SIXTH DIVISION
December 23, 2015

No. 1-15-0258

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re the Marriage of:	)	Appeal from the
	)	Circuit Court of
BRIAN D. FREE,	)	Cook County.
	)	
Petitioner-Appellee,	)	No. 12 D 002921
	)	
and	)	
	)	
NANCY FREE,	)	Honorable
	)	John T. Carr,
Respondent-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

Held: We affirmed the judgment dissolving respondent's marriage to petitioner, finding the trial court committed no error in: (1) ordering the maintenance award to be reviewable in four years; (2) classifying petitioner's potential bonus, if issued after the dissolution judgment, as his non-marital property; and (3) classifying a brokerage account containing stock as marital property.

¶ 1 Respondent-appellant, Nancy Free, appeals from the judgment dissolving her marriage to petitioner-appellee, Brian D. Free. Respondent contends the trial court erred by: (1) ordering that her maintenance award be reviewable in four years; (2) failing to classify petitioner's potential 2014 bonus as marital property; and (3) classifying a brokerage account containing

Starbucks stock as marital property instead of awarding her the stock as non-marital property. We affirm.

¶ 2 I. Pre-Trial Proceedings

¶ 3 On March 23, 2012, petitioner filed for dissolution of his marriage to respondent. Petitioner stated that he and respondent were married on June 22, 1996 and had a 12-year-old daughter and a 9-year-old son. Petitioner was 45 years old and a partner at the law firm of Chapman and Cutler, while respondent was 44 years old and unemployed.

¶ 4 On February 25, 2013, petitioner filed a motion for vocational assessment, alleging that respondent was seeking maintenance, but was making no effort to become self-supporting or to seek employment. Petitioner asked the court to enter an order requiring respondent to submit to an evaluation by Sander Marcus, a licensed clinical psychologist who specializes in vocational assessments.

¶ 5 Respondent filed a response to petitioner's motion for a vocational assessment, requesting that the court deny the motion. In her response, respondent stated that she is capable of working, has prepared a resume, and has "inquired about part-time employment" but received no offers. Respondent further stated, though, that she and petitioner consciously made a joint decision that she stop working 14 years ago to raise the children; that the youngest child is only 10 and respondent needs to be present when the children are not in school; and that she will not be able to earn the same income petitioner earns (in excess of $1,200,000 per year) and support herself in the standard of living established during the marriage.

¶ 6 On April 15, 2013, the trial court granted petitioner's motion for a vocational assessment of respondent.

¶ 7 On March 10, 2014, the trial court entered a custody and joint parenting agreement granting the parties joint custody of the children and naming respondent as the primary residential parent. The matter proceeded to trial thereafter.

¶ 8 II. Trial Evidence, Testimony, and Judgment Relative to Issues on Appeal

¶ 9 A. Respondent's Maintenance Claim

¶ 10 1. Respondent's Employability and Job Search

¶ 11 Respondent graduated from Brown University with a degree in economics in May 1989. In June 1989, respondent was hired as an assistant credit analyst for Fleet Financial Group. As an assistant credit analyst, respondent managed credit evaluations and financial analysis for a $20 million portfolio of highly leveraged loans to middle market companies.

¶ 12 In June 1990, respondent was hired as a credit analyst for Citicorp in Chicago and worked there until March 2000. Respondent's initial salary at Citicorp was $40,000. During her tenure at Citicorp, respondent moved up the corporate ladder and eventually became a vice president in Citicorp's securitization group. In that position, respondent "[o]riginated and structured asset backed financings ranging in size from $50 million to $1 billion" and obtained "AAA ratings from S&P on three asset backed transactions for non-investment grade clients." Respondent testified that, to her knowledge, the type of job she performed as a vice president in Citicorp's securitization group "does not exist in the form that [she] did it in the 1990s." In 1999, her last full year of employment with Citicorp, respondent had a gross income of $192,832.

¶ 13 Respondent and petitioner made a joint decision in March 2000, near the end of her maternity leave, for respondent to stop working and stay home to care for their newborn daughter because petitioner was about to become a partner at Chapman and Cutler and double his income.

¶ 14 Respondent testified that at the end of 2012, beginning of 2013, she started putting together her resume. In February 2013, she applied to a brokerage firm that ultimately rejected her because she no longer had significant work experience, having been out of work for 15 years, and she no longer had the appropriate licenses; to acquire the licenses, respondent would have to take a prep class for two or three months, pass a four-hour test, and be employed by an "accredited broker to hold those licenses for [her]."

¶ 15 Respondent testified that in April 2014 she had a discussion with the owner of a neighboring book store about possibly working there, but she was not hired. Respondent redrafted her resume in August 2014, reached out to some of her past colleagues, and sent out four resumes. She did not receive any job offers.

¶ 16 Respondent testified she had not worked with a career counselor or headhunter but was "in the process" of starting a LinkedIn account. She attended a back-to-work seminar on October 29, 2014.

¶ 17 Sander Marcus, the vocational expert, met with respondent in April 2013, to conduct the court-ordered vocation assessment to evaluate her employment potential. His later report based on his assessment was admitted into evidence at trial.

¶ 18 In his report, Mr. Marcus stated he asked respondent whether there was anything preventing her from working, and she stated "the only issue that might prevent her from working is the issue of childcare for her children." Respondent described herself to Mr. Marcus as efficient, trustworthy, task-oriented, and well-organized. However, when asked if she had any career plans, respondent told Mr. Marcus that she feels her life is in "limbo" until the divorce is finalized, and that she has not explored potential short-term career goals. Respondent is uncertain about how to re-enter the workforce.

¶ 19 Respondent described her work history to Mr. Marcus, noting she started as a financial analyst at Citicorp and spent her final three years in a vice president position which required her to have her "broker licenses in public and private areas." The skills she utilized while working for Citicorp included writing reports, reading technical manuals, interpreting financial data, supervising others, conducting meetings, and making presentations. Since leaving Citicorp, respondent has been primarily a homemaker and stay-at-home mom, except for her volunteer work. Respondent has held many positions at her church and is a board member of her local public school foundation. Respondent also has volunteered to act as treasurer for her children's nursery and elementary school boards and as manager of a department in providing rummage services.

¶ 20 Mr. Marcus gave respondent tests to provide standardized measures of her vocational characteristics. The Wonderlic Personnel Test measures general reasoning skills and ability to learn on the job in business and industry. Respondent scored in the 93rd percentile, placing her in the superior range. The Meyers-Briggs Type Indicator and the Reddin Management Style Diagnosis Test indicated that respondent takes a people-oriented approach when in a managerial role. Similarly, the Strong Interest Inventory indicated that respondent prefers working with people, as opposed to working alone or only with data, is comfortable taking a leadership role, and is willing to take "reasonable risks in the workplace."

¶ 21 Mr. Marcus consulted with four persons familiar with the employment market regarding respondent's job prospects. First, Mr. Marcus spoke with John Foresman, a business development manager and sales trainer with years of experience in training and working with major companies and individuals in a variety of industries. Mr. Foresman told Mr. Marcus that even given respondent's age, she can successfully re-enter the workforce in the financial area.

Mr. Foresman stated that one key would be to make sure that her broker and other appropriate licenses were renewed, which could involve her retaking any required licensing examinations.

¶ 22 Next, Mr. Marcus consulted with James Fergle, who Mr. Marcus described as "one of the top job search coaches and experts in the Chicago metropolitan area." Mr. Fergle believed that with an effective job search strategy, respondent likely could re-enter the financial banking area, provided she was computer literate regarding the current financial programs and provided she updated her licenses.

¶ 23 Next, Mr. Marcus consulted with Jan Leahy, the executive director of a comprehensive employment resource center that provides job search counseling. Ms. Leahy told Mr. Marcus that there are fewer banks than before due to mergers and, therefore, there "may be fewer opportunities for the kind of role [respondent] had." Ms. Leahy also questioned whether banks and financial institutions "might consider an individual in [respondent's] situation to be a hiring 'risk'." Nevertheless, Ms. Leahy believed that respondent can get back into the banking and finance area, although it might take time (perhaps a couple of years) to regain the kind of position she left. Ms. Leahy stated that respondent would do well to upgrade her financial computer skills and certifications, and to take a job that would enable her to "'pay her dues' in perhaps a less high level role."

¶ 24 Finally, Mr. Marcus consulted with Gerald McIlvain, a vice president of trust and wealth management for a bank. Mr. McIlvain told Mr. Marcus that "if [respondent's] role involved any broker functions (interactions that had a sales or business development component, *i.e.*, if she helped bring in business to the bank), she would likely be one of the 'easiest hires,' that such bank positions are readily available, and that the fact that she has not worked for a bank in 14 years would be irrelevant."

¶ 25 Mr. Marcus consulted the Occupational Outlook Handbook, available on the U.S. Bureau of Labor Statistics website, which is considered the basic resource for descriptions of the mainstream careers in the United States. The Handbook stated that median salaries for individuals in a variety of financial management roles overall are approximately in the $40,000 to $60,000 range.

¶ 26 Mr. Marcus concluded that "[f]or a person raising two children, and with a work history that is not entirely consistent, there is no question that getting back into the mainstream workforce (particularly in this era of a difficult job market) would be challenging for anyone in this type of situation."

¶ 27 Mr. Marcus noted that respondent does have "positives," including her bachelor's degree, her work for Citicorp, her active participation in various volunteer activities, her testing results, interpersonal skills, self-confidence, and organizational ability. However, respondent would need to "confront the challenges of re-entering this financial arena," such as by updating her computer skills, obtaining or updating the appropriate licenses, and seeking out appropriate sales and business development training as well as professional job search and career coaching assistance. As of the date of his report (July 11, 2013), Mr. Marcus saw no evidence that respondent had taken any of these steps.

¶ 28 Mr. Marcus stated that even though he is optimistic about respondent's ability to re-enter the banking arena, she may not be able to immediately enter the level at which she left. Nevertheless, in a "brief perusal of job openings on the Internet," Mr. Marcus noted two positions for which respondent may be competitive; one was a private banking project analyst for a major bank, and one was an assistant vice president of finance for another major bank. If

respondent were to obtain one of these types of jobs, she might expect a starting salary in the $40,000 to $60,000 range.

¶ 29 Mr. Marcus testified at trial consistently with his report, opining that if respondent took a job as a private banking project analyst or assistant vice president of finance, her starting salary would probably be in the $40,000 to $60,000 range. Mr. Marcus further testified that if respondent took a position as a credit analyst, the mean annual wage (according to the Occupational Outlook Handbook) was $77,950.

¶ 30 2. Respondent's Expenses

¶ 31 Respondent submitted financial disclosure statements. An August 2012 financial disclosure statement provided that she had $29,067 in monthly expenses. A July 2014 financial disclosure statement provided that she had $34,529 in monthly expenses. Respondent testified that much of the increase in expenses was due to the children's expenses, largely their athletic activities and increased cost of vacations. There also were increased personal expenses and home maintenance expenses.

¶ 32 The parties own a single family home in Winnetka which was the marital residence prior to their separation in April 2012. The principal balance on the home's mortgage, for which the parties are liable, is $465,276 as of October 7, 2014.

¶ 33 3. Petitioner's Income and Employment History

¶ 34 Petitioner graduated from Miami University in 1988 and IIT-Chicago Kent College of Law with honors in 1991. Petitioner started working as a staff attorney at Chapman and Cutler LLP in January 1992.

¶ 35 Petitioner was an income partner at Chapman and Cutler from April 2000 until April 2004. Petitioner has been a managing partner at Chapman and Cutler since April 2004. As a

managing partner, petitioner's share in the firm's annual net profits is based on the number of partnership units assigned to him during the calendar year. As of April 1, 2014, petitioner's partnership units were increased to 1,800, an amount equal to 2.3% of the units issued by the firm partnership.

¶ 36 Petitioner's compensation from Chapman and Cutler is paid to him in three ways: (1) monthly draws; (2) quarterly distributions; and (3) a possible discretionary bonus. Petitioner's ordinary business income from Chapman and Cutler as set forth in the parties' joint federal income tax returns for the years 2010 through 2013 was as follows: 2010-$941,659; 2011-$1,264,486; 2012-$1,763,026; and 2013-$1,890,586.

¶ 37 As of August 1, 2014, petitioner had accrued $1,006,465.90 in earnings for the year. Petitioner anticipated receiving his fourth quarter distribution in January 2015. Historically, the fourth quarter distribution has been the largest distribution for each year.

¶ 38 Petitioner has received a bonus every year since he became a managing partner in 2004. Bonuses are determined by Chapman and Cutler's upper management during the first quarter of each year and are paid for the previous calendar year. Bonuses paid to the firm's partners are purely discretionary and there is no formula for calculating the amount of a partner's bonus.

¶ 39 Petitioner testified to his understanding that "the rationale for paying out a bonus is to reward partners whose income has not been accurately reflected by their contribution to the firm in the previous year." Given that Chapman and Cutler had increased his partnership units in 2014, thereby rewarding him for his contribution to the firm, petitioner was of the opinion that he would not be receiving a bonus in 2015 for the 2014 calendar year.

¶ 40 By virtue of his partnership, petitioner is a participant in the Chapman and Cutler LLP retirement plan for partners. From 2011 to 2013, petitioner contributed $259,849 to his retirement plan.

¶ 41 4. Petitioner's Expenses

¶ 42 Petitioner submitted a financial disclosure statement for September 2014 listing his monthly living expenses as $18,265, which includes the $5,017 monthly mortgage for a new home he bought in Glenview after the parties' separation.

¶ 43 B. Judgment on Maintenance

¶ 44 The trial court ordered petitioner to pay respondent maintenance in the amount of $45,000 per month for 48 months. The trial court ordered respondent to file a "petition for review of maintenance" prior to the end of the 48-month period (the review period). In the event that respondent did not file a petition for review of maintenance within the review period, the trial court ordered that respondent's right to receive maintenance from petitioner "shall be forever terminated" at the end of the review period.

¶ 45 C. Property Division

¶ 46 Respondent was awarded assets with stipulated values of $2,080,723.37, which was 58% of the marital estate. Respondent's award included $350,820.90 of stocks and cash not held in a retirement account. Respondent also received 50% of the following unvalued assets: (1) an unfunded retirement plan through petitioner's partnership; and (2) petitioner's 2014 fourth quarter distribution from his partnership that he anticipated receiving in January 2015. The trial court awarded respondent $177,133 more in non-marital property than it did petitioner, and awarded respondent approximately $480,274 more in marital property.

¶ 47 III. Appeal

¶ 48 First, respondent argues that the trial court erred in ordering her to file a petition for review of her maintenance award in four years.

¶ 49 Maintenance awards are governed by section 504 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504 (West 2012)), which allows for both temporary and permanent maintenance awards. Temporary maintenance is designed to be rehabilitative and to allow the dependent spouse to become financially independent. *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 18. Permanent maintenance is appropriate where the recipient spouse is unemployable or employable only at an income substantially lower than the previous standard of living during the marriage. *Id*. In addition, permanent maintenance generally is considered appropriate when the recipient spouse had devoted significant time to raising a family in lieu of pursuing a career. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 652 (2008). Ultimately, a maintenance award, whether temporary or permanent, must be reasonable, and what is reasonable depends on the facts of each individual case. *Id*. It is within the trial court's discretion to set the duration of the maintenance award, which will not be overturned unless the court abused its discretion. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 305 (2010).

¶ 50 Section 504 of the Act sets forth 12 factors to consider in awarding a spouse maintenance. These factors are:

> "(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, training, employment, or career opportunities due to the marriage;

(5) 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;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(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 2012).

¶ 51 No single factor is determinative in considering the duration and amount of a maintenance award and the trial court is not limited to a review of the factors outlined in section 504 of the Act. *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 119.

¶ 52 The record shows that the trial court expressly considered the section 504 factors and awarded respondent maintenance of $45,000 per month subject to review in four years upon a petition for review filed by respondent; in the absence of such a petition for review filed by

respondent within the review period, the maintenance would terminate after four years. The trial court also awarded respondent assets worth more than $2 million, which was 58% of the marital estate.

¶ 53 Respondent makes no argument on appeal that the amount of the maintenance award was too low, nor is there any pending cross-appeal from petitioner in which he argues that the maintenance award was too high. Rather, respondent argues that the maintenance award should have been subject to a longer review period, or made permanent, given the following facts: the 18-year duration of their marriage in which she gave up her lucrative career to stay at home and care for their two children, for whom she continues to have extensive child care responsibilities, thereby enabling petitioner to pursue his career as a partner at Chapman and Cutler; the vocational assessment indicating she would only be able to return to work in the financial field at an initial salary of between $40,000 and $60,000, far below her standard of living during the marriage, as compared to petitioner's almost $2 million annual income; and her testimony that the type of job she performed as a vice president in Citicorp's securitization group no longer exists in the same form.

¶ 54 The trial court in entering its maintenance award recognized the challenges respondent faced in returning to the work force, as she was the residential parent with child-care responsibilities, and had been home taking care of the children for several years, but the court concluded that respondent's sending out six resumes in a year and a half did not amount to a sufficient effort to find work in her chosen financial field. The trial court determined from respondent's educational and employment background, and from the report and testimony of the vocational expert, that with more effort she had the potential to again become gainfully employed in the finance field. The court further recognized that respondent's initial salary upon

returning to work would be far lower than the income earned by petitioner, but noted that, given her education and work experience, she had the potential to increase her earnings. Therefore, the court made the maintenance award reviewable in four years so as to give respondent the impetus to make her best effort in finding work and achieving financial independence. See *In re Marriage of Wolf*, 180 Ill. App. 3d 998, 1008 (1989) (A spouse seeking maintenance has the affirmative obligation to seek gainful employment, and the purpose of reviewable maintenance is to provide an incentive for that spouse to use the review period to "diligently try and secure gainful employment.") It is important to note, though, that respondent's maintenance award does not automatically end nor is it automatically reduced upon respondent's filing of a review petition within the four-year period; rather, upon respondent's filing of a petition for review, the trial court will merely review respondent's employment history during that four-year period along with the other section 504 and 510(a-5) (750 ILCS 5/504(a), 510(a-5) (West 2012)) factors, including the apportionment of the marital and non-marital property, when determining the appropriate amount and duration of maintenance going forward. We find no abuse of discretion in the trial court's setting of the four-year review period for the maintenance award.

¶ 55 *In re Marriage of Heller*, 153 Ill. App. 3d 224 (1987), is informative. In *Heller*, Floyd and Carole Heller were married in 1962, had two children, and separated in 1982. *Id.* at 227. Mrs. Heller filed a petition for dissolution of marriage in 1984. *Id.* At the time of trial, Mr. Heller was 51 years old, an anesthesiologist and an associate professor. *Id.* Mr. Heller received a gross salary of $135,800 and a $20,000 annual bonus. *Id.* Mrs. Heller was 47 years old at the time of trial. *Id.* She had a B.A. degree in elementary education but had been out of that job market for 20 years. *Id.* At the time of the dissolution proceedings, Mrs. Heller was employed part-time by a travel agency and received a gross salary of $105 per week. *Id.* Mrs. Heller

estimated her ultimate income from full-time employment as a travel agent would be $15,000 annually. *Id.*

¶ 56 The relevant issue on appeal was whether the trial court abused its discretion in awarding Mrs. Heller permanent maintenance. *Id.* at 235. The appellate court noted that a spouse seeking maintenance has an affirmative duty to seek gainful employment, and that maintenance for a limited period of time is appropriate when the spouse is employable at an income not overly disproportionate from the standard of living established during the marriage. *Id.* Conversely, where the spouse seeking maintenance is not employable or is employable only at a lower income, as compared to her previous standard of living during the marriage, then permanent maintenance would be appropriate. *Id.*

¶ 57 The appellate court acknowledged that Mrs. Heller's current part-time income and/or her anticipated income from full-time employment as a travel agent was clearly disproportionate to the standard of living established during the marriage. *Id.* However, the appellate court held that, given her educational background, she might be able to earn more than $15,000 per year and, therefore, "it would have been more appropriate for the trial court to have reserved for review the maintenance award after a given period of time [citation], such as every five years, in order to reassess [Mrs. Heller's] ability to become financially independent." *Id.*

¶ 58 In the present case, respondent, like Mrs. Heller, was a healthy, well-educated 47-year-old woman at the time of trial. Respondent had a far more extensive work history than Mrs. Heller, with a 10-year background in finance. Like Mrs. Heller, though, respondent had not worked in that job market for over a decade, and the vocational expert acknowledged at trial that getting back into the financial field would be "challenging" for respondent. Although the vocational expert concluded that respondent ultimately would be successful in reentering the

financial field upon updating her licenses and engaging in certain training and obtaining job search assistance, respondent had not done any of those things as of the time of trial. Accordingly, the trial court did what the appellate court in *Heller* stated should be done when the spouse seeking maintenance is well-educated with some job experience but when her current employment prospects and income potential are unclear: the trial court awarded respondent maintenance but made it reviewable after a given period of four years in order to reassess her employment prospects and earning capacity. The trial court committed no abuse of discretion in setting a four-year review period for respondent's maintenance award, especially where the evidence at trial indicated that this period was enough time for respondent to acquire/update the licenses necessary for rejoining the financial field and to find work in the financial field.

¶ 59 Respondent cites several cases in which the appellate court affirmed the trial court's award of permanent maintenance after finding that the spouse receiving maintenance did not have the capacity to earn sufficient income to maintain the marital standard of living. See *In re Marriage of Nord*, 402 Ill. App. 3d 288 (2010) (58-year-old wife who was a high school graduate but who had not worked outside the home in approximately 30 years was awarded permanent maintenance of $17,000 per month where her husband, a physician, made over $1 million per year); *In re Marriage of Heroy*, 385 Ill. App. 3d 640 (2008) (56-year-old wife who formerly worked as a law librarian but who had not worked in the field in nearly 20 years awarded $35,000 per month in permanent maintenance where her husband, an attorney, had total income of about $2 million per year); *In re Marriage of Minear*, 287 Ill. App. 3d 1073 (1997) (40-year-old wife earning $1,086 per month as a medical receptionist awarded $500 per month permanent maintenance where she lacked the ability to increase her income to the $3,063 per month earned by her husband in the operation of his service station). Respondent contends she,

too, lacks the ability to earn income sufficient to maintain her marital standard of living and, therefore, that permanent maintenance should have been ordered (or, alternatively, the court should have ordered a longer review period than merely four years).

¶ 60 Each case seeking maintenance rests on its own unique facts. *Hellwig v. Hellwig*, 100 Ill. App. 3d 452, 465 (1981). In the present case, the trial court determined from respondent's educational and employment background and the vocational expert's report and testimony that she could potentially do "very well" in her return to the finance field, but that she had not made a sufficient effort to find suitable employment. To more fully assess respondent's ability to re-enter the work force in the finance field, and to assess her future earning potential and ability to maintain the marital standard of living, the trial court set the four-year review period for the maintenance award. As discussed, the evidence at trial indicated four years was sufficient for respondent to obtain/update her necessary licenses and re-enter the financial field. On the facts of this case, the four-year period of review for the maintenance award did not constitute an abuse of discretion.

¶ 61 Respondent also cites *In re Marriage of Rothbardt*, 99 Ill. App. 3d 561 (1981), which held that the trial court erred in awarding the wife only temporary maintenance for nine months where the court engaged in "speculation" that she will have attained self-sufficiency at the end of nine months. *Id*. at 569. The trial court here did not engage in similar speculation, as it did not order an arbitrary cutoff of respondent's maintenance award based on a finding that she will have attained self-sufficiency, but rather ordered that her maintenance award be reviewable upon respondent's petition at the end of four years in order to assess her employment prospects and income-earning potential.

¶ 62 Respondent also cites section 504(b-1) of the Act, which states in pertinent part that "when the combined gross income of the parties is less than $250,000" the duration of a maintenance award shall be calculated by multiplying the length of the marriage by the following factors: 0 to 5 years (.20); 5 to 10 years (.40); 10 to 15 years (.60); or 15 to 20 years (.80). 750 ILCS 5/504(b-1) (West 2012). Respondent's marriage lasted 18 years and, therefore contends that, under section 504(b-1), the duration of the maintenance award should have been for 14.4 years (.80 multiplied by 18). Section 504(b-1) is inapplicable as it went into effect on January 1, 2015, after the time of trial and the combined gross income of the parties is greater than $250,000.

¶ 63 In conclusion, we affirm the trial court's order providing for the maintenance award to be reviewable in four years upon respondent's petition.

¶ 64 Respondent further argues the maintenance award should be permanent, subject to modification if petitioner shows there has been a substantial change in circumstances. See 750 ILCS 5/510 (West 2012) (providing that a maintenance award may be modified upon a showing of a substantial change in circumstances). As extensively discussed earlier in this order, though, the trial court committed no abuse of discretion in ordering that the maintenance award be reviewed in four years upon respondent's petition, as opposed to awarding permanent maintenance at this time. Accordingly, respondent's contention is without merit. We note, though, that nothing in our order is meant to preclude the trial court from awarding respondent permanent maintenance upon her review petition, if the relevant statutory factors indicate such a permanent award is then appropriate.

¶ 65 Next, respondent contends the trial court erred in the dissolution judgment by ordering that "[petitioner] shall retain any bonus paid to him in 2015 for 2014." Respondent argues that

the trial court should have classified petitioner's potential bonus as marital property to be divided in accordance with the proportionate division effected by the court of the other marital assets.

¶ 66 The classification of property as marital or non-marital property is reviewed under the manifest weight of the evidence standard. *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2009). The classification is against the manifest weight of the evidence if the opposite conclusion is clearly evident or if it is unreasonable, arbitrary, and not based on the evidence. *In re Marriage of Berger*, 357 Ill. App. 3d 651, 660 (2005).

¶ 67 All property acquired by either spouse after the marriage and before a judgment for dissolution of marriage is presumed to be marital property, unless it falls within one of the exceptions provided in section 503(a) of the Act. 750 ILCS 5/503(b)(1) (West 2012). There is no claim that petitioner's potential 2014 bonus payable in 2015 was non-marital property because it fell within one of the section 503(a) exceptions. Instead, petitioner claims that the potential 2014 bonus was not marital property because it was not property at all but was a mere expectancy, and that if the bonus is issued after the dissolution judgment, it should be considered his non-marital property. For the reasons that follow, we agree with petitioner.

¶ 68 We begin by discussing the nature of petitioner's potential bonus. The parties stipulated at trial that petitioner's potential bonus for the 2014 calendar year was "purely discretionary." There was no formula for calculating his bonus and petitioner had no contractual right to receive a bonus based on his performance. The sixth restated articles of partnership and Chapman and Cutler's bylaws provided that 8% of the firm's net profits were allocated to be divided among the partners by decision of Chapman and Cutler's chief executive partner (CEP). The CEP would make the determination regarding whether petitioner would receive a bonus for the 2014 calendar year (payable in 2015), and the amount of any such bonus. Chapman and Cutler's CEP

had not made any discretionary bonus determinations for the firm's partners as of the date (December 22, 2014) when the trial court entered the dissolution judgment.

¶ 69 Petitioner testified at trial to his opinion that he would not be receiving a bonus in 2015 for the 2014 calendar year because his partnership units had already been increased in 2014, thereby rewarding him for his contributions to the firm and negating the rationale for paying him a bonus.

¶ 70 Respondent argues that petitioner's testimony that he would not be receiving a bonus for the 2014 calendar year was suspect, as he has received a bonus every year in which he was eligible, even in those years in which his partnership units had been increased. Respondent, therefore, argues that it was likely petitioner would be receiving a bonus paid in 2015 for the 2014 calendar year, that such a bonus was earned during the marriage and is, thus, marital property, and that the trial court should have retained jurisdiction until such time as the bonus was paid, at which point the court would determine how best to allocate the bonus between the parties.

¶ 71 *In re Marriage of Wendt*, 2013 IL App (1st) 123261, is dispositive. In *Wendt*, the husband was a software developer with Citadel, LLC (Citadel). *Id*. ¶ 3. With regard to potential bonuses payable to the husband by Citadel, certain Citadel documents stated that his bonus would take the form of "Participation Points" issued by Citadel that were converted to cash at a rate of $1 per point. *Id*. ¶ 7. Participation Points would be governed by the relevant employee incentive program in effect when 2012 Participation Points were awarded. *Id*. All bonuses were discretionary and based on individual performance as well as the company's overall performance in 2012. *Id*.

¶ 72 The trial court entered a judgment for dissolution of marriage between the parties on September 19, 2012. *Id*. ¶ 9. On October 12, 2012, the trial court entered an order finding the husband's "2012 Bonus to be received if at all in February 2013, is not a contractually enforceable right and is not marital property as it was not acquired during the marriage pursuant to section 503 and [the husband] must be working there to receive the bonus and it is an expectancy and not a written contract of employment." *Id*. ¶ 11.

¶ 73 On appeal, the issue was whether the trial court erred in finding that the husband's 2012 bonus, if issued after the dissolution judgment, was non-marital property. *Id*. ¶ 14. The appellate court stated that the "classification of a nonvested, discretionary bonus issued after the entry of a judgment for dissolution is an issue that has not yet been considered in Illinois." *Id*. ¶ 16. The appellate court began its analysis by noting that the husband was an at-will employee who had no contractual right to receive a bonus by virtue of having signed an employment agreement providing for one. *Id*. ¶ 17. His employer's policy was that all bonuses were discretionary and based on myriad factors, including an employee's individual performance as well as factors unrelated to his work. *Id*. ¶ 18. Therefore, the appellate court found that the husband did not have a contractual right to the bonus at issue (*id*. ¶ 20) and that, without such an enforceable, contractual right, any such bonus was "speculative," a "mere expectancy," and not property at all until paid. *Id*. ¶¶ 16, 24, 31. The appellate court further found that the timing of the ultimate payment of the bonus was dispositive as to whether it would be considered marital property or non-marital property upon payment. If the bonus was paid to the husband after the marriage and prior to dissolution, then it became property acquired by the husband during the marriage and, thus, was marital property under section 503(b)(1) of the Act; however, if the bonus was paid to

the husband only *after* the marriage was dissolved, it did not become his property until then and was rightly considered non-marital. *Id*. ¶¶ 25, 31.

¶ 74 In the present case, petitioner had no contractual right to the potential 2014 bonus (to be payable, if at all, in 2015). Any such bonus was payable at the pure discretion of Chapman and Cutler's CEP and there was no formula for calculating the bonus. Although respondent correctly points out that petitioner had received a bonus for each year he had been a managing partner, it does not change the fact that all such bonuses were discretionary as opposed to contractual in nature. In the absence of an enforceable, contractual right to the potential 2014 bonus, any such bonus is a mere expectancy and not property at all until paid. As the potential 2014 bonus was not paid to petitioner during the marriage, it never became property acquired by him during the marriage and, thus, never became marital property; if the potential 2014 bonus ultimately is paid to petitioner subsequent to the dissolution of the marriage, it only becomes his property at that point of payment and is rightly considered non-marital. *Id*.

¶ 75 Accordingly, we affirm the trial court's judgment awarding any 2014 bonus paid after the dissolution judgment to petitioner as non-marital property.

¶ 76 Next, respondent argues the trial court erred by failing to allocate certain Starbucks stock to her as non-marital property. Respondent purchased 400 shares of Starbucks prior to her marriage which were held in her name in a brokerage account (account 1). Respondent testified that a year after the marriage, she added petitioner as a "co-tenant" to account 1 so they could "accumulate joint stocks together." There were subsequent stock splits and dividends reinvested in the purchase of the stock, and by 1999, a stock split had increased the number of Starbucks shares in account 1 to 800.

¶ 77 In September 2000, petitioner and respondent signed an authorization transferring the holding of several stocks, including the 800 shares of Starbucks, from account 1 into a new account 2 in respondent's name only. The Starbucks shares had a value at trial of $123,203.70. Respondent testified as follows regarding why she and petitioner transferred the 800 shares of Starbucks from the joint account 1 into account 2 in respondent's name only:

> "We were going through estate planning at the time. We were about to take our first trip after our daughter was born in 1999, and we wanted to put the individual stocks that we owned *** for estate planning purposes into an individual account in my name so that if something *** happened to petitioner, that stock would proceed directly to my benefit because I had purchased that stock."

¶ 78 The trial court ultimately classified account 2 containing the Starbucks stock as marital property and awarded it to respondent. Respondent contends the trial court should have classified account 2, and the Starbucks stock making up that account, as her non-marital property. As discussed earlier in this order, we review the classification of property as marital or non-marital under the manifest weight of the evidence standard. *In re Marriage of Schmitt*, 391 Ill. App. 3d at 1017.

¶ 79 Where a spouse owning separate non-marital property performs the affirmative act of transferring title into a form of joint ownership, such an act creates the rebuttable presumption that a gift was made to the marital estate and the property becomes marital property. *In re Marriage of Rink*, 136 Ill. App. 3d 252, 257 (1985); see also *In re Marriage of Wojcicki*, 109 Ill. App. 3d 569, 572-73 (1982). The presumption may be rebutted with "clear, convincing and unmistakable evidence." *Rink*, 136 Ill. App. 3d at 257.

¶ 80 The Starbucks stock, at issue here, was originally held in account 1 in respondent's name only, was purchased by respondent prior to her marriage, and constituted non-marital property. However, during the marriage, respondent expressly added petitioner as a joint owner of account 1 so they could jointly accumulate stocks together. Thus, account 1 (and the shares of Starbucks stocks held in that account) were presumptively made a gift to the marital estate and became marital property. No evidence was admitted negating the presumption that account 1 containing the Starbucks stock was gifted to the marital estate and became marital property.

¶ 81 Respondent argues that account 1 was "simply a holding structure" akin to a safety deposit box, that the shares of Starbucks stock contained in that account never were put in petitioner's name and, therefore, petitioner never became an owner of the Starbucks stock. Respondent's argument is belied by the fact that the Letter of Authorization form for the 2000 transfer of the parties' Starbucks stock from account 1 into account 2 required *both* parties' signatures, indicating each spouse had ownership rights to the Starbucks stock.

¶ 82 Respondent contends that even if account 1 and the Starbucks stock therein became marital property upon her adding petitioner as a joint owner of that account, she and petitioner later transferred the shares of Starbucks stock from account 1 into the new account 2 in respondent's name only, thereby gifting the shares back to respondent and converting them to non-marital property. We disagree. Even where a spouse claims the other spouse gifted her property that was intended to belong to her only and not to the marriage, the presumption remains that the property was marital unless it is overcome by clear, convincing, and unmistakable evidence. *In re Marriage of Davis*, 215 Ill. App. 3d 763, 771 (1991). The spouse claiming the non-marital gift must show "a donative intent to pass title and relinquish all present and future dominion over the property." *Id.* at 772. Mere proof that title to property was placed

in one party's name does not establish the requisite donative intent to remove the property from the marital estate. *Id*. at 771. Here, respondent's testimony at trial made clear that the transfer of the Starbucks stock from the joint account 1 into account 2 in her name only was made solely for estate planning purposes; as the transfer was made for estate planning purposes only, there was no donative intent. See *In re Marriage of Wittenauer*, 103 Ill. App. 3d 53, 55 (1981) (mere proof that title to property was placed in wife's name as estate planning device did not establish the requisite donative intent to remove the property from the marital estate).

¶ 83 Respondent also argues that, since all the Starbucks stock in account 2 is clearly traceable to the stock initially purchased by her prior to the marriage, she should be awarded all of that stock as non-marital property under section 503(c) of the Act. Section 503(c) states:

> "(1) When marital and non-marital property are commingled by contributing one estate of property into another resulting in a loss of identity of the contributed property, the classification of the contributed property is transmuted to the estate receiving the contribution, subject to the provisions of paragraph (2) of this subsection; provided that if marital and non-marital property are commingled into newly acquired property resulting in a loss of identity of the contributing estates, the commingled property shall be deemed transmuted to marital property, subject to the provisions of paragraph (2) of this subsection.
>
> (2) 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* ***." (Emphasis added.) 750 ILCS 5/503(c) (West 2012).

¶ 84 The appellate court has held that the clear language of section 503(c) indicates that "reimbursement for contributions is not mandated when property is given as a gift to the marital estate." *In re Marriage of Durante*, 201 Ill. App. 3d 376, 382 (1990). As discussed earlier in this order, respondent gifted the Starbucks stock to the marital estate and, therefore, she is not entitled to any reimbursement thereof under section 503(c).

¶ 85 For the foregoing reasons, we affirm the circuit court.

¶ 86 Affirmed.