some point during the marriage, petitioner began to withdraw money from Rochelle. Petitioner characterized these withdrawals as a loan, and for purposes of trial, the parties stipulated that the withdrawals qualified as a loan and, as such, was an asset of Rochelle. The parties further stipulated that the balance on the loan as of October 31, 2010, was $1,645,778.95. By December 31, 2015, the balance had grown to $3,783,286.32. The parties also agreed and stipulated that if Rochelle were to forgive the loan to petitioner, the amount forgiven would be deemed a shareholder dividend to petitioner on which he would be required to pay federal and state taxes. In addition, Rochelle would be required to declare and pay all of its other shareholders dividends in amounts pro rata to their ownership interest.

¶ 8 Mike Rand, the chief financial officer of NewsMedia testified that Rochelle's revenue had been decreasing for a number of years. As of the time of his testimony in early 2016, Rand had not been paid his full 2015 salary and had not received any payment since October 2015, other than a $15,000.00 check in December 2015. In addition, Rochelle owed salaries to petitioner, petitioner's brother, and the business's retired advertising director. Specifically, petitioner received only $305,000.00 of his $425,000.00 salary in 2015. Rochelle owed petitioner's brother, Mike Tompkins, $140,000.00 to $150,000.00 for 2015 and $85,000.00 to Patrick Duffy, the retired advertising director. According to Rand, full salaries had not been paid to those individuals because Rochelle simply did not have the money to pay them.

¶ 9 Rand also testified that Rochelle had been loaning money to petitioner for approximately 12 to 13 years. In October 2008, petitioner signed a promissory note in which he promised to repay, with interest, advances made to him by Rochelle. According to the promissory note, petitioner was to make the payments "from time to time" or within 396 days of Rochelle making a written demand for payment. At the time the promissory note was executed, the outstanding balance on the loan was $1,246,853.00. According to the loan ledger admitted into evidence, the balance continued to grow over the years, during which time petitioner would occasionally make payments on the balance through bonuses he received from Rochelle. Rand testified that Rochelle considered the advances to petitioner a loan. According to him, Rochelle had not declared a dividend in over 20 years and there had been no talk of forgiving the loan to petitioner. If Rochelle were to forgive the loan to petitioner and declare it a dividend, Rochelle would also have to pay dividends to its other shareholders, to the tune of $1,054,675.00.

¶ 10 Rand also testified to a number of expenses that Rochelle paid on behalf of the petitioner. For instance, Rochelle purchased the Rochelle, Illinois, home in which petitioner lived, although petitioner paid $1,900.00 per month in rent. In addition, Rochelle paid petitioner $2,901.00 per month to maintain an office in his Tucson, Arizona, vacation home and $1,440.00 to maintain an office in the Belvidere, Illinois, home in which respondent lived. On top of that, Rand testified that Rochelle paid for petitioner's vehicle in Illinois ($1,428.00/month); his two vehicles in Tucson; all gas, insurance, repairs, and maintenance on all of those vehicles; petitioner's cell phone; his travel to and from his vacation home in Tucson; the fees of petitioner's expert in the present divorce case; and the fees charged by Rochelle's corporate counsel for working on petitioner's divorce case.

¶ 11 Petitioner's assistant, Janaan Harms, testified that among her other duties, she paid petitioner's bills. Included in this task was reviewing petitioner's credit card statements and sorting out those charges that were personal and those that were business related based on guidelines given to her by petitioner. These business expenses included travel to and from Tucson for petitioner and sometimes for his girlfriend, dining and grocery bills while in Tucson, any other business-related travel expenses, all vehicle-related expenses

¶ 12 Petitioner testified that he began borrowing money from Rochelle approximately 20 years prior, although he only "rarely" borrowed from Rochelle prior to 2002. Petitioner testified that during the parties' marriage, they spent more money than they earned. Petitioner claimed that after the parties separated their finances during their separation, between the first and second mortgage payments on the Belvidere ($6,540.00 total) and Tucson ($7,639.00 total) homes, the taxes on both homes ($3,071.00 total), and his monthly temporary maintenance to respondent ($15,000.00), his monthly expenses exceeded his monthly net income ($32,000.00), even before he was able to pay his own monthly expenses. Petitioner testified that both before and after the separation, he used loan funds from Rochelle to cover the expenses that exceeded his income. He also used loan funds from Rochelle to pay respondent's attorney's fees as ordered by the trial court and to pay his own attorney's fees.

¶ 13 According to petitioner, there had never been any discussions about the loan being forgiven and he had never considered having the loan forgiven, because it would be "disastrous to the company." It was petitioner's belief that he had to pay back all of the money that he had borrowed from Rochelle.

¶ 14 Petitioner agreed with Rand's testimony that Rochelle paid for the gas, repairs, and maintenance of his vehicles in Illinois and Arizona and $4,400.00 in home office rental fees. In

addition, petitioner testified that Rochelle paid a monthly donation to Andrew Wommack, a ministry supported by petitioner, and any expenses incurred by petitioner at the Apple store. Rochelle also paid all of petitioner's travel expenses to Tucson, his limousine service there, and all meals while there. Petitioner testified that in 2015, he spent one week per month in Tucson.

¶ 15 On cross-examination, petitioner acknowledged that in the months surrounding the filing of his pretrial petition to reduce respondent's maintenance, he incurred credit card charges for resorts, dining out, vacationing in Wisconsin, clothes, a trip to Colorado to visit family, salons, and visits to Chicago.

¶ 16 Respondent testified that during her marriage to petitioner, the parties' finances and major financial decisions were handled and made solely by petitioner. She was not aware that petitioner had been borrowing money from Rochelle over the years and only learned about it during the divorce proceedings.

¶ 17 During the parties' marriage, respondent was free to use her credit cards to purchase whatever she pleased, although she would check with petitioner before purchasing anything over a thousand dollars. Respondent would then submit her credit card bills to Harms for payment. At no point did petitioner inform respondent that they could not afford her purchases. After the parties' separation, respondent noticed that only the minimum payments on her credit cards were being made, and she began to receive notices from her credit card companies, stating that her credit was being reduced as a result of nonpayment. Around the same time, petitioner closed the parties' primary joint account without notice to respondent.

¶ 18 Respondent further testified that her monthly car payment was $680.00, projected monthly healthcare insurance would be $1,000.00, and that the balances on her credit cards as of the time of her testimony totaled $64,000.00. Since the entry of the temporary maintenance

order in July 2014, she had not been able to pay for all of her expenses. For example, she had to forego doctor and dentist visits. She has, however, following their separation, been able to travel to their home in Tucson, California, Florida, and Alabama.

¶ 19 Both parties submitted expert evidence on the valuation of Rochelle. Petitioner's expert, Owen VanEssen, opined that Rochelle had a total equity value of $3,383,610.00 as of October 31, 2014. In that calculation, he treated the withdrawals by petitioner as a loan, such that it was an asset of Rochelle's that increased Rochelle's value. VanEssen also testified that he believed that Rochelle's revenues would continue to drop for a period of time before flattening out. Nevertheless, VanEssen viewed Rochelle as a viable company. Respondent's expert, Stephen Pawlow, concluded that the total value of Rochelle as of October 31, 2014, was $12,486,000.00. Like VanEssen, Pawlow included the withdrawals by petitioner as an asset of Rochelle in conducting his valuation.

¶ 20 Following trial, the trial court orally stated its findings and determinations on the record with the directive that the parties prepare a judgment based on those findings. The trial court also stated that it would set all pending fee petitions for a separate hearing and that it would review the attorney's fees it had previously ordered petitioner to pay to respondent's attorney in light of the property distribution and maintenance awards. A transcript of the subsequent hearing on the fee petitions was not included in the record on appeal.

¶ 21 In September 2016, the trial court entered its initial written judgment for dissolution of marriage. Following motions to reconsider filed by the parties, the trial court issued an amended judgment for dissolution of marriage on December 13, 2016. In the amended judgment, with respect to the valuation of Rochelle, the trial court rejected the valuations testified to by both parties' experts and determined its own. The trial court did, however, borrow the method by

which petitioner's expert valued the business, *i.e.*, a multiple of earnings before interest, taxes, depreciation, and amortization ("EBITDA"), plus any other assets, minus any long-term debt. Rather than using a 3.8 multiple of EBITDA as petitioner's expert did, the trial court used a 4.3 multiple, but the trial court did use the same EBITDA as petitioner's expert. Ultimately, the trial court valued Rochelle as follows:

Adjusted EBITDA	$3,587,614
x	4.3
Entity value	$15,425,880[1]
Receivable from petitioner	$3,357,837
	$18,783,717
Long term debt	($13,425,779)
Equity value	$5,357,938

Stating that it had multiplied the "entity value"[2] by the percentage of marital shares, the trial court calculated the value of the marital portion of Rochelle to be $4,195,054.[3]

¶ 22 Although including petitioner's withdrawals as an asset of Rochelle and referring to it as a "shareholder loan" in the judgment, the trial court did not include the repayment of that loan as a liability of the marital estate. The trial court explained: "The Court disagrees that John's

[1] We note that $3,587,614 multiplied by 4.3 actually equals $15,426,740.20. Neither of the parties takes issue with this error, however.

[2] Although the trial court stated that it multiplied the entity value by the percentage of marital shares to arrive at the marital value, we believe that the trial court likely intended to say that it used the equity value, not the entity value, as 78.2% of the entity value ($15,425,880) yields a marital value of $12,063,038.16, nowhere near the $4,195,054 obtained by the trial court's math.

[3] It is unclear how the trial court reached this figure. Multiplying $5,357,938 by 0.782 (because petitioner owned 78.2% of Rochelle) yields a marital value of $4,189,907.52. Even if the initial mathematical error noted in footnote 1 is corrected, the marital value still is only $4,190,580.19. Again, neither of the parties identified this error in their briefs, and so we leave it undisturbed.

shareholder loan has to be paid back. John can do what he wants with the shareholder loan to the Business. However, the Court finds that the appropriate way to handle the shareholder loan is to deem it a shareholder distribution and to deem the liability of the marital estate to be the Federal and Illinois taxes on the distribution." Accordingly, the trial court concluded that the marital estate included a liability of $1,500,000 for taxes on the withdrawals.

¶ 23 After identifying the remainder of the marital assets and liabilities, the trial court distributed them between the parties. Concluding that the parties were each entitled to half of the marital estate, but having distributed to petitioner $3,395,377 of the net estate and to respondent $277,176 of the net estate, the trial court ordered petitioner to pay respondent $1,559,101 to equalize the division. The trial court ordered the payment to be made in monthly installments of $12,992.51 over the following 10 years. The Tucson and Belvidere homes were to be immediately sold, and the parties were to split any profits.

¶ 24 With respect to maintenance, the trial court concluded that respondent was entitled to monthly payments of $19,200, which represented 40% of petitioner's base income of $576,000 per year. Petitioner was also ordered to pay respondent 40% of any gross income he received over $576,000. The trial court ordered petitioner to name respondent as the sole beneficiary of $3,000,000 of the current life insurance policy petitioner until 2027. The purpose of this directive was to secure respondent's interest in the maintenance and property equalization payments petitioner was to make to her.

¶ 25 Finally, the trial court stated that it had held a hearing on respondent's rule to show cause and that it found that petitioner had the ability to comply with the December 7, 2015, order directing him to pay attorney's fees to respondent's attorney. Accordingly, the trial court

directed petitioner to pay respondent's attorney the outstanding $69,877 within 60 days or be held in contempt of court.

¶ 26 Petitioner then brought this timely appeal.

¶ 27 ANALYSIS

¶ 28 On appeal, petitioner argues that the trial court erred in characterizing his withdrawals from Rochelle as an asset of the corporation for purposes of determining Rochelle's value; ordering him to pay 40% of his income as maintenance to respondent; ordering him to maintain a $3,000,000.00 life insurance policy for the benefit of respondent; and ordering him to pay $69,877.00 in respondent's attorney's fees. We conclude that the trial court the trial court (1) did not err in characterizing petitioner's withdrawals from Rochelle for purposes of determining Rochelle's value, (2) did not abuse its discretion in making its maintenance award to respondent, and (3) did not abuse its discretion in ordering petitioner to maintain life insurance for the benefit of respondent. We further conclude that petitioner has waived his contention that the trial court erred in ordering him to pay respondent's attorney's fees by failing to provide a sufficient record to permit us to conduct a meaningful review of the issue.

¶ 29 Withdrawals from Rochelle

¶ 30 Petitioner's primary argument is that the trial court erred in characterizing his withdrawals from Rochelle as a shareholder loan for purposes of valuing Rochelle in light of the trial court's simultaneous decision to characterize the withdrawals as a shareholder distribution for purposes of assessing the value of the marital estate. According to petitioner, given the trial court's specific statement that the withdrawals should be deemed a shareholder distribution in assessing the liabilities of the marital estate, the withdrawals cannot also be considered a receivable increasing the value of Rochelle. Petitioner urges us to resolve this conflict by

deeming the withdrawals a shareholder distribution, thereby lowering the value of Rochelle and, in turn, the marital estate. We disagree.

¶ 31 As an initial matter, the parties disagree over the applicable standard of review. Petitioner argues that because the trial court did not correct this error despite it being raised in his motion to reconsider, we should apply the standard of review for motions to reconsider: *de novo*. See *In re Marriage of Lasota and Luterek*, 2014 IL App (1st) 132009, ¶ 28. In the alternative, petitioner contends that we should apply the manifest-weight-of-the-evidence standard that applies to determinations of asset value. See *In re Marriage of Grunsten*, 304 Ill. App. 3d 12, 17 (1999). Respondent, on the other hand, argues that the valuation of an asset is subject to an abuse-of-discretion standard of review. See *In re Marriage of Schneider*, 214 Ill. 2d 152, 162 (2005).[4] We are inclined to apply the manifest-weight-of-the-evidence standard that traditionally applies to questions of fact, because we believe that the determination of whether the withdrawals from Rochelle were a loan or a shareholder distribution is a question of fact. See *In re Marriage of Smith*, 265 Ill. App. 3d 249, 252-53 (1994) ("Ultimately, the determination whether an asset is marital or nonmarital is a question of fact *** [and a] reviewing court will not overturn a trial court's determination that an asset is nonmarital unless that determination is against the manifest weight of the evidence."); *In re Marriage of Trull*, 254 Ill. App. 3d 34, 38 (1993) ("[T]he valuation of property is a question of fact, and the trial court's determination of value will not be reversed unless it is contrary to the manifest weight of the evidence.").

¶ 32 The shortcoming in petitioner's contention with respect to the characterization of his withdrawals from Rochelle is simple. Petitioner frames the question before the trial court as

[4] In support of the proposition that questions of fact are subject to an abuse-of-discretion standard, *Schneider* cites to *In re Marriage of Stone*, 155 Ill. App. 3d 62, 70 (1987). Although *Stone* does state that the valuation of assets is a question of fact, it also states that it is the *apportionment* of the marital property that is subject to an abuse-of-discretion standard. *Id.*

what label should be placed on petitioner's withdrawals from Rochelle for all purposes. In reality, however, there were two distinct questions before the trial court: (1) In assessing the value of Rochelle, were the petitioner's withdrawals properly characterized as a loan or a shareholder distribution; and (2) in assessing the value of the marital estate, what were the actual marital liabilities? Based on our review of the record, it was not against the manifest weight of the evidence for the trial court to conclude that petitioner's withdrawals were properly considered a loan (*i.e.*, an asset of Rochelle) for purposes of valuing Rochelle, while also concluding that, in reality, the marital estate would, at most, be held liable for the taxes due on the withdrawals if they were treated as a shareholder distribution.

¶ 33 First, with respect to the trial court's finding that the withdrawals should be characterized as a loan for purposes of valuing Rochelle, such a finding is amply supported by the record. First and foremost, the parties specifically stipulated that petitioner "has a Shareholder Loan from Rochelle Newspapers, Inc., which is an asset of that corporation." Throughout trial, all of the relevant witnesses referred to petitioner's withdrawals as a loan, and petitioner introduced into evidence a copy of a promissory note that he signed, promising to repay the balance of the withdrawals. In addition, petitioner specifically testified that he believed the withdrawals to be a loan that he was required to repay. Given this evidence, we cannot say that the trial court's conclusion that the withdrawals qualified as a loan for purposes of valuing Rochelle was against the manifest weight of the evidence. In fact, in light of petitioner's stipulations, testimony, and exhibits, all of which were introduced for the purpose of convincing the trial court that the withdrawals were a loan, if there were any error in the trial court's conclusion, it was certainly invited by petitioner. See *Torres v. Midwest Development Co.*, 383 Ill. App. 3d 20, 31 (2008) ("Under the doctrine of invited error, a party may not request to proceed in one manner and then

later contend on appeal that the course of action was in error. [Citation.] To permit a party to use, as a vehicle for reversal, the exact action which it procured in the trial court would offend all notions of fair play and encourage duplicity by litigants." (Internal quotations omitted.)).

¶ 34 Second, the trial court's conclusion that the greatest liability that the marital estate would likely face related to petitioner's withdrawals from Rochelle was the tax liability if the withdrawals were declared a distribution is also not against the manifest weight of the evidence. While recognizing that petitioner's withdrawals were officially on Rochelle's books as a loan, the trial court easily could have concluded that the likelihood that the marital estate (or even just petitioner) would actually be required to repay those withdrawals was minute, at best. The evidence presented at trial indicates that petitioner had been withdrawing money from Rochelle for 20 years, and as of December 31, 2015, the balance of the withdrawals totaled $3,783,286.32. Between 2002 and 2015, the balance of the unpaid withdrawals increased by $200,000 to $400,000 per year. Although petitioner made some type of payment nearly every year between 2002 and 2015, the balance of the withdrawals rapidly outpaced those payments. Nevertheless, Rochelle continued to allow petitioner to withdraw funds at his pleasure. In addition, the promissory note executed by petitioner only obligated him to make payments "from time to time" or within 396 days of Rochelle issuing a written demand for payment. The promissory note did not include any set payment schedule, payment amount, withdrawal limit, or termination date for withdrawals. There was no evidence presented at trial that Rochelle, despite its claimed dire financial circumstances, attempted to collect additional payments from petitioner or to call in the loan. Based on this evidence, we do not believe it to be against the manifest weight of the evidence for the trial court to have concluded that, despite petitioner's withdrawals being officially labeled as a loan on Rochelle's books, the actual marital liability on those withdrawals

would be, at most, the tax liability that the federal and state governments would impose (and, unlike Rochelle, would insist on collecting) if the "loan" were officially relabeled what it appears to actually have been—a shareholder distribution.

¶ 35 We recognize that Rochelle has not—and may not ever—deem the withdrawals a shareholder distribution. In fact, there is little incentive for Rochelle or petitioner, as majority shareholder of Rochelle, to do so. If the withdrawals remain labeled a loan on the books, Rochelle, which claims to be a struggling business, can continue to include the loan as an asset, thereby boosting its perceived value. Rochelle also avoids the obligation of paying out additional distributions to the other shareholders. Petitioner, on the other hand, is permitted to continue withdrawing tax-free money from Rochelle at a rapid rate, without limit and with only an illusory obligation to repay it. It is a win-win situation for Rochelle and petitioner, at least until Rochelle was valued for purposes of the marital estate. It is only when petitioner faced a large property equalization payment that he sought to characterize the withdrawals as something other than a loan. The trial court appears to have believed that, although the withdrawals were officially labeled as a loan for purposes of Rochelle's business calculations, the reality was that petitioner would never be forced to repay those funds and that, if pushed to do so, petitioner, as the majority shareholder, would first forgive the loan and convert it to a shareholder distribution, making his only liability the taxes on the distribution. Based on the evidence presented at trial, as described above, we cannot say such a conclusion was against the manifest weight of the evidence.

¶ 36 Maintenance

¶ 37 Petitioner next argues that the trial court erred in ordering him to pay 40% of his income as maintenance to respondent. According to petitioner, when considered with the property

equalization payment and other expenses that the trial court ordered he pay, his maintenance obligation is excessive because he cannot afford to pay it. We disagree.

¶ 38 Petitioner does not dispute that respondent is entitled to an award of maintenance; instead, he takes issue with the amount of the maintenance award made by the trial court. Under the Illinois Marriage and Dissolution of Marriage Act ("IMDMA") (750 ILCS 5/504(b-1)(1) (West 2016)) at the time of the parties' divorce, where the combined annual income of the parties was less than $250,000.00 and the payor did not have any maintenance or child support obligations from a previous relationship, the duration and amount of maintenance were required to follow certain guidelines. In situations such as here, where the parties not subject to guideline maintenance because their income exceeded $250,000.00, however, the trial court could award maintenance as it deemed appropriate after consideration of the statutory factors in section 504(a) of the IMDMA (750 ILCS 5/504(a) (West 2016)). 750 ILCS 5/504(b-1)(2) (West 2016). These factors included:

> "(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance as well as all financial obligations imposed on the parties as a result of the dissolution of marriage;
>
> (2) the needs of each party;
>
> (3) the realistic present and future earning capacity of each party;
>
> (4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;
>
> (5) any impairment of the realistic present or future earning capacity of the party against whom maintenance is sought;

(6) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or any parental responsibility arrangements and its effect on the party seeking employment;

(7) the standard of living established during the marriage;

(8) the duration of the marriage;

(9) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties;

(10) all sources of public and private income including, without limitation, disability and retirement income;

(11) the tax consequences of the property division upon the respective economic circumstances of the parties;

(12) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(13) any valid agreement of the parties; and

(14) any other factor that the court expressly finds to be just and equitable."

750 ILCS 5/504(a). Although the trial court is required to consider these factors, it also has wide latitude in that consideration and is not limited to only those factors listed above. *In re Marriage of Mohr*, 260 Ill. App. 3d 98, 107 (1994). No one factor should be considered determinative. *In re Marriage of Murphy*, 359 Ill. App. 3d 289, 304 (2005). We review the trial court's award of maintenance for an abuse of discretion. *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10.

¶ 39 Petitioner's argument is simple: after payment of maintenance ($19,200), taxes ($9,216), and property equalization ($12,942), he is left with only $6,642 net income each month from his monthly gross income of $48,000.00. Then, after paying his half of the expenses on the Tucson and Belvidere homes ($8,625.00) and $1,000.00 for the premium on the $3,000,000.00 life insurance ordered to be kept on respondent's behalf, he has negative income before paying his own living expenses. Thus, according to petitioner, the trial court's maintenance award was unreasonable, especially in light of the fact that respondent would be receiving approximately $27,047.62 per month after taxes.

¶ 40 Although petitioner has very adeptly pointed out all of the financial obligations he faces as a result of the parties' divorce, along with all of the income respondent will receive, he fails to take into account the entire picture. First, the expenses associated with the Tucson and Belvidere homes are temporary, as the trial court ordered that they be sold. Thus, the $8,625.00 that petitioner attributes to the monthly expenses on the Tucson and Belvidere homes will last only as long as the parties fail to sell the homes. Once these expenses are eliminated, petitioner will no longer have a negative net monthly income. Second, petitioner only takes into account the income he receives as a paycheck from Rochelle. He fails to take into account the fact that Rochelle pays a large number of his expenses: all vehicle-related expenses (lease payments, insurance, repair, maintenance, fuel, etc.); taxes on the Rochelle home; cell phone; travel to and from Tucson; other travel expenses (lodging, airfare, meals) that are business-related; and health insurance. The payment of these expenses significantly reduces the expenses that must be paid out of petitioner's monthly paycheck. Respondent, on the other hand, does not receive any such benefits.

¶ 41 Finally, although the IMDMA does require consideration of the apportionment of marital property, we find it somewhat misleading that petitioner includes the property equalization payment that respondent is to receive as evidence that she is achieving a greater result at the expense of petitioner. After determining the value of the marital estate, the trial court found that the parties were each entitled to half of it. Because petitioner was awarded a greater number of the marital assets, he was required to make payments to respondent to compensate her for her half of the marital estate. Thus, although petitioner is making monthly equalization payments to respondent, she is not receiving anything greater than petitioner received. In fact, until petitioner makes all of those equalization payments, he will be in possession of assets belonging to respondent. The only difference is that petitioner received his half of the marital estate in the form of the actual assets, while respondent will receive hers in the form of cash payments over time.

¶ 42 Petitioner also argues that the trial court's maintenance award is even more unreasonable because its requirement that he pay respondent 40% of everything he makes in excess of $576,000.00 per year makes it impossible for him to pay of the $1,500,00.00 in tax liability if his withdrawals from Rochelle are deemed a shareholder distribution. As an example, petitioner argues that if he receives an additional $10,000.00, he will have to pay $4,000.00 of it to respondent. Then, after taxes of $2,400,[5] there remains only $3,600.00 to be applied to the $1,500,000.00 in tax liability. This contention fails because even petitioner's own example demonstrates that it would not be impossible for him to pay the tax liability, but, at most, that repayment might be slow, depending on the additional income received by petitioner. Moreover, petitioner has failed to offer any argument or authority for the proposition that a maintenance

[5] We pass no judgment on the accuracy of the tax rates employed by petitioner in his hypotheticals.

award that does not permit repayment of liabilities at a rate rapid enough to satisfy petitioner is an abuse of discretion. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (providing that an appellant's brief must contain "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"); *CE Design, Ltd. v. Speedway Crane, LLC*, 2015 IL App (1st) 132572, ¶ 18 ("The failure to provide an argument and to cite to facts and authority, in violation of Rule 341, results in the party forfeiting consideration of the issue."). We also find petitioner's concern over payment of $1,500,000.00 a bit disingenuous, given that he has owed at least that much or more to Rochelle since the end of 2009.

¶ 43 For these reasons, we conclude that the trial court did not abuse its discretion when awarding respondent maintenance in the amount of 40% of petitioner's income.

¶ 44 Life Insurance

¶ 45 Petitioner also argues that the trial court erred in ordering him to maintain $3,000,000.00 in life insurance for the benefit of respondent, for the purpose of securing the property equalization and maintenance payments. Petitioner contends that it is unreasonable to require him to maintain that much insurance, because it is more than double the amount of property equalization payments he was ordered to make. In addition, petitioner argues that if the insurance was also intended to secure his maintenance obligation, then the insurance premium payments should have been allocated between the parties or respondent should have been ordered to pay them, as petitioner cannot afford to. Petitioner's contention that the amount of insurance is excessive because it is more than double the amount of property equalization payments owed to respondent fails because (1) $3,000,000.00 is not more than double $1,559,101.00 (the total of the property equalization payments), and (2) the insurance was

intended to secure both the property equalization and maintenance payments, which, over the course of 10 years, would far exceed the $3,000,000.00 in insurance. Second, petitioner's contention that he cannot afford the premium payments fails, because, for the same reasons explained above with respect to the maintenance payments, we conclude that the trial court did not abuse its discretion in placing the obligation for the premium payments on petitioner.

¶ 46 Attorney's Fees

¶ 47 Finally, petitioner argues that the trial court erred in ordering him to pay $69,877.00 in respondent's attorney's fees. This contention fails because petitioner has failed to provide us with a sufficient record to conduct a meaningful review of this award. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) ("[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant."). Prior to trial, on December 7, 2015, the trial court ordered petitioner to pay $79,877.00 to respondent's attorney. Petitioner failed to follow that order. After the trial court issued a rule to show cause, petitioner agreed to pay $10,000.00 of that amount and to set the matter over until trial. After trial, but prior to the issuance of the written judgment, the trial court orally announced its rulings on the issues of property division and maintenance. With respect to the rule to show cause and other pending fee petitions, the trial court set them over for a separate hearing. Following that hearing, the trial court issued its written judgment in which it found that petitioner "had and has the ability to comply with Paragraph 4 of the December 7, 2015, Court Order to pay the sum of $69,877 to [respondent's] counsel."

¶ 48 Petitioner now argues that he cannot afford to pay the ordered attorney's fees in light of the property equalization and maintenance payments ordered by the trial court and that respondent is able to pay her own attorney's fees in light of those payments. Petitioner's contention fails for two reasons. First, the trial court determined that petitioner had the ability to pay the fees at the time it ordered petitioner to pay on December 7, 2015, long before the property equalization or maintenance payments were imposed. We cannot say that the trial court's determination of petitioner's ability to pay at that time was incorrect based on financial obligations that did not yet exist.

¶ 49 Second, the only issue pending at the time of trial with respect to the attorney's fees at hand was the outstanding rule to show cause, *i.e.*, whether petitioner's failure to comply with the December 7, 2015, order was willful. See *In re Marriage of Logston*, 103 Ill. 2d 266, 285 (1984). Whether petitioner's failure to comply with the trial court's order was contemptuous is a question of fact that we may not disturb unless it was against the manifest weight of the evidence. *Id.* at 286-87. Petitioner, however, has failed to provide us with the transcripts of the December 7, 2015, hearing or the posttrial hearing on attorney's fees. Accordingly, it is impossible for us to determine whether the trial court's determination on petitioner's ability to pay or the contemptuousness of petitioner's failure to pay was against the manifest weight of the evidence. See *In re Marriage of Naylor*, 220 Ill. App. 3d 366, 370-71 (1991) ("A party who prosecutes an appeal has the duty of presenting to the court of review everything necessary to decide the issues on appeal. *** We must presume in the absence of such a record that the trial court's ruling was in conformity with the law and had a sufficient factual basis. Any doubts resulting from the incompleteness of the record will be resolved against the appellant.").

¶ 50 CONCLUSION

¶ 51 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 52 Affirmed.