No. 2—10—0733
Order filed June 10, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF ROBERT FLYNN, Petitioner-Appellant, and LYNN FLYNN, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 09—D—692 Honorable John W. Demling, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in awarding respondent 55% of the contested marital property, as its award to respondent was in lieu of maintenance and justified by the length of the marriage and the parties' relative incomes.

Petitioner, Robert Flynn, appeals from a judgment dissolving his marriage of nearly 35 years to respondent, Lynn Flynn. Robert argues that the trial court erred in the division of marital property. We affirm.

The dissolution judgment was entered following a bench trial in the circuit court of Du Page County. The evidence establishes that the parties were married in 1975 and had no children. At the

time of trial, Lynn was employed by the Internal Revenue Service (IRS) as a forensic chemist assistant and earned a salary of $48,788. She began working for the IRS about two months before she and Robert were married. Robert worked for Alcatel Lucent as an advanced professional marketing product manager and earned a salary of $102,500. Marital property included stock options earned by Robert and the parties' respective pensions. The parties stipulated that each would retain his or her pension, that Robert would receive the first $5,000 in gains realized on the stock options, and that the remaining income from the stock options would be shared equally when realized. No value was assigned to the parties' pension plans.

The parties stipulated to the value of the following marital property:

Robert's 401(k) plan	$182,000
Robert's individual retirement account (IRA)	$ 40,715
Lynn's thrift savings plan	$ 31,000
Motor vehicles	$ 2,000
Equity in marital residence	$147,000
Investment account	$ 6,900
Bank accounts	$ 12,000
Life insurance policies	$ 37,600
Total	$459,215

From this property, the parties agreed that the 401(k) plan, the IRA, the thrift savings plan, and the motor vehicles would be shared equally. The total value of these assets was $255,715. The parties reached no agreement as to the other assets listed above (which were worth $203,500).

The trial court declined to award maintenance to either party. The court explained that, after considering the relevant factors (see 750 ILCS 5/504(a)(West 2008)), it concluded that "both parties are self-sufficient and can support one another [*sic*] without contribution on the part of each party."

The trial court added, "In making that award [*sic*], I am also considering the award of marital property[.]" The trial court awarded 62% of the equity in the marital residence, the investment account, the life insurance policies, and the bank accounts to Lynn and 38% of those assets to Robert.

At the outset, it is important to note that Robert's argument proceeds from the false premise that Lynn was awarded 62% of the entire marital estate. That percentage applies only to marital property that was not divided by agreement of the parties. The total value of marital property to which a value was assigned was $459,215. The parties agreed to an even division of marital property worth $255,715; each received property worth $127,857.50. Of the remaining $203,500 worth of marital property, Lynn's share was 62 %, or $126,170, and Robert's share was 38 percent, or $77,330. Thus, the total value of marital property distributed to Lynn was $254,027.50, which is approximately 55% of the total value of marital property to which a value was assigned. Robert received the remaining 45% ($205,187.50).

With that calculation in mind, we consider whether the trial court erred in the division of property. Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d) (West 2008)) provides that, in a dissolution-of-marriage proceeding, the trial court must divide marital property in just proportions upon consideration of all relevant factors, including, *inter alia*, the duration of the marriage; the economic circumstances of each spouse; and the age, health, income and employability of each spouse. The trial court's decision as to the division of marital property is reviewed under the abuse-of-discretion standard. *In re Marriage of Oden*, 394 Ill. App. 3d 392, 393 (2009). "In determining whether the trial court abused its discretion in dividing marital

property, this court will not substitute its judgment for that of the trial court unless no reasonable person would adopt the position of the trial court." *Id.* at 397.

In announcing its decision as to the division of the marital property not already allotted by stipulation of the parties, the trial court stated that it had considered section 503 of the Act and that "the length of the marriage and the disproportionate income that the parties make *** mitigate [*sic*] in favor of a nonequal division ***." The trial court indicated that it did not believe that an equal division was "equitable under the circumstances, *and considering the fact that the Court has barred maintenance*." (Emphasis added.) Robert argues, in essence, that the trial court's decision to award the greater share of marital property to Lynn on the basis that she would not receive maintenance is inconsistent with its finding that neither party needed support from the other. Section 504 of the Act (750 ILCS 5/504 (West 2008)) provides that the court may order a party to pay maintenance after it considers all relevant factors. Among the factors specifically enumerated is "the income and property of each party, including marital property apportioned *** to the party seeking maintenance" (750 ILCS 5/504(a)(1) (West 2008)). Section 504(a)(1) complements section 503(d)(10) of the Act, which provides that one of the factors to be considered in dividing marital property between the parties is "whether the apportionment is in lieu of or in addition to maintenance" (750 ILCS 5/503(d)(10) (West 2008)). Thus, the issues of division of marital property and maintenance are interrelated. *In re Marriage of Underwood*, 314 Ill. App. 3d 325, 328 (2000).

Although the trial court declined to award maintenance to either party, believing that each was "self-sufficient," the court explained that in reaching its decision it had considered the apportionment of marital property. It is thus apparent that the finding of self-sufficiency was contingent upon Lynn's receipt of the greater portion of the marital estate. Accordingly, it is futile

to argue, as Robert does in his reply brief, that, because the trial court concluded that the parties were self-sufficient, an analysis of the interrelatedness of the two issues is "inappropriate." It is clear from the record that the decisions as to maintenance and the division of property were coordinated and interdependent. The trial court stated that, in refusing to order either party to pay maintenance, it had considered the apportionment of marital property. In awarding Lynn the greater portion of the marital estate, the trial court correspondingly noted that it had considered its decision not to award maintenance. When the relationship between the trial court's decisions as to maintenance and the division of marital property is taken into account, Robert's argument is self-defeating. The premise of his argument that the marital property should have been evenly divided is that the trial court found that Lynn was self-sufficient. However, if the trial court had divided the property evenly, it would not necessarily have made that finding.

Robert cites *In re Marriage of Calisoff*, 176 Ill. App. 3d 721 (1988), in support of the proposition that the division of property was not equitable. The differences between *Calisoff* and this case could hardly be more pronounced. In *Calisoff*, the trial court "awarded petitioner assets worth $168,900, including the marital home, while awarding respondent only $37,390 of assets and requiring him to assume virtually all of the marital debts totaling nearly $63,000" (*id.* at 726) and also ordered the respondent to pay a substantial award of attorney fees, plus maintenance and the costs of four-year college educations for the parties' two children. Here, although the trial court ordered Robert to pay $3,700 in interim attorney fees to Lynn's attorney, Robert was awarded 45% of the marital property to which a dollar value was assigned and was not ordered to pay maintenance. Because the parties have no children, educational expenses are not an issue. Robert argues that *Calisoff* is "instructive," citing it for the principles that it is inequitable to distribute marital property

in a manner that does not leave a party in a position from which he or she can "start anew" (*Calisoff*, 176 Ill. App. 3d at 726) and that a disparity in earning capacities "does not warrant granting all the benefits of the marriage to petitioner and imposing all of its burdens on respondent" (*id.*). Suffice it to say that, given all the circumstances of this case, the award to Lynn of about 55% of the marital property to which a value was assigned does not run afoul of either principle.

Robert sets up a pair of straw men, arguing that the disparity in the distribution of marital property cannot be justified on the basis of Lynn's health problems (her migraines) or that she sacrificed career opportunities to raise children. That is beside the point, because the fairly modest disparity finds ample justification in the other relevant circumstances, most notably the length of the marriage and the parties' relative incomes. As to the latter consideration, Robert argues that the disparity in the parties' incomes is the result of Lynn's "choice of an unusual occupation which is as unremunerative as it is challenging." Evidently, Robert would have us impute to Lynn an ability to earn additional income from some unspecified alternative career that a more mercenary job-seeker might have chosen. Suffice it to say that Robert cites no authority in support of such an approach, and arguments unsupported by citation to authority will not be considered on appeal. *McElmeel v. Safeco Insurance Co. of America*, 365 Ill. App. 3d 736, 743 (2006).

Given all of the relevant circumstances, the trial court did not abuse its discretion in dividing marital property in a manner that results in Lynn receiving roughly 55% of the value of the marital estate (excluding property to which no value was assigned). We therefore affirm the judgment of the circuit court of Du Page County.

Affirmed.