2017 IL App (1st) 151477-U

FOURTH DIVISION
February 9, 2017

No. 1-15-1477

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF	)	Appeal from the
DONNA MANDELL,	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
v.	)	No. 11 D 30089
	)	
STEVEN MANDELL,	)	Honorable
	)	Gregory Emmett Ahern,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

Held: The trial court's judgment is affirmed where the trial court did not err in (1) its valuation of the couple's marital property, (2) its distribution of the couple's marital property, or (3) its award of attorney fees.

¶ 1 Respondent, Steven Mandell, appeals from the trial court's judgment of dissolution of marriage (dissolution judgment) and its subsequent memorandum opinion and order in which the court granted in part and denied in part respondent's motion to reconsider. On appeal, respondent

challenges the trial court's valuation of the couple's marital property, its distribution of the couple's marital property, and its award of attorney fees. For the reasons that follow, we affirm.

¶ 2 I. BACKGROUND

¶ 3 A. Pretrial Proceedings

¶ 4 Petitioner and respondent were married in 1985 and had three children during their marriage. Only one of the children was a minor at the time of trial, and this appeal presents no dispute regarding child custody or support. Throughout their marriage, the parties accumulated several pieces of real property in Lemont, Illinois; Cicero, Illinois; Berwyn, Illinois; and Lake Geneva, Wisconsin.

¶ 5 In February 2011, petitioner filed a petition for dissolution of marriage in which she sought, *inter alia*, temporary and permanent support.

¶ 6 In June 2011, petitioner sought an order of protection against respondent. At the time, both parties were living at the marital residence on Ruffled Feathers Drive in Lemont (hereinafter referred to as the Ruffled Feathers property). The trial court granted petitioner an *ex parte* emergency order of protection and later extended that order, prohibiting respondent from entering or remaining at the Ruffled Feathers property. The court subsequently entered an agreed order granting respondent possession of the residence, commencing on August 12, 2011.

¶ 7 In August 2011, petitioner filed a petition for temporary custody of the minor child, child support, maintenance, and other equitable relief.

¶ 8 In September 2011, the trial court entered an agreed order in which it vacated the emergency order of protection, entered a parenting schedule, and allowed petitioner the exclusive right to collect all of the income from the parties' rental properties in Lemont, Cicero, and Berwyn. The court ordered petitioner to apply the rental income toward the properties' ongoing

expenses and to use any remaining funds for her personal living expenses, in lieu of temporary maintenance.

¶ 9 In January 2012, respondent filed a petition requesting that petitioner seek immediate full-time employment, alleging that he was dismissed from his job in August 2011. In February 2012, petitioner filed a motion to compel respondent to seek employment. She alleged that she anticipated the court would award her maintenance at trial and that to satisfy his maintenance obligation, respondent would need to find employment.

¶ 10 In April 2012, respondent filed an emergency petition for the sale of the couple's home in Lake Geneva (hereinafter referred to as the Lake Geneva home). Respondent alleged that the property was appraised for $550,000 in November 2011, an offer had been made to purchase the property for $525,000, and he could no longer afford the property's expenses since losing his job. The court entered an order indicating the parties agreed to award the Lake Geneva home to petitioner at a value of $550,000. The court ordered petitioner to make all necessary efforts to rent out the property, with any net rental profits to be divided equally between the parties.

¶ 11 B. Trial

¶ 12 A trial commenced in September 2013. We set forth only the evidence pertinent to the issues on appeal.

¶ 13 Petitioner and respondent both testified that petitioner managed the rental properties that the couple owned. Petitioner testified she prepared an asset list in which she provided the following values for the couple's real properties: $655,000 for the Ruffled Feathers property; $550,000 for the Lake Geneva home; $200,000 for the 3643 South Clinton property in Berwyn (South Clinton property); $190,000 for the 1828 South Home Avenue property in Berwyn (South Home property); $130,000 for the 308 East Division property in Lemont (East Division

property); $115,000 for the 325 South Logan Street property in Lemont (South Logan property); $78,000 for the 405 Stephen property in Lemont (Stephen property); $132,000 for the 733 Ridge property in Lemont (Ridge property); $123,000 for the 1518 South 60th Court property in Cicero (South 60th property); $75,000 for the Lot 1825 Geneva Club vacant lot (Lake Geneva lot); and $90,000 for two garage spaces in Millennium Tower.

¶ 14 Referring to the property values assigned to each property, petitioner's attorney asked petitioner, "[d]id you come up with those numbers next to the properties; you inserted those?" Petitioner responded, "yes, from the appraisal." Petitioner said she based her belief as to the value of the Ruffled Feathers property on the "[a]ppraisal that [she] had done in November of 2011." Petitioner's attorney then asked the following questions, and petitioner provided the following responses.

"Q. How did you find the appraiser?

A. You told me to get a guy that was, like, the—I can't remember the certification, this—the big certification.

Q. Okay. Certified appraiser. And then you went upon the task of finding somebody, right?

A. Right.

Q. And you did it all on your own, right?

A. Yeah. I can't remember the—

Q. Talk loud so the judge can hear you too, and the court reporter, please.

A. I can't remember the name of the—You know it's like a—I have to look at my notes, but I called a lot of different people to make sure they had the highest appraiser certification thing.

Q. Okay. All right. And an appraiser came out and appraised the 104 Ruffled?

A. Yes.

Q. And did that appraiser prepare a written appraisal report for you?

A. Yes.

Q. And you've seen that report?

A. Yes.

Q. And based on that report, you believe the property's worth 655—655,000, correct?

A. Yes."

¶ 15 Petitioner testified that she based her values for all of the other properties, except the two Lake Geneva properties and the Millennium Tower garage spaces, on November 2011 appraisals conducted by the same person who performed the Ruffled Feathers appraisal. A different appraiser from Wisconsin, who was recommended by somebody that petitioner trusted, appraised the two Lake Geneva properties and prepared a written report.

¶ 16 With respect to the Clinton property, petitioner's attorney asked her "again, your—your opinion is based entirely on the appraisal or have you accounted—have you taken into account anything independently that you're aware of?" Petitioner replied, "That's fair market and that's the appraisal so…" Petitioner's attorney asked her whether the amount she listed was the number set forth in the appraisal, and petitioner responded affirmatively. Petitioner determined the value of the two parking spots by visiting "the Millennium Center website," which listed previous sale prices. A print-out of the website was admitted into evidence.

¶ 17 Respondent did not agree with most of petitioner's property valuations. He testified that he believed the value of the Ruffled Feathers home was between $500,000 and $550,000 based

on comparables that he received from his neighbor, "who [was] the number one realtor in town." The following colloquy ensued.

> "THE COURT: Let me stop you and ask you this. If I gave it to [petitioner] at $655,000, you'd just do it like that, right? If I gave her that piece of property of—
>
> [RESPONDENT]: In a heartbeat."

¶ 18 Respondent's attorney then asked respondent about the sale prices of properties comparable to the Ruffled Feathers home. The following exchange took place.

> "[RESPONDENT'S ATTORNEY]: So what did you find one comparable to actually sell for?
>
> [RESPONDENT]: I'm looking for that.
>
> [PETITIONER'S ATTORNEY]: Judge, I'm going to object again. Not to his opinion, which he's entitled to have. He's the owner of the property. But he's going beyond what my opinion is. He's going to now testify to hearsay about what other people did. And we weren't allowed to do that.
>
> THE COURT: Okay.
>
> [RESPONDENT'S ATTORNEY]: He's going to testify to what a comparable actually sold for.
>
> [RESPONDENT]: I have four comparables, actually, your Honor."

Respondent's attorney persisted in his questioning of respondent, asking the sale price of one of the comparables. Respondent stated, "$450,000. It's right down the street from us." Petitioner's

attorney again objected on the basis of hearsay, and the court stated as follows: "He testified he thinks the value is between 500 to 550. She says 665. Let's go."

¶ 19 Respondent's attorney then questioned respondent about the Lake Geneva properties. Respondent agreed with petitioner's $75,000 valuation of the Lake Geneva vacant lot. He said he would sell the lot if the trial court awarded it to him. Respondent believed the South Clinton property was worth between $175,000 and $225,000. Based on comparable properties, respondent valued the South Home property at roughly $250,000, or between $225,000 and $250,000. This was based on the condition and size of the South Home property and respondent's review of every comparable property sold in the last year, which had sale prices of between $150,000 and $280,000. Respondent stated he had "the whole series of solds that are here." Petitioner's attorney objected based on hearsay, and the court responded, "Well, we used—we used all of your stuff without anybody testifying to it but her, right?" Petitioner's counsel responded, "Right. I asked her what was the basis of your opinion." Respondent's attorney stated, "She used appraisals, which is hearsay." The court responded, "Right. Okay. You can ask him what the basis of those things are. We're not going to admit them into evidence." Petitioner's attorney stated that he was "afraid [respondent] was going to go and elaborate, 'Well, this particular realtor said.' " Respondent's attorney stated, "No. Don't second-guess me."

¶ 20 Respondent testified that he valued the East Division property at $182,000 based on similar sold properties. He explained one house sold on July 31, 2013, for $164,000. He described that property as "worse than" the couple's East Division property. Respondent valued the South Logan property at $169,000. He said he had "several comps," including "the house exactly next to" the couple's home, which sold for $150,000 in November 2012. Respondent valued the Stephen property at $111,000 based on comparable properties. A similar property

most recently sold in March 2013. Respondent computed the Stephen property value by averaging three prior comparable property sales, including one from May 2012. Respondent valued the Ridge property at $172,000 based on a property that sold in January 2013 for $171,000. He valued the South 60th property at $131,500. He was asked whether he had "a comparable comp in the past year for that," and he responded, "'10, yeah. Anywhere from 117,000 to 161, and I took an average of those, which was 131.5." Finally, he believed the garage spaces were each worth between $27,000 and $28,000.

¶ 21 Respondent testified that he did not obtain an appraisal of the couple's properties. He testified that the appraiser petitioner hired was "an agent" of Borisal Appraisal and that Paul Borisal contracted the appraiser. The appraiser came to the Ruffled Feathers home, and respondent spoke to her and provided her a blueprint of the home. However, he told the appraiser she could not take photographs of the home's interior. After the appraiser did take photographs, respondent contacted the Illinois Department of Financial and Professional Regulation. Respondent also attempted to initiate an investigation of petitioner's attorney with the Illinois Attorney Registration and Disciplinary Commission for instructing petitioner to obtain an appraisal of the estate.

¶ 22 Petitioner provided testimony regarding the monthly gross income each property generates. She said the Lake Geneva home produces $2,475 a month; the South Clinton property earns $2,550 a month; the South Home property produces $2,700 a month; the East Division property generates $1,200 a month; the Logan property earns $1,000 a month; the Stephen property produces $950 a month; the Ridge property makes $950 a month; the South 60th property makes $2,400 a month; and the Lake Geneva lot earns $0 a month. She indicated in her asset disclosure form that the gross income from all of the rental properties, minus real estate

taxes, insurance, gas, water, maintenance, and repairs totaled $4,717 a month. This amount did not include the Lake Geneva home. All of the rental units were occupied, although petitioner was engaged in eviction proceedings and non-paying tenants occupied some of the properties.

¶ 23 Petitioner testified that she would rather have a larger share of the real estate instead of maintenance so that she could support herself. She explained she did not want maintenance "[b]ecause based on [respondent]'s past of not paying bills and not obeying court orders, it would be pretty difficult" and she had "a no contact order" with respondent and "would rather have a clean break." She explained that the properties were her sole source of income other than a "little landscape design" work that she did. She made $1,200 in 2013 doing landscape design work. She also acknowledged earning money doing interior design in 2006; however she only made $9,000 in net income and said she discontinued interior design work due to the weakened economy.

¶ 24 Petitioner testified that she earned an associate's degree in business in 1998. She also took landscape design classes in 2010. She testified she had not worked outside the home in 23 years. Throughout the marriage, she cared for the couple's three sons and managed the properties, while respondent's role was having "a job outside the house." Respondent testified that "without a doubt," petitioner was the manager of the couple's properties, although he also did some work at the properties, such as painting and cleaning. Respondent had not participated in managing the rental properties since petitioner initiated the divorce proceedings in 2011.

¶ 25 Petitioner testified that she did not plan to seek further education or vocational training. She said that to rent property for others, she would need a real estate license. She did not have time to obtain a real estate license due to the court proceedings and the time she was spending dealing with turnover in the rental properties. She participated in a golf league on Wednesday mornings, played an instrument at church on Sundays, and attended bible study. Petitioner

indicated that she had $4,197 in total monthly living expenses. These expenses included taxes; however, she acknowledged she had not yet paid those taxes and that in every year since 2006, the couple had taken a loss and had never paid income tax on their properties. She earned $57,000 from the properties in 2012, excluding the Ruffled Feathers and Lake Geneva properties.

¶ 26 Petitioner specifically sought the Logan property, Stephen property, East Division property, South Home property, South Clinton property, and Lake Geneva home. She was not seeking the Millennium Tower spots because respondent had always managed those and they did not "make much money." She also was not seeking the Lake Geneva lot because it "would be a liability" that she could not afford on the income she would make managing the properties. She sought the Berwyn properties instead of the Cicero property because although she was not afraid to go to Cicero, "Cicero is different than Berwyn" and she thought the Cicero property "would be good for a man to manage."[1] During petitioner's testimony, respondent's attorney asked her about the total value of the properties that she was seeking. The court stated, "I told him, if someone appraised something, they're probably going to get it at that value."

¶ 27 Unlike petitioner, respondent wanted the trial court to divide the couple's assets equally and award petitioner maintenance. Respondent testified he believed petitioner would receive an "immense windfall" if she were awarded all of the properties that she requested, as that was the couple's "whole life [they] built" and the properties had "tremendous equity." Respondent testified that he intended to sell the Ruffled Feathers property. He said the Ruffled Feathers home was "the one piece of property we have a gaping challenge with what the property is."

[1] Petitioner actually testified as follows: "And Berwyn, I thought that would be good for a man to manage." However, when this testimony is read in context with the rest of her testimony, it appears petitioner meant to say Cicero instead of Berwyn.

¶ 28 Respondent testified that he held a bachelor's degree in business. At the time of trial, he was making $8,333 in gross monthly salary at his position selling software, consulting services, and publishing. His position was "in the hospital field" whereas his previous positions were "in the pharmaceutical field." Respondent said salaries in his new field were "very different" from salaries in his prior field. Respondent also earned $400 a month for the couple's two garage spaces.

¶ 29 The trial court admitted into evidence the first pages of the couple's joint tax returns from 2005 through 2012. In 2012, they listed wages of $22,949, and business income of $78,233. Respondent explained the $22,949 was for his work for three months at Clinical Care, and the $78,233 was money he earned consulting for two companies. In 2011, respondent's wages were $166,776. In 2010, respondent's wages were $131,866. The couple's tax returns showed that in 2009, they listed wages of $67,449; in 2008, they listed wages of $141,551; in 2007, they listed wages of $290,150; in 2006, they listed wages of $280,694; and in 2005, they listed wages of $207,516. Petitioner testified that due to the rental properties, "there was always the depreciation and the loss carryover, all that." Respondent similarly testified that in 2011, the couple listed a loss of $14,415 in rental real estate even though they did not actually lose $14,000 that year. They likewise claimed losses in 2012 and 2010.

¶ 30 Respondent was asked whether it was true that, if he were ordered to pay maintenance, "there's no guarantee [he] would be able to pay it," and respondent replied, "I've always found a job and I always will." Respondent described his relationship with his employer at the time of trial as "[g]ood." Nonetheless, he felt uncertain about his continued employment because he had lost two jobs in the last approximately three years due to petitioner's filing of five orders of protection against him. He testified, "it was very difficult to get a job and hold a job because

[petitioner] continued to keep having [him] arrested." Respondent also believed his employment was uncertain because a "very unstable business market" existed for the type of work he did. He testified that he made less money than he used to because his prior field "really doesn't exist anymore."

¶ 31 Petitioner testified respondent sold the couple's boat and liquidated their Ameriprise account but did not give petitioner any of the money from these sales. According to petitioner, respondent also removed several items from the Lake Geneva home such as furniture, a hot tub, and oil paintings. Respondent testified he sold the boat and a trailer for $7,600 because they were stored at the Lake Geneva home and the renters of that property asked that the boat be removed. He also liquidated the Ameriprise account. He used the money from the sale of the boat and trailer to pay his real estate taxes, and he used the money from the Ameriprise account to pay bills, including property taxes. Respondent testified that petitioner took "whatever she wanted" from the Ruffled Feathers and Lake Geneva homes. He also said petitioner "cleared out" the couple's safe deposit box at Chase Bank, which respondent believed contained bonds, insurance forms, and $40,000 to $50,000 in cash.

¶ 32 Following the parties' testimony, the trial court directed their attorneys to submit written closing arguments. By agreement, the court also continued the matter for respondent to provide retirement account statements to petitioner within seven days and for petitioner to produce a spreadsheet showing the monthly income for all rental properties.

¶ 33 C. Pre-Judgment Proceedings

¶ 34 In December 2013, petitioner filed a rule to show cause, asserting respondent refused to tender full and complete retirement account statements. The trial court ordered respondent to provide his counsel certain records by March 5, 2014, and for respondent's counsel to provide

those records to petitioner by March 7, 2014. According to the court's dissolution judgment, respondent failed to timely comply with the order and petitioner did not receive the documents until May 2014.

¶ 35 In January 2014, respondent filed a petition to sell the Lake Geneva lot. In February 2014, respondent *pro se* filed a petition for rule to show cause, asserting petitioner refused to make rental payments to him from the Lake Geneva home as required by the court's pretrial, April 2012 order.

¶ 36 According to the trial court's dissolution judgment, the parties submitted written closing arguments as directed by the court, and oral argument took place in September 2014. Neither the written closing arguments nor a transcript of the September 2014 oral arguments appears in the record.

¶ 37 D. The Trial Court's Dissolution Judgment

¶ 38 On October 8, 2014, the trial court entered a dissolution judgment. The court found the Ruffled Feathers property was worth $655,000, with an outstanding mortgage of $397,000, for a net equity of $258,000. The court also found the parties agreed to the following values for three of their properties: $123,000 for the South 60th property; $75,000 for the Lake Geneva lot; and $550,000 for the Lake Geneva home. The court valued the other properties as follows: the South Clinton property at $200,000; the South Home property at $190,000; the East Division property at $130,000; the Ridge property at $133,460; the Stephen property at $78,000; the South Logan property at $115,000; and the two Millennium Tower parking spaces at $25,000 each. The court indicated it "came to this conclusion by taking into consideration the credibility of the testimony, evidence and the appraised value that the party who is to receive the property assigned it, except for the Ruffled Feathers property since the two values offered by the properties were so different.

The Court decided on the $655,000 value after taking into account the credibility of the appraisals and testimony."

¶ 39 The trial court found that petitioner was entitled to a disproportionate split of the marital assets based on the factors detailed in section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d) (West 2010)). The court also found petitioner would be entitled to receive maintenance based on the factors set forth in section 504 of the Act (750 ILCS 5/504 (West 2010)). However, the court found it equitable to award petitioner a disproportionate share of the marital estate in lieu of maintenance. The court awarded petitioner assets totaling $1,621,407.85, while it awarded respondent assets totaling $1,080,938.57. The court noted it was awarding petitioner "approximately 60% of the marital estate." With respect to the couple's real property, the court awarded petitioner the following property, at the specified values: the Geneva home ($550,000); the South Clinton property ($200,000); the South Home property ($190,000); the East Division property ($130,000); the Stephen property ($78,000); and the South Logan property ($115,000). The court awarded respondent the following real property, at the specified values: the Ruffled Feathers home ($258,000 equity); the South 60th property ($123,000); the Ridge property ($133,460); the Geneva vacant lot ($75,000); and the two Millennium Tower garage spaces ($50,000 total).

¶ 40 The trial court ordered that petitioner and respondent were each responsible for their own attorney fees, without contribution from each other. The court indicated that following the September 2014 oral arguments, "counsel for each party submitted to this court proof of his unpaid attorney fees for legal services rendered in this matter through said date." Finding the attorney fees were necessary and reasonable, the court approved them in their entirety. The court ordered respondent to make a net distribution to each party's attorney from the "Chase

Investment Account." It further ordered that the amount by which petitioner's attorney fees exceeded respondent's attorney's fees should be subtracted from the amount respondent was otherwise ordered to distribute to petitioner.

¶ 41 D. Post-Judgment Proceedings

¶ 42 On October 27, 2014, respondent's attorney filed a motion to withdraw. New counsel for respondent filed a motion for substitution of attorneys, and the trial court entered an order substituting new counsel and allowing respondent's prior attorney to withdraw. The court also granted respondent an extension of time to file his motion to reconsider.

¶ 43 In November 2014, petitioner filed a petition for rule to show cause, asserting that respondent refused to distribute attorney fees to petitioner's attorney as required by the dissolution judgment. Evidently, respondent's prior attorney also filed a petition for rule to show cause for non-compliance with the attorney-fee portion of the dissolution judgment, although that petition is absent from the record.[2] That month, the trial court ordered that both rules to show cause should issue against respondent. The court allowed respondent 21 days to respond and indicated he could pay the attorney fees within 21 days from any source.

¶ 44 In December 2014, respondent filed his motion to reconsider the trial court's dissolution judgment. Respondent argued, *inter alia*, that the trial court failed to consider the tax consequences and benefits of the couple's assets, failed to adequately consider the "true value" of the divided property, and failed to account for the rents petitioner had been receiving for the Lake Geneva home. Respondent also challenged the attorney fees award, arguing the court erred by (1) ordering him to pay the fees from his retirement account, (2) entering petitions for rule to show cause while his post-judgment motion was pending, and (3) ordering him to pay his

[2] In his brief, respondent acknowledges his prior counsel filed a petition for rule to show cause, and the court's November 2014 order indicates such a petition was filed.

attorney while that attorney was still counsel of record. At some point, petitioner filed a response to respondent's motion to reconsider.[3] Respondent filed a reply, and a hearing commenced in February 2015.

¶ 45 Following the hearing, the trial court entered a May 2015 memorandum opinion and order granting in part and denying in part respondent's motion. As to its valuations of the couple's properties, the court noted that petitioner, as a lay witness, could provide opinion testimony pursuant to Illinois Rule of Evidence 701 (eff. Jan. 1, 2011). The court stated as follows.

> "In this matter, [petitioner], as property manager of the subject properties, had intimate familiarity with the properties, as well as the opportunity to observe them. This Court was faced with the necessity of apportioning the subject properties and it needed testimony as to their value in order to make that determination. [Petitioner]'s testimony as to the properties' values may have been informed by the appraisals she had done on said properties. [Respondent]'s testimony as to the same was allegedly informed by the market comparisons ('comps') his neighbor provided him."

The court noted that while respondent argued the court failed to use "appropriate" evidence to value the properties, respondent also failed to provide such evidence. The court stated as follows.

> "Here [respondent] failed to put on sufficient evidence to warrant the request he was making and now displeased with the Court's decision, he asks that [petitioner]'s evidence be held to be hearsay. Ultimately, this Court was faced

[3] The response was not included in the record on appeal. It was included in the supplemental record; however, it does not bear a file stamp.

> with a credibility issue with regard to the value of the subject properties. As this Court found [respondent] to be a difficult party and an even more challenging witness at trial, it found [petitioner] a more credible witness and therefore accepted the value quotes she presented as the properties' values."

¶ 46 The trial court did, however, grant the portion of respondent's motion regarding the payment of attorney fees from his Chase Investment Account, conceding that retirement accounts are exempt from attorney fee orders. The court thus vacated the portion of its dissolution judgment ordering the fees to be taken from the retirement account. The court stated that the "fees or costs associated with said withdrawal" were "to be split between the parties 50/50 per the agreed order submitted by the parties." That agreed order reflects the parties agreed to split the fees incurred when respondent withdrew the funds from his retirement account.

¶ 47 This appeal followed.

¶ 48 II. ANALYSIS

¶ 49 On appeal, respondent challenges the trial court's valuation of the couple's marital property, its distribution of the couple's marital property, and its award of attorney fees. We address respondent's arguments in turn.

¶ 50 A. Valuation of Property

¶ 51 Respondent first contends the trial court erred by basing its valuation of the couple's real property on petitioner's testimony. Respondent argues petitioner's testimony was incompetent because it was based solely on what unnamed appraisers allegedly told her the values of the properties were. Respondent further challenges petitioner's testimony on the bases that her testimony was "pure hearsay" and lacked foundation, and the appraisals on which she relied were

outdated. In sum, respondent argues the court erred by rejecting the competent evidence he presented in favor of petitioner's incompetent evidence.

¶ 52 Section 503(d) of the Act provides that a trial court shall divide marital property in "just proportions." 750 ILCS 5/503(d) (West 2010). To do so, the court must first establish the value of the assets. *In re Marriage of Schneider*, 214 Ill. 2d 152, 171 (2005). The valuation of assets in a dissolution action is generally a question of fact, which we review under a manifest-weight-of-the-evidence standard. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700 (2006). It is for the trier of fact to resolve any conflicting valuation testimony. *Schneider*, 214 Ill. 2d at 171.

¶ 53 The owner of property is generally "qualified to express his opinion of the value of his property by virtue of his ownership." *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 206 (2011). This is because property ownership typically indicates knowledge of the original price paid for the property, taxes paid, improvements that have been made, and the current state of the property, such that the property owner "probably has a reasonably good idea of the current value." *In re Marriage of Vucic*, 216 Ill. App. 3d 692, 703 (1991). This rule, however, "is not absolute." *Id.* To the contrary, "[a] property owner may be shown to be incompetent to testify where it is affirmatively shown that special circumstances exist which indicate that he is unfamiliar with facts which give the property value." *Id.* The party opposing the property owner carries the burden of showing the existence of "special circumstances" (*In re Marriage of Thornton*, 89 Ill. App. 3d 1078, 1090 (1980)) and "may make this affirmative showing on cross-examination, revealing the absence of probative value in the testimony" (*Vucic*, 216 Ill. App. 3d at 703).

¶ 54 The appellate court in *Vucic* applied the aforementioned rules to conclude the trial court improperly valued a couple's home. *Id.* at 703-04. The wife testified that she and her husband

purchased their home for $150,000 and that an appraiser valued it at $200,000. *Id.* at 696. The husband testified the home was worth $300,000. *Id.* The parties did not introduce appraisal documentation into evidence. *Id.* The trial court valued the home at $200,000. *Id.* at 697. On appeal, the *Vucic* court concluded that the wife's testimony "was sufficiently brought into question during her cross-examination, so as to require a better basis for valuing the home upon remand." *Id.* at 703-04. The court noted that on cross-examination, it was established that the wife "did not know how her home compared to others in the neighborhood." *Id.* at 704. The court further noted that "[t]he only basis for [the wife's] valuation opinion was her testimony that an unnamed appraiser walked through the home 'a few months ago' and valued it at $200,000." *Id.* The court expressed its belief that the trial court on remand "should be presented with better evidence, possibly in the form of testimony from a real estate appraiser, upon which to base an opinion" of the home's value. *Id.*

¶ 55 Respondent argues the facts in *Vucic* are "virtually identical" to the facts of this case because petitioner testified her sole basis in forming her valuation opinion as to most of the properties came from two unnamed appraisers.

¶ 56 Contrary to respondent's contention, we find *Vucic* to be distinguishable. In *Vucic*, the husband affirmatively established on cross-examination that the wife did not know how her home compared to others in the neighborhood. *Id.* at 704. The court stated that the sole basis for the wife's valuation was her testimony as to what an unnamed appraiser told her. *Id.* By contrast, while petitioner in this case testified on direct examination that she based her belief of the value of the properties on the appraisals, respondent never demonstrated on cross-examination that petitioner was unaware of how her home compared to other neighborhood homes. In fact, it was undisputed that petitioner was the manager of the couple's properties. Presumably, she relied on

her own experience in owning and managing the properties when determining the validity of the appraisal values and whether to rely on them. As the court in *Vucic* explained, the rule that a property owner is generally competent to testify as to a property's value is overcome where "it is *affirmatively* shown that special circumstances exist which indicate" a property owner "is unfamiliar with facts which give the property value." *Vucic*, 216 Ill. App. 3d at 703. Importantly, it was respondent's burden to show these "special circumstances." See *Thornton*, 89 Ill. App. 3d at 1090. In *Thornton*, for example, the court rejected the wife's argument that the trial court erred by admitting her husband's valuation testimony because the wife "did not, through cross-examination or otherwise, attempt to meet" her burden of establishing "special circumstances" existed. *Id.* Similarly, here, respondent did not show petitioner was unfamiliar with the properties. At no point did respondent elicit testimony from petitioner on cross-examination showing "special circumstances" existed that would warrant a finding that petitioner was incompetent to testify as to the properties' values. Her reliance on the appraisal, by itself, did not indicate she was otherwise "unfamiliar with facts" establishing the properties' values. Accordingly, respondent failed to overcome the rule that petitioner, as a property owner, was competent to provide valuation testimony of the properties.

¶ 57 We note that while respondent repeatedly characterizes petitioner's testimony as "hearsay," he fails to cite any authority relating to hearsay. He claims that *Vucic* "relates to [petitioner]'s hearsay recount of another's opinions." However, the word "hearsay" does not appear in *Vucic* and as we have detailed, the court reversed in *Vucic* because the husband called into question the wife's competence to testify. Further, as petitioner points out, the appraisals were not admitted into evidence, and petitioner testified as to her own beliefs of the properties' values, based on the appraisals. See Ill. R. Evid. 801(c) (eff. Jan. 1, 2011) (defining hearsay as "a

statement, other than one made by the declarant at the trial or hearing, offered in evidence to prove the truth of the matter asserted"). For all of the foregoing reasons, respondent's hearsay claim is unpersuasive.

¶ 58 Similarly unpersuasive is respondent's contention that petitioner's testimony was incompetent because it was unsupported by "*any* foundation." In this regard, respondent claims petitioner never established who the unnamed appraisers were, on what date they performed their appraisals, who was present for the appraisals, what the appraisers' ultimate conclusions were based on, or what valuation methodology they employed. However, respondent cites no authority suggesting these purported foundational requirements were necessary to admit petitioner's valuation testimony. As the *Vucic* court explained, a property owner is generally competent to testify to the value of property she owns, absent an affirmative showing of special circumstances. *Vucic*, 216 Ill. App. 3d at 703. Respondent also argues that petitioner's reliance on the appraisals was improper because the appraisals were performed two years prior to trial. "In a proceeding for dissolution of marriage *** the court, in determining the value of the marital and non-marital property for purposes of dividing the property, shall value the property as of the date of trial or some other date as close to the date of trial as is practicable." 750 ILCS 5/503(f) (West 2010). While respondent focuses on the dates of the appraisals, we note petitioner provided values for the properties in an asset disclosure statement dated August 26, 2013. Thus, although she testified she based her valuations of the properties on the earlier appraisals, she did, in fact, provide the court with valuations of the properties close to the date of trial.

¶ 59 As respondent failed to show that petitioner's testimony was incompetent, it was for the trial court to weigh petitioner's testimony against respondent's and resolve their conflicting valuations. See *Schneider*, 214 Ill. *2*d at 171. The record reflects that the court did so and found

petitioner more credible than respondent. Specifically, in its memorandum opinion and order denying in part respondent's motion to reconsider, the court stated it found respondent "to be a difficult party and even more challenging witness at trial" and found petitioner "a more credible witness and therefore accepted the value quotes she presented as to the properties' values." We defer to the trial court's credibility findings because the court has the ability to observe the conduct and demeanor of witnesses and is thus in the best position to assess their credibility. *Berberet*, 2012 IL App (4th) 110749, ¶ 56. Accordingly, we reject respondent's contention that the court erred by accepting petitioner's testimony over his.[4]

¶ 60 In sum, the trial court's valuations were not against the manifest weight of the evidence.

¶ 61 B. The Distribution of Marital Property

¶ 62 Respondent next challenges the trial court's distribution of the parties' property. Specifically, respondent claims (1) the court erred by awarding respondent both a disproportionate share of the assets and also more of the income-producing properties, (2) the court failed to consider the tax consequences of its distribution, (3) the court failed to consider petitioner's noncompliance with the interim order requiring her to pay respondent half of the rental income from the Lake Geneva home, and (4) the court erred by awarding petitioner a disproportionate share of the income-producing properties in lieu of maintenance.

¶ 63 "The Act's objective is to recognize and compensate each party for his or her contributions to the marriage and to place each party in a position to begin anew." *In re*

[4] Respondent contends that he "attempted to offer additional competent evidence, which the trial court rejected." In support, he cites to the court's statement that "We're not putting documents in." However, a review of the record shows the court made this statement when rejecting petitioner's hearsay objection to respondent's testimony, and that respondent's attorney indicated he did not intend to admit any documents. Respondent also contends in his reply brief that he was "prepared, and began to, testify to *his* belief of value based on what *he* believed to be comparable sales, before the circuit court *sua sponte* stopped him." Again, however, when the court's comments are read in context, it is clear the court was merely summarizing respondent's testimony while rejecting petitioner's attorney's hearsay objection.

Marriage of Polsky, 387 Ill. App. 3d 126, 136 (2008). Section 503(d) of the Act requires a trial court to divide the marital estate in "just proportions" based on its consideration of several factors, including each party's contribution to the acquisition, preservation, or increase or decrease in the value of the marital or non-marital property; the duration of the marriage; the relevant economic circumstances of each spouse; the age, health, occupation, amount and sources of income, vocational skills, employability and needs of each of the parties; whether the apportionment is in lieu of or in addition to maintenance; the reasonable opportunity of each spouse for future acquisition of capital assets and income; and the tax consequences of the property division upon the respective economic circumstances of the parties. 750 ILCS 5/503(d) (West 2010). Mathematical equality is not required to divide marital property in just proportions; instead, "[t]he touchstone of proper apportionment is whether it is equitable in nature." (Internal quotation marks omitted.) *In re Marriage of Evanoff and Tomasek*, 2016 IL App (1st) 150017, ¶ 30. In dividing a couple's assets, the trial court "is authorized to award either property or maintenance, both property and maintenance, or property in lieu of maintenance." *In re Marriage of Jones*, 187 Ill. App. 3d 206, 223 (1989).

¶ 64 Distribution of the marital estate rests within the sound discretion of the trial court, and we will not disturb the court's decision absent an abuse of discretion. *Evanoff and Tomasek*, 2016 IL App (1st) 150017, ¶ 45. A court abuses its discretion "only when no reasonable person would take the view adopted by the trial court." *Polsky*, 387 Ill. App. 3d at 135.

¶ 65 Here, the trial court found that petitioner was entitled to a disproportionate share of the marital estate after considering the factors set forth in section 503(d) of the Act. The court further found respondent would be entitled to maintenance based on the length of the marriage, the disproportionate earning potential between the two parties, the standard of living established

during the marriage, and the contributions petitioner made throughout the marriage. However, the court found it equitable to instead award respondent a greater share of the marital estate. In sum, the court awarded petitioner six of the rental properties, a 2005 Mustang convertible, $284,156.43 of the Chase 401(k), and the $62,133.42 Schwab IRA. The court awarded respondent two of the rental properties, the vacant Geneva lot, the Ruffled Feathers property, and the two Millennium Tower garage spaces. The court also awarded respondent several vehicles, $253,463.57 of the Chase 401(k) (plus the remainder), a $26,567 IRA, a $20,234 IRA, a $200 Ameriprise stock account, and a $67,000 American Medical Association pension. The court indicated that petitioner's property totaled $1,621,407.85, while respondent's property totaled $1,080,938.57.

¶ 66 We find no abuse of discretion in the trial court's division of the couple's assets. The evidence showed that petitioner earned only approximately $100 a month in her landscaping business and that she had not worked outside of the home for 23 years, except for doing some interior design work in 2006. Throughout the marriage, she cared for the couple's three children and managed the rental properties. On the other hand, respondent was earning $8,333 in monthly gross salary at the time of trial and had a history of substantial earnings. His wages in 2011 and 2010 were $166,776 and $121,866, respectively. Between 2005 and 2007, the couple listed wages in excess of $200,000 on their tax returns. Thus, the evidence showed respondent possessed a far greater earning capacity than petitioner and was capable of earning significant sums of money in addition to the income from the rental properties. By contrast, petitioner's sole source of income, other than the small amount she made through her landscaping business, was the money she received from the rental properties. By awarding petitioner more of the income-producing properties, the trial court effectuated a division of property that would allow petitioner

to support herself, without having to rely on respondent, while at the same time providing respondent with some of the rental properties and retirement accounts to support himself after retirement. As the court explained in its memorandum opinion and order denying in part respondent's motion to reconsider, its division of the couple's property compensated both parties for their contributions to the marriage while also providing both parties with enough assets to "begin anew." The court's division of property thus cannot be characterized as an abuse of discretion.

¶ 67 The record belies respondent's contention that the trial court failed to consider the tax consequences of its distribution of the couple's property. The court explicitly stated in its dissolution judgment that it had considered the factors set forth in section 503(d) of the Act, which include the tax consequences of its property division. See 750 ILCS 5/503(d) (West 2010). Further, in denying in part respondent's motion to reconsider, the trial court stated it was "fully aware of the fact that these parties, together, used depreciation to their benefit throughout the time of their ownership of all eleven properties" and that it was "aware that depreciation was a 'maneuver' used by these parties." Nonetheless, the court explained, it "made a conscientious judgment to apportion" petitioner more income-producing properties based on its consideration of the factors set forth in section 503(d) of the Act. Similarly, respondent's contention that the court's distribution of assets did not accomplish its stated goal of a 60/40 distribution is unpersuasive. Respondent raised this issue in his motion to reconsider, arguing at the hearing on his motion that based on the actual rent received at the properties, the court actually effectuated a 72/28 division. However, the court saw no reason to modify its distribution of the couple's properties. We cannot say that "no reasonable person would take" the court's view. *Polsky*, 387 Ill. App. 3d at 135.

¶ 68 We also reject respondent's argument that the trial court did not consider petitioner's "failure to comply with the interim order" requiring that she pay respondent half of the Lake Geneva rental payments. At the hearing on respondent's motion to reconsider, respondent's attorney acknowledged that the first time he raised petitioner's purported failure to divide the rents was during closing arguments. Further, respondent fails to point to any evidence establishing that petitioner in fact refused to split the rental payments from the Geneva home or that the court ever found petitioner in contempt for failing to comply with the interim order.[5] Accordingly, respondent's contention that the court should have considered petitioner's failure to comply with the interim court order is unpersuasive.

¶ 69 Finally, to the extent respondent argues that the trial court should have awarded petitioner maintenance instead of a greater share of the couple's properties, we note that a larger property division, instead of maintenance, is the preferred method of reimbursing a spouse for nonmonetary contributions and contributions of capital. *In re Marriage of Durante*, 201 Ill. App. 3d 376, 383 (1990). In addition, "where the earning powers of the former spouses are disproportionate, there is a preference for the former spouse through a greater award of the marital assets, rather than an award of maintenance." *In re Marriage of Lee*, 246 Ill. App. 3d 628, 646 (1993). Both of these considerations support the court's determination to award petitioner a large share of the property in lieu of maintenance. We note that respondent contends the court's award was inequitable because when respondent retires, petitioner will be earning three times more than him. He contends the income-producing properties petitioner received gross $9,875 a

[5] In his brief, respondent states that he "testified that [petitioner] kept all rents collected by the parties." However, the portions of the record to which respondent cites for this claim fail to establish petitioner kept the Lake Geneva rental payments. Respondent was asked about the couple's 2010 and 2012 tax returns and their claimed losses on those returns. He was then asked, "since this divorce and since you entered that agreed order, [petitioner] has been receiving all of the rental income, correct?" to which he responded, "Yes." The agreed order that was referenced was the order entered in September 2011 allowing petitioner the exclusive right to collect all of the rental income from the parties' rental properties in Lemont, Cicero, and Berwyn. Thus, this testimony fails to establish respondent kept the rental payments from the Geneva property.

month, whereas the income-producing properties he received gross only $3,750 a month. However, at the time of trial, respondent was earning $8,333 a month in gross salary at his job. There is nothing precluding respondent from using some of his salary to purchase additional income-producing properties or from selling the Ruffled Feathers home or vacant lot to purchase additional rental properties to provide additional income for him in retirement.

¶ 70 Further, an award of property in lieu of maintenance is also appropriate where a recipient spouse shows that periodic payment of maintenance would not be feasible. *In re Marriage of Trull*, 254 Ill. App. 3d 34, 39 (1993). "[F]inancial bickering alone is not enough to support an award of property in lieu of maintenance; there must be some further evidence that the payment of maintenance would not be feasible, such as the nonpayment of bills or the failure to work." *Id.* Here, respondent said he would find a way to pay petitioner maintenance if he were ordered to do so. Yet, he also described his work situation as uncertain and acknowledged he failed to pay half of the real estate taxes for the couple's properties in 2012. He also sold the couple's boat and liquidated their Ameriprise account and did not give petitioner any money from those sales, and he failed to timely comply with the court's orders to produce certain documents following trial. Although respondent argues that any potential noncompliance issues could be resolved by issuing a notice of withholding to his employers, the court could reasonably have determined that the better course of action was to award petitioner more of the couple's properties to limit the potential for continued litigation between the parties. Indeed, in its dissolution judgment, the court expressly noted that a goal in allocating property is to achieve finality and that it was in the best interests of both parties not to have to return to court in the future. Accordingly, we find no error in the court's decision to award a greater share of property in lieu of maintenance.

¶ 71 Based on all of the foregoing, the trial court did not abuse its discretion in dividing the couple's property.

¶ 72 C. The Award of Attorney Fees

¶ 73 Finally, respondent argues the trial court erred by awarding attorney fees in its dissolution judgment. Specifically, respondent claims the court (1) improperly awarded fees from his retirement account, (2) erroneously awarded fees to his attorney while that attorney was still counsel of record, and (3) "compounded" its error by issuing two rules to show cause while respondent's post-judgment motion was pending.

¶ 74 Generally, we review a trial court's award of attorney fees for an abuse of discretion. *In re Marriage of Nash*, 2012 IL App (1st) 113724, ¶ 15. We review issues of statutory construction *de novo*. *Id*.

¶ 75 We first address respondent's claim that the trial court improperly awarded attorney fees from his retirement account. Respondent correctly notes that in its dissolution judgment, the court ordered respondent to make a net distribution to each party's attorney from the Chase retirement account. However, after respondent filed a motion to reconsider, the court vacated that portion of its dissolution judgment, conceding it erred by ordering attorney fee payments out of the retirement account. In its memorandum opinion and order, the court stated that "any and all fees or costs associated with" respondent's withdrawal of the funds from his retirement account would "be split between the parties 50/50 per the agreed order submitted by the parties." The parties' agreed order shows they agreed to split the fees that were incurred when respondent withdrew the funds from his retirement account.

¶ 76 Thus, the record shows the trial court agreed with respondent that it had erred by ordering fees out of the retirement account, vacated that portion of its order, and granted respondent the

relief to which he had agreed, *i.e.*, splitting the penalty for the withdrawal equally between the parties. In light of the foregoing, we fail to understand why respondent continues to challenge the trial court's award of attorney fees from his retirement account. We note that for the first time in his reply brief, respondent argues the court erred in its calculation of the parties' attorney fees because the court's dissolution judgment effectively made him responsible for petitioner's attorney fees even though the court stated earlier in the judgment that neither party was entitled to contribution from the other. However, arguments raised for the first time in a reply brief are forfeited. See *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010) ("the failure to argue a point in the appellant's opening brief results in forfeiture of the issue").

¶ 77 Equally unpersuasive is respondent's argument that the trial court erred by ordering him to pay his attorney while that attorney was still counsel of record. The sole authority on which respondent relies for this contention is section 508(c) of the Act. That section of the Act provides as follows:

> "Final hearings for attorney's fees and costs against an attorney's own client, pursuant to a Petition for Setting Final Fees and Costs of either a counsel or a client, shall be governed by the following:
>
> (1) No petition of a counsel of record may be filed against a client unless the filing counsel previously has been granted leave to withdraw as counsel of record or has filed a motion for leave to withdraw as counsel." 750 ILCS 5/508(c)(1) (West 2010).

Thus, by its own terms, section 508(c) governs proceedings when an attorney or client files a petition for setting final fees and costs. Here, however, a petition for setting final fees and costs does not appear in the record, and respondent argues that his attorney did not file such a petition.

Accordingly, section 508(c)(1) does not apply. Further, there is no indication from the court's dissolution judgment that it awarded fees under section 508(c). Instead, the dissolution judgment states only that the parties' attorneys each submitted proof of their unpaid attorney fees following the September 2014 closing arguments.[6] Accordingly, respondent's reliance on section 508(c) of the Act is unpersuasive.

¶ 78 Finally, we reject respondent's contention that the trial court erred by issuing rules to show cause "during the pendency of" his motion to reconsider. A timely posttrial motion stays enforcement of the judgment (735 ILCS 5/2-1203(b) (West 2010)) and thus, a judgment against which a timely posttrial motion is pending cannot serve as the predicate for a contempt finding (*In re Marriage of Maroon*, 165 Ill. App. 3d 529, 531 (1988)). Here, however, respondent had not yet filed his posttrial motion when the court issued the rules to show cause. Instead, he had only filed a motion for extension of time to file his posttrial motion. He has not argued or cited any authority suggesting that a judgment is stayed when a motion for extension of time to file a posttrial motion is pending. Accordingly, we reject his argument that the court erred by issuing the rules to show cause.

¶ 79 III. CONCLUSION

¶ 80 For the reasons stated, we affirm the trial court's judgment.

¶ 81 Affirmed.

[6] The record does not contain the parties' written closing arguments, a transcript of the September 2014 oral arguments, or the proof of attorney fees that each party submitted. As the appellant, respondent has the burden of providing a sufficient record of trial proceedings to support his claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of such a record, we must presume the court acted in conformity with the law and with a sufficient factual basis for its findings, and we resolve any doubts arising from the incomplete record against respondent. *Id.*