2013 IL App (1st) 122597-U

FIRST DIVISION
FILED: August 26, 2013

No. 1-12-2597

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF LANA RADAKOVIC,	)	Appeal from the Circuit
	)	Court of Cook County.
Petitioner-Appellee,	)	
	)	
and	)	No. 08 D3 30272
	)	
DUSAN RADAKOVIC,	)	Honorable
	)	Samuel J. Betar, III,
Respondent-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in awarding maintenance in gross to the wife; erred in finding that the husband dissipated marital assets but did not err in finding the non-marital estate was not entitled to reimbursement for its contributions to the value of marital property; did not abuse its discretion in dividing the marital estate; and did not err when it incorporated an agreed order, which enjoined the husband from selling or otherwise encumbering his corporation without notifying the wife, into the judgment of dissolution.

¶ 2 The respondent, Dusan Radakovic, appeals from the circuit court's order dissolving his marriage with the petitioner, Lana Radakovic, and resolving their property distribution and maintenance issues. On appeal, the respondent argues that the circuit court erred by: (1) awarding

the petitioner maintenance in gross of $100,000; (2) finding that he dissipated marital assets and denying reimbursement to the non-marital estate for funds it contributed to the marital estate; (3) awarding the petitioner 60% of the marital property; and (4) incorporating a previous agreed order, which enjoined him from selling his corporation without notice to the petitioner, into the dissolution order. For the reasons that follow, we affirm in part and vacate in part.

¶ 3 The parties married on May 13, 1992. At the time of the marriage, the respondent had custody of his 4 year-old twin sons from a previous marriage. The parties had one child, Olga, born on March 1, 1989. They purchased the marital residence in South Barrington in 1999 and have resided there since.

¶ 4 On March 12, 2008, the petitioner filed a petition for dissolution of her marriage to the respondent. On June 3, 2009, the petitioner filed a petition for a temporary and permanent injunction that sought to enjoin the respondent from selling, transferring, or otherwise encumbering a South Elgin property, which she alleged was valued at $1,200,000 and owned by a marital business, Sigma Investments, LLC (Sigma). The petitioner alleged that the respondent had plans to close the business and sell its property.

¶ 5 On July 22, 2009, an agreed order was entered, stating in relevant part:

> "That the [respondent], his agents, partnerships and corporations shall not mortgage, sell[,] transfer or otherwise encumber or dispose of his corporations, partnerships or real property until such time as he gives the Petitioner 30 days written notice of his intention to do so."

¶ 6 On November 6, 2009, the petitioner filed a petition seeking to hold the respondent in

indirect civil contempt, alleging that he had renegotiated the mortgage on the South Elgin property, increasing the mortgage from $306,543 to $776,397 as of November 2, 2009. The respondent denied that he took out a new mortgage on the property. Rather, he explained that the additional $550,000 was for new construction at the property that was completed prior to the court's July 22, 2009, order. The petitioner later withdrew this petition and filed a notice of intent to claim dissipation for the respondent's conduct.

¶ 7 The matter proceeded to trial in March 2011. The respondent, who was 75 years old at the time of the dissolution, testified that he emigrated to the United States from Yugoslavia in 1969. He completed the U.S. equivalent to some technical school while living in Yugoslavia, but he did not have a college degree. In 1978, he started Field Systems Machinery (FSM), a machinery repair business, and he was its sole owner. The company repaired machinery for power plants, steel mills, refineries and other similar businesses. The respondent built FSM from the ground up, garnering customers, preparing quotes, designing and coordinating projects, and performing the labor on the machinery. The respondent started Sigma in 1994 with the intent to purchase the South Elgin property in its name to house FSM's operations. He had a 99% interest in Sigma while the petitioner had a 1% interest. The total purchase price of the South Elgin property was $725,000, which was paid through a combination of funds furnished by the respondent, along with $150,000 paid by FSM and a $560,000 mortgage in Sigma's name. In 2006, construction began to build a 5,000 square foot addition to the South Elgin property. According to the respondent, FSM paid for the nearly $500,000 in construction costs.

¶ 8 The respondent then testified to several loan transactions that subsequently occurred

involving Sigma. Loan number 7651 showed that Sigma borrowed $350,000 from Itasca Bank on July 17, 2006, and that the loan would mature on January 17, 2014. The respondent testified that FSM made the monthly payments on this loan from 2006 through November 2009. The loan balance of $225,231.29 was paid off on November 3, 2009, with proceeds from another loan identified as loan number 7652. Loan number 7652 showed that Sigma borrowed $776,656 from Itasca Bank on November 3, 2009, and that the loan would mature on November 3, 2029. The remainder of the proceeds from loan 7652 paid off loan number 7650, which was a $550,000 loan that FSM took out from Itasca Bank on July 17, 2009. The FSM loan was used as a line of credit, and funds from the loan were deposited in FSM's bank accounts. The respondent admitted that he "probably" received a copy of the July 22, 2009, court order barring further mortgages and that he did not notify the petitioner of his intention to refinance and consolidate these loans. The respondent testified that FSM paid $483,972 for the addition to be constructed on the South Elgin property.

¶ 9 Regarding his income, the respondent testified that he earned roughly $130,000 per year from FSM and collected approximately $25,000 annually in social security income, but he admitted that he withdrew funds in addition to his monthly income from FSM for certain family expenses. The respondent testified that, after expenses including paying the mortgage and expenses for the marital residence, his net monthly income was approximately $2,300.

¶ 10 The petitioner, who was 50 years old at the time of the dissolution, testified that she had been employed at Siemens as a compliance administrator since 2007, earning approximately $47,000 per year. Prior to her position at Siemens, she worked for FSM for 15 years, performing administrative work. During the first few years working at FSM, she did not take a salary. She had a four-year

college degree in French and literature from a college in Yugoslavia, and she worked as a translator for about a year after graduation while living in Yugoslavia.

¶ 11 The petitioner testified that she raised the three children throughout the marriage. During the marriage, the family would go on vacations once per year. The petitioner testified that the couple's monthly expenses prior to the dissolution totaled nearly $12,000 and that her income was insufficient to maintain the lifestyle established during the marriage. She testified that she needed $7,000 per month to supplement her gross monthly income of $3,900 in order to maintain the lifestyle. This level of support would allow her to pay the mortgage on the marital residence if the respondent paid off the $100,000 home equity line of credit, which the petitioner had used for family expenses. She testified that, if she was not awarded sufficient support, she would have to move to a small condominium. The petitioner testified that, during the marriage, the respondent often withdrew funds from FSM in addition to his monthly salary to pay for family expenses, including gas, vehicles, and the children's college tuition.

¶ 12 The petitioner's forensic accounting and valuation expert, Jeffrey Brend, testified that he valued FSM as of November 30, 2009, at $641,000. Brend explained that FSM's booking of the building costs at the Sigma property was improper and lowered FSM's net income and retained earnings. Accordingly, Brend stated that the building costs should have been accounted for by Sigma. Brend further testified that Sigma should have been collecting approximately $120,000 in rental income. He explained that the advantage to carrying the Sigma expenses on FSM's books was that it lowered FSM's tax liability and retained earnings. Brend also explained that, in his calculations, he considered FSM a machinery business, not a service business, and he used a 5%

goodwill factor. Brend explained that the classification and goodwill factors were the major differences between his value and the value that respondent's expert calculated. The respondent's expert had used a 50% goodwill factor and classified FSM as a service business. Brend did not report a value for Sigma.

¶ 13 In reviewing the loan transactions involving FSM and Sigma, Brend explained that, in 2009, Sigma had roughly $225,000 outstanding on its original $350,000 mortgage and FSM had a $550,000 loan; both loans were paid off with proceeds from Sigma's $776,000 loan. Brend testified that FSM's loan proceeds were deposited into its business account and used both for its operation expenses and for the construction costs for the South Elgin property. He further testified that the increase in the Sigma loan decreased the equity in the Sigma property.

¶ 14 The respondent's accounting expert, H. Edward Morris, testified that he valued FSM at $226,000. Morris factored in the building expansion at Sigma's South Elgin property as a capital expenditure that would be expensed only through depreciation over the course of many years. He also classified FSM as a service business, not a manufacturing business, which affected the capitalization rate that he used. Morris testified that he classified FSM as a service business because the business repairs machinery and does not manufacture machine parts for sale. He also placed a much higher value on the goodwill factor than Brend because the respondent performed the sales and labor for the business. For Sigma's value, Morris used the asset approach and subtracted the $776,656 debt from the property's 2009 fair market value of $1 million and discounted that by 15% for marketability. He concluded its net value was $189,842.

¶ 15 Regarding the various loans, Morris identified loan number 7651, showing that Sigma took

out a loan for $350,000; and loan number 7650, showing that FSM took out a loan for $550,000. The respondent told Morris that the FSM loan was taken out to be used as a line of credit and to create a facility for the company. The South Elgin property was listed as collateral for both loans. According to Morris, loan number 7652 consolidated the two earlier loans and the South Elgin property remained listed as collateral. Morris testified that some, but not all, of the proceeds from the FSM loan were used for the construction costs on the property. Using FSM's general ledger to track funds, Morris calculated that FSM paid $483,972 for construction costs between 2006 and early 2009.

¶ 16 Morris testified that he would not have advised FSM to book the construction costs at the South Elgin property as deductible expenses because the expenses belonged to Sigma. However, he testified that his value for Sigma would not change had Sigma properly accounted for the construction costs on its books.

¶ 17 Scott Braun, the comptroller for FSM, testified that FSM paid $483,972 for construction costs on the Sigma property over the course of 2007 through 2010.

¶ 18 The trial court issued its memorandum opinion and judgment for dissolution of marriage on April 10, 2012. The court found that Morris and Braun were credible witnesses, but found that Brend was not credible because his methodology in valuing FSM exhibited a clear bias in favor of the petitioner. The court specifically found, among other discrepancies with Brend's calculations, that his valuation of FSM's goodwill and its business classification were irrational given the evidence. The court therefore rejected Brend's testimony in its entirety.

¶ 19 Regarding the petitioner's claim that the respondent dissipated marital assets when he

consolidated the FSM loan and the Sigma loan, the court determined that the loan consolidation was done in direct violation of the court's July 22, 2009, order and reduced the net equity of Sigma by $551,425. Because the respondent executed a loan against a marital asset to pay off a non-marital debt, the court found that he was guilty of dissipation. The trial court acknowledged that the marital estate had insufficient assets to compensate the petitioner for one-half the sum dissipated by charging it to the respondent's portion of the marital estate. Therefore, in lieu of factoring the dissipation amount into the distribution of the property, the court entered judgment against the respondent for one-half the sum, $275,712.50.

¶ 20 Regarding the distribution of the property, the court awarded the petitioner 60% and the respondent 40% of the following marital assets: Sigma, with a net value of $188,000; the South Barrington residence, with a net value of $262,166; Chase IRA, valued at $13,948; American Funds account, valued at $7,547; Chase Brokerage account, valued at $13,555; and Charter One IRA, valued at $3,400. The total value of the marital estate awarded to the petitioner was $323,791; respondent received $216,861. Additionally, the respondent was awarded 100% of FSM, which had a value of $226,000.

¶ 21 Regarding maintenance, the petitioner sought $7,000 monthly maintenance for a minimum of 10 years, pointing out that her monthly expenses totaled that amount. The court awarded the petitioner $100,000 maintenance in gross, finding that maintenance was appropriate given the length of the marriage (20 years), the gross disparity of income between the parties, the parties' lifestyle during the marriage, and the fact the petitioner would be unable to sustain that lifestyle on her income alone. In its decision, the court stated that it rejected permanent maintenance because the

respondent could retire at any time and request a reduction, leaving the petitioner without meaningful financial support; it also rejected rehabilitative and reviewable maintenance because the petitioner did not need time to acquire education or job skills.

¶ 22 The respondent moved for reconsideration, and the trial court denied that motion on August 2, 2012. The respondent timely filed the instant appeal.

¶ 23 The respondent first argues that the trial court abused its discretion in awarding the petitioner $100,000 maintenance in gross, payable to her within 45 days of the judgment. He argues that maintenance was not warranted in this case because the petitioner was only 50 years old, educated, employed, and able to support herself for years to come.

¶ 24 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(a) (West 2008)) provides that the trial court may grant "a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just *** in gross or for fixed or indefinite periods of time, and the maintenance may be paid from the income or property of the other spouse after consideration of all relevant factors." Thus, in Illinois, a support obligation may take the form of (1) periodic maintenance, payments for an indefinite period of time in an indefinite amount, subject to modification in response to a change in the parties' circumstances; (2) maintenance in gross, a fixed sum of money, payable in installments for a fixed period of time and which is nonmodifiable; or (3) property settlements in lieu of maintenance. *In re Marriage of D'Attomo*, 2012 IL App (1st) 111670, ¶ 24, 978 N.E.2d 277. While periodic awards have historically been preferred, an award in gross is appropriate in exceptional circumstances. *Id.*, ¶ 25. "There is no pat formula for resolving when sufficient special circumstances exist," and the form of

maintenance must be determined on a case by case basis. *McArdle v. McArdle*, 55 Ill. App. 3d 829, 834, 370 N.E.2d 1309 (1977).

¶ 25 In determining whether an award of maintenance is warranted, the trial court must determine whether one party needs maintenance and whether the other party has the ability to pay. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 651, 616 N.E.2d 1379 (1993). The court may award maintenance only if it finds that the spouse seeking maintenance lacks sufficient property to provide for her reasonable needs and is either unable to support herself through appropriate employment or is otherwise without sufficient income. *Id.* Section 504(a) enumerates factors to be considered in determining whether to award maintenance, and those factors include: (1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance; (2) the needs of each party; (3) the present and future earning capacity of each party; (4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having foregone or delayed education or career opportunities because of the marriage; (5) the time necessary to enable the party seeking maintenance to acquire education and employment and whether that party is able to support herself through appropriate employment; (6) the standard of living established during the marriage; (8) the age and physical and emotional condition of the parties; (9) the tax consequences of the property division; (10) contributions and services by the party seeking maintenance to the education or career of the other party; (11) any valid agreement of the parties; and (12) any other factor that the court expressly finds to be just and equitable. 750 ILCS 5/504(a) (West 2008).

¶ 26 "Both the form and amount of [maintenance] to be awarded lie within the discretion of the

trial court and such award will not be reversed absent an abuse of discretion." *D'Attomo*, 2012 IL App (1st) 111670, ¶ 25. "An abuse of discretion will be found only where a trial court has made a decision no reasonable person could make. Where reasonable people could differ as to the propriety of the trial court's action, there has been no abuse of discretion." *In re Marriage of Sykes*, 231 Ill. App. 3d 940, 946, 596 N.E.2d 1226 (1992).

¶ 27 The trial court is not required to give the statutory factors equal weight as long as the balance struck by the court is reasonable under the circumstances. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 293, 932 N.E.2d 543 (2010). Here, the trial court explained its reasons for awarding maintenance; namely: (1) the length of the marriage; (2) the disparity of the parties' income, noting that the respondent earned three times the amount of the petitioner; (3) the standard of living established during the marriage; and (4) the petitioner's inability to sustain that lifestyle solely on her income. The trial court considered the petitioner's age and her present and future earning capacity and concluded that she was unable to support herself in the manner that was established during the marriage. The court also determined that the respondent was able to pay a maintenance award, considering his income and assets. The trial court's decision that maintenance was warranted was supported by the facts as adduced at trial. Therefore, we do not find that the trial court abused its discretion in determining that maintenance was warranted.

¶ 28 Next, the respondent argues that the trial court abused its discretion in the amount of maintenance awarded. Specifically, he argues that the court erred in awarding the petitioner $100,000, payable within 45 days of the judgment, claiming that he has no ability to pay the sum given that he has insufficient liquid assets.

¶ 29 In awarding the $100,000 amount, the court stated that because the respondent's income was three times that of the petitioner, a "substantial maintenance award [was] warranted." The $100,000 award represents roughly 22% of the respondent's total assets and accounts for only 14 months of the petitioner's $7,000 monthly expenses. See *Riordan v. Riordan*, 47 Ill. App. 3d 1019, 1024, 365 N.E.2d 492 (1977) (finding trial court did not abuse its discretion in awarding maintenance in gross amount that represented 34% of the husband's entire estate). The respondent argues that the award is well over 50% of his annual income. See *In re Marriage of Reynard*, 344 Ill. App. 3d 785, 791, 801 N.E.2d 591 (2003). However, the award is not an annual award and should not be compared to his annual income. While the respondent argues that he is unable to pay the award within 45 days of the judgment, we note that he never requested that the court modify its order to allow for installment payments over a definite time period.

¶ 30 Further, the respondent argues that he is past retirement age and should not be compelled to work in order to satisfy the court's order, citing *In re Marriage of Puls*, 268 Ill. App. 3d 882, 884, 645 N.E.2d 525 (1995) and *In re Marriage of Smith*, 150 Ill. App. 3d 34, 35-36 (1986) in support of this argument. We find neither case persuasive. In *Puls*, the court ordered the husband to pay monthly maintenance until he retired and awarded the wife a significant amount of the marital assets. *Puls*, 268 Ill. App. 3d at 884. The appellate court determined that the trial court did not abuse its discretion in limiting the duration of maintenance to the husband's retirement date. *Id.* *Puls* is inapplicable to the facts of this case. Here, the respondent was already beyond the standard retirement age, which was the reason the court did not order periodic maintenance. Instead, the court chose a maintenance in gross award to protect the petitioner from the possibility that the respondent

could retire shortly after the judgment and have a periodic award modified, leaving the petitioner without any meaningful financial support. Additionally, the *Puls* court did not reverse, but rather affirmed the trial court's award under the abuse-of-discretion standard of review.

¶ 31 We also find *Smith* unpersuasive as its reasoning is flawed. In *Smith*, the court determined that maintenance in gross was an inappropriate form of maintenance because such an award could not be modified for the potential changes in the parties' circumstances; the court noted that the parties' incomes were likely to change because of the husband's health problems and the wife's career prospects. *Smith*, 150 Ill. App. 3d at 36. As the dissenting justice pointed out, maintenance in gross is appropriate when special circumstances exist, such as the husband's health condition, in order to secure that a sum certain is paid. *Smith*, 150 Ill. App. 3d at 37-8 (Barry, J., dissenting). As the dissent explained, the maintenance in gross award represented an "equitable compromise between a larger periodic award of indefinite duration *** and the smaller, nonmodifiable monthly amount ordered" in gross. *Id.*

¶ 32 In this case, the court did not err in choosing maintenance in gross where it determined that special circumstances existed favoring such an award, namely the respondent's retirement age and the petitioner's need for financial support after a lengthy marriage. The facts of this case justified the smaller, nonmodifiable sum over the two possible alternatives–a larger periodic award for an indefinite duration, or a periodic award that might end shortly after its entry if the respondent were to retire. Given these facts, we cannot say that the trial court abused its discretion in the amount or form of the award.

¶ 33 Next, the respondent argues that the court erred in finding that he dissipated marital assets.

We agree with the respondent that the trial court erred in its dissipation finding, but we do not agree that the court erred in denying reimbursement.

¶ 34 Dissipation has been defined as the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown. *Sanfrantello*, 393 Ill. App. 3d at 652-53. Whether a given course of conduct constitutes dissipation depends upon the facts of each case. *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 830, 633 N.E.2d 82 (1994). The person charged with dissipation bears the burden of establishing by clear and convincing evidence how the funds were spent. *Id.* We review a trial court's factual findings on dissipation under the manifest weight of the evidence standard, though we review its final property distribution under an abuse of discretion standard. *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d 761, 779, 881 N.E.2d 396 (2007).

¶ 35 Here, the facts established that Sigma borrowed $350,000 and FSM borrowed $550,000. FSM paid down approximately $125,000 of Sigma's $350,000 loan, and the respondent consolidated the remaining $225,000 with FSM's outstanding $550,000 loan under Sigma's name. On the surface, the respondent's conduct appears to have lowered Sigma's value by having it assume debt that had previously been under FSM's name. However, both parties' experts agreed that the construction expenses belonged to Sigma, should have been recorded on Sigma's books, and that the Sigma property was listed as collateral for all three loans. Morris explained that Sigma's value would not have changed had the construction costs been recorded properly, because the property's value was always subject to the loans used to finance the construction. Thus, at all times, the South Elgin property was subject to the $776,000 mortgage, and its value did not change by virtue of the loan

consolidation. While the respondent failed to provide a reason for restructuring this debt obligation at that particular point in time in violation of the court's July 22, 2009, order, the trial court's finding that he dissipated this marital asset by consolidating the debt was against the manifest weight of the evidence. The court's judgment of $275,712.50, entered against the respondent and intended to compensate the petitioner for one-half of the dissipation claim, was therefore an abuse of its discretion, and we vacate that judgment. However, because the trial court did not factor the sum dissipated into its distribution of the marital property, we need not remand for redistribution.

¶ 36 The respondent further argues that the trial court abused its discretion in failing to reimburse the non-marital estate for the $483,972 that it paid for the construction at the South Elgin property, which added value to the marital estate.[1] We disagree.

¶ 37 Section 503(c)(2) of the Act provides that:

> "When one estate of property makes a contribution to another estate of property, or when a spouse contributes personal effort to non-marital property, the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation; provided, that no such reimbursement shall be made with respect to a contribution which is not retraceable by clear and convincing evidence, or was a gift *** The court may provide for reimbursement out of the marital property to be divided or by imposing a lien against the non-marital property which received the contribution." 750 ILCS 5/503(c)(2) (West 2008).

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[1] The petitioner argues that the respondent forfeited this argument by failing to raise it in the trial court. However, the issue was raised in the respondent's motion to reconsider.

¶ 38 A trial court's division of marital assets, including orders to reimburse an estate, will not be disturbed unless the court clearly abused its discretion. *In re Marriage of Crook*, 211 Ill. 2d 437, 453, 813 N.E.2d 198 (2004).

¶ 39 While several witnesses testified that FSM paid $483,972 in construction costs for the benefit of Sigma, those payments were assumed by Sigma when the respondent consolidated FSM's line of credit loan number 7650 with Sigma's loan number 7651 under Sigma's loan number 7652. The roughly $125,000 that FSM paid down on the original $350,000 Sigma loan (loan number 7651) and the $151,000 that FSM paid on the down payment is the only equitable amount that FSM contributed to Sigma. However, FSM has already enjoyed the benefit of using Sigma's property without paying rent to Sigma. While the respondent testified that the property was leased to FSM, no rental contract or history of rent payments is contained in the record. See *In re Marriage of Crook*, 211 Ill. 2d 437, 454-5, 813 N.E.2d 198 (2004) (finding estate not entitled to reimbursement where the estate had already been compensated for its contributions by use of the property during marriage). Therefore, the trial court's decision to deny reimbursement to the non-marital estate was not an abuse of discretion.

¶ 40 Next, the respondent argues that the trial court's division of the marital property was inequitable and an abuse of its discretion. Specifically, he contends that he should have been awarded a greater share than 40% of the estate because of his age and lack of college education. He argues that the petitioner has greater economic and employment prospects because of her younger age and college education. We reject the respondent's argument.

¶ 41 Section 503(d) provides that the trial court shall divide the marital property in "just

proportions considering all relevant factors," including: (1) the contribution of the parties to the value of the property; (2) dissipation claims; (3) the value of the property assigned to each spouse; (4) the duration of the marriage; (5) the relevant economic circumstances of each spouse after the division; (6) any obligations due from prior marriages; (7) antenuptial agreements; (8) the age, health, occupation, employability, liabilities and needs of the parties; (9) custodial provisions for any children; (1) whether the division is in lieu of or in addition to maintenance; (11) the reasonable opportunity of each spouse to acquire future assets and income; and (12) the tax consequences of the property division. 750 ILCS 5/503(d) (West 2008).

¶ 42 "If the trial court has considered all the factors set out in section 503 of the Act, it will only be reversed where it has abused its discretion." *In re Marriage of Carini,* 112 Ill. App. 3d 375, 381, 445 N.E.2d 412 (1983). "There is no requirement that marital property be divided equally between the parties"[,] and "[a]n unequal division of property is not an abuse of the court's discretion." *In re Marriage of Carini*, 112 Ill. App. 3d 375, 380, 445 N.E.2d 412 (1983). Further, an important objective to be reached by the trial court in entering the property division order is to place the parties in a position from which they can begin anew. *In re Marriage of Calisoff*, 176 Ill. App. 3d 721, 726, 531 N.E.2d 810 (1988). When reviewing a trial court's division of property, we do not substitute our discretion for that of the trial court. *In re Marriage of Partyka*, 158 Ill. App. 3d 545, 550, 511 N.E.2d 676 (1987). Rather, we find that an abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court. *Id.*

¶ 43 Here, after stating it considered the factors set forth in section 503(d), the trial court concluded that a 60/40 split in favor of the petitioner was just. The court was aware of the parties'

ages and education levels, and it considered these factors along with the remaining section 503(d) factors. The respondent's argument asks this court to re-weigh the factors in his favor, but that is not the function of this court. *Partyka*, 158 Ill. App. 3d at 550. It is clear from the record that the trial court considered the relevant factors and divided the property with the goal of placing the parties in a position from which they can begin anew. Therefore, the trial court's decision to award the petitioner with a greater share of the marital property was not an abuse of discretion.

¶ 44 Finally, the respondent argues that the trial court erred when it incorporated the July 22, 2009, order into the final judgment. He argues that the July 22 order was a temporary order, which dissolved pursuant to section 501(d) of the Act when the final judgment was entered. The respondent argues that, by incorporating the earlier order into the final judgment, the trial court improperly *sua sponte* entered a permanent injunction, depriving him of a hearing on the merits. We disagree.

¶ 45 Section 501(d) of the Act provides that a temporary order enjoining a party from transferring, selling, or otherwise encumbering property "terminates when the final judgment is entered." 750 ILCS 5/501(d)(3) (West 2008). " 'A permanent injunction is of unlimited duration and 'alters the status quo,' meaning that it adjudicates rights between the interested parties.' " *In re Marriage of Winter*, 387 Ill. App. 3d 21, 27, 899 N.E.2d 1080 (2008) (quoting *Skolnick v. Altheimer & Gray*, 191 Ill.2d 214, 222, 730 N.E.2d 4 (2000), quoting *Smith v. Goldstick*, 110 Ill.App.3d 431, 438, 442 N.E.2d 551 (1982)). Here, the trial court incorporated its earlier order into the judgment by stating that "[t]he order entered on July 22, 2009 restraining Respondent from disposing of his assets shall remain in full force and effect until further order of court. Of course, Respondent may transfer

marital assets to Petitioner to accomplish the allocation of the estate ordered herein." The court's language indicates that the restraint on the respondent was temporary, and not permanent as the respondent claims, because it was subject to further court proceedings. Therefore, we reject the respondent's argument that the trial court's incorporation of its earlier temporary injunction rendered it an improper *sua sponte* permanent injunction.

¶ 46 For the foregoing reasons, we affirm that portion of the trial court's judgment that awarded the petitioner $100,000 maintenance in gross and 60% of the marital property. We also affirm the trial court's incorporation of its earlier temporary injunction into the judgment. Finally, we vacate the judgment of $275,712.50, entered against the respondent for dissipating marital assets when he consolidated two business loans, but we affirm the trial court's finding that the non-marital estate was not entitled to reimbursement for contributions it made to the marital estate.

¶ 47 Affirmed in part and vacated in part.