

NOTICE
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2014 IL App (5th) 130540-U

NO. 5-13-0540

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
JOHN P. BROCKUS,)	Madison County.
)	
Petitioner-Appellant,)	
)	
and)	No. 09-D-354
)	
MARTHA L. BROCKUS,)	Honorable
)	Elizabeth R. Levy,
Respondent-Appellee.)	Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* The petitioner did not present sufficient evidence to show that the trial court violated Madison County circuit court local rules by issuing its judgment more than 11 months after the close of testimony and had sufficient evidence been presented, the petitioner has waived this issue on appeal by not raising it in the trial court. The court's determination on the distribution of the marital property, the award of retroactive maintenance, the award of periodic nonmodifiable maintenance, and the classification of the maintenance award as nontaxable to the respondent and nondeductible by the petitioner was not against the manifest weight of the evidence or an abuse of discretion. The court's determination that certain stocks were marital property was against the manifest weight of the evidence and an abuse of discretion, and we therefore modify the judgment of dissolution of marriage to award this nonmarital asset to the petitioner. Accordingly, the court's judgment for dissolution of marriage is affirmed as modified.

¶ 2 The petitioner, John Brockus, appeals the judgment entered by the circuit court of Madison County dissolving his marriage to the respondent, Martha Brockus. On appeal, John makes the following arguments: that the circuit court violated Madison County circuit court local rules by issuing its judgment more than 11 months after the close of testimony; the court abused its discretion and disregarded the manifest weight of the evidence in its division of the marital property; the court abused its discretion and disregarded the manifest weight of the evidence when it concluded that certain stocks were marital assets; the court abused its discretion and disregarded the manifest weight of the evidence when it ordered John to pay retroactive temporary maintenance during a period of time when he was unemployed and when it ordered John to pay periodic nonmodifiable maintenance to Martha; the court was without authority to order the maintenance award to be nontaxable to Martha and nondeductible by John; and the court abused its discretion and disregarded the manifest weight of the evidence when it valued the parties' 25 Krugerrand gold coins at \$28,935 and awarded them to Martha. For the following reasons, we affirm as modified.

¶ 3 The facts necessary to the disposition of the appeal are as follows. John and Martha were married on August 9, 1974, when John was attending college at the University of Illinois. Three children were born during the marriage, all of whom were over the age of 18 at the time of their parents' separation. John filed a petition for dissolution of marriage on April 13, 2009. At the time of the trial, John was 58 years old and was employed as a contract consultant in the information technology field for Vitalize Consulting Solutions. His base salary was \$100,000, and depending on his job

assignment, he had an opportunity for some revenue sharing. Martha was 56 years old and was employed at Weight Watchers as a lecturer. She was also employed as a soloist at the Old Cathedral in St. Louis and was the music director at St. Peters and Paul Church in Alton, Illinois. Her annual gross income was approximately \$36,500.

¶ 4 Following John's graduation from college, John and Martha had lived in Edwardsville. From the time of their marriage until 1979, they had lived primarily off of a trust fund that John had received from his father's estate. In 1978, John and Martha moved from Illinois to Spokane, Washington. Two of their children were born there. While living in Washington, they purchased 120 acres of land, one-third of which was owned by John and Martha, one-third was owned by John's brother, and one-third was owned by John's mother. Thereafter, they moved to Mansfield, Washington, where they purchased a triplex with John's brother, William. John, Martha, and William lived at the triplex and rented the remaining living quarters to a tenant. They had received income from the property until 1987 when William began handling the accounting for the property. John had not received any money from the rent on that property from William for approximately 20 years.

¶ 5 While living in Washington, John secured employment in the information technology field. Martha was employed part-time at a wallpaper store and at Weight Watchers. John and Martha returned to Madison County in 1987 because John received an offer of employment with Digital Equipment Corporation in St. Louis. They purchased a house in Alton, Illinois, and their third child was born shortly thereafter.

¶ 6 John testified that his father had formed Brockus Machine Company, a tool and die machine shop. John's father actively worked in the tool and die business until the mid-1960s when the business changed from being an operational business to a holding and management business. John's father died in 1968 and William began supervising the operation of the company. John never worked for the business, but he was gifted 10% interest in the company when he was a child.

¶ 7 John's mother died in 2002. After her death, Brockus Machine Company was dissolved and the assets were distributed to the owners with John receiving 10% and his mother's estate receiving 70%. The 70% was then equally distributed to John, William, and their sister. The company assets included commercial real estate in Granite City, real estate in Edwardsville, stocks, bonds, and investments. John's mother's estate included a residence located on Swamp Oak Lane in Edwardsville. The property consisted of 83 acres with a primary residence and a caretaker's house. Adjoining that property was an unimproved 40-acre parcel that was owned by Brockus Machine Company and rented out for farming. In addition to the property, John's mother's estate consisted of stocks, depository accounts, and other real estate in Illinois and Washington. The estate held stocks in the following companies, which were distributed to John and his siblings equally: BellSouth, AT&T, Verizon, and Ameren. John explained that the stocks had changed in nature since the distribution because there had been "acquisitions and spinoff companies, some of [the] companies no longer exist, and *** there [were] other stocks that [had] appeared as a result of those spin-offs."

¶ 8 According to John, the three siblings reached the following agreement on the distribution of the real estate from his mother's estate: William would receive the property in Washington; John would receive the Swamp Oak Lane real estate; and their sister would receive equalizing cash payments from the brothers. Pursuant to the agreement, John was to pay \$206,000 to his sister. To help make the equalization payment to his sister, John and Martha took out a first mortgage for \$100,000 secured by the Swamp Oak property and a second mortgage note in the amount of \$50,000 secured by their house in Alton. John initially testified that he had used money that he had received from liquidated bank accounts inherited from his mother's estate to make up the remaining amount of the payment owed, but later acknowledged that he was unsure as to the source of the funds. The deed to the Swamp Oak Lane house was placed in his and Martha's name as joint tenants. The mortgage was also in both of their names. The balance of the mortgage loan at the time of the trial was approximately \$84,000.

¶ 9 Martha and John moved into the house on Swamp Oak Lane in January 2004 and lived there until their separation in late March 2009. Martha then moved into the caretaker's house located on the property. John paid the mortgage and real estate taxes on both homes. He also paid the following expenses for Martha: internet, automobile insurance, household insurance, and rental insurance.

¶ 10 Prior to working at Vitalize Consulting Solutions, John was employed by St. Louis University. Approximately four or five months after the parties' separation, John was terminated from this employment. He was unemployed for 14 months. During that time, he supported himself by "exhausting" his savings, "running up credit cards," and selling

off assets, such as a stock account and 25 Krugerrand gold coins. John was under an agreed temporary order to pay Martha \$1,000 per month in maintenance. He could not make the maintenance payment while he was unemployed, but he resumed making the payment in July 2012.

¶ 11 With regard to the Krugerrand gold coins, John explained that he had purchased 50 coins in approximately 1978 or 1979 with the revenue received from his trust fund. He explained that the value of the coins changed daily and was based on the stock price for gold per ounce. He had liquidated 25 of the coins while the divorce proceedings were ongoing and while he was unemployed.

¶ 12 John testified that he had shares of stock from Qwest Communications that were obtained from distributions of the estate of Brockus Machine Company. Although there was nothing in the estate documents to indicate that Brockus Machine Company owned Qwest Communications' stock, John believed that the stock was the result of "spin-offs of other companies such as AT&T." He acknowledged that he had never received anything from Brockus Machine Company or his mother's estate indicating that it had stock in Qwest Communications. He explained that he never purchased Qwest Communications' stock during the course of the marriage.

¶ 13 Martha testified that she had always worked part-time during the marriage, usually during the evenings or weekends so she could be home with the children during the weekdays. In addition to working part-time, Martha took care of the parties' three children and performed all of the usual household chores for the family. Martha testified that they had purchased the Swamp Oak Lane real estate with money from the joint loan

and proceeds from the sale of their Washington property and the sale of the Alton house. They made substantial improvements to the house, and most of the money from John's mother's estate was used for those improvements and a new road for the house. Martha was currently living in the caretaker's house on the property, and she had to make substantial improvements to make the house habitable. She was currently working three part-time jobs, which required her to do a lot of driving. She was weary of driving and having to work so many jobs. She had no other job experience outside of part-time positions. During the marriage, she was given full access to the joint account and was always permitted to purchase whatever she desired. Martha had no nonmarital assets.

¶ 14 The trial court entered an order dissolving the parties' marriage on August 9, 2013. The court distributed the marital property as follows. The court awarded the parties' one-half interest in the rental property in Washington to John, valuing the property at \$107,000. The court awarded John the home that he was currently living in along with two acres, valuing the property at \$158,000. Martha was awarded the home that she was currently living in along with two acres, and the property was valued at \$92,000. The court assigned the \$86,254 mortgage on both properties to John.

¶ 15 The trial court concluded that John was not entitled to reimbursement for the \$206,000 that was used to purchase the marital home. The court noted that the deed and mortgage were held in the parties' names jointly and that the payments were made from marital funds. The court further noted that John did not dispute that the property was marital. The court explained that the contribution made by John was presumed to be a gift and that presumption could only be overcome by clear and convincing evidence. The

court concluded that John had failed to meet his burden to overcome the presumption of a gift and that John was therefore not entitled to reimbursement from the marital estate.

¶ 16 Regarding the gold coins, the trial court found that John's testimony was "at best, *** uncertain" as to whether the coins were purchased with nonmarital funds. The court concluded that John had failed to overcome the presumption of marital property and show by clear and convincing evidence that the coins were nonmarital. The court explained that even assuming that the coins were purchased using John's trust funds, the testimony was clear that John placed trust funds in the joint account and then used them for marital purposes. The court noted that John sold 25 of the coins for \$28,935, that the sale was made without Martha's consent, and that John used the money to pay for expenses during his 14-month gap in employment. The court further noted that John had testified that he was "uncertain" as to the source of the money for the coins. Accordingly, the court awarded the remaining 25 coins to Martha.

¶ 17 The trial court further concluded that the 326 shares of Qwest Communications' stock valued at \$13,718.08 was marital property as there was no clear and convincing evidence to overcome the presumption of marital property. The court determined that this stock should be divided equally between the parties.

¶ 18 The trial court noted that an August 11, 2009, temporary order was entered by stipulation that provided in part that John would pay Martha temporary maintenance in the amount of \$1,000 per month. On October 30, 2009, John filed a motion to modify the temporary order requesting that his monthly maintenance obligation be terminated until such time as he obtained employment because he was terminated from his job on

September 23, 2009. The court noted that John had unilaterally stopped paying the maintenance and that he had testified that there was a 14-month gap in his employment. The evidence indicated that John found new employment in December 2010, but that he did not resume paying Martha maintenance until the court entered a modified temporary order in July 2011. John testified that he used the Sears MasterCard, the Ameritrade account, and some of the gold coins to pay for his living expenses and some of Martha's living expenses, which excluded the \$1,000 per month maintenance payment. Although the court noted that John had not provided an accounting of what amount that he had actually paid on Martha's behalf, it concluded that John should be given "some adjustment" for the time that he was unemployed. Accordingly, the court concluded that John owed Martha the following retroactive maintenance: \$1,000 for October 2009; \$500 per month for the remaining 13 months that he was unemployed; and \$1,000 per month from and including December 2010, to and including when he started paying the maintenance in July 2011. The total retroactive maintenance award was \$14,500.

¶ 19 Furthermore, John was ordered to pay Martha nonmodifiable maintenance in the amount of \$54,000, payable in installments of \$1,000 per month until the \$54,000 was paid in full. In awarding Martha maintenance, the court particularly considered the great disparity in the present disposable incomes of the parties, that John had a disposable income in excess of \$956, the length of the marriage, the present and future earning capacity of each party, the fact that the property located in Washington awarded to John was a rental property, the role of Martha as a homemaker, and the fact that the majority

of the property awarded to Martha would require her to invade the principal of the asset and would result in tax consequences.

¶ 20 On September 6, 2013, John filed a motion for rehearing to modify or vacate the judgment, arguing, in pertinent parts, as follows. John argued that the trial court erred by awarding the 25 Krugerrand gold coins to Martha as marital property as the evidence indicated that he had sold 25 of the coins to "help support the family and maintain the mortgage, utilities, and taxes on the marital residences occupied" by the parties. He argued that the court erred in valuing the gold coins at \$28,935 as at the most recent closing price of gold, the coins were worth \$34,150. John sought to have the remaining 25 gold coins divided equally between the parties. John argued that the court erred in ordering him to pay retroactive maintenance during a period in which he was unemployed, but was still making the mortgage, utility, and real estate tax payments on the marital real estate.

¶ 21 John further argued that the trial court should modify the prospective maintenance award to describe the monthly payments as nonmodifiable periodic maintenance in gross paid at the rate of \$1,000 per month for a period of 54 months in order to avoid any confusion with the deductibility and taxability provisions of the Internal Revenue Code. Additionally, John argued that the court erred in making a disproportionate award of marital assets in favor of Martha when the court also awarded her maintenance. John noted that the court awarded him the value of the Krugerrand coins that were sold in 2009 and 2010, an award that no longer existed at the time of the dissolution. Finally, John argued that the court erred by concluding that the Qwest Communications' stock was

marital property as the evidence was undisputed that all stock was nonmarital property, received from the distribution of Brockus Machine Company and John's mother's estate.

¶ 22 On October 7, 2013, the trial court entered the following order on John's motion to reconsider. The court denied John's motion with regard to his argument concerning the award and valuation of the gold coins. The court noted that it did not intend the \$54,000 maintenance award to be deductible by John and includible to Martha for income tax purposes. The court denied John's motion with regard to the disproportionate division of marital property and debt and noted that John's figure of disparity did not include the nonmarital property assigned to him. The court also denied John's motion concerning the Qwest Communications' stock. John appeals.

¶ 23 John first argues that the trial court violated Madison County circuit court rule part 8, rule 1 by issuing its judgment of dissolution of marriage more than 11 months after the close of testimony. Madison County circuit court rule part 8, rule 1 establishes a deadline for the circuit judges to render a decision on cases taken under advisement. Specifically, this rule states as follows:

"All judges of this circuit are encouraged to render their decisions promptly when matters are ready for decision. No judge of this circuit shall keep a matter under advisement for a period of time greater than 90 days:

- a) From the date the proceeding was taken under advisement,
- b) From the date ordered for filing of memoranda,
- c) From the date of receipt by the judge of requested memoranda, or

d) From the date of the last argument, whichever is latest, unless otherwise prescribed by Supreme Court Rule." Madison Co. Cir. Ct. Pt. 8, R. 1 (eff. Aug. 1, 2009).

¶ 24 Further, rule 2 requires a judge to take the following measures where a case has not been decided within the 90-day deadline: "Any case taken under advisement which has not been decided by the sitting judge within 90 days after being taken under advisement shall be reported by the judge on an order or docket sheet that explains the reason such decision has not been rendered." Madison County Cir. Ct. Pt. 8, R. 2 (eff. Aug. 1, 2009). In addition to reporting the cause of the delay on an order or docket sheet, the judge is required to report the case with the reason for the delay to the chief judge's office under rule 3. Madison County Cir. Ct. Pt. 8, R. 3 (eff. Aug. 1, 2009).

¶ 25 "Circuit courts possess inherent authority to enact and enforce rules regulating their calendars and dockets as long as those rules do not conflict with statutes or supreme court rules." *In re Marriage of Jackson*, 259 Ill. App. 3d 538, 543 (1994). Local rules are not mere suggestions to be complied with whenever convenient. *Clymore v. Hayden*, 278 Ill. App. 3d 862, 869 (1996). Instead, a local rule is binding and has the force of a statute. *Premier Electrical Construction Co. v. American National Bank of Chicago*, 276 Ill. App. 3d 816, 834 (1995).

¶ 26 Here, John argues that the trial judge's violation of this local rule resulted in the judgment for dissolution of marriage containing a "number of factual and computational errors," some of which were corrected by the court and some of which (the nonmarital stock and value of the gold coins) the court "refused to correct *** despite clear evidence

to the contrary." John argues that the "substantial passage of time from the close of the evidence to the ruling on the substantive issues contributed to cause the errors made by the [t]rial [c]ourt and may serve to explain the [t]rial [c]ourt's failure to rule on a critical issue, that being the disproportionate contribution John made to the acquisition of the marital estate."

¶ 27 In response, Martha argues that John's assertion that the judgment for dissolution of marriage is less reliable and prejudicial is "sheer speculation and, if so, would apply equally to both parties." Martha argues that the trial judge had a transcript of the trial available and the detailed judgment and posttrial order indicated that the judge was familiar with the facts of the case. Martha further contends that there was no assertion that the trial court did not comply with rules 2 and 3 of the Madison County circuit court rule part 8. Furthermore, Martha argues that John has waived this issue on appeal as he did not raise it in his posttrial motion.

¶ 28 John has not cited any authority that indicates a violation of the Madison County circuit court part 8, rule 1 warrants reversal of the trial court's decision on appeal. Neither have we found any in our own research. According to this rule, the circuit judge must report to the chief judge's office any cases taken under advisement that has not been decided within 90 days of being taken under advisement. There is no indication that the circuit court did not comply with that mandate. Furthermore, John has waived this argument on appeal because he failed to raise the issue in his posttrial motion. See *In re Marriage of Gattone*, 317 Ill. App. 3d 346, 358 (2000) (issues not raised in the trial court are generally deemed waived and may not be raised for the first time on appeal).

¶ 29 John next argues that the trial court abused its discretion and disregarded the manifest weight of the evidence in its division of the marital estate by failing to properly consider and weigh the factors under section 503 of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/503 (West 2012)). Specifically, John argues that the court erred by not considering his contribution to the purchase of the marital estate when dividing the marital estate and that the court further erred in awarding Martha a disproportionate amount of the marital assets when it also awarded her maintenance.

¶ 30 The circuit court's determination on the ultimate division of marital property will not be disturbed on review absent an abuse of the court's discretion. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 700 (2006). "[T]he circuit court's decision on the ultimate division of marital property depends upon a circuit court's view of the facts in conjunction with prevailing relevant statutory factors, and so the circuit court is accorded more discretion when making this determination." *Id.* An abuse of discretion occurs only when no reasonable person would agree with the decision reached by the circuit court. *In re Marriage of Pittman*, 212 Ill. App. 3d 99, 101 (1991).

¶ 31 To distribute property upon dissolution of marriage, the trial court must first classify the property as either marital or nonmarital. *In re Marriage of Hegge*, 285 Ill. App. 3d 138, 140 (1996). Property classified as nonmarital under section 503(a) of the Act (750 ILCS 5/503(a) (West 2012)) "may still be presumptively transmuted into marital property by an affirmative act of the contributing spouse, such as placing the nonmarital property in joint tenancy or some other form of co-ownership with the other spouse." *Gattone*, 317 Ill. App. 3d at 352. The affirmative action taken by the

contributing spouse raises the presumption that the property was a gift to the marital estate. *Id.* This presumption may be overcome by the contributing spouse presenting clear and convincing evidence that he did not intend to make a gift of the nonmarital property. *Id.* The contributing party has the burden of proving that the property is nonmarital. *Hegge*, 285 Ill. App. 3d at 141. "Any doubts as to the nature of the property are resolved in favor of finding that the property is marital." *Gattone*, 317 Ill. App. 3d at 352.

¶ 32 Once the trial court has classified the parties' property as marital or nonmarital, section 503(d) of the Act gives the court discretion to divide the marital property "in just proportions considering all relevant factors," which include statutory factors. 750 ILCS 5/503(d) (West 2012); *In re Marriage of Johns*, 311 Ill. App. 3d 699, 704 (2000). The pertinent statutory factors include the following: contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or nonmarital property, including the contribution of a spouse as a homemaker; the value of the property assigned to each spouse; the duration of the marriage; the relevant economic circumstances of each spouse when the property division becomes effective; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; whether the apportionment is in lieu of or in addition to maintenance; the reasonable opportunity of each spouse for future acquisition of capital assets and income; and the tax consequences of the property division upon the respective economic circumstances of the parties. 750 ILCS 5/503(d) (West 2012).

¶ 33 "An award of property in just proportions does not mean equal proportions, and a trial court does not abuse its discretion in awarding a larger share of the marital property to one party." *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1042 (2008). Where a spouse makes a greater contribution to the marital assets, the court may be justified in awarding that spouse a larger share of the marital property. *In re Marriage of Jones*, 187 Ill. App. 3d 206, 225 (1989).

¶ 34 In this case, John acknowledges that the inherited real estate had become transmuted into a marital asset, but requested that the court take into account his disproportionate contribution represented by the \$237,000, which was the value of his portion of the land inherited from his mother's estate. The trial court explained that John's contribution was presumed to be a gift and the presumption could only be overcome by clear and convincing evidence. The court found that John had failed to meet his burden to overcome the presumption of gift and that no reimbursement was due to John from the marital estate.

¶ 35 Like the trial court, we conclude that John was not entitled to a reimbursement for the nonmarital property that was commingled with the marital property. The evidence indicated that the funds that he had inherited from his mother's estate were placed in the parties' joint account and that the marital residence was held in joint tenancy. The evidence further indicated that the parties always operated out of joint checking accounts and John's nonmarital monies were deposited into the joint accounts. John had no other account in his name personally during the marriage. John failed to present any evidence to rebut the presumption of gift as to the inherited cash and real estate.

¶ 36 Furthermore, we conclude that the trial court's decision concerning the division of the marital property, which included the court's decision not to reimburse John for the inherited money and real estate, was not an abuse of discretion. The duration of the marriage was 38 years. The court considered Martha's contribution as a homemaker with three children. Martha had part-time employment earning approximately \$36,500, while John was employed full-time earning in excess of \$100,000. At the time of the trial, Martha worked three part-time jobs, which required a lot of driving. Martha had no nonmarital property, while the court found that John had nonmarital property valued at over \$135,000. In making its decision, the trial court properly considered the statutory factors listed in section 503 of the Act and also considered the credibility and demeanor of the witnesses. As stated above, the distribution of the marital property rests within the sound discretion of the trial court and we cannot say that the court abused this discretion when dividing the marital property.

¶ 37 The third issue raised on appeal by John is whether the trial court's determination that the 326 shares of Qwest Communications' stock was nonmarital property was against the manifest weight of the evidence. The reviewing court will not disturb a trial court's classification of an asset as nonmarital property unless that decision is contrary to the manifest weight of the evidence, as that determination rests largely on the trial court's evaluation of the credibility of the witnesses. *Hegge*, 285 Ill. App. 3d at 140. The party claiming that the property is nonmarital has the burden of proving that an asset acquired after the marriage and before dissolution is nonmarital. *Id.* at 141. Further, the court's

determination on the ultimate division of marital property will not be disturbed on review absent an abuse of the court's discretion. *Hubbs*, 363 Ill. App. 3d at 700.

¶ 38 Here, the trial court awarded John all of the stock that he asserted was nonmarital except for the 326 shares of Qwest Communications' stock. In making this decision, the court reasoned that although John had testified that he had inherited the stock from his mother's estate, the stock was not listed in any order for distribution in the probate case, of which the court had taken judicial notice. The court therefore concluded that this asset was presumed to be marital property and that John had failed to present clear and convincing evidence to overcome this presumption.

¶ 39 John had testified that the Qwest Communications' stock was acquired either as a distribution from Brockus Machine Company or as a distribution from his mother's estate. He explained that he and his siblings had received shares of BellSouth, AT&T, Verizon, and Ameren stock. He did nothing with those stocks except have them on a dividend reinvestment plan so that any increase would be held within that plan. He did not contribute any personal effort to the increase in value of the stock, nor did he purchase any new stock during the marriage. Also, there was no testimony from Martha indicating that the parties had purchased stock during the marriage.

¶ 40 Further, John testified that the inherited stocks had changed in nature throughout the years as there had been acquisitions and spinoff companies, which resulted in the acquisition of stock in different companies in the amount of stock held in the companies that no longer existed. John acknowledges that the Qwest Communications' stock was not listed on the proposed final distribution from his mother's estate, but points to

petitioner's exhibit 7A, which sets forth the history of the spinoffs for the inherited stock. John notes that the exhibit indicates that AT&T shareholders had received shares of U.S. West stock in January 1984 and that there were multiple U.S. West stock splits in 1986 and 1990. Thereafter, in June 2000, U.S. West shareholders received shares of Qwest Communications' stock, and in 2011, Qwest shareholders received shares of CenturyLink stock.

¶ 41 Based on this evidence and John's testimony that the parties did not purchase any stock during the marriage, we conclude that the court's determination that the Qwest Communications' stock was a marital asset was against the manifest weight of the evidence and an abuse of discretion. Accordingly, we modify the circuit court's August 9, 2013, judgment for dissolution of marriage pursuant to our authority under Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994) to conclude that the 326 shares of Qwest Communications' stock are John's nonmarital property and, as such, are awarded to him.

¶ 42 The fourth issue that John raises on appeal is whether the trial court abused its discretion and disregarded the manifest weight of the evidence when it ordered him to pay Martha retroactive temporary maintenance during his unemployment. He also argues that the court abused its discretion and disregarded the manifest weight of the evidence in ordering him to pay Martha periodic nonmodifiable maintenance.

¶ 43 Section 504(a) of the Act (750 ILCS 5/504(a) (West 2012)) provides that the trial court may grant temporary or permanent maintenance after considering the following relevant factors: the income and property of each party, which includes marital property

apportioned and nonmarital property assigned to the party seeking maintenance; the needs of each party; the present and future earning capacity of each party; any impairment in the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having foregone or delayed education, training, employment, or career opportunities due to the marriage; the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment; the standard of living established during the marriage; the duration of the marriage; the age and the physical and emotional condition of both parties; the tax consequences of the property division upon the respective economic circumstances of the parties; contributions and services by the party seeking maintenance to the education, training, career, or career potential of the other spouse; any valid agreement between the parties; and any other factor that the court expressly finds to be just and equitable.

¶ 44 The trial court has discretion to determine the amount and the duration of any maintenance award. *Walker*, 386 Ill. App. 3d at 1041. When a party challenges the trial court's factual findings with regard to a maintenance award, a reviewing court will not reverse unless the court's factual findings were against the manifest weight of the evidence. *Id.* "However, the court's ultimate decision to award maintenance will not be reversed on appeal absent an abuse of discretion." *Id.* As previously explained, an abuse

of discretion occurs when no reasonable person would take the view adopted by the trial court. *Id.*

¶ 45 John first argues that the trial court erred by ordering him to pay retroactive maintenance during his period of unemployment. A temporary order was entered by stipulation in this case where John was required to pay Martha \$1,000 per month for temporary maintenance. Thereafter, in September 2009, John's employment was terminated and he unilaterally stopped paying maintenance. On October 30, 2009, John filed a motion to modify the temporary order requesting that his maintenance obligation be terminated until such time as he obtained full-time employment. John obtained full-time employment in December 2010, but did not resume making the maintenance payment until the court entered a modified temporary order on July 1, 2011.

¶ 46 In the judgment for dissolution of marriage, the court ordered John to pay Martha \$500 per month for the 13 months that he was unemployed, which excluded October. The court also ordered John to pay Martha \$1,000 for October 2009 representing the maintenance that was owed prior to John filing his motion to modify and \$1,000 per month from December 2010 through June 2011 for the period of time that he was employed, but was not paying maintenance. Although John testified that he had continued paying Martha's living expenses during his period of unemployment, the court noted that John had not provided any accounting of the amount that he had actually spent on Martha's behalf. Despite John not providing any accounting, the court concluded that John "should be given some adjustment for the [14] months that he was not employed." After carefully reviewing the record, we cannot say that the court's decision was an abuse

of discretion. Accordingly, we conclude that the court's decision to award Martha retroactive maintenance in the amount of \$500 per month for the period of time that John was unemployed was not an abuse of discretion and was not against the manifest weight of the evidence.

¶ 47 John's next argument regarding maintenance was that the trial court erred in awarding Martha periodic nonmodifiable maintenance. The court ordered John to pay Martha maintenance in gross in the amount of \$54,000, payable in installments of \$1,000 per month and provided that the maintenance was nonmodifiable.

¶ 48 In making this determination, the trial court considered the section 504 factors, particularly the great disparity in the present disposable income of the parties, the length of the marriage, the present and future earning capacity of each party, the fact that the Washington property awarded to John was a rental property, the role of Martha as a homemaker, and the fact that the majority of the property awarded to Martha would entail her invading the principal of the asset and would result in tax consequences. The court noted that John's disposable income was in excess of \$956, which included some expenses for Martha that he would no longer be paying. The court found that Martha had no nonmarital property, while John had nonmarital property valued over \$135,000. The duration of the marriage was 38 years. Martha was 56 years old at the time of the trial and working three part-time jobs. During the marriage, she was a full-time homemaker and adjusted her work schedule in order to be home with the parties' three children. She had no other job experience outside of her part-time employment. During the trial, Martha was earning approximately \$36,500, while John was earning in excess of

\$100,000. The record supported the trial court's factual findings and the court considered the relevant statutory factors when making its decision. Accordingly, we conclude that the trial court did not abuse its discretion in ordering John to pay Martha periodic nonmodifiable maintenance.

¶ 49 The next issue presented by John on appeal is whether the trial court had the authority to declare the \$54,000 maintenance ordered to be paid by John at \$1,000 per month not taxable to Martha and not deductible by John.

¶ 50 Pursuant to section 71(a) of the United States Code (Code), gross income includes amounts received as alimony or separate maintenance payments. 26 U.S.C. § 71(a) (2012). However, the definition of alimony or maintenance payments does *not* include any payment designated in the divorce or separation instrument as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215 of the Code (26 U.S.C. § 215 (2012)). 26 U.S.C. § 71(b) (2012). In this case, the trial court indicated in its October 2013 order that it did not intend the \$54,000 maintenance payment to be deductible by John and includible to Martha for income tax purposes. Accordingly, the court had authority to make the \$54,000 maintenance payment not taxable to Martha and not deductible by John, and we cannot say that the court abused its discretion in making this decision.

¶ 51 The last issue that John raised on appeal is whether the trial court abused its discretion and disregarded the manifest weight of the evidence in valuing the Krugerrand gold coins at \$28,935, which represented the amount that John had sold his share of the coins for during the pendency of the divorce proceedings. Because John sold his 25 coins

before the dissolution of the marriage, the court awarded Martha the remaining 25 coins. This division was equal and equitable, and the valuation was not necessary for the court's division of the coins. Accordingly, we conclude that the court's decision to award Martha the remaining 25 coins and place an equal value that was determined when John had sold his share of the coins was not an abuse of discretion or against the manifest weight of the evidence.

¶ 52 For the foregoing reasons the judgment of the circuit court of Madison County is hereby affirmed as modified.

¶ 53 Affirmed as modified.