

No. 1-10-1154

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).

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF)	Appeal from the
ANTHONY L. MUNAO,)	Circuit Court of
)	Cook County.
Petitioner-Appellant,)	
)	
v.)	No. 07D330305
)	
PENNY J. MUNAO,)	The Honorable
)	Daniel Sullivan,
Respondent-Appellee.)	Judge Presiding.

Justice James Fitzgerald Smith delivered the judgment of the court.

Justices Pucinski and Sterba concur in the judgment.

HELD: In appeal from judgment of dissolution of marriage, trial court is affirmed where there was no abuse of discretion in its credibility findings, its valuation of the marital business, the distribution of marital property, the order of maintenance, the finding of dissipation, nor its denial of the motion to reconsider.

¶ 1

ORDER

¶ 2 Petitioner-appellant Anthony Munao (Anthony) appeals from the circuit court's order of

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judgment for the dissolution of marriage from respondent Penny Munao (Penny) and various post-judgment orders. Anthony contends that the trial court erred where: (1) it ordered him to pay Penny \$2,600 per month in permanent maintenance; (2) it abused its discretion regarding the distribution of marital property; (3) it allowed Penny's expert to testify regarding the value of the marital business; (4) it ordered Anthony to pay a portion of Penny's attorney fees; (5) it found that Anthony had dissipated marital assets and ordered him to pay Penny \$75,000; and (6) when it denied Anthony's motion to reconsider. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Anthony and Penny were married in 1989. They lived together in Elgin, Illinois. There were no children of the marriage. After 18 years of marriage, Anthony filed a petition for dissolution of marriage in March 2007. He alleged that irreconcilable differences caused an irretrievable breakdown of the marriage. The following facts are adduced from trial and court filings.

¶ 5 During the marriage, the couple enjoyed a comfortable lifestyle, including going on vacation twice a year to such places as the Bahamas and St. Kitts, and dining out frequently. Anthony also pursued a costly automobile racing hobby for 15 years. Anthony was the primary income earner for the household during the marriage and paid most of his and Penny's expenses.

¶ 6 During the marriage, in 1991, Anthony started an automotive repair business, Anthony's Professional Automotive (Professional Automotive). Professional Automotive was consistently busy until 2009, after which business decreased. However, Anthony still earned between

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approximately \$14,000 and \$20,000 per month from Professional Automotive. The most Penny earned during the marriage was \$24,437 per year working as a nursing assistant. Anthony controlled the household finances and major decisions.

¶ 7 Robert Arnold, the court-appointed receiver for Professional Automotive, testified that Anthony earned a minimum monthly salary of \$13,983 and a maximum monthly salary of \$20,220. Arnold attributed the fluctuation to the large number of unknown personal expenses Anthony paid through Professional Automotive. The trial court found Arnold's testimony credible.

¶ 8 Certified public accountant Nicholas Burke also testified as an expert regarding the value of Professional Automotive. In determining the value, he examined financial statements, bank statements, legal documents, and all books and records of Professional Automotive, and conducted a management interview. Burke testified that he used a capitalization of earnings approach and initially valued the business at \$81,000. However, if he took into account the receiver's testimony that Anthony was withdrawing between \$13,000 and \$20,000 per month for personal expenses, Burke testified that the value of Professional Automotive would be \$170,000. The trial court, finding both Burke's and Arnold's testimony credible, ruled that Professional Automotive had a value of \$150,000.

¶ 9 Christine LeSage, Anthony's stepdaughter, testified that she worked at Professional Automotive as an office manager from March 2005 to August 2007. Her responsibilities included paying the bills, sending invoices, and receiving money from people who paid for services. During that time, Anthony received between \$500 and \$5000 per month in cash

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through Professional Automotive, which he kept for himself and did not report. Anthony created the policies and procedures of the business. When she received cash payments, she often deleted the invoices afterwards. This cash was in addition to his \$13,000 to \$20,000 monthly income from the business. Penny testified that he also kept boxes in the house filled with large sums of money. She recalled that one of the boxes contained \$40,000.

¶ 10 Anthony pursued an automobile racing hobby for 15 years. In 2004, Anthony purchased a custom-built racecar. Anthony used the racecar at various races from 2006 to 2008, and went racing nearly every weekend in 2007 and 2008 during the pendency of the divorce. Although Anthony paid for the racecar through the revenues generated from Professional Automotive, there were no decals or advertisements for the business on the car. Anthony also purchased several trailers to transport the racecar and other racing equipment to races. In 2007, Anthony had almost \$200,000 in racing-related expenses.

¶ 11 Although Anthony and Penny did not have children of their own, Penny brought her four children from a previous relationship to the marriage. These children were ages 3, 4, 5, and 6 at the time of the marriage. Penny has a high school diploma and a nursing assistant certificate. During the marriage, her duties were mainly domestic. As of trial, she was employed at Fox Valley Older Adult Services, working 10 hours per week and earning \$8.00 per hour. Prior to trial, she had made several online employment inquiries and submitted an application for a full-time position at the Lutheran Home for the Aged.

¶ 12 Licensed Clinical Social Worker Mary Korbel-Chiappetta testified that she had been treating Penny in therapy since October 2006. Penny initially began therapy because of the stress

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she experienced within her marriage. Chiappetta testified that, at the time of trial, Penny was unable to work due to the high amount of stress she was under.

¶ 13 At the time Anthony filed for divorce, there was approximately \$87,000 of credit available on a home equity line of credit for the marital residence. Anthony liquidated the entire credit line by having a check sent payable to himself for \$67,000 and another check payable to cash for \$16,000, and used the remainder for various expenses. The court ordered Anthony to deposit the \$67,000 into an escrow account, but Anthony instead deposited it into his individual account. Regarding the \$16,000, on the same day this amount was withdrawn, Anthony's mistress, Vanessa Hill, tendered \$16,000 for a down payment on her house. Anthony testified that the money did not go to Vanessa's down payment, but was unable to account for where it may have gone. Regarding the \$16,000, the trial court stated in its judgment for dissolution of marriage:

"The court found it disturbing and not so credible as to Anthony's explanation as to the removal of the \$16,000 from the credit line on the same day Vanessa Hill wrote a check for \$16,000[.]"

¶ 14 Anthony met Vanessa in 2005. Anthony and Vanessa conceived a child, Sophia, who was born in June 2008. In addition to providing child support for Sophia, Anthony paid Vanessa's mortgage of \$1,300 per month while they lived together, as well as paid the gas, electric, garbage, water, and cable bills at Vanessa's house. Anthony purchased jewelry for Vanessa totaling approximately \$5,000.

¶ 15 The trial court stated that it believed the record showed dissipation by Anthony in the

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amount of \$300,000. However, due to mitigating circumstances, *i.e.*, Anthony having provided for Penny and her children as a stepfather, the trial court found \$150,000 of dissipation. The court ordered Anthony to pay Penny \$75,000 for the dissipation.

¶ 16 After 14 days of testimony, the trial court granted the dissolution of marriage in a memorandum order. In the order, the trial court noted that:

"Anthony wanted Penny out of his life without having to fulfill his obligation under the law and his wanting to move on with his new family as if there was never this previous 20-year marriage to Penny. The court believes his actions throughout the pendency of the divorce supports this belief."

The trial court also ordered Anthony to pay a portion of Penny's attorney's fees. Anthony filed a motion to reconsider pursuant to section 2-1301 of the Code of Civil Procedure (735 ILCS 5/2-1301 (West 2008)). The trial court granted the motion as to one claim and denied the remaining portions of the motion. Anthony appeals.

¶ 17

II. ANALYSIS

¶ 18 a. Maintenance

¶ 19 Anthony first contends that the trial court abused its discretion when it ordered him to pay Penny \$2,600 per month in permanent maintenance. The trial court based its maintenance award on facts "including the length of the marriage[,] the fact that Penny primarily did domestic duties during the marriage, the standard of living during the marriage, Anthony's control over money,

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the assets, the business and the virtual economic situation of the marriage." Anthony argues that the court erred by finding the testimony of the receiver regarding Anthony's income credible, failing to bar Penny from receiving maintenance, and awarding Penny permanent maintenance. We disagree.

¶ 20 A trial court has wide discretion in awarding maintenance, taking into consideration such statutory factors as the parties' income and needs; their present and future earning capacity; and any impairment of that earning capacity due to time devoted to domestic duties or having delayed training or employment due to the marriage. 750 ILCS 5/504(a) (West 2008); see also *In re Marriage of Petersen*, 319 Ill. App. 3d 325, 341 (2001); *In re Marriage of Krane*, 288 Ill. App. 3d 608, 618 (1997). "The Act further provides that the maintenance order is to be for an amount and duration as the court deems just, after considering the following additional factors: the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment; the standard of living established during the marriage; the duration of the marriage; the age and the physical and emotional condition of the parties; and the ability of the spouse from whom maintenance is sought to meet his or her own needs while meeting those of the spouse seeking maintenance." *Vendredi v. Vendredi*, 230 Ill. App. 3d 1061, 1066 (1992).

¶ 21 After the court has determined that a maintenance award is appropriate, no one factor is determinative of the amount and duration of the award. *Vendredi*, 230 Ill. App. 3d at 1066. In determining the amount of support where one party's current income is uncertain, the trial court may take into account that party's past earnings. *In re Marriage of Benkendorf*, 252 Ill. App. 3d 429, 447 (1993). An award of maintenance is within the discretion of the trial court and will not

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be reversed on appeal unless the award constitutes an abuse of discretion or is against the manifest weight of the evidence. *In re Marriage of Minear*, 181 Ill. 2d 552, 561 (1998). An abuse of discretion exists when the lower court "act[s] arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceed[s] the bounds of reason and ignore[s] recognized principles of law so that substantial injustice result[s]." *In re Marriage of Hughes*, 160 Ill. App. 3d 680, 684 (1987).

¶ 22 Here, the trial court correctly considered the applicable statutory factors and did not abuse its discretion in setting the duration and amount of the maintenance award. "Trial courts have wide discretion in determining what needs are reasonable and must decide on a case-by-case basis, considering such factors as the parties' circumstances, the standard of living established during the marriage, and the duration of the marriage." *Vendredi*, 230 Ill. App. 3d at 1066. The trial court did not abuse its discretion where it considered the requisite statutory factors in determining the award of maintenance. See 750 ILCS 5/504 (West 2008). In determining its award of permanent maintenance to Penny of \$2600 per month, the trial court specifically noted that it considered their work history and future earning potential, the length of the marriage, the fact that Penny primarily did domestic duties during the marriage, the standard of living during the marriage, and "Anthony's control over money, the assets, the business and the virtual economic situation of the marriage." Specifically, Anthony and Penny enjoyed a comfortable lifestyle where they were able to, as Penny testified, afford "pretty much anything" they wanted. They lived in a home worth \$540,000 and went on vacations twice per year to vacations such as the Bahamas, and they dined out frequently. Penny testified that she was able to purchase new

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clothes whenever she liked and have her hair and nails done every six weeks.

¶ 23 Regarding Penny's present and future earning capacity, the record reveals Penny's limited ability to meet her needs without maintenance. She is 50 years-old and has a high school diploma and a nursing assistant certificate. Although she worked for a short time during the marriage, she has not worked full-time since 2004. Penny testified that she has not been able to find steady work since November 2008. Her therapist testified that Penny was unable to hold a job because of the stress caused by her marriage. The most Penny made during the marriage was approximately \$24,000 per year. This evidence supported the trial court's finding that:

"although Penny worked a couple of years and made somewhat in the mid 20s working for Anthony, she now makes minimal amount of money. Based on the observations and the evidence presented the court found that Penny Jo will likely never really make any significant money in the near future."

¶ 24 The trial court also heavily weighed Penny's support and devotion of time to Anthony and his pursuits during the marriage, finding that Penny was a "supportive wife and most of her duties were domestic, taking care of the kids and supporting Anthony in all ways in his work, in his hobbies [and] even their vacations centered around his perqs from his work and his racing perqs for his business." The trial court also found that Penny "devoted herself pretty much to what Anthony wanted throughout the marriage."

¶ 25 Additionally, the trial court's finding that court-appointed receiver Arnold's testimony regarding Anthony's income from Professional Automotive was credible was not against the

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manifest weight of the evidence. Issues regarding the credibility of witnesses and the weight to be given their testimony are matters within the purview of the trier of fact, as it is in the best position to see the witnesses and to observe their demeanor. *Fritch v. Fritch*, 224 Ill. App. 3d 29, 40 (1991). A credibility determination will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Kaplan*, 149 Ill. App. 3d 23, 28 (1986).

¶ 26 Arnold is a practicing attorney with a background in investigating business values and assets. Prior to being an attorney, he was a sergeant with the Elk Grove Village police department investigations unit where he investigated financial crimes. The trial court heard lengthy testimony from Arnold regarding Anthony's business income. Arnold reviewed Professional Automotive's books, financial records, and other financial documents, including bank and credit card statements. Arnold spoke with Anthony five times and met with him three times, and Anthony showed him his computer program, described how he "operated and conducted his business" regarding invoices, receivables, and Quick Books, and demonstrated how his checkbook ran parallel to his Quick Book program.

¶ 27 During his investigation, Arnold also interviewed Penny, Christine, employee Tom Milani, and the parties' attorneys. Arnold testified that his calculations were based largely on a number of personal expenses that Anthony paid through Professional. Anthony failed to provide proof that such expenses were business-related, and Anthony did not introduce any evidence to the contrary.

¶ 28 After his investigation, Arnold determined that Anthony was using the business to pay thousands of dollars of his monthly personal expenses. Based on this information, Arnold

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testified that Anthony's monthly income was between \$13,983 and \$20,220. The trial court found Arnold's testimony credible and adopted this finding. The trial court's adoption of Arnold's finding was not against the manifest weight of the evidence. See *In re Kaplan*, 149 Ill. App. 3d at 28.

¶ 29 Anthony also argues that Penny should be barred from receiving maintenance because she failed to make sufficient efforts in seeking employment. We disagree. It is clear from a review of the record that Penny sought a higher paying job or one allowing more hours, although unsuccessfully. See *In re Heller*, 153 Ill. App. 3d 224, 235 (1987) (a recipient of maintenance has an affirmative obligation to seek gainful employment). Penny testified that, at the time of trial, she was employed at Lutheran Home for the Aged, working 10 hours per week and earning \$80 per week. She had submitted an application for a full-time position at the Lutheran Home for the Aged and had also made online employment inquiries prior to trial. The trial court, which is in the best position to judge the credibility of witnesses, heard this evidence and determined that an award of maintenance was warranted. See *Fritch*, 224 Ill. App. 3d at 40 (issues regarding the credibility of witnesses and the weight to be given their testimony are matters within the purview of the trier of fact, as it is in the best position to see the witnesses and to observe their demeanor). We cannot say that Penny failed to meet her affirmative obligation to seek gainful employment.

¶ 30 Anthony also challenges the trial court's decision to award "permanent maintenance," claiming that the trial court erred where it did not include provisions for modification of the maintenance award. We disagree. Although maintenance may be awarded for a definite time

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period, "where the spouse is not employable or is employable only at a low income as compared to the previous standard of living, maintenance for an indefinite period would be appropriate." *In re Marriage of Werries*, 247 Ill. App. 3d 639, 652 (1993).

¶ 31 In the case at bar, the parties' marriage was of long duration. Penny had no other training aside from her nursing assistant certificate. For much of the marriage, Penny did not work outside of the home. Her therapist testified that Penny was unable to work in her current condition. On the other hand, Anthony's income is somewhere between \$13,983 and \$20,220 per month. Penny introduced substantial evidence at trial showing her standard of living during the marriage, including living in a \$540,000 home, going on exotic vacations, dining out, and buying new clothes. Based upon the evidence before us, we, like the trial court, see no likely possibility that Penny will be able to generate sufficient income to meet her needs or the lifestyle maintained during the parties' marriage. The trial court's award of permanent maintenance was not an abuse of discretion.

¶ 32 We note, however, that while the judgment provides maintenance on a permanent basis, should there be a substantial change in circumstances—such as an increase in Penny's earning capacity or a decrease in Anthony's resources, or if Penny were to marry or to cohabit with another person on a resident, continuing conjugal basis, the maintenance award would be reviewable in court. See 750 ILCS 5/510 (West 2011). Under the circumstances of this case, it was neither unreasonable nor against the manifest weight of the evidence for the court to determine that Penny should receive \$2600 per month in permanent maintenance from Anthony.

¶ 33 Anthony's reliance on *In re Marriage of Heller*, 153 Ill. App. 3d 224, and *In re Marriage*

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of *Girrolat*, 219 Ill. App. 3d 164 (1991), does not persuade us differently, as the facts of those cases are easily distinguishable from those in the case at bar. In *Heller*, the former wife was well-educated with a college degree in teaching and "speculative" earning capacity due to a variety of employment skills she possessed, including culinary cooking skills and training as a travel agent. *In re Marriage of Heller*, 153 Ill. App. 3d at 235. This court determined that the trial court should have reserved for review the maintenance award after a given period of time in order to assess the former wife's ability to become financially independent. *In re Heller*, 153 Ill. App. 3d at 235. In *In re Girrolat*, the former wife had an eighth-grade education and was working 30 hours per week at \$4 per hour. *In re Girrolat*, 219 Ill. App. 3d at 169. There was evidence, however, that she would be obtaining a high school equivalency certificate which would enable her to earn considerably more in the near future. *In re Girrolat*, 219 Ill. App. 3d at 169. Accordingly, the reviewing court determined that the trial court should have made provision for review of the maintenance award after a predetermined period of time. *In re Girrolat*, 219 Ill. App. 3d at 169. These cases are inapposite to the case at bar, where there is no evidence in the record that Penny's earning capacity will increase in the near future. In fact, the trial court specifically found that, "[b]ased on observations and the evidence presented the court found that Penny Jo will likely never really make any significant money in the near future."

¶ 34 b. Property Distribution

¶ 35 Next, Anthony contends that the trial court abused its discretion by awarding a

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disproportionate share of the marital estate to Penny. Specifically, he argues that the property division was against the manifest weight of the evidence because he had high debts against much of the property he was awarded. We disagree.

¶ 36 The Illinois Marriage and Dissolution of Marriage Act (IMDMA) provides that, in dividing marital property in a dissolution proceeding, the trial court must consider factors such as the contribution of each party to the acquisition or increase in marital property; the value of property assigned to each spouse; the relevant economic circumstances of each spouse; the duration of the marriage; the age, occupation and employability of each of the parties; and the reasonable opportunity of each spouse for future acquisition of capital assets and income. 750 ILCS 5/503(d) (West 2008).

¶ 37 A trial court has broad discretion in dividing marital property in just proportions between the parties. See 750 ILCS 5/503(d) (West 2000); *In re Benkendorf*, 252 Ill. App. 3d at 433. An abuse of discretion occurs only when no reasonable person would take the view adopted by the court. *In re Benkendorf*, 252 Ill. App. 3d at 432-33. A reviewing court should examine whether the trial court "acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." *In re Marriage of Aud*, 142 Ill. App. 3d 320, 326 (1986). Although the court is to consider all relevant statutory factors, it is not required to divide the property with mathematical equality. *In re Benkendorf*, 252 Ill. App. 3d at 433; see 750 ILCS 5/503(d) (West 2000). The value of the parties' nonmarital assets is among the things to be considered by the court. *In re Benkendorf*, 252 Ill. App. 3d at 433. The trial court need not make

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specific findings to support its decision. *In re Marriage of Hart*, 194 Ill. App. 3d 839, 847 (1990).

¶ 38 In the instant case, the trial court divided the marital assets between Anthony and Penny. Anthony's award included the marital residence, Professional Automotive, a motor home, trailer, and all cars in his possession, including a 2008 Ford F250 truck and a 2003 Chevrolet Silverado Truck. According to Anthony's testimony, these assets had a total value of at least \$944,000.¹

¹Anthony relies on the testimony and findings of Marcel Kuper, Professional Automotive's accountant, to argue that these values are not representative of the actual values of the estate. However, he admits that Kuper never actually testified at trial. Instead, Anthony directs this court to a document he filed with the trial court titled "summary of Marcel Kuper's testimony" in which Anthony's counsel argues that Kuper submitted a report analyzing Burke's appraisal of Professional Automotive, that Penny's attorney had that report, and that Burke did not utilize the report when he testified. It concludes with: "Kuper's report is the one that should be given great weight since it is fairly done without all the improper exclusions set forth in Burke's report." The document does not specify at what hearing Kuper allegedly testified, or whether it was testimony in a deposition. Anthony failed to include a transcript of this alleged testimony in the record on appeal. This court will not consider evidence outside the record. *McCullough v. Knight*, 293 Ill. App. 3d 591, 594 (1997). An appellant has the burden of presenting the reviewing court with a sufficiently complete record of the circuit court proceedings to support a claim of error. *LaSalle National Bank v. City Suites, Inc.*, 325 Ill. App. 3d 780, 788 (2001). Absent such a record, reviewing courts are instructed to assume that the trial

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Penny received a 2004 Nissan Murano, her retirement account, \$75,000 as her share of Professional Automotive, and \$75,000 of her dissipation claim. The value of these assets totaled \$182,000.

¶ 39 Anthony argues that these are not the true values of some of the items, because he was "upside down," or owed more than the balance of the loan, on the house, the motor home, and the trailer. He also owed two years' worth of past due real estate taxes totaling more than \$20,000. However, even if these assets were "upside down," we do not find the court's property distribution to be an abuse of discretion. Rather, Anthony's monthly income was found to be between \$13,000 and \$20,000. Anthony specifically testified that he wanted to keep the house and was willing to take the debt along with it. The court, in its discretion, considered these factors along with the other relevant factors discussed *inter alia*, such as the relevant economic circumstances of each party, the age, occupation, and employability of each spouse, and the reasonable possibility of each spouse for future acquisition of assets and income. See 750 ILCS 5/503(d) (West 2008). As previously discussed, Anthony makes a great deal more money than does Penny, and the trial court found that Penny does not have potential to make a large amount

court's order comported with the law and was supported by the facts, and any doubts must be resolved against the appellant. *LaSalle National Bank*, 325 Ill. App. 3d at 788. Because the record on appeal is incomplete and does not include Kuper's alleged testimony, we will affirm the trial court's finding that Burke's testimony is credible as to the value of Professional Automotive.

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of money in the near future. The trial court is not required to divide the property with mathematical equality. *In re Benkendorf*, 252 Ill. App. 3d at 433; see 750 ILCS 5/503(d) (West 2000).

¶ 40 We find that the court considered the requisite factors under section 503(d) (750 ILCS 5/503(d) (West 2008)) and the circumstances of the case, and ordered a reasonable distribution of the marital property. We do not find the property division provisions of the court's order to have constituted an abuse of the court's discretion.

¶ 41 c. Valuation of the Marital Business

¶ 42 Next, Anthony contends that the trial court abused its discretion when it allowed Penny's expert, Burke, to testify regarding the value of Professional Automotive. Specifically, Anthony argues that the testimony violated Supreme Court Rules 213(f), (g), and Supreme Court Rule 218. We disagree.

¶ 43 Illinois Supreme Court Rule 213 sets forth strict disclosure requirements for expert witnesses, mandating that, upon written interrogatory, a party must disclose the identities of expert witnesses and, depending on what kind of expert opinions are being disclosed, the bases of their opinions. 177 Ill. 2d R. 213(f). Rule 213(f) requires parties to disclose before trial the names of all witnesses and the subjects about which they will testify. 177 Ill. 2d R. 213(f). Subjects not disclosed under Rule 213(f) or testified to at a discovery deposition cannot be testified to at trial. 177 Ill. 2d R. 213(f). Rule 213(g) states, in relevant part:

"The information disclosed in answer to a Rule 213(f)

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interrogatory, or in a discovery deposition, limits the testimony that can be given by a witness on direct examination at trial * * * [and] the burden is on the proponent of the witness to prove the information was provided in a Rule 213(f) answer or in the discovery deposition." 210 Ill. 2d R. 213(g).

"The purpose behind Rule 213 is to avoid surprise and to discourage tactical gamesmanship." *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 111 (2004). Whether a witness' testimony is outside the scope of a party's Rule 213 disclosures is a matter reserved for the trial court, and its determination will not be reversed absent an abuse of discretion. See *Thompson v. Gordon*, 221 Ill. 2d 414, 428 (2006) (decision whether to admit expert testimony is within the sound discretion of the trial court).

¶ 44 Penny's Rule 213 disclosures identified Burke as a controlled expert witness, stating:

"As a controlled expert pursuant to Supreme Court Rule 213(f)(iii), Mr. Burke will testify to his examination of the parties business and his opinion as to the value of said business. Mr. Burke will render an opinion with a reasonable degree of certainty as to the value of said business. His opinions will [be] based upon his experience, his education, training, his experience as a business evaluator and Certified Public Accountant and his interpretation and review and analysis of any document(s) in discovery. Mr. Burke will also testify regarding any issue surrounding any

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testimony that may be given in his deposition relative to this cause."

Burke testified accordingly at trial. Testifying as an expert in the area of appraising businesses, Burke testified that, before making his determination, he examined financial statements, bank statements, legal documents, and all books and records of Professional Automotive. He also conducted a management interview. Burke testified that he used a capitalization of earnings approach and initially valued the business at \$81,000. When asked how his valuation would change after taking into account the receiver's testimony that Anthony was withdrawing between \$13,000 and \$20,000 per month for personal expenses, Burke testified that the value of Professional Automotive would increase to \$170,000. This testimony did not violate Supreme Court Rules 213(f) or (g). Penny disclosed the subject matter to which Burke was going to testify and Burke did not deviate from that subject matter in his testimony. The trial court's decision to admit his testimony was not an abuse of discretion.

¶ 45 Anthony also argues that the trial court abused its discretion by allowing Burke to testify to a hypothetical. We disagree. Burke testified that the business was valued at \$81,000. Then, after describing the evidence that had previously been admitted to the court that Anthony was withdrawing between \$13,000 and \$20,000 per month for personal expenses, Penny's counsel asked Burke to opine what effect that might have on the value of the business. The court allowed the testimony, and Burke testified that he would then value the business at \$170,000. A hypothetical may be admitted on direct examination so long as it includes facts already admitted into evidence. *Kane v. Northwest Special Recreation Association*, 155 Ill. App. 3d 624, 628

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(1987); *Coriell v. Industrial Commission*, 83 Ill. 2d 105, 110 (1980). "As long as the witness is not called upon to decide any controverted fact, but is asked to assume the truth of the facts testified to, he may give his opinion thereon in any form." *Kane*, 155 Ill. App. 3d at 628.

¶ 46 Nor did Burke's testimony violate Supreme Court Rule 218. Rule 218 governs pretrial procedure and requires the completion of discovery, including the disclosure of witnesses, not later than 60 days before trial. 134 Ill. 2d R. 218. Initially, Burke submitted a report in which he analyzed the value of Professional Automotive. When further financial information came to his attention, however, he created a supplemental petition regarding his new estimate of the business value. This, however, was past the 60-day Rule 218 time limit, and the trial court denied the admission of this report. Anthony argues that, although the trial court properly denied the admission of Burke's supplemental report, it abused its discretion by allowing Burke to testify to an opinion he formed when making that report. We disagree.

¶ 47 Here, Burke was hired to determine the value of Professional Automotive. Burke performed his valuation by examining corporate financials and other documents and by interviewing Anthony. However, when Burke completed his initial valuation, he was unaware that Anthony was paying for personal expenses through the business that totaled between \$13,000 and \$20,000 per month. This fact was introduced at trial by Arnold, the receiver for Professional Automotive. Penny's counsel then posed a hypothetical to Burke, asking him how this fact would impact the value of Professional Automotive. Burke testified that it would increase his valuation of the business from \$81,000 to \$170,000. The trial court found both Burke's and Arnold's testimony credible, and valued Anthony's Professional at \$150,000.

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¶ 48 We find no violation of Rule 218 here, and the trial court did not abuse its discretion when it allowed Burke's testimony into evidence. See *Kane*, 155 Ill. App. 3d at 628 ("As long as the witness is not called upon to decide any controverted fact, but is asked to assume the truth of the facts testified to, he may give his opinion thereon in any form").

¶ 49 d. Attorney's Fees

¶ 50 Next, Anthony contends that the trial court abused its discretion where it ordered Anthony to pay \$25,000 of Penny's attorney's fees. Specifically, Anthony argues that the trial court lacked jurisdiction to rule on the issue of attorney's fees because no petition was before the court at that time. We disagree.

¶ 51 The decision to award attorney fees and the amount awarded is within the discretion of the trial court and will not be reversed on appeal unless the award constitutes an abuse of discretion. *In re Marriage of Suriano and LeFeber*, 324 Ill. App. 3d 839, 846 (2001). The relevant statutory section provides that a party's petition for contribution to fees and costs incurred in the proceeding shall be heard and decided after the close of proofs and before judgment is entered. 750 ILCS 5/503(j) (West 2000). The language of section 503(j) is clear and unambiguous, and does not require an evidentiary hearing concerning the trial court's allocation of attorney fees and costs. *In re Suriano*, 324 Ill. App. 3d at 847; see 750 ILCS 5/503(j) (West 2000).

¶ 52 Further, it is well-established that attorney fees are the primary obligation of the party for whom the services are rendered. *In re Marriage of McCoy*, 272 Ill. App. 3d 125, 130 (1995).

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According to statute, the trial court, however, may, after considering the parties' financial resources, order one party to pay the reasonable attorney fees of the other party. See 750 ILCS 5/508(a) (West 2000); *In re McCoy*, 272 Ill. App. 3d at 130. An award of attorney fees is within the discretion of the trial court and such award will not be disturbed on appeal absent an abuse of discretion. *In re McCoy*, 272 Ill. App. 3d at 130-31.

¶ 53 Here, pre-trial discovery lasted approximately 16 months. Trial lasted 14 days that took place over a period of 9 months. Post-trial motion practice lasted approximately four months. As of trial, Penny had paid her attorney \$22,500 in fees. On February 23, 2009, Penny's counsel filed a petition for attorney's fees seeking contribution from Anthony. On March 30, 2010, Penny's counsel filed a petition for interim attorney's fees, seeking an additional \$15,000 in fees for work that was performed on the case after the judgment for dissolution was entered on December 10, 2009. Throughout trial, the court heard evidence regarding Penny's attorney's fees as well as the marital assets, maintenance, and the earning capacities of each party. Ultimately, the trial court ordered Anthony to pay \$25,000 of Penny's counsel's fees. The trial court clearly had jurisdiction to hear the petitions for attorney's fees which were properly before it. Moreover, where the trial court heard evidence regarding the parties' finances and future earning potential, the trial court did not abuse its discretion when it ordered Anthony to pay a portion of Penny's attorney's fees.

¶ 54 d. Dissipation of Marital Assets

¶ 55 Next, Anthony contends that the trial court abused its discretion when it found that Anthony dissipated marital assets and ordered him to pay Penny \$75,000. Specifically, Anthony argues that the trial court's finding of dissipation should be reversed because it: failed to make a finding as to precisely when the marriage underwent an irreconcilable breakdown; did not hear additional evidence before modifying the dissipation finding; and proceeded with a post-trial hearing without Anthony's counsel being present. We disagree.

¶ 56 "Dissipation is a spouse's use of marital property for his or her own benefit, for a purpose unrelated to the marriage, during a time when the marriage is suffering from an irreconcilable breakdown." *In re Marriage of Tabassum and Younis*, 377 Ill. App. 3d 761, 779 (2007), quoting *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 700 (2006). In allocating property during divorce proceedings, the trial court must consider dissipation by each party involved, *i.e.*, a spouse's use of marital property for his/her sole benefit for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown. See *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 652-53 (2009). Whether a spouse has dissipated marital assets depends on the facts of each case. See *Tabassum*, 377 Ill. App. 3d at 779; accord *Hubbs*, 363 Ill. App. 3d at 700. Once a *prima facie* case of dissipation is made, the charged spouse must show by clear and convincing evidence how the marital funds were spent. *Tabassum*, 377 Ill. App. 3d at 779. If the spouse fails to do so, the trial court must find dissipation. *Tabassum*, 377 Ill. App. 3d at 779; *Hubbs*, 363 Ill. App. 3d 701-02. We review a trial court's findings regarding dissipation under a manifest weight of the evidence standard, and its final property distribution for an abuse of discretion. *Tabassum*, 377 Ill. App. 3d at 780. Moreover, a trial court is not required to state an

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exact amount of dissipation. *Tabassum*, 377 Ill. App. 3d at 780. Nor is it required to list what conduct constituted dissipation, to explain how it arrived at a dollar amount, to award the other spouse money equaling half the dissipated amount, or to directly charge the dissipated amount against the charged party's share of the marital estate. See *Tabassum*, 377 Ill. App. 3d at 779-80 (and cases cited therein). Rather, the trial court is only required to "consider the value of the property distributed to each spouse and that there is sufficient evidence of value in the record to allow for review of the trial court's distribution." *Tabassum*, 377 Ill. App. 3d at 780.

¶ 57 Based on the facts in the case at bar, we do not find fault with the trial court's finding that Anthony dissipated marital assets, nor with its order requiring Anthony to pay Penny \$75,000. The trial court heard testimony regarding Anthony's costly racing hobby, payments to his mistress and their daughter Sophia, and unauthorized withdrawals from marital accounts during the pendency of the divorce proceedings. At the motion to reconsider, the court stated:

"[THE COURT]: [I] believe the record would show [Anthony's] dissipation in the amount at least in and around \$300,000."

However, after taking into consideration the support Anthony had provided to Penny's children during the marriage, as well as to Penny herself, the trial court decided to reduce the amount to a finding of \$150,000, and ordered Anthony to pay Penny half of that amount.

¶ 58 Even without a specific finding of the date of irretrievable breakdown, the trial court's determination is not error. Anthony filed his petition for dissolution of marriage in March 2007. Even if we use the petition date as the date the marriage was irretrievably broken, the trial court's finding of dissipation still would not be an abuse of discretion. See *In re Marriage of Carter*,

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317 Ill. App. 3d 546, 552 (2000) (finding irreconcilable breakdown of marriage as of "at least" the filing of the petition for dissolution of marriage).

¶ 59 Evidence at trial showed that, after filing the petition, Anthony withdrew \$67,000 from a joint account and kept it for himself in violation of a court order to place it in escrow. Anthony also provided child support for his and Vanessa's newborn daughter Sophia, and paid Vanessa's mortgage of \$1,300 per month while they lived together. Evidence also appeared to show that Anthony gave Vanessa \$16,000 for a down payment on her house when it was purchased in 2007. While living with Vanessa, Anthony paid the gas, electric, garbage, water, and cable bills at Vanessa's house. He also purchased jewelry for Vanessa totaling approximately \$5,000. Anthony spent at least \$200,000 pursuing his racing hobby during the pendency of the divorce. Even if the irretrievable breakdown did not come about until the date the petition for dissolution was filed, the facts adduced at trial support a finding of dissipation in the amount of at least \$150,000. This amount was not against the manifest weight of the evidence, and the finding of dissipation did not constitute an abuse of discretion.

¶ 60 As to Anthony's argument that he was prejudiced because the trial court made its final dissipation finding without hearing arguments from his attorney, the record shows that this issue was before the court on consideration of cross-motions to reconsider. The court did not hear oral argument from either party, and specifically stated that it based its findings on the motions to reconsider as well as on its review of the record. Anthony was clearly not prejudiced by having "no ability to argue the issue" due to his attorney's absence at the hearing where the trial court did not hear oral argument from either party.

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¶ 61 d. Denial of the Motion to Reconsider

¶ 62 Finally, Anthony contends that the trial court erred in denying his motion to reconsider. Specifically, Anthony argues that the trial court "disregarded the facts as set forth" when it ruled against him. We disagree.

¶ 63 "The intended purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law." *Chelkova v. Southland Corp.*, 331 Ill. App. 3d 716, 729 (2002), quoting *Landeros v. Equity Property & Development*, 321 Ill. App. 3d 57, 65 (2001). A trial court's decision to grant or deny a motion to reconsider will not be disturbed absent an abuse of discretion. *Chelkova*, 331 Ill. App. 3d at 729.

¶ 64 Here, the trial court did not abuse its discretion where Anthony failed to introduce any newly discovered evidence, changes in the law, or incorrect legal application in his motion to reconsider. Rather, in his motion to reconsider, Anthony argued that the court had ruled incorrectly on various matters that were within its discretion. Specifically, Anthony argued that: (1) the court's credibility findings were incorrect; (2) the valuation of the business was in error; (3) the court's determination that Anthony could pay maintenance to Penny was in error; (4) the court's determination that Anthony must pay Penny's credit card debt was in error; (5) the court's determination that Anthony should pay \$25,000 of Penny's \$50,000 in attorney's fees was in error; (6) that the distribution of marital assets was in error; and (7) a supplemental order requiring Anthony to pay certain sums to Penny was in error. The court considered the motion, granted that portion pertaining to Penny's credit card debt, and denied the remaining allegations.

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Anthony failed to introduce anything new in his motion to reconsider, the trial court properly relied on the evidence in the record, and did not abuse its discretion when it denied the motion to reconsider.

¶ 65

III. CONCLUSION

¶ 66 For the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 67 Affirmed.