

No. 1-18-0649

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> the Marriage of:)	Appeal from the
)	Circuit Court of
HEATHER ALTMAN,)	Cook County, Illinois.
)	
Petitioner-Appellee,)	No. 2013 D 4828
)	Cons. 2013 OP 20174
and)	
)	Honorable
JEFFREY BLOCK,)	David E. Haracz,
)	Judge Presiding.
Respondent-Appellant.)	

JUSTICE COGHLAN delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s judgment for dissolution of marriage was proper and supported by the record, particularly in light of respondent’s failure to comply with discovery and his failure to appear at trial.

¶ 2 Petitioner Heather Altman filed a petition for dissolution of marriage from respondent Jeffrey Block in May 2013. After many years of protracted litigation, the trial court entered a judgment for dissolution of marriage (judgment) on March 21, 2017. Dissatisfied with the judgment, Block appeals the trial court’s decision: (i) awarding maintenance and child support; (ii) denying parenting time; (iii) allocating 100% of marital debt arising from the foreclosure sale

of marital property to Block; (iv) finding that he dissipated the marital estate; (v) classifying Altman's retirement account as entirely nonmarital property; (vi) failing to consider the interim award of \$25,000 when allocating the marital estate; (vii) awarding attorney fees; and (viii) extending the plenary order of protection. Block contends that the record failed to support the trial court's judgment as to those issues. Finding no error, we affirm the trial court's judgment in its entirety.

¶ 3

BACKGROUND

¶ 4

Block and Altman were married on September 3, 2005. During the course of their marriage, a set of triplets were born in 2008.

¶ 5

Prior to their marriage, the parties executed a prenuptial agreement. The prenuptial agreement included provisions specifying that in the event of a dissolution of marriage: (i) each party's separate property remained separate regardless of contributions to the property; (ii) each party's separate retirement account and any earnings on or increases in value remained separate; (iii) joint debts would be paid first with joint assets; (iv) each party would be awarded one half of net joint property; and (v) each party would pay for their own legal fees "except for court ordered sanctions for violation of court orders or the filing of bad faith or false pleadings." The prenuptial agreement listed Altman's retirement account as separate property, which was valued at \$46,000.

¶ 6

On May 24, 2013, Altman sought a plenary order of protection against Block, seeking protection for herself and their three minor children. A few days later on May 28, 2013, Altman filed a petition for dissolution of marriage. The order of protection and divorce actions were consolidated. Block then filed a counter-petition for dissolution of marriage. Around that same time, Block was laid off from his position as a consultant earning approximately \$180,000 a

year. Altman continued working as a Rabbi at a synagogue about 12 to 15 hours a month. In 2013, Altman's gross income was under \$30,000.

¶ 7 On August 29, 2013, the trial court granted Altman's petition for plenary order of protection for a period of two years, which was extended multiple times during the dissolution proceedings.

¶ 8 Altman filed a petition requesting interim attorney fees, which she later amended on May 13, 2014. Altman requested interim fees of \$54,099 and prospective fees of \$25,000, for a total award of \$79,099. After considering Altman's financial status, including requests for maintenance and child support, the trial court awarded Altman \$25,000 as interim attorney fees, and ordered \$16,000 to be disgorged from the fees paid to Block's attorney.¹

¶ 9 Also during the dissolution proceedings and following a lengthy evidentiary hearing, the trial court entered a temporary child support award requiring Block to pay \$1421 in monthly child support based on his annual salary of \$42,000, and reserved ruling on the issue of monthly maintenance. Altman filed a motion to vacate the child support order, alleging Block falsified his income representing that he earned an annual salary of \$42,000, but his actual annual salary was \$180,000. The trial court granted Altman's motion, and set \$2218 as monthly child support and \$3680 as monthly maintenance, both retroactive, based on Block's accurate income of \$180,000, less \$788 per month paid in child support in a separate matter. The trial court did not find Block credible and found that he committed a fraud on the court.

¶ 10 Block failed to pay any portion of the maintenance award and only paid a portion of the child support award. Because Block failed to give any legally sufficient reason for his failure to comply with the support orders, the trial court held him in indirect civil contempt and he was

¹Block's attorney appealed the trial court's order directing fees to be disgorged, and this court reversed the disgorgement order. *In re Marriage of Altman & Block*, 2016 IL App (1st) 143076, ¶ 36.

incarcerated. Block was released a week later and placed on electronic monitoring on condition that he continue to pay down the child support and maintenance arrearages. In November 2016, Block cutoff the electronic monitoring device and moved outside of Illinois. Also as of November 2016, Block no longer appeared at any proceedings and failed to respond to discovery requests.

¶ 11 On December 1, 2016, the trial court issued a body attachment for Block, due to his failure to pay temporary support and unauthorized removal of the electronic monitoring device. Block owed more than \$36,000 in child support payments and more than \$120,000 in maintenance. The purge amount for the body attachment was set at \$60,000. The body attachment was registered with the Cook County Sheriff's Office and a warrant for Block's arrest was issued. Shortly thereafter on December 6, 2016, the trial court suspended Block's parenting time with the minor children.

¶ 12 Meanwhile, the parties' former marital residence fell into default and the trial court entered a judgment of foreclosure on July 27, 2016. The property was sold at a judicial sale, resulting in a deficiency judgment of \$100,104. The same trial judge also presided over the foreclosure matter.

¶ 13 As the trial date on the dissolution of marriage approached, Altman filed a motion to compel because Block failed to comply with discovery requests. The trial court entered an order granting Block 14 days to comply with all outstanding written discovery. Block failed to comply with that order and did not respond to written discovery requests. Block also failed to appear for a deposition scheduled on March 2, 2017, which had been rescheduled at his request.

¶ 14 On March 15, 2017, Altman filed a notice of intent to claim dissipation, alleging Block dissipated the marital estate of \$148,723, consisting of: (i) \$81,526 from a Fidelity account on August 20, 2013, (ii) \$26,439 from a Fidelity Roth IRA on September 4, 9, and 13 of 2013, and

(iii) \$40,758 from his 401(k) account on September 18, 2013. Altman sought one half of the amount dissipated. Altman first informed Block's attorney of her dissipation claim through a letter dated October 15, 2015. Altman also filed a motion for default and to bar Block's testimony because he failed to personally appear in the proceedings since November 2016 and failed to comply with discovery. The trial court granted Altman's motion to bar Block's testimony, and also struck all of his pending pleadings.

¶ 15 On March 16, 2017, Altman filed a motion requesting the trial court to take judicial notice of the previous filings and orders. The trial court granted the motion, stating that it knew the case well, having presided over the case since its inception in 2013. Altman's counsel also filed an Illinois Supreme Court Rule 237(b) (eff. July 1, 2005) notice compelling Block to appear and produce at trial.

¶ 16 The next day, Block's counsel filed an emergency motion to continue the trial, asserting that after Block's prior counsel withdrew, he was unable to retain new counsel until March 8, 2017.² New counsel requested additional time to prepare for trial. The trial court denied the motion.

¶ 17 On March 20, 2017, after nearly four years of litigation, much of which was "extremely contentious" and the parties were "overly litigious," the matter proceeded to trial. Block failed to appear at trial, but was represented by counsel. The trial court's prior order finding Block in indirect civil contempt remained in place. Altman and the court-appointed guardian *ad litem*, on behalf of the minor children, testified at trial, and the parties' prenuptial agreement was entered into evidence.

²Throughout the dissolution proceedings, Block retained over a half dozen of different attorneys, and at times appeared *pro se*.

¶ 18 Because Block failed to tender any discovery, Altman's counsel intended to call her as a witness only to facilitate the trial court taking judicial notice of the prior hearings and financial information. Regarding her request to extend the plenary order of protection indefinitely, Altman testified that Block had a history of harassment, intimidation, and abuse, and since the plenary order of protection was issued in 2013, the abuse continued. When questioned by Block's attorney, Altman acknowledged that she has had only indirect contact with Block, mainly from messages he sent through the minor children, and she last received a threatening, harassing, and abusive message a couple of months ago. But Block had not threatened to physically harm her in the last year. Altman believed that Block posed a danger to their three minor children and that he was a flight risk if he had unsupervised parenting time with the minor children. Altman also believed that if Block had contact with the minor children's school personnel, medical professionals, camp personnel, and similar individuals, it would be detrimental to the children.

¶ 19 Altman also testified as to financial matters. According to Altman, the child support arrearage increased to \$36,653 and the maintenance arrearage increased to \$121,440. Regarding the foreclosed property and deficiency judgment of \$100,104, Altman believed that had Block participated in the mortgage mitigation program, the foreclosure would not have gone forward. More specifically, Altman stated that had Block signed a statement in August of 2013 that he was unemployed, one year of their mortgage payments would have been deferred. Altman confirmed that she acquired her retirement account prior to the marriage. Altman acknowledged that the prenuptial agreement placed limitations on receiving attorney fees, but asserted that contribution toward her attorney fees was proper due to Block's fraudulent behavior and refusal to comply with discovery requests, which unduly increased her attorney fees.

¶ 20 The guardian *ad litem* believed that it was in the minor children's best interests for Altman to have sole decision making authority. The guardian *ad litem* also believed that it was

best to maintain the status quo in the case and prohibit Block from contacting the minor children's school personnel, medical providers, and similar individuals. The guardian *ad litem* found Block to have a lovely relationship with the minor children, but "the issue is his own baggage that he's got to clear up" before the trial court should give him time with the minor children.

¶ 21 On March 21, 2017, the trial court entered the dissolution judgment. As relevant here, the judgment: (i) awarded \$3680 per month as maintenance to Altman; (ii) awarded \$2218 per month as child support; (iii) extended the plenary order of protection indefinitely; (iv) allocated Altman's entire retirement account balance of \$127,728 as nonmarital property; (v) found Block dissipated the marital estate in the amount of \$148,723; (vi) allocated 100% of the marital debt relating to the foreclosed property to Block; and (vii) awarded Altman attorney fees totaling \$75,000 pursuant to sections 503(j) and 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) and Illinois Supreme Court Rule 137 (eff. July 1, 2018). Regarding the plenary order of protection, the trial court stated that it could not determine Block's next actions and Altman testified credibly that she still had the same fears of Block that she had when the plenary order of protection was issued. The trial court continued the body attachment and did not alter the \$60,000 purge amount.

¶ 22 In conjunction with the dissolution of marriage judgment, the trial court simultaneously entered a judgment of allocation of parental responsibilities. The trial court determined that it was in the best interests of the minor children to award Altman the parental responsibilities of the minor children and have sole decision-making authority. The trial court found that due to Block's "uncooperativeness, erratic and abusive behavior, [Block] cannot reasonably participate in the decision-making on behalf of the minor children." The trial court also prohibited Block from visiting or contacting any providers of services to the minor children. The trial court

continued the suspension of Block's parenting time, but informed Block that he could file a petition demonstrating that parenting time was in the minor children's best interests.

¶ 23 On September 28, 2017, Block filed a motion to quash body attachment to allow his participation in posttrial proceedings. Block argued that the \$60,000 purge amount was penal and not rationally related to his ability to pay, given his current annual salary of \$170,000, which was substantially less than his salary at the time the temporary support orders were entered. The trial court denied Block's motion to quash, finding the \$60,000 purge amount reasonable.

¶ 24 On October 11, 2017, Block filed an amended motion to vacate the default judgment (735 ILCS 5/2-1301(e) (West 2016)), or in the alternative, to vacate the judgment (735 ILCS 5/2-1203 (West 2016)). Block alleged that the judgment was a default judgment because it was based only on Altman's testimony. Block further alleged that his new employment position and salary obtained posttrial constituted newly discovered evidence warranting modifying or vacating the judgment due a substantial change in circumstances. The trial court described Block's motion to vacate as "simply another bite at the apple *** He has to have it his way. If it's not his way he'll keep biting until he thinks he can get it." The trial court rejected Block's claim that the judgment was a default judgment, because the judgment was entered after a trial and Block's counsel had the opportunity to cross-examine witnesses. The trial court denied Block's motion to vacate a default judgment, but granted Block's motion to vacate a judgment, finding that additional statutory factors addressing termination of maintenance should have been added to the judgment. The trial court struck references to Rule 137 sanctions, finding that a motion for Rule 137 sanctions had not been filed. Regarding Altman's attorney fees, the trial court made specific findings regarding section 508(b) fees that "on numerous occasions throughout the entire proceedings, [Block's] litigation tactics, motion filings, defense posture was often improper,

meant to harass, cause unnecessary delay and greatly increased the cost of litigation. The fees requested by Heather’s counsel at trial were fair and reasonable.”

¶ 25 Block timely appealed the trial court’s judgment and order refusing to modify the body attachment.

¶ 26 ANALYSIS

¶ 27 As a preliminary matter, Altman filed a motion to dismiss the appeal or, in the alternative, to stay appellate proceedings based on Block’s failure to comply with the trial court’s order directing Block to pay attorney fees of \$15,000 to Altman’s counsel to defend the appeal. This court denied Altman’s motion to dismiss, but granted her request to stay proceedings to allow her to seek relief in the trial court for Block’s failure to pay attorney fees. The trial court again held Block in indirect civil contempt.

¶ 28 In an order dated April 11, 2019, this court rejected Block’s arguments that: (i) the purge amount should have been reduced; (ii) the trial court erred in denying Block’s request to delay trial proceedings; (iii) the trial court erroneously took judicial notice of prior proceedings and orders when allocating the marital estate; and (iv) the trial court erred in denying Block’s posttrial motion based on “newly” discovered evidence relating to his recently acquired employment position. This court expressly stated that it would not consider those issues any further. This court also directed Block to pay \$15,000 in attorney fees to Altman’s attorney within 14 days. Block filed a motion to reconsider with this court, which was denied. Block complied with this court’s directive to remit \$15,000 to Altman’s attorney, allowing his appeal to proceed.

¶ 29 On the merits, Block admittedly raises “the kitchen sink,” arguing that the judgment should be reversed based on the evidence, and lack thereof, offered at trial. Block contends that the trial court erred in: (i) awarding maintenance and child support; (ii) denying parental time

with the minor children; (iii) allocating 100% of the marital debt to Block; (iv) finding Block dissipated the marital estate; (v) allocating 100% of Altman's retirement account as nonmarital property; (vi) failing to account for the \$25,000 interim award to Altman; (vii) awarding attorney fees to Altman; and (viii) extending the plenary order of protection.

¶ 30 This court will not disturb the trial court's allocation of parenting time (*In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 46), finding of dissipation (*In re Marriage of Patel & Sines-Patel*, 2013 IL App (1st) 112571, ¶ 74), classification of property as nonmarital or marital (*In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 68), and finding of abuse (*Best v. Best*, 223 Ill. 2d 342, 350 (2006)) unless it is against the manifest weight of the evidence. A trial court's finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Vaughn v. City of Carbondale*, 2016 IL 11981, ¶ 23.

¶ 31 We review each of the remaining issues for an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005) (maintenance); *In re Marriage of Moorthy & Arjuna*, 2015 IL App (1st) 132077, ¶ 41 (child support); *In re Marriage of DeRossett*, 173 Ill. 2d 416, 422 (1996) (distribution of marital property); and *In re Marriage of Schneider*, 214 Ill. 2d at 174 (award of attorney fees). A trial 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. We now turn to address the merits of Block's claims of error.

¶ 32 Maintenance and Child Support

¶ 33 Block first contends that the trial court failed to consider the well-established statutory factors provided in sections 504(a) (750 ILCS 5/504(a) (West 2016)) and 505(a) (750 ILCS 5/504(a) (West 2016)) of the Act when determining the monthly maintenance award of \$3680 and monthly child support award of \$2218. Block claims that the trial court merely adopted the

temporary support awards without any additional considerations, particularly regarding his reduced income and the continued need for financial support from Block.

¶ 34 A trial court is required to consider the statutory factors enumerated in sections 504(a) and 505(a) of the Act in establishing maintenance and child support amounts, but the trial court is not required to make a specific finding as to the reasons for its decision regarding maintenance and child support. *In re Marriage of Reynard*, 378 Ill. App. 3d 997, 1004 (2008); *In re Marriage of Rundle*, 107 Ill. App. 3d 880, 883 (1982). Maintenance and child support awards must be reasonable and necessary for the support of the children and former spouse, and reasonableness involves a fact specific determination. 750 ILCS 5/505(a) (West 2016); *Vendredi v. Vendredi*, 230 Ill. App. 3d 1061, 1067 (1992). In circumstances where credible evidence regarding a party's income is lacking, the trial court may award child support based on an amount that was reasonable in the case. *In re Parentage of I.I.*, 2016 IL App (1st) 160071, ¶ 58.

¶ 35 Although it is true that the monthly maintenance and child support awards were not modified from the interim award amounts, Block failed to comply with discovery regarding his current salary and financial position despite Altman's request for that information. Importantly, the interim maintenance and child support awards were determined following a protracted evidentiary hearing, and the trial court found that Block was not credible and had committed a fraud upon the court regarding his income. And the trial court's written order regarding temporary child support explicitly stated that "such amount is pursuant to § 505 guidelines." More importantly, Block acknowledged in his motion to reduce temporary maintenance that the trial court applied the statutory guidelines when determining the maintenance amount and the trial court recognized his child support obligations in an unrelated matter. Because the transcript of the April 1, 2015 evidentiary hearing addressing the modified support awards is not included in the record, we must presume that the maintenance and modified child support awards were

likewise in conformity with the law and that the omitted report of proceedings justified the trial court's awards. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Moreover, there is no evidence in the record demonstrating that since the evidentiary hearing awarding interim support: (i) Altman's employment as a Rabbi changed; (ii) Altman obtained additional employment; or (iii) the financial needs of the children changed.³ And Block's claim that the trial court calculated the award amounts based on a monthly income of \$20,000 is belied by the record, as the trial court clearly based the award amounts on Block's \$15,000 monthly income (or \$180,000 per year), taking into consideration Block's monthly child support obligation in a separate matter of \$788. Based on the record before us, we find the trial court's final maintenance and child support awards were not an abuse of discretion, but reasonable and supported by the record.

¶ 36

Parenting Time

¶ 37

Block next contends that the denial of any parenting time should be reversed because there was no evidence demonstrating that he posed a serious endangerment to the minor children.

¶ 38

A trial court determines the allocation of parenting time based on the best interests of the child standard. 750 ILCS 5/602.7(a) (West 2016). A reviewing court will accord great deference to the trial court's best interests finding because the court is in a better position to observe the temperaments, personalities, and capabilities of the parties. *In re Marriage of Betsy M.*, 2015 IL App (1st) 151358, ¶ 60. The trial court cannot restrict parenting time unless it finds by a preponderance of evidence that a parent's exercise of parenting time would seriously endanger the child's physical, mental, moral, or emotional health. *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 33.

³At trial, Altman testified that Block had not paid any maintenance since the award was entered on April 1, 2015, and the arrearage amount totaled \$121,440.

¶ 39 Here, the record supports the trial court’s parenting time determination. The trial judge, who had presided over the matter since its inception, found Block to be uncooperative, erratic, demonstrated abusive behavior, and caused chaos in the case. The trial court found Altman’s testimony credible that she had ongoing fears of Block and that he posed a danger to their minor children. Altman also believed that since Block resided outside of Illinois, he posed a flight risk if he had unsupervised visits with their minor children. Thus, the trial court implicitly found that Block posed a serious endangerment to the minor children. And at the time of the dissolution of marriage trial on March 20, 2017, Block had been absent from Illinois since November 2016 and a body attachment was issued, resulting in an active warrant for his arrest. Although the trial court did not grant Block any parenting time, Block may petition for parenting time in the future by demonstrating that parenting time with the minor children is in their best interests. 750 ILCS 5/602.5 (West 2016). Importantly, the final parenting time determination maintained the status quo concerning Block’s visitation with the minor children, and Block offered no evidence demonstrating any changed circumstances regarding the best interests of the minor children.

¶ 40 Block also claims that the guardian *ad litem* believed that Block should have contact with the children, but the record again belies his claims. The guardian *ad litem* recognized that Block had a lovely relationship with all three minor children, but expressed that “he can’t be with the children until he clears up his own circumstances.” The guardian *ad litem* also agreed that it was in the best interests of the minor children to prohibit Block from contacting the minor children’s teachers, medical providers, counselors, and individuals in similar roles.

¶ 41 Given Block’s presence outside of Illinois for an extended period of time, the testimony offered at trial, and his failure to personally participate in the trial proceedings, the trial court’s determination that it was in the minor children’s best interests to deny Block any parenting time was not against the manifest weight of the evidence.

¶ 42 Allocation of Marital Debt

¶ 43 Block also contends that the trial court erred in allocating to him 100% of the \$100,104 deficiency judgment relating to the foreclosure sale of the former marital residence. Block claims that allocating the entire marital debt to him was contrary to the prenuptial agreement, asserting joint debts were to be divided equally between the parties. Block argues that even if the prenuptial agreement did not control, it was inequitable to allocate 100% of the marital debt to him.

¶ 44 Under section 503 of the Act, marital property should be divided in “just proportions.” 750 ILCS 5/503(d) (West 2016). But “just proportion” does not require an equal distribution of property, and what constitutes a just division may vary widely. *In re Marriage of Aschwanden*, 82 Ill. 2d 31, 37 (1980); *In re Marriage of Ackerman*, 168 Ill. App. 3d 438, 442 (1988). The underlying consideration regarding a proper apportionment of property is whether it is equitable in nature, which rests on a determination of the facts of each case. *In re Marriage of Demar*, 385 Ill. App. 3d 837, 852 (2008); *In re Marriage of Drury*, 317 Ill. App. 3d 201, 211 (2000); *In re Marriage of Orlando*, 218 Ill. App. 3d 312, 319 (1991). Depending on the facts of a particular case, an unequal division of marital property may be considered a just apportionment. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 661-62 (2008); see *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 22 (an equitable distribution of marital property does not rest solely on an analysis of dollars and cents).

¶ 45 We must again state that Block did not testify at trial, did not participate in the scheduled deposition, and did not comply with discovery requests. Block had multiple opportunities to offer evidence and to refute claims concerning his participation in the mortgage mediation program, but elected not to participate in the proceedings. Altman, however, testified that if Block had signed a statement that he was unemployed, then they would have had a year of their

mortgage payments deferred and the deficiency judgment would likely have been avoided. Likewise, the trial judge, who also presided over the foreclosure proceedings, found that Block “vehemently refused to participate [in a mortgage mediation program] due to his own fraudulent agenda” despite several opportunities to do so. Moreover, Block claims that section 12(b) of the prenuptial agreement required an equal allocation of marital debt on the basis that “net joint property” would be distributed equally, but the agreement specifies that “[j]oint debts shall be paid with joint assets” and the trial court had noted that the “relatively small” marital estate was insufficient to even pay reasonable attorney fees. Under the facts of this case, allocating 100% of the marital debt relating to the foreclosed property to Block as “just proportion” was equitable and not an abuse of discretion.

¶ 46 Dissipation

¶ 47 Before addressing the merits of Block’s contention disputing a finding of dissipation in the amount of \$148,723,⁴ we must address his assertion that Altman’s dissipation claim was untimely because she raised it less than 60 days before trial.

¶ 48 Under the Act, a “notice of intent to claim dissipation shall be given no later than 60 days before trial or 30 days after discovery closes, whichever is later.” 750 ILCS 5/503(d)(2)(i) (West 2016).

¶ 49 The record reveals that Altman filed her notice of intent to claim dissipation on March 15, 2017, which she acknowledges was less than 60 days before trial. But for a dissipation claim to be timely under the Act, the relevant time period is the later of either 60 days before trial or 30 days after the close of discovery. Because Block failed to comply with discovery requests in any manner, discovery never closed and, thus, Altman’s March 15 notice was timely. Moreover, Block received ample notice of Altman’s dissipation claim and had the opportunity to refute the

⁴The judgment awarded Altman one half of the dissipated amount.

claim had he chosen to participate in the proceedings. According to Altman, she notified Block about her dissipation claim as early as October 2015. See *In re Marriage of Hamilton*, 2019 IL App (5th) 170295, ¶ 76 (a claim of dissipation should be considered provided it complies with the express requirements of the statute and also comports with the notions of fairness). Block cannot reasonably claim surprise at Altman's dissipation claim, given that he was on notice of the claim long in advance of 60 days before trial. Consequently, the trial court properly considered Altman's timely dissipation claim.

¶ 50 Turning to the merits, Block contends that Altman failed to make a *prima facie* showing of dissipation, asserting that the only evidence she offered demonstrating dissipation was her own testimony.

¶ 51 Dissipation occurs when a spouse uses marital assets for his or her benefit for purposes unrelated to the marriage while the marriage is undergoing an irreconcilable breakdown. *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497 (1990); *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 108. Once the complaining spouse makes a *prima facie* showing of dissipation, the burden then shifts to the party charged with dissipation to demonstrate with clear and convincing evidence how the funds were spent. *In re Marriage of Stuhr*, 2016 IL App (1st) 152370, ¶ 65; *In re Marriage of Partyka*, 158 Ill. App. 3d 545, 549-50 (1987). If the party fails to satisfy that burden, then a finding of dissipation is proper. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 700 (2006). Whether dissipation has occurred is a factual inquiry based on the facts and circumstances of each individual case. *In re Marriage of Rai*, 189 Ill. App. 3d 559, 565 (1989).

¶ 52 Here, the record supports the trial court's finding of dissipation. At trial, Altman identified the specific amounts dissipated, the three accounts Block withdrew the funds from, and the dates the funds were withdrawn. Block's counsel did not cross-examine Altman on the subject of dissipation, and Block offered no evidence demonstrating how the alleged dissipated

marital funds were used, leaving Altman’s claims of dissipation un rebutted. See *In re Marriage of Sanfratello*, 393 Ill. App. 3d at 653 (spouse charged with dissipation must demonstrate with clear and convincing evidence how the funds were spent). Block claims that Altman’s testimony alone was insufficient to establish a *prima facie* case of dissipation, but Block refused to comply with discovery requests, which included Altman’s request for documents, and the trial court implicitly found her testimony regarding dissipation credible. See *In re Marriage of Kaplan*, 149 Ill. App. 3d 23, 28 (1986) (the trial court assesses the credibility of witnesses). Because Block failed to meet his burden of demonstrating how the dissipated funds were used by clear and convincing evidence, or any evidence, the trial court’s finding of dissipation was not against the manifest weight of the evidence. *In re Marriage of Partyka*, 158 Ill. App. 3d 545, 551-52 (1987).

¶ 53 Classification of Altman’s Retirement Account

¶ 54 Block further claims that the trial court erred in classifying Altman’s entire retirement account as nonmarital property. Block contends that Altman must reimburse the marital estate for the marital contributions to her retirement account, which increased in value from \$46,000 when the parties executed the prenuptial agreement to its ending value of \$127,728.

¶ 55 Section 503(a) of the Act (750 ILCS 5/503 (West 2016)) requires the trial court to make specific findings as to the classification of all property as either marital or nonmarital before distributing property in a dissolution proceeding. *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 68.

¶ 56 Turning to the prenuptial agreement, we note that the agreement expressly provided that “any interest in any retirement plan *** accruing prior to the date of the marriage, including any earnings on or increase in value of any such account or plan subsequent to the marriage, shall be separate property.” The agreement further provided that a party’s separate property “shall remain separate regardless of any contributions to such property by the other party or the parties jointly.”

During trial, Altman confirmed that her retirement account was acquired prior to the marriage and was listed as a separate asset in the prenuptial agreement. Block offered no evidence contradicting the classification of Altman’s entire retirement account as nonmarital. Based on our review of the record, we find that the trial court’s classification of Altman’s entire retirement account as nonmarital property was not against the manifest weight of the evidence.

¶ 57 Interim Award

¶ 58 Block contends that the trial court failed to consider the \$25,000 interim award to Altman in 2014 for her attorney fees in the final allocation of property, because the judgment did not reference the interim award.

¶ 59 Section 503(d)(1) of the Act provides that the division of marital property shall consider “any decrease attributable to an advance from the parties’ marital estate” for an interim award under section 501(c-1)(2), which allows a trial court to assess attorney fees in favor of the petitioning party while the case is still pending. 750 ILCS 5/503(d)(1)(i) (West 2016). In other words, an interim award is deemed an advance from the parties’ marital estate. *In re Marriage of Patel*, 2013 IL App (1st) 122882, ¶ 36; *Marriage of Rosenbaum-Golden & Golden*, 381 Ill. App. 3d 65, 76 (2008); *In re Marriage of Beyer & Parkis*, 324 Ill. App. 3d 305, 314 (2001).

¶ 60 Contrary to Block’s assertion, the trial court explicitly stated that it considered all prior judicial orders and proceedings, which necessarily would have included the interim award. Moreover, judges are presumed to know the law, and as such, we can reasonably conclude that the trial court considered the interim award when allocating the marital property. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 72 (we presume the trial judge knows and follows the law unless the record expressly rebuts such a presumption). Importantly, Block is not contesting the actual interim award, but merely that the trial court did not take into account the interim award when allocating the marital property in the judgment. In any event, the trial court gave careful

consideration to the disparity in attorney fees paid by the parties and awarded interim attorney fees to level the playing field, particularly in light of the “relatively small” marital estate and neither party’s ability to pay reasonable attorney fees. Given the depth of analysis concerning the attorney fees throughout the proceedings, nothing in the record supports Block’s claim that the interim award was not taken into consideration in distributing the marital property. Consequently, we find no abuse of discretion regarding the trial court’s final allocation of marital property.

¶ 61 Attorney Fees

¶ 62 Block next contends that the trial court abused its discretion in awarding attorney fees totaling \$75,000 in favor of Altman because the trial court did not review detailed invoices and failed to consider whether the amount of attorney fees was reasonable. Block also claims that the prenuptial agreement barred either party from receiving attorney fees.

¶ 63 Generally, the party who incurred attorney fees is responsible to pay for those fees. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 667 (2008). But under section 508(b), the trial court may award attorney fees to the prevailing party in every proceeding involving the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification. 750 ILCS 5/508(b) (West 2016).

¶ 64 We find no abuse of discretion regarding the trial court’s award of attorney fees. Although it is true that the prenuptial agreement provided that each party would be responsible for his and her own attorney fees in a dissolution of marriage proceeding, Block fails to recognize that the same provision provided an exception for attorney fees relating to violations of court orders or the filing of bad faith or false pleadings. The trial court found that “[t]hese proceedings were made more complex due to Jeffrey’s individual conduct, namely, his commitment of domestic abuse, his perpetuation of fraud on this Honorable Court, his failure to

cooperate with the discovery process or this Honorable Court's orders. As a direct result thereof, the attorneys' fees and costs incurred by Heather have been unduly inflated and further, as a result of fraud by Jeffrey, not reasonably contemplated by Heather when she entered the prenuptial agreement." Given the protracted litigation, highly contested hearings, Block's failure to participate in discovery, and Block's false testimony regarding his income, the award of attorney fees pursuant to section 508(b) were authorized under the prenuptial agreement.

¶ 65 Moreover, we do not agree with Block that the trial court failed to consider whether the amount of attorney fees awarded was reasonable. The experienced trial judge was familiar with the case and had personal knowledge of its procedural history having presided over the matter since its inception almost four years earlier. Likewise, the record supports a finding that the trial court considered the allocation of marital property and maintenance in ordering Block to contribute toward Altman's attorney fees, and the trial court found that the fees requested by Altman's counsel at trial "were fair and reasonable." Even though the record did not contain detailed invoices regarding the attorney fees, attorney fees may be awarded in divorce proceedings without a review of the petitioning party's billing records. *In re Marriage of Nesbitt*, 377 Ill. App. 3d 649, 658 (2007) (citing *In re Marriage of Hasabnis*, 322 Ill. App. 3d 582, 596-97 (2001)); *Kaufman v. Kaufman*, 22 Ill. App. 3d 1045, 1051 (1974). And the trial court may consider a party's misconduct when deciding whether to award attorney fees. *In re Marriage of Cotton*, 103 Ill. 2d 346, 362 (1984). In explaining the basis for the section 508(b) attorney fees, the trial court stated that "Jeffrey's litigation tactics, motion filings, defense posture was often improper, meant to harass, cause unnecessary delay and greatly increased the cost of litigation." Under the facts of this case, the award of attorney fees was not an abuse of discretion.

¶ 66 Block further argues that the trial court failed to differentiate between the amount of attorney fees awarded pursuant to sections 503(j) (petition for contribution for fees) and 508(b)

(attorney fees relating to a party's failure to comply with an order or judgment). But the judgment provided that Altman would be solely responsible for payment of her own attorney fees, except for the fees incurred due to Block's fraudulent and contemptuous conduct as specified in section 11(c) of the judgment. In section 11(c), the trial court found that Block's conduct, particularly in committing fraud upon the court, resulted in unduly inflated legal fees. Thus, although the trial court did not explicitly classify the entire attorney fees award of \$75,000 as section 508(b) fees in the judgment, such classification was implicit in its order. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 399 (2002). Moreover, the trial court clarified in its ruling on Block's posttrial motion that the unduly inflated fees attributable to Block's conduct throughout the proceedings were classified as section 508(b) fees (as opposed to Rule 137 fees). Consequently, we find no error with the trial court's award of attorney fees.

¶ 67

Plenary Order of Protection

¶ 68

Lastly, Block contends that the trial court erred in extending the plenary order of protection indefinitely because Altman offered no evidence demonstrating any continued abuse.

¶ 69

In a proceeding seeking to obtain an order of protection, the central inquiry is whether the petitioner has been abused. *Best v. Best*, 223 Ill. 2d 342, 348 (2006). If the petitioner demonstrates by a preponderance of the evidence that abuse occurred, the trial court is compelled to issue an order of protection. 750 ILCS 60/214(a) (West 2016); *In re Marriage of Sanchez & Sanchez-Ortega*, 2018 IL App (1st) 171075, ¶ 35. A plenary order of protection may be extended, upon good cause shown, and remains in effect until the order of protection is vacated or modified. 750 ILCS 60/220(e) (West 2016).

¶ 70

Here, the evidence supports the extension of the plenary order of protection. At trial, Altman testified that she still required protection from Block, who had a history of harassment, intimidation, and abuse during the protracted dissolution proceedings. Altman further testified

that there had been no change in the circumstances since the plenary order of protection was granted in August of 2013, and she believed that he also posed a danger to their minor children. The trial court found Altman's testimony credible. See *Best*, 223 Ill. 2d at 350 (we will not substitute our judgment for that of the trial court regarding the credibility of a witness). Block offered no evidence refuting Altman's abuse claims. *In re Marriage of Sanchez*, 2018 IL App (1st) 171075, ¶ 37. Moreover, because Block failed to appear at trial and was residing outside the jurisdiction, the trial court could not ask him any questions, determine what actions he may take next, or assess whether he posed a flight risk with the minor children.

¶ 71 Although Block contends that an order of protection for an indefinite period of time is disfavored, a plenary order of protection incorporated into a final judgment of another civil proceeding, such as a judgment for the dissolution of a marriage, remains in effect until the order of protection is vacated or modified. 750 ILCS 60/220(b)(1)(ii) (West 2016). Consequently, the trial court properly extended the plenary order of protection.

¶ 72 CONCLUSION

¶ 73 We affirm the trial court's dissolution of marriage judgment in its entirety.

¶ 74 Affirmed.