2019 IL App (1st) 181514-U

Nos. 1-18-1514 & 1-18-1515 (cons.)

Order filed February 28, 2019

Fourth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JOANNA A. PORZECKA,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant	)	Cook County
	)	
v.	)	No. 15 D2 30466
	)	
NORBERT BARSZCEWSKI,	)	Honorable
	)	Timothy P. Murphy,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice McBride and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's allocation of joint decision-making and allocation of parenting time. We further find that the trial court did not abuse its discretion in denying Joanna's motion to reopen proofs, in valuing and dividing the marital assets, and in determining the amount of child support.

¶ 2 Petitioner Joanna Porzecka (Joanna) and Respondent Norbert Barszcewski (Norbert) were married on May 19, 2006, in Tallahassee, Florida. The parties have twin boys, O.B. and M.B., who were born on July 25, 2012. On November 5, 2015, Joanna filed a petition for dissolution of the parties' marriage on the basis that irreconcilable differences had arisen

between the parties resulting in the irretrievable breakdown of the marriage. Following a lengthy trial where both Joanna and Norbert testified, the court issued a judgment for the dissolution of the parties' marriage and allocation of parenting time and parenting responsibility. In a separate order, the court divided and allocated the parties' marital assets and liabilities. On appeal, Joanna contends that the trial court abused its discretion in allocating joint decision-making and in its allocation of parenting time. She further contends that the court abused its discretion in denying her motion to reopen the proofs with respect to the allocation judgment. She also asserts that the court erred in its characterization, valuation, and distribution of some of the parties' assets. Finally, she asserts that this court should reverse the trial court's child support award.

¶ 3 I. BACKGROUND

¶ 4 A. Pretrial Filings

¶ 5 The parties were married on May 19, 2006, in Tallahassee, Florida, and had two children during the marriage in July 2012. On November 5, 2015, Joanna filed a petition for dissolution of the parties' marriage on the basis that irreconcilable differences had arisen between the parties resulting in the irretrievable breakdown of the marriage. At the time of filing the petition, the parties' twin minor children, O.B. and M.B., were three years old. On November 15, 2015, Norbert filed a petition for temporary eviction from the Marital Residence. In his petition, Norbert contended that during the course of the marriage, the parties purchased a single-family home in Northbrook, Illinois, where they resided with their children (Marital Residence). Norbert noted that Joanna's parents were also staying with them in the Marital Residence. Norbert asserted that he typically works in the Marital Residence and that there were increasing tensions in the home, which was starting to have an effect on him and the children. Norbert requested that the court therefore temporarily evict Joanna from the Marital Residence. On

November 16, 2015, Norbert filed his response to Joanna's petition for dissolution of the marriage acknowledging that irreconcilable differences had arisen between the parties leading to the irretrievable breakdown of the marriage.

¶ 6 On February 18, 2016, Joanna filed a motion for allocation and sale of the Marital Residence, to set a parenting schedule, and other relief. In her motion, Joanna asserted that the living situation in the Marital Residence was "untenable." Joanna contended that in his motion for temporary eviction, Norbert failed to take responsibility for the tensions at home, but the facts were clear that "Norbert has engaged in a pattern and practice of harassment, and verbal and emotional abuse toward Joanna." Joanna then outlined a series of events that she contended illustrated Norbert's harassment and abuse. On April 7, 2016, Joanna filed an emergency motion for allocation of the Marital Residence, to set parenting schedule, and for other relief. In this motion, Joanna contended that since she filed her original motion for allocation and sale of the Marital Residence on February 18, 2016, Norbert "waged a campaign of harassment, abuse and alienation against Joanna." Joanna again listed a series of events that had taken place since February 18, 2016, that she contended illustrated Norbert's harassment and abuse.

¶ 7 On April 29, 2016, the parties entered into an agreed order setting a temporary parenting schedule. Under this agreed order, the parties entered into a "nesting schedule" whereby whichever party had parenting time with the children would also have exclusive possession of the Marital Residence. Under the nesting schedule, the parties would have parenting time on alternate weekends, Joanna would have parenting time every Monday morning through Wednesday morning, and Norbert would have parenting time Wednesday until Friday morning. The order further provided that the parties would immediately list the Marital Residence for sale.

The order also provided that the parties would communicate only in writing with regard to issues pertaining to the children, except in the case of emergencies.

¶ 8 On October 3, 2016, following a pretrial conference, the court entered an order finding that, for purposes of educational residency, the party or parties who resided within the current school district would be considered the residential parent for that purpose only. The court also stated that both parents could attend O.B.'s ongoing therapy. The court further ordered that the parties shall interact exclusively in writing except in cases of emergency through Our Family Wizard. The court charged Joanna with the sole responsibility for scheduling the children's medical and rehabilitative services in accordance with both parties' schedules. On January 12, 2017, Norbert filed a petition to release funds from escrow so that he could purchase a townhouse in the children's school district in Northbrook, Illinois.

¶ 9 On February 16, 2017, Joanna filed a petition for allocation of parental responsibility and for other relief. In her petition, Joanna asserted that it was in the children's best interest if the court allocated her "significant decision-making concerning the children's medical, education, religious, and extra-curricular decisions." Joanna contended that the children often tell her that they want to stay with her rather than have parenting time with Norbert. She further asserted that Norbert's current residence is outside of the children's school district and that the children are "more comfortable" at her residence. Joanna contended that the parties are unable to cooperate to make decisions and the "high level" of conflict between the parties impairs their ability to share decision-making. She asserted that Norbert refused to communicate effectively with her and on three occasions made false police reports against her.

¶ 10 Joanna further contended that prior to the divorce, she was the primary decision maker for the children as evidenced by the fact that she first noticed issues with O.B.'s development,

and notified Norbert of her concerns. Norbert told Joanna that he did not think the issues she noted were serious, but Joanna nonetheless told the child's physician and O.B. started early intervention therapy. Joanna contended that Norbert did not become involved in decision-making for the children until right before she filed the petition for dissolution. Joanna asserted that she was willing and able to facilitate a relationship between the children and Norbert, whereas she believed Norbert would not be willing to do the same with her. Joanna contended that Norbert falsely accused Joanna of child abuse and manipulated the children to be fearful of her.

¶ 11 Joanna also proposed a parenting time schedule in her petition whereby Norbert would have parenting time every other weekend and every Wednesday from after school until 7 p.m., and Joanna would have parenting time at all other times. Under this parenting plan, the parties would evenly divide the major secular and religious holiday and divide the children's spring and winter breaks. Joanna contended that she is the more attentive parent and, even before the breakdown of the parties' marriage, was the parent who was primarily responsible for the children's upbringing.

¶ 12 On February 21, 2017, Norbert filed his own petition for allocation of parental responsibility and entry of proposed parenting plan. In his petition, Norbert contended that it would be in the best interests of the children for the court to allocate "joint responsibility to the parties to make 'significant' decisions for the minor children" in accordance with Norbert's proposed parenting plan. In Norbert's proposed parenting plan, Norbert asserted that he should have the majority of the parenting time and believed that the children desired to reside primarily with him and spend the majority of parenting time with him. Norbert further contended that in the two years since the dissolution petition was filed, he had spent more time than Joanna caretaking for the children. Norbert noted that the children have a good relationship with both

parents and that they have adjusted well to the 50/50 parenting schedule devised by the court in the April 2016 agreed order. Norbert also contended that he would be willing to cooperate with Joanna in sharing parenting time and promoting a good relationship between her and the children.

¶ 13 In his parental responsibilities plan, Norbert posited that routine, everyday decisions and emergency decision would be made by the parent who was currently caring for the minor child under the parenting schedule. Norbert suggested that both parents would have to jointly agree for all significant, non-emergency medical decisions. Norbert suggested a similar procedure for all significant, non-emergency educational and religious decisions.

¶ 14 With regard to allocation of parenting time, Norbert suggested a weekend schedule whereby Joanna would have parenting time on the first, third, and fifth Fridays of every month through the following Tuesday. The parents would split the children's summer vacation evenly, which would supersede the weekend parenting time. For other major holidays, such as Christmas, Thanksgiving, and Spring break, the parties would alternate parenting time on odd and even-numbered years. Any parenting time not specifically allocated to Joanna would be Norbert's parenting time. Norbert also allocated times for phone calls between the children and the non-parenting time parent.

¶ 15 B. Trial

¶ 16 At trial, both Norbert and Joanna testified extensively regarding their assets both before and during the marriage and their relationship before their marriage, during their marriage, and after Joanna filed the petition for dissolution. Both parties also testified at length regarding their involvement in raising their children, including their involvement in the children's medical care, education, and everyday life. Joanna first testified regarding her premarital assets, including a

vehicle, her savings account, and a condominium she owned in Mount Prospect, Illinois. With regard to the children and her relationship with Norbert, Joanna testified that the parties have employed a nanny since September or August 2013. Their current nanny, Grace Volinski, was hired in January 2016 and works with whichever parent has parenting time. Joanna testified regarding occasions where she and Norbert had trouble communicating about the children, including an instance where Norbert took M.B. to the hospital for a rash, but failed to adequately communicate with her regarding his condition and treatment. She testified that she did not believe she and Norbert could cooperate effectively regarding the decision-making for the children's educational decisions. She noted there had been issues registering the children for school and attending parent-teacher conferences because of scheduling issues and lack of cooperation between her and Norbert.

¶ 17 She also testified that she and Norbert could not cooperate effectively regarding healthcare decision-making for the children. She testified that the most important aspect of the children's healthcare is to ensure that the children get the medical attention and services that they require, but stated that she and Norbert would often disagree over trivial matters such as who would schedule the appointments or who would drive the children to the appointments. She agreed that if she were granted exclusive control over the children's healthcare that she would notify Norbert about all of the concerns regarding the children's health and that he could attend the appointments. She testified that she wanted to have "normal" co-parenting with Norbert and wanted to be able to talk to him about the children. Joanna proposed a parenting schedule where Norbert would take the children after school on Tuesday and Thursday until 7 p.m., Joanna and Norbert would alternate weekends, and all other times would be Joanna's parenting time.

¶ 18 With regard to O.B., Joanna testified that when he was around one year old, she noticed that he was having issues playing and making eye contact. She testified that she told Norbert about her concerns, but he told her that she was being overprotective. She nonetheless contacted a behavior specialist and was able to get O.B. into an early intervention program for children who are developmentally delayed. Over the course of the next several years, O.B. received many therapies including speech therapy, food therapy, occupational therapy, and physical therapy.

¶ 19 O.B.'s occupational therapist, Shelly Blanski, testified at the trial and was qualified as an expert witness in the area of pediatric occupational therapy. She started therapy with O.B. in May 2014 and noted that O.B. had improved significantly in most areas with the therapy. She testified that throughout the therapy sessions, both Joanna and Norbert were attentive and involved parents and were cooperative with each other and the children. She testified that neither parent was "better" than the other when participating in O.B.'s therapy and both were very concerned and loving parents. She further testified that O.B.'s significant improvement through the therapy was a result of both parents' shared support of his therapies.

¶ 20 Norbert testified that he believed it was in the children's best interests that he and Joanna share in the allocation of decision-making for the children's health, education, religion, and extracurricular activities. He testified that he wanted to keep the parenting schedule from the April 2016 agreed order to provide consistency for the children. Under this schedule, the children would alternate weekends, spend Monday and Tuesday with Joanna, and spend Wednesday and Thursday with Norbert. The parents would alternate holidays each year and evenly divide longer breaks, such as summer and winter break. He testified that his communication with Joanna had been difficult since the beginning of the dissolution process, but thought that it had been improving over time and hoped that would continue. Norbert testified that it was not possible for

him to say who first noticed O.B.'s developmental issues because at that point in their marriage they would often talk about the children and he was also trying to figure out what was wrong with O.B.

¶ 21 He further testified that although he did not currently live in the children's school district, he wanted to move. He attempted to buy a residence in the school district previously, but was unable to do so because the funds from the sale of their Marital Residence were still in escrow. He testified that he did not want to be around Joanna, but would make efforts for the benefit of the children so that they could attend medical appointments together. He believed that he and Joanna had been cooperating well regarding O.B.'s food therapies. He testified that he regretted previous instances where he threatened Joanna with kidnapping for taking the children during his parenting time, but thought that he was improving at co-parenting. Norbert also testified regarding his financial assets, including the company he co-owned with Joanna, JP NetQuest, Inc. (JP NetQuest), some property he owned in Poland, his retirement accounts, and his financial transactions before and during the marriage.

¶ 22 Finally, Anna Pawlowski, an acquaintance of Norbert, testified on his behalf at the trial. She described several instances where she had seen him parenting M.B. and O.B. over the last several years and observed that he was a good parent who acted appropriately with the children. She also testified that the children behaved well with both Norbert and Joanna and believed that Joanna was a good mother and Norbert was a good father.

¶ 23 C. The Circuit Court's Judgment

¶ 24 1. *Judgment for Dissolution of Marriage and Allocation of Parenting Responsibilities and Parenting Time*

¶ 25 The court entered its judgment in two separate orders. The first order addressed the dissolution of the parties' marriage and the allocation of parenting responsibilities and parenting time. In its order, the court noted that it had the opportunity to review the parties' voluminous exhibits, which included emails and financial documentation, and had the opportunity to observe the demeanor of each witness and judge the witnesses' credibility. The court recounted specific pieces of testimony and stated that it considered the factors set forth in section 5/602.5(e) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.5(e) (West 2016)). The court observed that:

> "While the testimony and evidence demonstrated that the parties each engaged in some out-of-character behaviors during the breakdown of their marriage, the evidence also showed that the behavior of each of them has stabilized, and that they have made decisions regarding the boys' schools, medical and health condition, and the like that are in the children's best interests. That the court has little or no concern that the unusual behaviors exhibited towards each other during the breakdown of the marriage will reoccur; it is unfortunate that these good people experienced same."

¶ 26 The court determined that the children were well-adjusted to their homes and community and that both parents had put the children's interests before their own in providing them with opportunities to develop and thrive. The court found that "despite Joanna's argument that Norbert lacks the ability to cooperate regarding decision-making, the overwhelming evidence suggests the contrary: that both of the parents are able to cooperate to make decisions regarding the boys' best interests." The court observed that although Joanna and Norbert did not agree on every parenting decision, "the parties do both individually and collectively make decisions in the

children's best interests." The court noted that there were no instances in which the boys' interests were not protected or addressed by the parents.

¶ 27 The court also noted Balanski's testimony regarding both parents' involvement in O.B.'s therapy, and that both O.B. and M.B. are "thriving, happy and developing appropriately as a result of the combined efforts of the parents." The court concluded that the overwhelming evidence showed that Joanna and Norbert had the ability to cooperate and make decisions together regarding the children and that it was in the children's best interests that the decision-making be shared by the parents.

¶ 28 With regard to allocation of parenting time, the court stated that it considered the factors in section 602.7 of the Act (750 ILCS 5/602.7 (West 2016)) and the parties' proposed parenting schedules. The court found that the evidence adduced at trial showed that both Joanna and Norbert were highly involved in the daily caretaking, support, and development of M.B. and O.B, and that both children had a healthy relationship with both parents. The court noted that under the current parenting schedule from the April 2016 agreed order, over a two-week period both Joanna and Norbert had parenting time for seven overnights, five full days, and four partial days. The court determined that this schedule minimized the number of exchanges of the children and would provide each parent with an equal amount of time with the children. The court also noted that there was no evidence that the current parenting schedule, where the children would be with one parent for a five-day period each week, caused problems for either O.B. or M.B. despite Joanna's testimony that the children had trouble adjusting to her home during her parenting time following five consecutive days with Norbert. Accordingly, the court determined that it was in the children's best interests to have the current parenting schedule

remain in place. In a separate part of the order, the court specifically delineated parenting time for holidays, school breaks, such as summer and winter vacation, and birthdays.

¶ 29 The court further ordered that each parent would have responsibility for routine and everyday decisions when the children were with that parent. With regard to responsibility for significant decision-making, such as the children's education, health, religion, and extracurricular activities, the court determined that Norbert and Joanna would share those decisions. The court then outlined specific guidelines for both Norbert and Joanna to follow regarding registering the children for school, signing them up for extracurricular activities, scheduling medical appointments, and other decisions related to the children's education, health, religion, and extracurricular activities.

¶ 30 2. *Division and Allocation of Marital Estate and Liabilities Judgment*

¶ 31 In a separate order, the court outlined and divided the parties' assets. As relevant here, the court found that the testimony showed that during the marriage, the parties started a business, JP NetQuest, of which Norbert was the president. Through the company, Norbert provided web development and internet marketing services. The court noted that Norbert testified that the company owned four computers and four cell phones. The court found that JP NetQuest was marital property, but that its value was "*de minimus*." The court awarded Norbert sole interest in the ownership of JP NetQuest free and clear of any and all claims of interest from Joanna.

¶ 32 The court also addressed Norbert's two retirement accounts. During the trial, Norbert testified about two retirement accounts that he had, a Florida State Optional Retirement Account (FSU Retirement Account) and a Florida State University 401(A) FICA Alternative Plan (Bencor Account). The court found that Norbert started contributing to the FSU Retirement Account in

2000, prior to the marriage, and the employer also made contributions to the account until Norbert left Florida State University in 2007. The court noted that Norbert testified that he did not make any contributions to the account after the marriage, but his employer made contributions of "a few thousand" after the marriage and the value of the account as of March 31, 2017, was $45,083. The Bencor Account was acquired after Norbert returned to work with Florida State University after the marriage and the court, therefore, determined that the account was a marital asset. The value of the Bencor Account as of May 2017 was $10,188. The court awarded both the FSU Retirement Account and the Bencor account to Norbert, free and clear of any and all interest by Joanna.

¶ 33 The court's order also contained a child support award for Norbert. The court noted that the evidence showed that Joanna's 2017 salary was $93,521 and Norbert's was $70,863 when including his salary from Florida State University and his self-employment income. After considering the parties' tax deductions, the court determined that Joanna would pay Norbert $259 per month based on the current "income-sharing" statutory provisions.

¶ 34 D. Post-Judgment Proceedings

¶ 35 1. *Parenting Responsibilities and Parenting Time Judgment*

¶ 36 Following the court's judgment allocating parenting responsibilities and parenting time, Joanna filed a motion for reconsideration or in the alternative to reopen proofs. In her motion, Joanna contended that the evidence at trial overwhelming demonstrated that the parties failed to meet the standard for joint decision-making under section 602.5. Relying on *In re Swanson*, 275 Ill. App. 3d 519 (1995), Joanna contended that joint decision-making requires an "unusual level of cooperation and communication" between the parties that was absent in this case. Joanna asserted that the evidence demonstrated that the parties were unable to communicate and unable

to facilitate a relationship between the children and the other parent. Joanna contended that the testimony of the parties and thousands of emails between them that were entered into evidence demonstrated Norbert's inability to co-parent, his refusal to facilitate a relationship between Joanna and the children, and his inability to cooperate and communicate with Joanna. Joanna contended that the evidence adduced at trial, together with the incidents Joanna identified in her petition for allocation of parental responsibilities, provided ample examples of Norbert's interference with Joanna's parenting, his refusal to co-parent, and his abusive and belligerent behavior toward Joanna and her parents. Joanna maintained that the court's finding that it has "no concern" regarding the parties' ability to co-parent is "admirable," but "misplaced," and cannot be the basis for a judgment of joint decision-making.

¶ 37 In addition, Joanna requested that the court reopen the proofs because the evidence of Norbert's behavior after the trial contradicted the court's finding that Norbert's prejudgment behavior was "out-of-character." Joanna asserted that in the six months since the conclusion of the trial, "Norbert's outrageous, demeaning and uncooperative behavior towards Joanna has worsened and shows without question that Norbert cannot co-parent with Joanna as this Court ordered." Joanna then outlined a series of events that had occurred since the conclusion of the trial that she contended demonstrated Norbert's demeaning and uncooperative behavior including interfering with Joanna's phone calls with the children during his parenting time and threatening to call the police on Joanna in front of the children who, upon hearing Norbert's threat, "became hysterical." Joanna contended that the court should thus reopen the proofs so that the court could further consider the impact of Norbert's conduct on the court's decision. Joanna attached to her motion a series of emails and text messages that she claimed demonstrated Norbert's behavior.

¶ 38 Subsequently, Joanna filed a supplement to her motion for reconsideration or in the alternative to reopen proofs. In her supplement, Joanna detailed more instances of Norbert's behavior that occurred since she filed the original motion. In his response to Joanna's motion, Norbert asserted that he was ready to cooperate with Joanna and knew that the children would need many more years of careful parenting. Norbert contended that the precedent Joanna relied upon was outdated, and that current case law supported the trial court's decision. Norbert responded to the incidents Joanna detailed in her motion and supplement and contended that Joanna was confusing the court's parenting time decision with it's decision-making decision, and disagreed with Joanna's characterization of many of the events.

¶ 39 On June 1, 2018, the circuit court expressly rejected Joanna's reliance on *Swanson* as "controlling law for the proposition that an 'unusual ability to cooperate' is required for an award of joint decision-making." In reviewing the incidents Joanna detailed in her motion, the court found that the posttrial incidents were consistent with Joanna's trial testimony regarding similar incidents between her and Norbert. The court noted that Norbert's trial testimony was not consistent with Joanna's "either as to the actual facts of the occurrences or as to the characterization of the alleged effect of same as related to the parents' ability to parent." The court determined that the evidence Joanna sought to present was cumulative and would invite continuous, ongoing litigation where the parties were in need of finality. Accordingly, the court denied Joanna's motion for reconsideration or in the alternative to reopen proofs.

¶ 40 2. *Marital Estate and Liabilities Judgment*

¶ 41 Following the circuit court's division and allocation of marital estate and liabilities judgment, Joanna filed a motion for reconsideration of that order. In her motion, Joanna contended that the court erred in characterizing Norbert's FSU Retirement Account as non-

marital property. Joanna asserted that the court found that account's value was mixed marital and non-marital, but it failed to make specific factual findings as to how it determined which portions of the account were marital and which were non-marital. Joanna contended that it was not possible for the court to make such a determination because Norbert failed to meet his burden of proof to trace the contributions to the account and simply relied on the account statements, which were insufficient to trace the marital and non-marital amounts.

¶ 42 Joanna further contended that the court failed to properly value JP NetQuest. Joanna noted that Norbert testified that JP NetQuest had a number of accounts receivable pending, but he did not quantify those amounts or submit documentation to show the amount of the accounts receivable. Finally, Joanna challenged the court's child support award contending that it did not consider Norbert's income from all sources and Joanna's additional living expenses that she incurred by living in the children's school district.

¶ 43 In denying Joanna's motion, the court rejected Joanna's contention that it characterized Norbert's FSU Retirement Account as mixed marital and non-martial property. The court noted that it instead found that the account had a "non-marital component." The court further rejected Joanna's claim that the account had been transmuted from non-marital to marital property where the evidence showed that Norbert made the majority of the contributions to the account prior to the marriage, made no contributions to the account during the marriage, and only the employer made contributions during the marriage. The court determined that the account thus had both a marital and non-marital component and the court took those components into consideration in its division and allocation of the parties' assets.

¶ 44 With regard to Joanna's claim that the court failed to consider JP NetQuest's accounts receivable in its order, the court found that it was the responsibility of both parties to present

evidence of the parties' assets so that the court could fairly evaluate and divide the marital property. The court also addressed Joanna's claim that the court failed to include JP NetQuest's accounts receivable in determining Norbert's income for purposes of the child support award. The court observed that it did attribute income to Norbert from JP NetQuest as detailed in its calculation of the parties' income and tax liability in its order. The court noted that Joanna "apparently confuses what accounts receivable are and what income is. 'Income' is derived from accounts receivable *and paid*, after costs are deducted therefrom to realize a net income for the business. That the evidence shows that Norbert reports the income from JP NetQuest on his income tax returns, and this court included same in its calculation of child support." (Emphasis in original). Finally, the court rejected Joanna's contentions regarding the award of child support finding that the statutory factors and the parties' income supported the court's judgment. This appeal follows.

¶ 45 II. ANALYSIS

¶ 46 On appeal, Joanna contends that the circuit court abused its discretion by allocating joint decision-making and in its allocation of parenting time. Joanna asserts that the parties' relationship, as evidenced at trial, demonstrates that joint decision-making is not in the best interests of the children and constantly shifting the children from each parent's home violates established precedent. Joanna also contends that the court abused its discretion in denying her motion to reopen the proofs where the evidence she sought to introduce was not cumulative. Joanna further asserts that the court erred in its characterization, valuation, and distribution of Norbert's FSU Retirement Account and the JP NetQuest accounts receivable. Finally, Joanna contends that the court abused its discretion in applying the child support guidelines.

¶ 47 A. Norbert's Appellee Brief

¶ 48 We first must address the state of Norbert's brief. As Joanna points out in her reply brief, Norbert's *pro se* appellee brief fails to comply with Supreme Court Rule 341(h) in that it fails to include record citations or citations to relevant authority. Ill. S. Ct. R. 341(h)(6), (7) (eff. May 25, 2018). Joanna asserts that we should therefore strike Norbert's brief. Our supreme court has recognized that this court should not be compelled to serve as an advocate for the appellee and that it should not be required to search the record for the purpose of sustaining the judgment of the trial court. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). However, our review is not precluded where "the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief." *Id.* In such cases, the court should decide the merits of the appeal. *Id.* Although the issues in the case before us may not be considered "simple," we conclude that Norbert's violations of the supreme court rules do not hinder our review of the case since we reviewed the record as a whole in addressing Joanna's arguments and thus can decide the issues without the aid of an appellee's brief. *Hurlbert v. Brewer*, 386 Ill. App. 3d 1096, 1101 (2008). Accordingly, we will not strike Norbert's brief, but will disregard any fact or claim not supported by the record. *Id.*

¶ 49 B. Joint Decision-Making

¶ 50 Joanna first contends that the court abused its discretion in allocating joint decision-making. She asserts that joint custody arrangements require "unusual circumstances" that are not present in this case given the "level of vitriol and acrimony between the parties." Joanna maintains that joint decision-making is not in the best interests of the children because the record shows that Norbert will not be able to co-parent effectively with her.

¶ 51 Section 602.5(a) of the Act provides that the trial court shall "allocate decision-making responsibilities according to the child's best interests." 750 ILCS 5/602.5(a) (West 2016).

Section 602.5(c) lists 15 specific factors for the court to consider when determining the child's best interests, including, *inter alia*, the ability of the parents to cooperate to make decisions, the level of each parent's participation in past significant decision-making, and the wishes of the parents. 750 ILCS 5/602.5(c)(4), (5), (7) (West 2016). We will reverse the court's allocation of decision-making responsibilities only where that decision is against the manifest weight of the evidence. *In re. A.S.*, 394 Ill. App. 3d 204, 214 (2009). A decision is against the manifest weight of the evidence only "if an opposite conclusion is apparent or if the findings appear to be unreasonable, arbitrary, or not based upon the evidence." *Id.* We accord great deference to the trial court's determination of the children's best interests because the court is in a better position to "observe the temperaments and personalities of the parties and assess the credibility of the witnesses." (Internal quotation marks omitted.) *In re B.B.*, 2011 IL App (4th) 110521, ¶ 32.

¶ 52 In contending that joint decision-making is disfavored, Joanna relies on *Shinall v. Carter*, 2012 IL App (3d) 110302, *Kocal v. Holt*, 229 Ill. App. 3d 1023 (1992), and *In re Marriage of Swanson*, 275 Ill. App. 3d 519 (1995). Joanna contends that these cases, together with other Illinois precedent, demonstrate that joint decision-making was not in the best interests of the children in this case because Joanna and Norbert do not have the unusual level of communication and cooperation required for such a finding. Joanna points out that she and Norbert cannot even communicate verbally and all of their interactions must take place by email. She also points out the evidence introduced at trial demonstrating Norbert's "inability to treat Joanna like a human being, let alone co-parent two young children with her."

¶ 53 Here, in its order, the court addressed each of the 15 factors in section 602.5(c) in determining that it was in the children's best interests to allocate joint decision-making. Particularly relevant here, the court found with regard to the ability of the parents to cooperate to

make decisions, that "despite Joanna's argument that Norbert lacks the ability to cooperate regarding decision-making, the overwhelming evidence suggests the contrary: that both parents are able to cooperate to make decisions regarding the boys' bests interests." The court acknowledged that Joanna and Norbert did not agree on the course of parenting in every instance, but noted such disagreements occur with all parents. The court crucially found that the evidence showed despite these disagreements, the parties both individually and collectively made decisions in the children's best interests and found no instances where the children's interests were not protected or addressed by the parents.

¶ 54 Joanna contends that this pronouncement by the trial court runs contrary to *Swanson*, in which the court held that a trial court can "reasonably conclude that the [the parents] are model parents *to their children*, [but] have not demonstrated an ability to cooperate *with each other* to the degree required for joint custody." (Emphasis in original.) *In re Swanson*, 275 Ill. App. 3d at 525. Joanna notes that she raised this argument in her motion to reopen the proofs, but the court rejected her reliance on *Swanson*, finding that it was not "controlling law for the proposition that an 'unusual ability to cooperate' is a requisite to an award of joint custody, or in this case for joint decision-making." Before this court, Joanna argues that such a finding was in error where appellate court opinions are controlling precedent for the trial court.

¶ 55 The trial court, however, did not reject *Swanson* as controlling precedent, *in toto*, but merely found that it was not controlling law for that specific proposition as Joanna contended. Indeed, a reading of *Swanson* shows that the "unusual capacity to cooperate" language was used by the trial court in that case as a basis for its allocation of joint decision-making. *In re Swanson*, 275 Ill. App. 3d at 522. In reversing the trial court's decision, the *Swanson* court determined that the record showed the parents in fact did not demonstrate an unusual ability to cooperate as the

trial court found and thus reversed its allocation of joint decision-making on that basis. *Id.* at 523. In this case, the court did not suggest that Joanna and Norbert had an unusual ability to cooperate, and, in fact, even noted areas of disagreement among the parties. The court determined, however, that even in light of these disagreements, it was nevertheless in the best interests of the children that the parties be allocated joint decision-making.

¶ 56 Joanna, in reliance on *Swanson*, would have this court find that joint decision-making is appropriate *only* in those cases where the parents have an "unusual ability to cooperate," but this is not what the statute dictates. Although the statute does include the ability of the parents to cooperate as one the 15 factors for the court to consider in allocating decision-making, it is but one factor and not controlling. Instead, the statute charges the trial court with considering all of the factors, and, considering all of the evidence presented together, to determine what is in the bests interests of the children. Although this decision may be informed by the parents' ability to cooperate and communicate, it is not controlled by that factor. We find further support for the trial court's judgment in *Shinall*, cited by Joanna, where in that case, the third district noted that:

> "Awards of joint custody have been affirmed where each party desired to maintain maximum involvement with their child and the evidence demonstrated that the parties were able to cooperate. *In re Marriage of Hacker*, 239 Ill. App. 3d 658 [] (1992) (affirming joint custody where both parties were reasonably loving and capable parents who were sufficiently able to cooperate even though each party attempted to prove the other less capable); *In re Marriage of Marcello*, 247 Ill. App. 3d 304 [] (1993) (affirming a joint custody award over the mother's objection where father was actively involved in the child's activities, the mother testified the father should not be

excluded from major decisions, and the parents live in close geographical proximity)." *Shinall*, 2012 IL App (3d) 110302, ¶ 35.

¶ 57 Here, the circuit court heard extensive testimony from both parents, a health care professional, and a friend of Norbert regarding the parties' ability to parent and their relationship with each other and their children. The court also considered dozens of exhibits including written communications between the parties. Based on that evidence, the court drafted a lengthy written order in which it specifically addressed each of the 15 statutory factors in section 602.5(c), including Joanna and Norbert's ability to cooperate. The court specifically noted that under the parties' current arrangement, whereby both parents shared in the decision-making for the children, both O.B. and M.B. were "thriving, happy, and developing appropriately as a result of the combined efforts of the parents." Thus, the court determined that based on all of the evidence presented it was in the best interests of the children to allocate joint decision-making to the parties. The record clearly establishes that the trial court considered all of the evidence presented in rendering its judgment and it is not our function to reweigh the evidence or assess the credibility of testimony. *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513 (1992). Nor can we "set aside the trial court's determination merely because a different conclusion could have been drawn from the evidence." *Id.* Accordingly, based on the record before us, we cannot say that the court's allocation of joint decision-making was against the manifest weight of the evidence or an abuse of discretion.

¶ 58 C. Parenting Time

¶ 59 Joanna next contends that the court abused its discretion in allocating parenting time. She asserts that in conflict with *Swanson*, the parenting schedule imposed by the trial court in this case "constantly shift[s]" the children from one parent to the other, and is improperly based on

the nesting schedule that was established when the parties still lived in the Marital Residence. She further contends that the court improperly placed the burden on Joanna to establish by "conclusive evidence" that the current nesting schedule was not in the best interests of the children.

¶ 60 Section 602.7(a) of the Act provides that the trial court "shall allocate parenting time according to the child's best interests." 750 ILCS 5/602.7(a) (West 2016). As with the trial court's decision regarding decision-making, we accord great deference to the trial court's allocation of parenting time because the trial court is in a superior position to judge the credibility of the witnesses and determine the best interests of the children. *In re Marriage of Whitehead and Newcomb-Whitehead*, 2018 IL App (5th) 170380, ¶ 15. A trial court's determination as to the best interest of the child will not be disturbed on appeal unless the court abused its considerable discretion or its decision is against the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly evident. *In re A.P.*, 2012 IL 113875, ¶ 17.

¶ 61 Section 602.7 of the Act provides 15 enumerated factors for the court to consider in determining allocation of parenting time. As the trial court recognized, these factors are nearly identical to the decision-making considerations under section 602.5(c). In assessing the relevant factors, the court focused on minimizing the number of exchanges of the children, "instances where the children now have to change houses, bring their belongings, school work, etc. during the parents' parenting time." The court determined that such a schedule minimized the disruptions to the children.

¶ 62 Relying on *Swanson*, Joanna contends that the parenting time allocation in this case is improper because it "constantly shift[s]" the children between the parties' residences and does

not give them a home base. *In re Swanson*, 275 Ill. App. 3d at 524. This court, however, has distinguished *Swanson* where in that case the trial court based the allocation of parenting time on a desire to equally divide the physical custody. *In re Marriage of Perez*, 2015 IL App (3d) 140876, ¶¶ 31-32. This court has not disfavored such arrangements where the trial court did not allocate parenting time in an attempt to equally divide physical custody, but did so where it is in the children's best interest to maximize the involvement of both parents. *Id*. In *Perez*, this court noted that courts have traditionally viewed 50/50 shared parenting schedules with caution, but the facts in that case demonstrated that the court did not abuse its discretion in establishing a 50/50 parenting schedule. *Id.* ¶ 33. The *Perez* court noted that both parties were capable parents and cooperative in reaching decisions in the best interests of their child, as the trial court found in this case. *Id.* The *Perez* court also noted the parties lived in close proximity to each other so changing between the parties' residences would not "disrupt [the child's] schooling, connections, and community ties." Likewise, in this case, the court noted that Joanna and Norbert lived only a short distance from each other and although Norbert did not currently live in the children's school district, he was intending to move into the district. The *Perez* court also observed, as did the trial court in this case, that "there was no indication that [the child] would suffer psychologically or emotionally" under the shared parenting schedule. *Id.* The *Perez* court thus concluded that "based on the specific facts presented at this time" the trial court's parenting schedule was in the best interests of the child and not against the manifest weight of the evidence. *Id.*

¶ 63 In this case, as in *Perez*, the trial court considered the effects of a schedule that "constantly shift[ed]" the children from one residence to another. The court determined that this schedule had already been in place for some time and the children were not suffering either

psychologically or emotionally. In imposing the schedule, the court sought to minimize the number of exchanges between the parents because the court determined those were the most disruptive factor for the children. As in *Perez*, it is clear that based on the specific facts presented in this case, the trial court's determination that maintaining the current parenting schedule was in the best interests of the children was not against the manifest weight of the evidence.

¶ 64 As Joanna points out, however, the imposed schedule does not account for certain holidays, such as Halloween and the Fourth of July. The fact that the trial court did not specifically account for these holidays as it did with others, suggests that the court intended the standard parenting schedule to apply during those days. Because of the fluctuations in the Gregorian calendar, these holidays will in some years occur during Norbert's parenting time, and in some years occur during Joanna's parenting time, just as with the holidays the court specifically accounted for.

¶ 65 Finally, Joanna's argument that the court improperly placed the burden on her to show that the current schedule was not in the children's best interest is not supported by the trial court's ruling. In maintaining the current parenting schedule, the court determined that it "received no conclusive evidence that the current schedule" had caused problems for O.B. or M.B. despite some testimony by Joanna that the children had trouble adjusting upon their return home. This was not an instance of the trial court improperly placing a burden on Joanna, but merely demonstrates the trial court's observations regarding why it determined that the current parenting time schedule was in the children's best interests.

¶ 66 D. Joanna's Motion to Reopen Proofs

¶ 67 Joanna next contends that court abused its discretion in denying her motion to reopen the proofs with respect to the decision-making and parenting time judgment. Joanna asserts that the

evidence she sought to introduce was not cumulative and showed that Norbert's behavior would not "normalize" after the dissolution as the trial court suggested. We review an order denying a motion to reopen proofs for abuse of discretion. *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1077 (2007).

¶ 68 In ruling on a motion to reopen proofs, the trial court considers: "whether the moving party has provided a reasonable excuse for failing to submit the additional evidence during trial, whether granting the motion would result in surprise or unfair prejudice to the opposing party, and if the evidence is of the utmost importance to the movant's case." (Internal quotation marks omitted.) *In re Estate of Bennoon*, 2014 IL App (1st) 122224, ¶ 55 (quoting *General Motors Acceptance Corp.*, 374 Ill. App. 3d at 1077). Although greater liberty should be allowed in reopening the proofs where a case is tried before a court without a jury, the fact that the case is heard without a jury does not mean that a motion to reopen proofs should be automatically granted. *In re Parentage of I.I.*, 2016 IL App (1st) 160071, ¶ 44 (citing *Bennoon*, 2014 IL App (1st) 122224, ¶¶ 55, 56).

¶ 69 In denying Joanna's motion to reopen proofs, the court determined that the alleged posttrial conduct was consistent with the "voluminous testimony" Joanna gave at trial detailing similar incidents. The court further noted that in his testimony, Norbert contradicted Joanna's characterization of these events. The court observed that the parties disagreed as to the actual facts of the occurrences and characterization of the events. The court believed that if it reopened the proofs, any additional testimony would "take the same tone and direction" as the trial. The court noted that it had already heard eight days of Joanna's trial testimony where she recounted events similar to those contained in her motion to reopen proofs and her supplement to that motion. The court therefore determined that the additional testimony would be cumulative and

have little probative value. The court also determined that the parties needed finality with their dissolution proceeding and allowing additional proofs would unnecessarily continue the litigation.

¶ 70 Thus, the court's comments suggest that the additional evidence Joanna sought to introduce was not of the "utmost importance" to her case. Both Joanna and Norbert had testified for days regarding similar incidents and both had their own characterization of the events. Indeed, as the record shows, and as the trial court predicted, in his response to Joanna's motion, Norbert disagreed with Joanna's characterization of the complained-of events. As the trial court recognized, the parties engaged in some "out-of-character behaviors," but were still able to make significant educational and medical decisions that were in the best interests of the children. The court indicated that the additional occurrences of these behaviors would not have influenced its decision with regard to decision-making or parenting time, and we have no basis to find that such a ruling is an abuse of discretion.

¶ 71 E. Valuation and Distribution of Norbert's FSU Retirement Account and JP NetQuest

¶ 72 Joanna next contends that the circuit court erred its characterization, valuation, and distribution of Norbert's FSU Retirement Account and the JP NetQuest accounts receivable. Joanna asserts that the court failed to specifically indicate which components of the FSU Retirement Account were marital and which were non-marital when it characterized the account as "mixed marital and non-martial." With regard to JP NetQuest, Joanna contends that the court failed to consider the value of the accounts receivable, which Norbert testified the company had pending.

¶ 73 Under section 503(d) of the Act, the trial court must divide the marital estate in just proportions. 750 ILCS 5/503(d) (West 2016). Section 503(b)(1) provides that "all property acquired by either spouse after the marriage and before a judgment of dissolution of marriage or declaration of invalidity of marriage is presumed marital property. This presumption includes non-marital property transferred into some form of co-ownership between the spouses ***." 750 ILCS 5/503(b)(1) (West 2016). "The Act thus creates a rebuttable presumption that all property acquired after the date of the marriage is marital property regardless of the manner in which title is held." *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 670 (2008). We will not reverse the trial court's valuation of marital property unless it is against the manifest weight of the evidence. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 700 (2006). However, we will review the trial court's ultimate division of marital property for abuse of discretion. *Id.*

¶ 74 1. *Norbert's FSU Retirement Account*

¶ 75 Joanna first contends that the trial court erred in its characterization and distribution of Norbert's FSU Retirement Account. Joanna acknowledges that Norbert began contributing to the account in 2000 before the marriage, and made no contributions during the marriage, but notes that Norbert testified that his employer made contributions to the account during the marriage. Joanna contends that because of these employer-made contributions during the marriage, it became Norbert's burden to prove the location and amount of those contributions. Joanna contends that he failed to do so and the trial court erred in characterizing the account as "mixed marital and non-marital" without affixing any value to either component. Joanna contends that we should therefore find that the entire account has been transmuted into a marital asset.

¶ 76 We initially observe that Joanna is incorrect in contending that the court failed to ascribe a value to either component. In the trial court's order, it determined that of the $45,083 account

balance, $6,440 was marital and $38,643 was Norbert's non-marital property. As the court explained in its order denying Joanna's motion for reconsideration, the evidence established that the "vast majority" of contributions were made prior to the marriage, and Norbert made no contributions to the account during the marriage. The trial court's division of this asset was thus based on the testimony presented and the account statements and we cannot say that the valuation was against the manifest weight of the evidence or that the ultimate division was an abuse of discretion.

¶ 77 Further, we find that the court did not err in not transmuting the entire account into martial property. Transmutation occurs when marital and non-marital property are commingled by contributing one estate of property into another resulting in a loss of identity of the contributed property. 750 ILCS 5/503(c)(1) (West 2016); *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 74. However, there is no presumption that commingled property is always transmuted into marital property. *Id.* Here, the court was able to divide the property into marital and non-marital components in dividing the marital estate based on the evidence presented. Joanna's argument that Norbert failed to meet his burden of proof on this matter is thus misplaced, and we find no abuse of discretion.

¶ 78 2. *JP NetQuest*

¶ 79 Joanna next contends that the trial court erred in not considering the value of the accounts receivable in its valuation of JP NetQuest. Joanna notes that Norbert testified that the company had some accounts receivable, but did not produce documentation showing the amounts. Norbert testified at trial that the accounts receivable were between $5,000 and $10,000. It is undeniable that accounts receivable are assets that the court must consider in dividing the marital estate. *In re Marriage of Schneider*, 214 Ill. 2d 152, 170-72 (2005).

¶ 80 Here, Joanna raised this same argument before the trial court in her motion for reconsideration of the division and allocation of marital estate and liabilities judgment. In denying her motion, the trial court observed that both parties had an obligation to present sufficient evidence to allow the court to fairly divide the marital property. In her brief before this court, Joanna contends that it was Norbert's failure to present this evidence and that omitting the accounts receivable from the trial court's valuation of the marital estate "effectively rewarded Norbert's lack of discovery compliance." She contends that Norbert "admitted at trial he [did not] produce any documents in discovery despite numerous requests to do so."

¶ 81 Despite Joanna's contentions, the record reveals no such discovery requests, nor did Norbert "admit" at trial that he did not produce any documents in discovery. At trial, Joanna's attorney asked Norbert if he recalled being asked at his deposition for JP NetQuest's accounts receivable. Norbert replied, "I do not. You asked for profit and loss statement. That was produced. That's different." When asked about the JP NetQuest accounts receivable again, Norbert testified, "I believe I submitted all the documents that were required. If there was something that was missing, we never heard about it." Thus, there is nothing in the record to suggest that Norbert failed to produce this information as Joanna contends. Instead, as this court found in *In re Marriage of Smith*:

> "[I]t is [both] parties' obligation to present the court with sufficient evidence of the value of the property. Reviewing courts cannot continue to reverse and remand dissolution cases where the parties have had an adequate opportunity to introduce evidence but have failed to do so. Parties should not be allowed to benefit on review from their failure to introduce evidence at trial. [Citations.] Remanding cases such as the one before us would only protract the litigation and clog the trial courts with issues which

should have been disposed of at the initial hearing." *In re Marriage of Smith*, 114 Ill. App. 3d 47, 54-55 (1983).

As the trial court found in denying Joanna's motion to reopen proofs, the parties in this case need finality. This sentiment was echoed by the trial court in *Smith*, which found that "at some point we must 'ring the curtain down.' " *Id.* at 55. Therefore, we cannot say that the trial court abused its discretion in failing to consider the value of the JP NetQuest accounts receivable where neither party presented any evidence of their value to the trial court. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶¶ 64-65.

¶ 82 F. Child Support Order

¶ 83 Finally, Joanna contends that the trial court's child support order should be reversed. Joanna asserts that the trial court abused its discretion in applying the child support guidelines, and that the court's finding that the parties did not have a preexisting agreement to pay the children's expenses incurred during the case was against the manifest weight of the evidence.

¶ 84 1. *The Child Support Guidelines*

¶ 85 Joanna first contends that the trial court erred in applying the child support guidelines. She contends that the trial court's decision to do so in this case was "inequitable, unjust and inappropriate" given the circumstances in this case. She contends that Norbert failed to produce his employment contract, which prevented the court from determining his true income, the court improperly failed to include the valuation of JP NetQuest's accounts receivable in his income, and failed to account for the fact that Joanna incurs more living expenses because she lives within the children's school district.

¶ 86 Section 505(a) of the Act provides the statutory guidelines for the amount of a child support award. 750 ILCS 5/505(a) (West 2016). These guidelines create a rebuttable

presumption that the amount of the support obligation that would result from the application of the guidelines is correct. 750 ILCS 5/505(a)(3.3) (West 2016). " 'Child support is an obligation the parents owe for the benefit of the child.' " *In re Marriage of Sobieski*, 2013 IL App (2d) 111146, ¶ 54 (quoting *In re Marriage of Deem*, 328 Ill. App. 3d 453, 458 (2002)). We review an award of child support for an abuse of discretion. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 37.

¶ 87 We find that Joanna has failed to establish that the trial court should have deviated from the child support guidelines. In this case, in determining the amount of support, the trial court outlined each party's income and certain tax deductions. The court was able to ascertain Norbert's employment income based on his extensive testimony about his salary and his tax returns. In addition, the trial court addressed Joanna's claim that it did not include the value of JP NetQuest's accounts receivable in Norbert's income in denying her motion for reconsideration. The court found that Joanna's claim was "simply wrong," and noted that in its calculation of child support, it determined that Norbert had income of $10,269 from JP NetQuest. The court further stated that "Joanna apparently confuses what accounts receivable are and what income is. 'Income' is derived from accounts receivable and paid, after costs are deducted therefrom to realize a net income for the business. That the evidence shows that Norbert reports the income [from] JP Netquest [*sic*] on his income tax returns, and this court included same in its calculation of child support ***." We therefore find that the court properly included Norbert's income from JP NetQuest in calculating the amount of support.

¶ 88 We further find that the court did not err in finding that additional amount Joanna pays in rent did not warrant a deviation from the child support guidelines in this case. The record shows that in calculating the amount of support, the court considered that amount each party would

have available for their living expenses. The parties presented extensive evidence at trial regarding the amount of their living expenses, including each party testifying about the amount of their rent. The trial court found that Joanna failed to meet her burden of showing that a deviation from the child support guidelines was warranted in this case, and we agree. Accordingly, we find the court did not abuse its discretion in determining the amount of the award by adhering to the child support guidelines.

¶ 89 2. *Agreement to Pay Children's Expenses*

¶ 90 Joanna next contends that the court erred in finding that the parties did not have an agreement to equally pay the children's expenses during the pendency of the proceedings. Joanna asserts that both parties testified that they had an agreement to equally pay the children's out-of-pocket expenses incurred after the case was filed, but Norbert failed to abide by the agreement. She maintains that she filed a motion seeking to enforce that agreement, but the trial court failed to ever address the motion and the court failed to adequately address her arguments regarding this issue in denying her motion for reconsideration. She contends that Norbert owes her $6,580.05 for one-half of the children's expenses during the trial.

¶ 91 At trial, Norbert testified that after Joanna filed the petition for dissolution, he and Joanna agreed to evenly split the cost of the children's health insurance premiums. He also testified that he and Joanna agreed to evenly split the children's uncovered medical expenses. Norbert acknowledged that both parties had been sending each other emails requesting reimbursement for medical expenses, and "[t]here is a difference of about $400." On August 2, 2017, Joanna filed a motion to enforce agreement of the parties, or in the alternative for contribution and further relief. In her motion, Joanna contended that for the last two years, "pursuant to the parties' agreement," they had been equally sharing the out-of-pocket expenses for the children, including

"medical, school expenses, and insurance premiums." Joanna contended that she sent numerous emails to Norbert requesting reimbursement for these expenses and to date, he owed her $6,580.05 for his one-half share of those expenses. In her motion for reconsideration, Joanna contended that the court never ruled on this motion. In denying her motion for reconsideration, the court directed Joanna to its marital estate and liabilities judgment where it found that outside of Norbert's agreement granting Joanna a one-half interest in a condominium he owned in Poland, "there is no antenuptial or postnuptial agreement between the parties as to the disposition of any asset or other issue herein." Joanna contends that this finding by the court failed to adequately address her contentions, and, in any event, a finding that there was no agreement between the parties is belied by the record where courts have routinely approved of out-of-court agreements regarding child support.

¶ 92 We first note that the court's order does address Joanna's contention. The alleged agreement would be a postnuptial agreement between the parties as to the disposition of marital assets. This ruling by the trial court thus reflects its judgment that there was no agreement for the parties to share the children's out-of-pocket expenses during the trial. We further note that Norbert's testimony related only to medical expenses, not the educational and other expenses Joanna is now seeking. There is nothing in the record to suggest that the parties ever agreed to evenly split all of the children's expenses as Joanna now claims.

¶ 93 We also find unpersuasive the authority Joanna relies on in support of her contention that courts routinely uphold out-of-court agreements regarding child support. In each of the cases Joanna cites, the court relied on the doctrine of equitable estoppel in enforcing the parties' agreement. Joanna raises no claim of equitable estoppel in her contentions before this court. Furthermore, *In re Marriage of Hodges*, 2018 IL App (5th) 170164, ¶ 19, there was "an agreed

order that received judicial approval" regarding the modification of child support. In this case, as discussed, the court did not approve of the alleged agreement. This is consistent with the supreme court's holding that "private agreements to modify child support without court approval are unenforceable." *In re Marriage of Jungkans*, 364 Ill. App. 3d 582, 584 (2006) (citing *Blisset v. Blisset*, 123 Ill. 2d 161, 167-68 (1988)). "Parents may create an enforceable agreement for modification of child support only by petitioning the court for support modification and then establishing, to the court's satisfaction, the parties' agreement is in accordance with the children's best interests." *Babcock v. Martinez*, 368 Ill. App. 3d 130, 143 (2006) (citing *Blisset*, 123 Ill. 2d at 168). Here, there was no agreement regarding child support that was either adequately established by either party or approved by the court. Joanna raises no claim of equitable estoppel either in the trial court or before this court, and we find that the trial court did not abuse its discretion in finding no agreement existed between the parties.

¶ 94 III. CONCLUSION

¶ 95 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 96 Affirmed.