No. 2—10—0356
Order filed March 17, 2011

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF RICHARD A. WHITE,	)	Appeal from the Circuit Court of Kane County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 07—D—144
	)	
JUDY L. WHITE,	)	Honorable
	)	Franklin D. Brewe,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

Held: Where the trial court abused its discretion in entering judgment against the husband for value of the wife's interest in his share of closely held corporation with knowledge that husband was unable to pay and there was insufficient marital property to award to the wife in lieu of the stock, we reverse the court's order and remand to the trial court to reconsider the division of the marital property; additionally, the trial court must reconsider the child support, maintenance, and attorney fees issues after it resolves the property division issue. However, we affirm the trial court's valuation of the stock as it was not against the manifest weight of the evidence.

Petitioner, Richard White, appeals the November 9, 2009, judgment order for dissolution of his marriage to respondent, Judy White, arguing that the trial court erred by: (1) valuing Richard's interest in Richards-Wilcox, Inc. by relying on the erroneous financial valuation methods of Judy's expert, which resulted in an improper division of the marital estate; (2) ordering Richard to pay Judy the value of half of his Richards-Wilcox, Inc. interest rather than granting Judy non-voting shares of the company; (3) awarding Judy reviewable spousal maintenance; (4) awarding Judy attorney fees; and (5) ordering Richard to pay certain household expenses. We affirm in part, reverse in part; we remand the cause to the trial court with instructions.

I. BACKGROUND

On January 31, 2007, Richard filed a petition for dissolution of his marriage to Judy, pursuant to section 401 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/401 *et seq.* (West 2006)). Judy filed a counter-petition on December 4, 2007. The petitions and the parties' testimony provided the following facts. Richard and Judy were married on June 7, 1986, when both were about 23 years old. The couple had two children: Spencer, born March 17, 1998; and Mitchell, born July 5, 2000.

Richard testified that the couple met at Graceland College in Iowa, where he received a bachelor's degree in business administration in 1986. After college, the couple moved to Illinois, where Judy grew up. Judy found a job at Good Samaritan Hospital as a nurse, and Richard began working for Lawrence Foods as a cost accountant. Richard left there in 1995 and began working for Richards-Wilcox, a manufacturer of file cabinets and office shelving, as a cost department manager. He eventually worked his way up to Chief Operating Officer (COO). During that time, Judy stopped working to raise the children. In 2003, Richard purchased a 1/3 ownership interest in Richards-Wilcox by purchasing 500 shares of the company. He purchased the shares using a $100,000 down payment, comprised of savings and a 401(k) loan. The remainder was financed through a loan from

LaSalle Business Credit. In 2008, Richard's salary as COO was $315,000, which was lower than the previous year when he was paid $350,000. He explained that sales were down 40% and all non-union employees took a 10% wage cut in April 2008.

Judy testified that she graduated from Graceland College in 1986 with a bachelor's degree in nursing. She worked full-time at Good Samaritan Hospital in 1988 or 1989 and continued until 1998, when her first son, Spencer, was born. She returned to work on a part-time basis after Spencer was born. After Mitchell was born in 2000, Judy returned to work on a very limited basis, maybe one or two days per week or less. She stopped working completely at the end of 2004 because Richard's salary was sufficient, and it was difficult to get hours that would accommodate her schedule at home. Before terminating her employment, Judy earned approximately $5,000 per year. She was not sure what she could currently earn after such a long absence from the workplace. Judy also had some health issues that could prevent her from returning to work immediately and could potentially limit her opportunities. However, Judy was hopeful that her health would not affect her ability to return to a full-time nursing position.

The issues involved in dividing the marital estate went to trial on July 28, 2009. Before summarizing the testimony and evidence adduced at trial, we summarize the trial court's order and Richard's contentions on appeal. On November 9, 2009, the trial court issued its "Judgment for Dissolution of Marriage." In the order, the trial court made the following findings. The marital residence was valued at $675,000, subject to a $388,242 mortgage. The parties were to immediately list the home for sale at the $675,000 value and make good-faith efforts to sell the home, reducing the value as market conditions dictated. The net proceeds of the sale of the home were to be divided on a 60/40 basis, with 60% going to Judy.

Prior to the sale of the home, the court ordered that its March 6, 2009, order remain in effect, which required Richard to pay Judy $1,743 per month as well as to pay Judy the items enumerated in "Exhibit A," excluding Richard's life insurance, entertainment for Richard and the children, food for Richard when outside the marital home, dining out for Richard and the children, gasoline for Richard, hotel for Richard, and cash to Judy. Exhibit A provided that Richard would pay Judy the following, in addition to the $1,743: mortgage, taxes and insurance ($4,145); water ($100); cable ($95); home telephone ($55); cellular phone ($48); life insurance for Judy ($24); home security ($36); electricity ($200); gas for home ($400); storage locker ($60); doctor/medical ($200); children's art class ($195); groceries and household items ($1,000); children's therapy ($500); and trash bin rental ($15). This totaled a monthly obligation of $8,816.

After the home was sold, the court ordered that Richard pay Judy $3,461.49 in maintenance, reviewable after three years, and $4,787.35 in child support. This totaled a monthly obligation of $8,248.84. In so doing, the court determined that Richard had a net monthly income of $17,097.67. Regarding the shares in Richard's business, Richards-Wilcox, Inc., the court ordered that Richard retain ownership of his 500 shares, which the court valued at $1,976,300. The court ordered that Richard pay Judy 50% of that value ($988,150). The court divided the couple's retirement accounts on a 60/40 basis, with 60% going to Judy. Richard's 401(k) account had a balance of $228,209, and Judy's plan through Advocate Healthcare was $101,000. Bank accounts totaling $198,009 were also divided on the 60/40 basis, with Judy receiving 60%. Richards-Wilcox provided the parties' vehicles and would continue to do so. Accordingly, Judy would continue driving a 2005 GMC Yukon Denali and Richard would continue in his 2006 BMW and a Honda CR-V. The court reserved the right to adjust the maintenance award should the company cease providing Judy's vehicle. The court further ordered Richard to pay all outstanding attorney fees and guardian ad litem fees.

Additionally, Richard was ordered to: (1) continue providing medical coverage for the children and to pay 50% of any medical expenses not covered by insurance; (2) pay 50% of any extracurricular expenses that the children incur; and (3) designate the children as irrevocable beneficiaries of his life insurance policy. Day care expenses and post highschool education were matters reserved for hearing when and if such matters developed. Richard was allowed to claim the children as dependents since he was providing a bulk of their support. Further, the court found neither party guilty of dissipation.

On November 18, 2009, Richard filed a motion for reconsideration, arguing that the terms of the judgment were inequitable because it required Richard to pay Judy more than his net income. In order to pay Judy monthly installments for the value of her share in Richards-Wilcox and child support and maintenance, Richard had to pay Judy $17,655 monthly, which was more than his net monthly income of $17,138. Additionally, Richard argued that the value of Richards-Wilcox, Inc. was $933,000, not $1,976,000. Richard argued that his expert, Patrick McNally of Blackman Kallick, LLP, used proper accounting methods to determine the value of Richards-Wilcox and that Judy's expert, John Coffey of Coffey & Associates, made an error in his calculations. Richard also argued that the trial court erroneously used a "layman's approach" in determining the company's value. Regardless of the value, Richard argued that the trial court should have awarded Judy a portion of the shares in the company and given Richard the option to purchase the shares because Richard had insufficient means to buy out Judy's portion.

Further, Richard argued that Judy should not have been awarded maintenance and attorney fees, and he requested the court correct several aspects of the order. Judy filed a posttrial motion for reconsideration as well. On March 4, 2010, the trial court issued its "Opinion and Order," which denied Richard's motion for reconsideration. On March 5, 2010, Judy filed a petition for attorney fees, and on April 5, the trial court ordered Richard to pay Judy's counsel a sum of $11,214.63 for the dissolution and $10,848 for posttrial motion fees. Richard timely appealed, arguing the same points as in his motion for reconsideration. We will summarize and discuss relevant trial evidence and testimony as we review each argument made on appeal.

II. ANALYSIS

A. Value of Richards-Wilcox, Inc.

Richard argues that the trial court erred in finding the value of Richard's shares of Richards-Wilcox was $1,976,300 because Judy's expert made errors in his calculation and the trial court improperly used a "layman's" approach to determine that value. It is well established that decisions concerning the ultimate distribution of marital property lie within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. *In re Marriage of Polsky*, 387 Ill. App. 3d 126, 135 (2008). However, we review the trial court's valuation of marital property or dissipation using the manifest weight of the evidence standard. *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699 (2006). The reason for the different standard of review for valuation of property or dissipation is that these issues usually involve factual determinations to which the manifest weight of the evidence standard is typically applied. *Id.* Accordingly, we review Richard's first claim regarding the valuation of the Richards-Wilcox stock using the manifest weight of the evidence standard.

The value of Richard's interest in Richards-Wilcox unfolded at trial in a battle of the experts. Patrick McNally, a corporate finance consulting group partner at Blackman Kallick, testified for Richard. McNally was retained to determine the fair market value of Richards-Wilcox, meaning the theoretical value in terms of the cash equivalent of what a hypothetical buyer would pay the hypothetical seller. McNally explained there were three approaches to determine the value, and he used the income approach to value Richards-Wilcox at $933,000. He explained that the income approach looked at the future economic benefits or cash flow that one could obtain from owning a share in the business. According to McNally, there were two basic income approaches: (1) the discounted cash flow approach, which projected cash flow for a discrete period of time and a projection beyond that into perpetuity; and (2) the capitalization of benefits approach, which used one time period to project the future cash flow into perpetuity. McNally and Coffey both used the latter approach.

McNally explained that there were two types of capitalization methods: the direct equity method and the invested capital method. McNally described the direct equity method as an attempt to calculate the cash flow as it would flow directly to the equity holders. The invested capital method considered the total cash flow the business produced, the cash flows made available to pay off bank debt, and the cash flow to shareholders. McNally used the invested capital method because it was a "cleaner way of approaching the valuation and understanding the value of the business" and "would involve fewer assumptions." Coffey used the direct equity method. However, McNally and Coffey agreed that both methods should result in the same value if done properly.

McNally reviewed financial records for the company from 2003 through 2009. For his valuation, he used financial information available as of May 31, 2009. He believed the data from

January 1 through May 31, 2009, was reliable despite being unaudited data because the owners did not anticipate any major adjustments to be performed at year-end. He then explained his series of calculations. McNally first adjusted the cash flow for management compensation and perks (such as car allowances and country club memberships) and other personal expenses that owners often run through the business. This projected a higher cash flow for the business, which ultimately increased the value of the business. With the adjusted cash flow, McNally's next step was to project a future cash flow. McNally accomplished this by reviewing financial information for 2005 through May 31, 2009. He took the one-year time period of June 1, 2008, through May 31, 2009, as the most recent year. He then weighted each year's profits, giving the most weight to the most recent time period. For instance, for fiscal year 2006, the adjusted operating profit was $2,051,047. McNally weighted that number by 2, yielding a weighted operating profit of $4,102,094. The total weighted operating profit for the five-year period was $29,079,801. McNally divided that total by 15, which was the sum of the weights given, to reach the normalized operating profit of $1,938,653.

The next step was to remove taxes, which McNally did using the common rate of 38% to represent state and federal taxes. Subtracting taxes of $736,688 resulted in a net income of $1,201,965. Next, McNally adjusted for depreciation and amortization. He explained that this was necessary to determine cash flow because depreciation expenses must be recognized to get from income to cash flow by adding this non-cash item back into the figures. In this case, McNally used a weighted average of the company's actual depreciation for the preceding five years. He added $975,609 for depreciation and amortization. He then subtracted the capital expenditures to obtain those assets. The capital expenditures number that McNally used was identical to his number for depreciation ($975,609). McNally explained that the numbers were identical because he was calculating the valuation into perpetuity, and depreciation cannot exceed capital expenditures into perpetuity. McNally then reduced the number by $196,783, which represented the increase in debt-free working capital. McNally explained that as the business grows, the amount of money owners have to invest in things such as inventory also grows, and the cash flow must be reduced to reflect that continued investment. Thus, the "free cash flow" to debt and shareholders was $1,005,182.

McNally then divided the free cash flow amount by the capitalization rate of 8.59%, resulting in the total invested capital value of $12,054,471. McNally continued by stating that because projections were being made into perpetuity and the numbers were growing every year by 3%, McNally needed to discount the cash flow using the capitalization rate to bring those future numbers into a single number representing today's value. McNally next subtracted the debt from the invested capital value to reach the "Implied Total Equity Value on a Marketable, Controlling Interest Basis." Debt was valued at $7,391,045, resulting in an Implied Total Equity Value of $4,663,426. Richard owned a 1/3 interest in this value, but McNally had additional factors to account for. First, he reduced Richard's interest because he was not a controlling shareholder, using a standard discount for lack of control (20% or $310,895). Next, McNally discounted for the lack of marketability, using 25%, which was within the range of standard discounts for this factor. The concluded equity value of Richard's share in Richard-Wilcox was $933,000. The value of the company would be $9,040,000 based on the enterprise value and discount for the lack of marketability. This would be the total paid to the owners and bank debtors.

McNally acknowledged that Coffey's number should be the same as McNally's. McNally testified that Coffey's value differed because of flaws in Coffey's calculations that caused an overstatement of the value. First, McNally believed that Coffey assumed that Richards-Wilcox would be able to continue to borrow more and more money each year. McNally believed this was a flawed assumption given that Richards-Wilcox was already a heavily leveraged company and that Coffey did not discuss this with the banks or with the owners. McNally testified that Coffey failed to take into account $5 million of bank debt and then erred again by adding debt into perpetuity, using the false assumption that the company could borrow more money annually. McNally also believed that Coffey used a lower lack of control discount because he used some outdated figures and a lower marketability discount, which was unexplained in the report. Coffey did not use any data from 2009, which McNally believed was a flaw because the data was both available and reliable. Standard industry practice was to use the most current financial statements.

More importantly, McNally addressed errors in Coffey's working capital calculations. McNally criticized Coffey's methodology in which he added depreciation of $1,126,000 but only subtracted out $410,905 for capital expenditures. McNally testified that under Coffey's methods, eventually the calculations would factor negative assets on the books because Coffey depreciates that excess $700,000 figure ($1,126,00-$410,905) into perpetuity. Essentially, McNally testified that depreciation cannot exceed capital expenditures into perpetuity; logically, one cannot depreciate an asset that he never purchased. When McNally equalized depreciation with capital expenditures, using Coffey's remaining figures and data, he computed the value of Richard's share to be $1,047,000.

On cross-examination, McNally acknowledged that within five years of purchasing the company, Richard and the other two owners were able to reduce corporate debt from $14 million to $7.8 million. He also acknowledged that over that time period, the three owners were paid out a total of $6 million in compensation and perks. However, on redirect, McNally explained that shortly after the purchase, the company sold a large building for $1.9 million and the proceeds were used solely to reduce the debt. Regarding Coffey's method of having depreciation exceed capital expenditures, McNally acknowledged that James Hitchner's textbook, a treatise on business valuations, stated that there are "situations in which depreciation can exceed capital expenditures for extended periods of time." However, McNally explained that he did not believe that Hitchner meant that depreciation could exceed expenditures into perpetuity but rather an "extended period of time" meant 15 years or 20 years. On redirect, another portion of the Hitchner text was read, which included that:

> "In the normalization process, the depreciation should be adjusted to the level of anticipated capital expenditures. Capital expenditures should not be adjusted to depreciation. The future depreciation will be generated by future capital expenditures. Again, the concept is to normalize the cash flows of the business. The normalization process for depreciation should happen in two steps. It needs to be removed from the expenses in the income statement with the new capital expenditures inserted. To calculate cash flow, depreciation is added back and capital expenditures are subtracted out which can net to be zero."

John Coffey, a business valuation expert and owner of Coffey & Associates, testified for Judy. Coffey performed two valuations of the company. The first was done using financial data through 2007; the second was done using numbers through May 2008. Coffey agreed with McNally that the best approach to valuing this business was the income method but that he used the direct equity approach rather than the invested capital method. According to Coffey, the invested capital method determined how much cash flow was available to service both the debt and the equity, then capitalized that cash flow by subtracting the debt, which yields the equity value. The direct equity approach considered the cash flow that was available simply to the equity holders and that value is capitalized. Coffey agreed that both methods should yield the same value.

Coffey explained that he had the audited financial statements from the last five years. Like McNally, Coffey adjusted the historical net income from those statements by adding back the officer perks and benefits. Next, he subtracted the income taxes. The spreadsheet (Respondent's Exhibit No. 47) did not specify the tax rate used but Coffey acknowledged that he used a lower tax rate than McNally. Coffey next added back in the historical depreciation. Coffey's spreadsheet (Respondent's Ex. No. 47) showed the adjusted historical net income as $786,357. Historical depreciation, $1,126,967, was added to that net income, resulting in $1,913,324. Coffey next adjusted that number by adjusting for working capital. Coffey explained, like McNally, that as a company grew, it needed additional working capital for items such as inventory. He therefore subtracted $63,392 for working capital, using a 3% growth rate, which was the same as McNally. Next, Coffey adjusted for capital expenditures by deducting $410,905. Coffey explained that future depreciation expenses come from future capital expenditures. "In other words, you cannot have depreciation in assets that you haven't purchased," he testified.

Coffey's next adjustment added $83,575 for long-term debt. He explained that the invested capital method assumes what percentage of cash flow will go towards debt and what percentage will go towards equity. That number is then calculated into perpetuity. Under the invested capital method, it is implied that the company will continue to borrow and the company will continue to have to make loan payments. Coffey testified that the direct equity method also assumes that the company will continue to borrow and the long-term debt adjustment is made for loans used for the company's future growth. Coffey explained that one could not assume that a company like Richards-

Wilcox would not continue to borrow because such an assumption would lead to zero debt and all equity. The resulting number after Coffey's adjustment was $1,522,600, which Coffey described as the estimated projected cash flow into perpetuity that would be available to the equity owners of the company.

One of the differences between Coffey's and McNally's computations involved the fiscal years used. McNally used the trailing 12-month year (June 1, 2008 through May 31, 2009); Coffey used the audited fiscal years through December 31, 2008, because he felt those numbers were a better representation of the actual cash flows of the company. Coffey next addressed McNally's concern that capital expenditures and depreciation should be equal. Coffey testified that McNally took the depreciation on the books and assumed that was the number that the company would spend for future capital expenditures in perpetuity. Coffey testified that he analyzed what the company was actually spending over the period of time studied, used a weighted average of that number, and assumed that would be the capital expenditures figure for the future.

Coffey testified that he agreed with McNally's statement that depreciation cannot exceed capital expenditures into perpetuity. He explained that contrary to McNally's allegation, he did not do this in his calculation. Coffey testified that he adjusted depreciation to the level of capital expenditures but that McNally did not. Coffey stated that McNally adjusted his future capital expenditures to past depreciation, which violated Hitchner's text, and that in this company's case, it was inappropriate to assume future capital expenditures would be equal to the past depreciation value. Coffey explained that under his analysis, future capital expenditures will be equal to roughly $400,000 per year whereas under McNally's calculation, future capital expenditures would be equal to roughly $900,000 per year. The difference in values was significant, according to Coffey, because the more cash assumed for expenditures meant less cash available to the owners, resulting in a lower value of the company. Thus, Coffey's value of Richards-Wilcox was higher than McNally's value.

Coffey discredited McNally's assumptions in part because he used the trailing 12-month time period, which included the period of January 1 through May 31, 2008. Those last five months happened to represent the company's worst performance over the last five years. Coffey also criticized McNally's tax rate assumptions. Coffey explained that he used a lower tax rate because S-corporations were taxed differently, and McNally simply used the highest tax rate possible. Coffey's tax rate represented the actual tax rates effective for Richard whereas McNally's tax rate was arbitrarily chosen and higher than Richard's true tax rate. When Coffey performed the valuation using McNally's chosen invested capital method, incorporating what Coffey believed to be proper assumptions as to capital expenditures, tax rates and discounts, Coffey calculated the value of Richards-Wilcox as $1,976,300.

On cross-examination, Coffey testified that in the last year, he performed approximately 25 business valuations and of those 23 were for divorce cases. The last time he valued a business for a client interested in buying or selling a business was the prior fall. Coffey admitted that he did not speak to any other owner other than Richard but felt he did not need to interview the others. Coffey admitted that he did not use the statistics for the same industry code as McNally but denied the industry category he selected was inappropriate or that McNally's category more closely resembled the business of Richards-Wilcox. He also admitted that he did not have the most recent data published by FactSet Mergerstat, the publisher of such statistical discounts commonly used in business valuations. Regarding his capital expenditures and depreciation values, Coffey stated that he adjusted his future depreciation to agree with his future capital expenditures. He acknowledged, however, that the values were not equal. In response to questioning regarding his use of $410,000 as his capital expenditures figure and his $1.1 million depreciation value, Coffey testified that was the depreciation figure on the books but “there are assets that for example are no longer on the books” that “are potentially being depreciated shorter than their life expectancy.” Counsel for Richard questioned Coffey that “you can only depreciate what's on the books, right?” Coffey responded that was true. Coffey gave the example of the building that Richards-Wilcox sold in 2004 for roughly $1.9 million. He explained that depreciation had been taken on that building in 2004, and if he simply used the historical number of depreciation on the books and projected it forward, he would be including depreciation on an asset that was sold. Coffey explained that when calculating cash flow, depreciation was added back and capital expenditures were subtracted out, which can net to zero but not always. When asked whether future depreciation and future capital expenditures must be equal when calculating into perpetuity, Coffey replied, “Future depreciation and future capital expenditures have to be equal into perpetuity.”

On redirect examination, Coffey explained that he did in fact equalize capital expenditures and depreciation, using Respondent’s Exhibit No. 50. Exhibit 50 showed Coffey’s calculations equalizing current year capital expenditures with current year depreciation and adjustments for non-depreciable assets. He further explained that every company will have years with higher or lower expenditures than the average. Coffey considered the last five years’ worth of expenditures to determine the average. He explained that it was not reasonable to factor in the company’s most recent purchase ($900,000 expenditure) as a regular occurrence, which was what McNally did.

Regarding the valuation of Richards-Wilcox, the trial court stated that it found both McNally and Coffey highly credentialed, thorough, and knowledgeable about their field. The trial court agreed with the evaluators that the valuation process involves subjective judgment. In this case, the trial court commented that it had the " 'luck' " of a sale of the same business approximately six years ago. The sale price was $15.2 million. The trial court was now in the position of determining whether the fair market value of Richards-Wilcox went up, down, or remained the same as when Richard and his partners purchased the company. The factors that the trial court found to diminish the value included the sale of the building subsequent to the purchase, the fact that revenues were down 40% in recent business cycles, and that the nature of the business was paper storage when many business were going "paperless." However, the court found that the recent $900,000 purchase of equipment seemed to contradict that the business was doing as poorly as Richard argued. The court then included the following rationale in its written order:

> "Both evaluators did impose a discount on value based upon the factors of control and marketability. Where does all of this lead? Mr. McNally placed a fair market value on Richards Wilcox of $9,000,040 as of May 31, 2009. The court found it difficult to accept that the three shareholders would sell for that price. Viewed simply by a layman, the court would expect a conservative fair market value to be more in the neighborhood of $13.3 million ($15.2 million minus $1.9 million for the sale of the building). Taken a step further, subtracting the financial indebtedness of $7.8 million from $13.3 million leaves equity of $5.5 million. Divided three ways yields a result of $1.83 million. The court is thus primed to be more persuaded by a shareholder's equity value in that vicinity; Mr. Coffey's valuation was."

The trial court further explained that it was persuaded by Coffey's assessment that the company had improved since 2003 and enjoyed improved cash flow. This was demonstrated, in the court's opinion, by the fact the three shareholders had reduced the debt of the company from $14.9 million to $7.8 million in less than six years, which was impressive even excluding the $1.9 million in proceeds from the building sale. Thus, the trial court accepted the Coffey value of $1,976,300.

Richard argues that the trial court’s determination was erroneous because the trial court did not rely on the expert testimony and instead used a layman's approach, which has been rejected by the courts. Included in that argument, Richard opines that the trial court was wrong in considering the purchase price that Richard paid in 2003 for the company. Further, Coffey’s value could not be accepted by the court because his opinion was based on fundamental errors in computation. We disagree that the trial court's valuation was based on its “layman’s” opinion or that Coffey’s value was based on erroneous calculations. Thus, for the following reasons, we find that the trial court’s valuation of Richards-Wilcox was not against the manifest weight of the evidence.

“So long as the trial court’s valuation of marital assets is within the range testified to by expert witnesses, it will not ordinarily be disturbed on appeal.” *In re Marriage of Blackstone*, 288 Ill. App. 3d 905, 910 (1997). While valuation of a closely held corporation is subjective in nature, the process is much less so when done with the benefit of viewing a similar transaction, especially when the transaction involves the same property. *In re Marriage of Grunsten*, 304 Ill. App. 3d 12, 17 (1999). “This is because fair value is best measured by what a willing buyer would pay a willing seller in a voluntary transaction.” *Id.* As even the experts in this case agreed, valuation of a business is an art, not a science. Therefore, in determining the fair market value, the trial court must rely on the experts for assistance, consider the relevant evidence before it, and determine the credibility of the witnesses, the reasonableness of their testimony, and the weight to be given to their testimony. *In re Marriage of Gunn*, 233 Ill. App. 3d 165, 183 (1992).

We first reject Richard's argument that the trial court's statement that "[v]iewed simply by a layman" when it determined the value of Richards-Wilcox meant that the court arbitrarily determined the value. When read in context of the trial court's entire order, it is clear that the trial court considered the testimony of both experts and the relevant evidence before it before finding Coffey's testimony to be more persuasive. Conflicts in testimony regarding the value of marital assets are matters for the trier of fact (*In re Marriage of Olson*, 223 Ill. App. 3d 636, 646 (1992)), and that is what the trial court did here. We reject Richard's comparison of the facts of this case to the facts of *In re Marriage of Blackstone*, 288 Ill. App. 3d 905, 908 (1997), and *In re Marriage of Weiss*, 129 Ill. App. 3d 166, 175 (1985).

In *Blackstone*, the trial court simply did not have any expert valuation evidence to consider on two of the respondent's companies when it placed a value on the two companies at $300,000. *Blackstone*, 288 Ill. App. 3d at 908-09. The appellate court found that the only evidence that could support the $300,000 value was the respondent's testimony that the couple invested about $250,000 to $300,000 in the corporations. However, there was no testimony about the six years that followed the initial investment. *Blackstone*, 288 Ill. App. 3d at 910-11. Unlike in *Blackstone*, the trial court in this case had plenty of evidence regarding the value of Richards-Wilcox, including evidence of Richard's purchase price in 2003, its performance in the years that followed, and the effect of the recent economic downturn on the company.

In *Weiss*, the petitioner argued that the value of her husband's medical practice was worth $425,000, which was the value in 1969. *Weiss*, 129 Ill. App. 3d at 172-73. The trial court determined the stock had no value after hearing evidence that the land, buildings and equipment were not owned by the medical group, that the group was two months behind on its rent, that it had only $34,000 available to buy out the respondent's share as there was no market for his stock, and that the decline of the group was continuing, causing reductions in salaries and benefits. *Weiss*, 129 Ill. App. 3d at 173. The appellate court affirmed the trial court's finding, stating that there was adequate evidence to support the zero value and that the value of the corporation in 1969 could not provide the trial court with an accurate idea of the present value. *Id.* Like in *Weiss*, the trial court here did not blindly consider the value of Richards-Wilcox in 2003; rather it considered the performance of the business following the purchase, including the most recent decision of the company to invest in a $900,000 piece of equipment, the current salaries and perks of its officers, its revenues, and the expert valuations. Additionally, the court found that its ability to reduce its debt as much as it did in a short period of time demonstrated that the company performed well over the last few years. The trial court considered the recent downturn in the economy but was not convinced under the facts that the recent downturn erased the value of the company as much as McNally opined. Based on the overall record, Richard's characterization of the trial court's determination of the corporation's value as akin to the "recent transaction method" appears disingenuous as the trial court's value was clearly not based on this sole factor. The trial court explained that it considered many factors besides the 2003 purchase price. In fact, it would have been remiss had the trial court *not* considered the purchase price in 2003 when it considered the other factors. See *In re Marriage of Grunsten*, 304 Ill. App. 3d 12, 17-18 (1999) (finding that the trial court failed to adequately consider the amount paid to a principal shareholder's widow to acquire her shares a few years earlier when it valued the respondent's shares much lower despite evidence that the corporation enjoyed great success in the years after that recent sale of shares).

Richard also argues that the trial court was wrong in accepting Coffey's figure because he did not perform the proper calculations. Specifically, Richard argues that Coffey did not equalize his depreciation and capital expenditures when he performed his calculations into perpetuity. As stated, conflicts in testimony regarding the value of marital assets are matters for the trier of fact to resolve. *Olson*, 223 Ill. App. 3d at 646. Here, the trial court found Coffey's figures to be more believable, and we cannot find that Coffey's value was against the manifest weight of the evidence. The trial court heard extensive testimony regarding each evaluator's methods of calculations. The differences in their figures, including the different discounts applied, different tax rates, and different values for expenditures and depreciation, were thoroughly covered through direct and cross-examinations of the witnesses. Coffey explained that his calculations applied the proper expenditures and depreciation figures. He explained that, unlike McNally, he did not use the depreciation on the books, but rather used a historical analysis to determine his expenditures and depreciation figures. Coffey explained that this was the "normalization process," which McNally failed to do in his calculations. The normalization process specifically handled the fact that there would be certain years with higher or lower expenditures than others. Using Respondent's Ex. No. 50, Coffey explained that he used an average capital expenditure of $410,905 with a 3% annual increase and the same for depreciation expenses. Coffey explained, using Respondent's Ex. No. 51, that if McNally had performed the normalization analyses with the numbers McNally assumed for capital expenditures and depreciation, his depreciation exceeded expenditures, which was an impossible situation. Coffey testified that using his assumptions with McNally's invested capital method, the value of Richards-Wilcox was $1,976,300. Whether we are convinced by Coffey's explanation of the fact that his numbers did not appear to equalize expenditures and depreciation is not the issue because our function is not to re-weigh the evidence. The trial court was free to choose to accept Coffey's valuation as a more accurate reflection of the value of Richards-Wilcox, even if the trial court believed that there were some flaws in the valuation. See *Olson*, 223 Ill. App. 3d at 647 (where the trial court's determination of corporate stock value was within the range of values testified to by the experts, the court "was free to choose to accept [one expert's] valuation, despite its flaws, as a more accurate reflection of the [company's] true value").

In addition to the specific testimony regarding Coffey's capital expenditures analysis, the trial court noted that McNally had considered the recent global economic downturn and its particularly negative impact on the industry of Richards-Wilcox. The trial court considered this fact in light of the other facts, such as the company's recent $900,000 purchase, the 2003 purchase price, and its overall debt reduction in the several millions over the last five years. McNally valued Richards-Wilcox at nearly $1 million; Coffey testified the value was closer to $1.5 million, and when Coffey used McNally's method with changes to certain figures that Coffey believed were wrong, Coffey valued the company at $1.9 million. While we find it curious that the trial court took the highest value, Richard is requesting this court to re-weigh the evidence in his favor, which is not a function of this court. Based on the evidence, we find that the trial court's determination that Coffey's value of Richards-Wilcox was more accurate was not against the manifest weight of the evidence.

B. Division of Richards-Wilcox

Richard next argues that regardless of the value of Richards-Wilcox, the trial court should have awarded Judy a portion of the shares in the company and given Richard an option to purchase the shares. He argues that this would be the more equitable method to divide the property because there were insufficient liquid assets in the marital estate from which to satisfy the monetary judgment to Judy. Section 503 of the Act provides that in allocating marital property, the trial court shall consider all relevant factors, including: (1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the property, including contribution as a homemaker; (2) dissipation by the parties; (3) the value of the property assigned to each spouse; (4) duration of the marriage; (5) relevant economic circumstances of each spouse following the division; (6) any obligations and rights arising from a prior marriage of either party; (7) any antenuptial agreement of the parties; (8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties; (9) the custodial provisions for any children; (10) whether the apportionment is in lieu of or in addition to maintenance; (11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and (12) the tax consequences of the property division upon the parties. 750 ILCS 5/503(d) (West 2008). We review the court's decision to distribute the marital property for an abuse of discretion. *Polsky*, 387 Ill. App. 3d at 135.

Richard acknowledges that courts typically seek to minimize further business dealings between the parties in dissolution proceedings. *In re Marriage of Sales*, 106 Ill. App. 3d 378, 381 (1982). "Division of small businesses or closely held corporations is particularly disadvantageous where it would require ongoing business association between the parties and the record reflects animosity between the parties." *Id.* In *Sales*, the appellate court reversed the trial court's award of a 20% interest of the husband's business to the wife because there was other property from which to award the wife her share without dividing the husband's interest in the partnership. *Id.* Richard distinguishes *Sales* from his situation, in which he argues there are insufficient assets from the marital estate to satisfy the court's monetary judgment of $988,150 to Judy. Richard argues that the trial court should have followed *In re Marriage of Simmons*, 87 Ill. App. 3d 651, 656-57 (1980). In *Simmons*, the trial court ordered the husband to transfer 20% of his stock in his business to the petitioner or pay her $6,000, which was the value of the stock. *Id.* The appellate court held that the trial court's order was an "eminently fair way of terminating any ongoing interest of the petitioner in the respondent's business." *Id.* In *Simmons*, Richard points out that the only marital property was land in Wisconsin and stock in the business. *Id.* We note, however, that the husband in *Simmons* had argued on appeal that the stock was worthless; the appellate court determined that if it was worthless, the wife would get 20% of 0, but if it was worth anything, the $6,000 sum was a "nominal figure" for a buyout option. See *Simmons*, 87 Ill. App. 3d at 657. The court did not address whether there were sufficient assets to simply payout the wife's portion of the stock, which is the true issue in this case.

Nonetheless, Richard argues *Simmons* supports his position that the trial court should have granted Judy a portion of the shares with a buyout option for Richard. Richard argues that the trial court acknowledged that there were insufficient liquid assets to satisfy Judy's share of the corporation, and that the judgment would accrue interest at a rate of 9% per year per statute (735 ILCS 5/2—1303 (West 2008)), unless Richard could obtain a loan with a more favorable interest rate. Richard was unable to obtain an unsecured loan for the judgment amount and is therefore required to pay Judy the amount of the judgment at the 9% rate. According to Richard, he will have to pay Judy $8,889 per month for 20 years, in order to satisfy this award. This sum is in addition to his maintenance ($3,461.49) and child support obligations ($4,787.35). Richard argues that his total monthly obligations to Judy exceed his monthly income. Given these circumstances, the more equitable method of dividing this asset would have been to assign Judy a portion of the shares (with non-voting terms) and given Richard the option to purchase those shares. We agree with Richard that the trial court abused its discretion in its order dividing the marital property.

Judy argues that Richard's proposal fails for two reasons: (1) as a non-voting shareholder per the shareholder agreement, Judy would have no control over how the three shareholders split up profits; (2) she also would have no way of preventing issuance of new stock, which would diminish the value of her shares. Judy argues that because such a distribution would not secure the value of her portion, the trial court's division was the most equitable way to distribute the property. Judy further argues that Richard's 20-year payment schedule was not ordered by the court. Upon our review of the record, we also do not find any order by the trial court that Richard pay any defined sum or follow any defined schedule to satisfy this judgment. However, common sense leads to the assumption that Richard will have to make payments to Judy on some sort of schedule. Judy fails to propose another method for Richard to satisfy this significant monetary judgment.

Judy also argues that Richard made significantly more than his net income through additional income from the company. However, the trial court determined that Richard's net income was roughly $17,000 per month; it made no mention of additional income. The exhibits that Judy refers to in support do not establish that Richard took home any of the profits that the company made. Because Richards-Wilcox is an S-corporation, its profits are taxed through the three shareholders. There was no testimony that established that Richard took home any profits. Richard only testified that the company would make distributions to the partners to cover tax liabilities. Beyond that, there is nothing in the record to support that Richard enjoys higher income than his salary. Therefore, we disagree with Judy that Richard is able to pay the $1 million judgment, his child support and maintenance obligations, and meet his needs as well.

Having accepted the trial court's determination that Richard's net monthly income is $17,097.67, and that there was not enough marital property to pay Judy the value of the Richards-Wilcox stock, we find that the trial court abused its discretion in entering a judgment in the manner it did, knowing that Richard did not have the means to pay, especially in light of the fact that the trial court ordered Richard to pay 50% of his net income to Judy for child support and maintenance. While Richard argues that instead of the monetary judgment, we should simply grant Judy the non-voting shares in Richards-Wilcox, this solution presents a host of issues that the record demonstrates that neither the parties nor the trial court factored into its decision, namely the shareholder agreement of Richards-Wilcox.

The shareholder agreement provides the following regarding involuntary transfers of stock:

> "9. *Involuntary Transfers.*
>
> (a) An involuntary transfer shall be defined as those Shares which are being transferred pursuant to or as a result of any judgment creditor, bankruptcy, insolvency, or a default for pledged Shares (which are pledged in violation of this Agreement), or pursuant to any settlement agreement or Court order in any dissolution of marriage. In such events, the "Disposing Event Effective Date" shall be the effective date of any court order, if applicable, or the date determined by the Corporation to be the date of the involuntary transfer.
>
> (b) Upon the involuntary transfer of Shares, the Corporation shall have an option to purchase the involuntarily transferred Shares. The Corporation's option to purchase the

involuntarily transferred Shares shall commence on the date of the Disposing Event Effective Date and shall continue for the next sixty (60) days thereafter. Any exercise by the Corporation of its option to purchase shall be in writing, addressed to all Shareholders.

(c) If, upon expiration of the sixty (60) day option period, there remain Shares available for purchase, then the remaining Shareholders shall have an option to purchase the involuntarily transferred Shares for an additional sixty (60) day period. If more than one Shareholder should express an interest in purchasing some or all of the Shares, then the Shareholders shall be entitled to purchase the Shares on a pro rata basis with each other, depending on the number of Shares they own. Any exercise by a Shareholder of its option to purchase shall be in writing, addressed to the Shareholders, with a copy to the Corporation.

(d) The purchase price for the involuntarily transferred Shares shall be the amount per share established by the Board of Directors at the annual meeting of the Board of Directors at any time or by unanimous written consent of the Board of Directors. This price must be established more than thirty (30) days but within the prior twenty-four (24) months of the Disposing Event Effective Date less a 20% discount due to minority ownership and a discount of 20% due to lack of marketability of the Shares.

(e) Any person or entity claiming ownership of Shares as a result of an involuntary transfer shall be subject to all terms and conditions of this Agreement, provided, however, that the Shares shall be immediately converted to an equal number of the Corporation's Non-Voting Common Stock. Such a conversion shall be binding upon the successors, assigns and transferees of the involuntarily transferring Shareholder. All Shareholders shall execute and deliver to the Secretary of the Corporation, a stock power in favor of the Corporation, which stock power shall be binding upon the successors, assigns and transferees of the involuntarily transferring Shareholder, and the Shareholders hereby authorize the Secretary of the Corporation to take all actions necessary to effectuate such conversion on the books of the Corporation."

We note that the section 9(d) of the shareholder agreement contains a different provision regarding the valuation of the shares, which could jeopardize Judy's interest in the value set forth by the trial court should the corporation value the shares lower than what the trial court determined. Additionally, if the corporation chose not to repurchase, there is no guarantee that Richard would ever buy out Judy's shares. In addition, the parties acknowledged at oral argument that there are tax implications to awarding Judy non-voting shares of the company.

Because it appears that the trial court did not adequately consider the factors contained in section 503(d), including the economic circumstances that the court's order would leave Richard in following the division and whether the apportionment of the property would be in addition to or in lieu of maintenance, we find that the court abused its discretion in ordering Richard essentially to be unable to meet his own basic needs and/or be forced to liquidate any assets he had remaining. However, we reject Richard's argument that we should simply award Judy non-voting shares because the trial court did not have the opportunity to consider the tax consequences of the division or the potential impact of section 9 of the shareholder agreement on such an arrangement. Accordingly, we reverse the trial court's order regarding the division of the marital property and remand the cause for division and distribution after adequate consideration of the relevant factors set forth in section 503 and in this order.

Upon remand, the trial court should consider the division of the property, paying attention to all relevant factors set forth in the Act, and if necessary, to determine a reasonable payment schedule. "[W]here it has been necessary to award large assets to one spouse, the trial court is in a position to fashion offsetting payments flexibly." *In re Marriage of Rosen*, 126 Ill. App. 3d 766, 778 (1984). Because we reverse the trial court's order relating to division of the marital property, the remaining issues raised by Richard are further reversed and remanded because under the Act, issues of maintenance and child support relate to the final property disposition, which must be first reached. *Rosen*, 126 Ill. App. 3d at 778; *In re Marriage of Leon*, 80 Ill. App. 3d 383, 385 (1980). Thus, after the trial court has set out the division of the property and if necessary, any appropriate payment schedule, the trial court should then consider the issues of child support, maintenance, and attorney fees.

C. Final Matters

Finally, Richard raises the following miscellaneous issues with the judgment: (1) that the trial court should have excluded monthly expenses for a storage locker ($60) and groceries ($1,000) from the expense affidavit Richard supplied the court as those expenses applied to his expenses only and not Judy's household expenses; and (2) that the bank account balances listed in the judgment were not accurate at the time the trial court issued its order.

Regarding the storage locker and grocery expenses, Richard submitted the expense affidavit to the trial court on March 6, 2009. The court ordered Richard to pay these items in its order dated the same (March 6, 2009). The order was in effect at the time of trial, and the trial court included it in its judgment for dissolution of marriage order until such time the marital home was sold. Richard did not raise this issue until he moved for reconsideration of the judgment on November 18,

2009. That motion was denied on March 4, 2010. Richard fails to cite any authority in support of his request to modify this portion of the court's order. He also fails to cite to any part of the record that establishes that these expenses are his sole expenses and not household expenses, as expressed in his affidavit to the court on March 6, 2009. Therefore, we deem this issue forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006).

Richard's argument pertaining to the bank accounts was also raised in his motion for reconsideration. He alleges that the balances contained in the trial court order were taken from his comprehensive financial statement dated July 24, 2009. He alleges that between July 24, 2009, and the court order dated August 18, 2009, he paid attorney and guardian ad litem fees for both parties in the amount of $144,616, leaving a bank balance of $53,393 at the time of the court order. Richard included an exhibit in his motion for reconsideration with payments made and balances but did not move to reopen the proofs. Because we are remanding this cause back for reconsideration of the attorney fee issue, this matter should be considered by the trial court at that time.

III. CONCLUSION

For the reasons stated, we affirm the trial court's valuation of the marital property as the value entered by it was not against the manifest weight of the evidence. Because the trial court abused its discretion in the division of the property, we reverse the remainder of the trial court's order and remand with instructions consistent with this order.

Affirmed in part and reversed in part; cause remanded with instructions.