2012 IL App (2d) 100988-U
No. 2-10-0988
Order filed June 29, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF PENNY D. GREGO,	)	Appeal from the Circuit Court
	)	of Du Page County.
Petitioner-Appellee,	)	
	)	
and	)	No. 09-D-0615
	)	
MARK R. GREGO,	)	Honorable
	)	Robert J. Anderson,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion when it classified and divided the assets between the parties, and its findings regarding valuation and dissipation were not against the manifest weight of the evidence. Further, the trial court did not abuse its discretion when it awarded maintenance to petitioner and ordered respondent to pay a portion of petitioner's attorney fees. We affirmed the judgment of the trial court.

¶ 1 In March 2009, petitioner, Penny D. Grego, filed a petition for dissolution of marriage from respondent, Mark R. Grego; in May 2009, respondent filed a counter petition for dissolution. In August 2010, following a bench trial, the trial court presented its findings and entered a judgment, in which it dissolved the parties' marriage, divided the property, awarded rehabilitative maintenance

to petitioner, and ordered respondent to pay a portion of petitioner's attorney fees. Respondent timely appeals, presenting issues regarding the distribution of marital property, including valuation and dissipation; maintenance; and attorney fees. We affirm.

¶ 2 The parties were married in January 2001; no children were born from the marriage. During the dissolution proceedings, the trial court ordered respondent to pay $2,700 per month in temporary maintenance to petitioner. The order also granted petitioner possession of the parties' townhome at 10 Pebblewood Trail in Naperville (the Pebblewood property) and granted respondent possession of the parties' residence at 4332 Clearwater Lane in Naperville (the Clearwater property). Respondent was further ordered to maintain payments for the parties' health and life insurance policies as well as all homeowners' association fees associated with the Pebblewood property. In May 2009, respondent filed a counter-petition for dissolution of marriage. In October 2009, petitioner filed a notice of dissipation. In February 2010, respondent filed his own notice of dissipation against petitioner. In April 2010, petitioner then filed a supplemental notice of dissipation, claiming that respondent had dissipated $178,147.56. On June 28, 2010, the trial conducted a hearing on the petitions.

¶ 3 For her case in chief, petitioner called respondent to testify as an adverse witness. Respondent was employed as a mortgage banker by Draper & Kramer Mortgage (Draper & Kramer), which had been purchased by First Advantage Mortgage (First Advantage) and was doing business under the First Advantage name. Respondent admitted he had owned a 5% share in Draper & Kramer and had received $18,189.93 as a result of the company's sale. Respondent claimed his interest in Draper & Kramer was nonmarital property.

¶ 4 Respondent's comprehensive financial statement listed open checking accounts with First American Bank, Chase Bank, and an open Paypal account. The Paypal account was utilized for

purchases and sales of sporting tickets and items on eBay. When asked about a particular deposit to the Paypal account in the amount of $7,797.45, respondent admitted he could not explain the amount deposited without seeing more details.

¶ 5 Respondent admitted having an "Iwatchrates.com" account containing $362, which was not listed on his financial statement. This account had been used by respondent as a Draper & Kramer corporate account, but had been closed prior to 2009 as a result of the company's sale. An "Iwatchrates.com" statement from July 2009, addressed to respondent, showed the account having a balance of $1,962.50.

¶ 6 Respondent admitted operating two accounts with his brother, Michael Grego, during 2009 that were also not listed on his comprehensive financial statement. On March 20, 2009, respondent deposited $33,044.62 into one of these accounts from a Capital One money market account held jointly with petitioner. Respondent also made two transfers totaling $7,000 into an ING account from a Chase Bank account held jointly with petitioner. Respondent admitted making two transfers totaling $7,805.03 from the ING account into an account held jointly with his brother in February and April of 2009. Respondent also admitted opening an account in 2008 with his friend, Jim Slowik, which was again not listed in respondent's comprehensive financial statement. Slowik withdrew $29,896 from that account in October 2009.

¶ 7 In addition to the Pebblewood and Clearwater properties, petitioner and respondent owned a third property in Tennessee. The Pebblewood and Tennessee properties did not have outstanding mortgages. However, the Clearwater residence had two outstanding mortgages and title was held by respondent and petitioner as tenants by the entirety. The second mortgage on the Clearwater property was a home equity line of credit (HELOC). Respondent admitted withdrawing $4,043.11

from the HELOC account and placing the money in a First American Bank account. Respondent also admitted using $1,500 from the HELOC account as a payment for legal services pertaining to the sale of Draper & Kramer.

¶ 8 Petitioner testified that she had been employed as an elementary teacher in Mundelein and owned a residence in Buffalo Grove prior to beginning her relationship with respondent in 1999. At the onset of their relationship, petitioner spent most of her time at respondent's home in Naperville and commuted to Mundelein for her job. Petitioner testified that she and respondent discussed the possibility of moving between Naperville and Buffalo Grove to shorten petitioner's commute, but that respondent ultimately rejected that idea and agreed that petitioner should resign from her position in 2001.

¶ 9 Petitioner and respondent bought and sold, or "flipped," three homes beginning in 2001. Petitioner testified that the proceeds from the first two sales went directly toward the purchase of the Clearwater property. Petitioner performed the physical labor involved with preparing the homes for sale and became licensed as a real estate broker near the completion of the third sale.

¶ 10 Petitioner and respondent originally intended on "flipping" the Pebblewood property much the same way as the previous three homes. Although the parties originally listed the property for more than $250,000, the only offer they received was for approximately $218,000, which they rejected. Petitioner opined that the property still needed some repairs and would be worth approximately $210,000. Petitioner opined that the Clearwater property might sell for approximately $580,000 and that the Tennessee property might sell for $50,000.

¶ 11 Petitioner testified that respondent failed to produce several financial documents during discovery, forcing her attorney to file petitions for the requested documentation. In November 2009, respondent was ordered to pay petitioner's attorney fees of $3,397.50 relating to those petitions.

¶ 12 Petitioner testified that respondent purchased a Jaguar automobile in 2005. The automobile was valued at $13,000 in respondent's comprehensive financial statement, which corresponded with the vehicle's listed Kelly Blue Book value. Petitioner and respondent also accumulated 157,547 airline miles through October 2009.

¶ 13 Petitioner admitted owning a condominium prior to her marriage to respondent in January of 2001. Petitioner sold the condominium in October of 2001 for $65,212.82. Petitioner admitted paying approximately 20% of the proceeds to a former spouse and using the rest to pay her personal debts.

¶ 14 Petitioner also admitted attending two job interviews between November 2009 and June 2010. Petitioner's income for 2009 and 2010 consisted primarily of $6,900 in real estate commissions and $120 per month as an employee for the Pebblewood homeowner's association. Petitioner oversaw and contracted maintenance work for the Pebblewood homeowner's association since May 2009. This employment did not require any minimum number of hours per week, and petitioner was unable recollect the amount of hours she worked during any given week.

¶ 15 For his case in chief, respondent testified that petitioner resigned from her teaching position because of her unhappiness with the commute and because of her difficulties with other teachers and the school's administration. Respondent further testified that he and petitioner agreed that petitioner would take one year off to investigate teaching opportunities in Naperville. Respondent testified that petitioner no longer wanted to teach after one year had passed and she had not secured employment.

¶ 16 Respondent testified in response to the allegations of dissipation, addressing each claim separately. Regarding his First American Bank account ending with the numbers 2001, respondent testified that he opened the account to receive deposits from other marital accounts and pay marital bills. On March 20, 2009, respondent made two separate deposits into the First American Bank account from the Clearwater HELOC account in the amounts of $2,056.85 and $1,629 respectively. Respondent testified that he did not withdraw the funds at the same time because he needed to wait for a pending Northwest Mutual life insurance payment to be drawn and did not want the account to be short of funds. Respondent further testified that the HELOC account had been used to pay marital bills in the past when his income was insufficient and that on a separate occasion, he transferred another $4,403.11 into his First National account from the HELOC account. Regarding petitioner's claim for dissipation of $1,962.50, respondent testified that those funds had been used for a payment on the Clearwater HELOC account.

¶ 17 Respondent testified that he withdrew $33,044.62 from the jointly held Capital One money market account for "safekeeping" because he feared that petitioner was attempting to "drain" marital assets. Respondent explained that petitioner had been making frequent withdrawals from a joint checking account at Chase Bank ending with the numbers 2517. On March 20, 2009, $33,044.62 was transferred into an account held jointly by respondent and his brother. In April 2009, a deposit was made into respondent's First American Bank account in the amount of $21,794.62, which had been drawn from accounts held jointly by respondent and his brother. Regarding petitioner's claim of dissipation of $5,128.35 from the Chase Bank account ending with the numbers 2517, respondent testified that the account was closed near the end of March 2009 and that the funds in question had been used to pay marital bills.

¶ 18 Respondent testified that his father had taken ill in 2007 and had given him $7,000 to cover possible funeral arrangements. Respondent testified that he opened the ING account to maintain his father's money but never actually deposited the money, instead using it as a source of petty cash through 2008. Respondent testified that his brother repaid the $7,000 to his father from their jointly held accounts after it became apparent that respondent's father had regained his health.

¶ 19 Respondent testified that he opened the account with his longtime friend Jim Slowik using the $18,189.93 from his ownership share in Draper & Kramer as the initial deposit. Respondent further testified that the account had been created to maintain investments on tax liens, but that he and Slowik were prevented from ever making such investments because of respondent's dissolution proceedings. Respondent eventually withdrew the $18,189.93, leaving $29,896.47 for Slowik, which respondent testified represented exclusively Slowik's contributions to the account.

¶ 20 Respondent further testified regarding marital assets described in petitioner's submitted trial memorandum. Although petitioner indicated that the parties' presently had approximately $56,000 in equity in the Clearwater property, respondent testified that the sale of the residence would likely result in a loss due to outstanding liabilities and closing costs. Respondent's Northwest Life insurance policy was listed with a value of $81,009.55, but respondent had borrowed $10,000 from the policy to pay expenses. Respondent's airline miles were valued at $4,000, which respondent suggested was merely a guess made by petitioner due to the difficulty in assessing a value. Respondent did not object to the listed $13,000 value of his Jaguar automobile.

¶ 21 On cross-examination, respondent admitted that he was a certified public accountant, but that he was not a practicing CPA. Respondent acknowledged that he also received an undergraduate

degree in accounting and a masters of business administration and admitted his familiarity with the difference between marital and nonmarital property.

¶ 22 Respondent admitted that cash deposits were made into the Park National bank account held jointly with Slowik subsequent to the initial $18,189.93 deposit from respondent's share of Draper & Kramer. Although respondent had testified that these deposits represented exclusively Slowik's personal contributions, respondent admitted making some of the cash deposits to the account himself, claiming that he was depositing Slowik's money.

¶ 23 After closing arguments, the trial court announced that it would take the case under advisement for as much time as was necessary to adequately assess the various complicated facts and render a judgment.

¶ 24 On August 18, 2010, the trial court issued its judgment for dissolution of marriage. The trial court found that the parties had satisfied Illinois law by proving grounds of irreconcilable differences. After considering the applicable case law and sections of the Illinois Marriage and Dissolution of Marriage Act (the Act), the trial court found that the Pebblewood property, the Clearwater property, and the Tennessee property were marital property. Among the various items and accounts found to be marital property, the trial court included respondent's personal accounts with First American bank and Chase bank, as well as his Paypal account and the accounts he held jointly with his brother; respondent's rollover retirement accounts valued in excess of $100,000; the airline miles; and the Jaguar automobile. The trial court found that respondent's Ameritrade accounts and his interest in First Advantage were nonmarital property.

¶ 25 The trial court acknowledged the volatility of the real estate market and the difficulties in assessing property values, finding the value of the Pebblewood property to be approximately

$200,000. The Clearwater property was disputed, but the trial court found that it had approximately $50,000 of equity. Finally, the trial court valued the Tennessee property at $50,000.

¶ 26 The trial court considered the allegations of dissipation as a factor in its award of marital property, finding that respondent was a financially sophisticated individual who systematically shifted and concealed assets as the marriage was on the verge of dissolution. Specifically citing to respondent's accounts with his brother and Slowik, as well as the testimony regarding the $7,000 loan from respondent's father, the court found respondent lacked credibility and his explanations were unbelievable.

¶ 27 Accordingly, the trial court adopted the first nine allegations of dissipation as alleged in petitioner's pretrial memorandum. This included $5,128.35 from an account ending in 2517 and $3,685.85 from the account ending with the numbers 6012. The finding of dissipation also included $4,043 from the Clearwater HELOC account, $33,044.62 from the joint Capital One money market account; and $1,962.50 from the "Iwatchrates.com" account. The trial court further found that respondent dissipated a total of $73,401.25 from the accounts with his brother and $29,890.33 from the account with Slowik. Finally, dissipation was found from respondent's First American bank account in the amount of $7,728.96 and from respondent's Paypal account in an unknown amount. Acknowledging the difficulty in determining the total amount of dissipation due to respondent's extensive maneuvering of funds, the trial court concluded and found that respondent had dissipated $137,329.44.

¶ 28 The trial court also found that a $2,700 per month award of maintenance was appropriate for a two-year period because petitioner agreed to resign her job and thereafter contributed to the relationship by working on the real estate sales. Petitioner was awarded the Pebblewood property,

and respondent was awarded the Clearwater property, including its debt. The value of the Tennessee property was divided with 65% being awarded to petitioner and 35% to respondent. Petitioner was given the option to take respondent's share of the Tennessee property as a credit against any amounts respondent owed to her. Petitioner was also awarded 65% of the amounts in respondent's life insurance account and the accounts held jointly between respondent and his brother. The trial court further found that respondent used $2,037.50 of marital funds to pay for nonmarital attorney fees regarding the sale of Draper & Kramer and ordered that amount to be returned to the marital estate and divided accordingly.

¶ 29 Respondent was awarded the Jaguar automobile and the airline miles, but was ordered to pay $13,400 of petitioner's attorney fees. The trial court relied on respondent's failure to disclose financial statements and ultimate prolonging of the case in reaching this determination. Respondent was also ordered to pay 2008 and 2009 real estate taxes on the Pebblewood property and to reimburse petitioner for any fees that she had paid to her homeowner's association.

¶ 30 All remaining monetary accounts, including all retirement accounts, were ordered to be divided equally between the parties. The parties were ordered to file a joint tax return for 2009 and any refund was also to be divided equally.

¶ 31 On August 16, 2010, petitioner filed a motion to clarify the judgment. On August 31, 2010, the trial court granted petitioner's motion and modified the judgment of dissolution, finding that respondent had dissipated $137,988.04. The trial court's modification order also clarified petitioner's nonmarital personal property and awarded petitioner 65% of the $2,037.50 respondent had used for legal services pertaining to the sale of Draper & Kramer. Finally, the trial court found that the

parties' nonretirement accounts would be divided 65% to petitioner and 35% to respondent, according to their respective values as of July 26, 2010.

¶ 32 Respondent filed a timely notice of appeal from both the written and modified judgments for dissolution. Respondent challenges the trial court's (1) distribution of property, including the valuation of the parties' real estate and the finding that he dissipated marital assets; (2) award of temporary maintenance to petitioner; and (3) amount of attorney fees awarded to petitioner. We will address each in turn.

¶ 33 First, respondent challenges the distribution of property. Within this issue, respondent contends that the trial court's valuations of the parties' real estate and findings of dissipation were against the manifest weight of the evidence. With respect to the valuation of real estate, the trial court found the value of the Pebblewood property to be $200,000. Respondent argues that his "significant and longstanding experience" as a mortgage banker entitled his opinion to more credibility than that of respondent, with her more recently acquired real estate broker license. Respondent testified that the Pebblewood property would sell for $234,000 or $235,000, while petitioner testified that it would sell for between $210,000 and $215,000. In support of his argument that the trial court undervalued the Pebblewood property, respondent also refers to the $218,000 offer that the parties received for the property and ultimately rejected. Respondent further argues that the trial court's valuation should not have been below $210,000 because petitioner opined that the property might be worth as much.

¶ 34 In an action for dissolution of marriage, both parties bear the burden of presenting the trial court with sufficient evidence for the valuation and distribution of marital property. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 663 (2008) (citing *In re Marriage of Blackstone*, 288 Ill. App. 3d

905, 910 (1997)). Generally, marital assets should be valued at the time the dissolution judgment is entered. *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 152 (2005). The valuation of marital assets is a matter to be resolved by the trier of fact, and the trial court's valuation will ordinarily not be disturbed on appeal unless it is outside the range testified to by expert witnesses. *In re Marriage of Brooks*, 138 Ill. App. 3d 252, 260 (1985). The trial court's valuation of marital property will not be reversed unless it is against the manifest weight of the evidence. *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 203 (2005). Determinations of the trial court regarding credibility, as the entity closest to the litigation and the trier of fact, are given great deference and there is a strong presumption the trial court made the right decision. *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641 (1997). The valuation of marital property is against the manifest weight of the evidence "where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on any of the evidence." *Heroy*, 385 Ill. App. 3d at 946 (citing *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946 (2007)).

¶ 35 In this case, the trial court's valuation of the Pebblewood property was not against the manifest weight of the evidence. Both parties presented evidence and documents regarding the property's valuation, and both chose to do so in the form of their own testimony. While respondent's experience as a mortgage broker and petitioner's real estate broker's license may entitle the parties' respective opinions to varying degrees of credibility, neither party chose to introduce testimony from any other qualified expert witness. Since neither party called an expert witness, it follows that the trial court's valuation could not have fallen outside any range testified to by expert witnesses. *See Brooks*, 138 Ill. App. 3d at 260.

¶ 36 Although respondent relies on the single offer of $218,000 for the purchase of the Pebblewood property, it does not follow that $218,000 represents the property's valuation for the purposes of dissolution. The trial court explained that the current volatility of the real estate market played a role in its valuation of the property at $200,000. Therefore, the trial court's valuation was not arbitrary. See *Heroy*, 385 Ill. App. 3d at 946. Given petitioner's opinion that the property might sell for $210,000 and the trial court's comments regarding the volatility of the real estate market, we hold that the trial court's valuation of $200,000 was reasonable. See *id*.

¶ 37 The trial court's valuation of the Pebblewood property was based on the evidence presented by both parties and the current volatility of the real estate market. Because the trial court's valuation was based on the evidence and was not arbitrary or unreasonable, an opposite conclusion is not clearly evident. See *id*. Therefore, we uphold the trial court's valuation of the Pebblewood property.

¶ 38 With respect to the Clearwater property, the trial court heard evidence that it had two outstanding mortgages. The second mortgage was a home equity line of credit (HELOC), which was also a subject of respondent's dissipation. While the trial court found a precise valuation difficult to determine, it did find "roughly" $50,000 in equity. The trial court's comments reflected a thoughtful consideration of the evidence, and we uphold its findings regarding the Clearwater property.

¶ 39 With respect to the issue of dissipation, respondent argues that he used the assets to pay petitioner's maintenance and marital debts such as mortgages, real estate taxes, homeowner's association fees, and insurance premiums. In support of his argument, respondent introduced a self-prepared net income summary to illustrate a monthly financial shortfall. Respondent asserts that the down economy negatively impacted his fluctuating income, rendering him incapable of paying his

debts without the use of marital assets. Petitioner counters that respondent's self-prepared net income summary failed to adequately detail how the various contested amounts of dissipation were expended and emphasizes the trial court's finding that respondent lacked credibility.

¶ 40 Section 503(d)(2) of the Act states that the trial court may consider the parties' dissipation when dividing marital property. 750 ILCS 5/503(d)(2) (West 2012). " ' "Dissipation" is defined as "the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at the time that the marriage is undergoing an irreconcilable breakdown." ' " *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 374 (2008) (quoting *In re Marriage of O'Neill,* 138 Ill. 2d 487, 497 (1990) (quoting *In re Marriage of Petrovich,* 154 Ill. App. 3d 881, 886 (1987))). " 'The spouse charged with dissipation of marital funds has the burden of showing, by clear and specific evidence, how the marital funds were spent.' " *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 700 (2006) (quoting *In re Marriage of Tietz,* 238 Ill. App. 3d 965, 983 (1992)). General and vague statements that funds were spent on marital expenses or to pay bills are inadequate to avoid a finding of dissipation. *Id.* When assessing explanations provided by a spouse accused of dissipation, the trial court is required to make a determination of credibility. *In re Marriage of Zweig*, 343 Ill. App. 3d 590, 596 (2003). Whether dissipation has occurred is a question of fact to be determined by the trial court, and such a determination will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 86 (citing *Holthaus*, 387 Ill. App. 3d at 374). As discussed previously, a factual determination is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent, or when the court's findings appear to be unreasonable, arbitrary, or not based upon the evidence. *Id* (citing *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 181-82 (2002)).

¶ 41 In the present case, petitioner presented a pretrial memorandum alleging 16 counts of dissipation, charging that respondent had dissipated $178,147.56 of marital assets from various accounts and sources of income. The trial court found dissipation in the majority of petitioner's allegations involving accounts held jointly by the parties and the accounts respondent held jointly with his brother and Slowik. The trial court further found that respondent dissipated assets in the form of his missing income, as well as from his own personal accounts, the "Iwatchrates.com" account, and the Clearwater HELOC account. Acknowledging difficulty in tracking the funds because they were "moved from account to account to account, plus there were substantial sums that were not accounted for in 2009 missing income," the trial court ultimately found that respondent dissipated $137,329.44. Respondent argues that the trial court "lazily" adopted petitioner's pretrial memorandum and erred in its calculation of dissipation. Petitioner maintains that the trial court's findings were appropriate given respondent's missing income and his lack of credibility.

¶ 42 Relying primarily on *In re Schinelli*, 406 Ill. App. 3d 991 (2011), respondent here argues that his expenditures of marital funds were justified because his payment of marital debts caused him to operate at a monthly deficit. In *Schinelli*, the reviewing court reversed a finding of dissipation based on evidence that the respondent was paying expenses for the parties' marital residence and the educational expenses for the parties' child. *Id.* at 1000. In addition, the respondent in *Schinelli* was also paying the expenses for his own residence, causing him to incur a monthly deficit. *Id.* The court in *Schinelli* held that it was appropriate for the respondent to be paying for the family's bills with the parties' jointly held account. *Id.*

¶ 43 There are significant differences between the circumstances in *Schinelli* and in the present case. In *Schinelli*, the respondent's alleged dissipation involved a series of transfers over a one-year

period that was approximately the same as the aggregate amount of his monthly deficit. *Id.* at 997. The respondent in *Schinelli* also detailed every transaction pertaining to the relevant accounts after the transfers were made. *Id.* Contrary to *Schinelli*, the instant case involved alleged amounts of dissipation that outweighed respondent's projected monthly deficit. Also, unlike the respondent in *Schinelli*, respondent in the present case failed to provide detailed evidence for the majority of the alleged dissipation. Although respondent provided evidence of expenditures toward marital debt for some of the dissipation, his evidence did not rise to the level of the detailed evidence presented by the respondent in *Schinelli*. In some instances, rather than presenting evidence of expenditures, respondent misstates the legal proposition that the burden of proof is on the party alleging dissipation and argues that petitioner failed to meet her burden. *See Hubbs*, 363 Ill. App. 3d at 700. Respondent also merely restates several explanations made in the trial court regarding the accounts with his brother and Slowik, and the $7,000 loan from his father.

¶ 44 The trial court was not required to list what conduct constituted dissipation or explain precisely how it arrived at a particular dollar amount. See *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d 761, 779-80 (2007). The trial court found that respondent was "financially, a very sophisticated person," who engaged in a "systematic, sustained effort to hide marital funds." Referencing respondent's explanation of the $7,000 loan from his ailing father and the joint accounts with his brother and Slowik, the trial court stated it "did not believe that [respondent] did the things that [respondent] said," agreeing that the majority of petitioner's allegations constituted dissipation.

¶ 45 It is worth noting that respondent made significant transfers of marital funds on March 20, 2009, the day after petitioner filed for dissolution of marriage. Respondent withdrew $33,044.62 from the Capital One money market account held jointly with petitioner and deposited the cash into

an account held jointly with his brother, which inexplicably was not later listed on his comprehensive financial statement. Also on March 20, 2009, respondent made two transfers totaling nearly $3,700 from the Clearwater HELOC account into his own personal account. These transfers were made before any court-ordered maintenance, and respondent asserted that they constituted preemptive maneuvers necessary to offset inevitable financial shortfalls. This assertion, similar to his other explanations and arguments, supports the trial court's determination that respondent lacked credibility.

¶ 46 The trial court's ruling that respondent did not meet his burden of showing how the marital funds were spent was not against the manifest weight of the evidence. See *Hubbs*, 363 Ill. App. 3d at 700. Respondent went to great lengths preparing his own net income statement to persuade the trial court that he could not have met his monthly financial burden without the use of the marital funds. However, respondent's testimony reflected no orderly patterns of expenditures, and he provided no reasonable explanations that might have led the trial court to believe that he was simply maneuvering marital funds for the purpose of paying marital expenses. It is also significant that the trial court chose not to accept all the petitioner's alleged counts of dissipation, finding that some of the allegations included what appeared to be "double counting." Contrary to respondent's assertion, the trial court did not "lazily" adopt petitioner's pretrial memorandum but rather assessed the numerous counts of dissipation and accepted those it deemed appropriate based on the evidence. See *Romano*, 2012 IL App (2d) 091339, ¶ 86 (citing *Ricketts*, 329 Ill. App. 3d at 181-82). Respondent attempted to reconcile the dissipated marital assets with explanations which the trial court found to be "incredible, unbelievable, and unconvincing." The trial court made a factual determination regarding respondent's credibility, which was not against the manifest weight of the evidence. See

Zweig, 343 Ill. App. 3d at 596 (2003). Therefore, the trial court's finding of dissipation was not arbitrary or unreasonable and an opposite conclusion was not clearly apparent. See generally *Romano*, 2012 IL App (2d) 091339.

¶ 47 Having reviewed the trial court's valuation and dissipation rulings, we turn to the trial court's distribution of marital property. Respondent contends that the trial court's distribution of marital property is highly inequitable and should be reversed or vacated. The trial court awarded petitioner 65% of the parties' marital property, including nonretirement accounts, and respondent's jointly held accounts with his brother and Slowik. Respondent contends that the trial court abused its discretion in its distribution of marital property and argues that he contributed a substantially larger portion of his earnings and nonmarital assets to the marital estate than did petitioner. Respondent further argues that the trial court failed to properly consider "the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property" as directed by section 503(d)(1) of the Act. As evidence of his substantial contributions to the parties' marital property, respondent lists a downpayment on the Clearwater property; proceeds from the sale of his premarital residence; and his continuing financial contributions throughout and after the dissolution of the marriage.

¶ 48 Petitioner counters by offering evidence that the downpayment on the Clearwater property was made from a joint marital account. Petitioner also testified that the parties lived in respondent's premarital residence following their marriage and presented evidence that respondent eventually quitclaimed the deed to respondent and petitioner. Relying on *In re Marriage of Johns*, 311 Ill. App. 3d 699, 703 (2000), petitioner maintains that these transactions involved marital property and that the property was "owned by both spouses, even if one spouse has furnished all the consideration for

it out of the nonmarital funds." Accordingly, petitioner argues that a marital residence "will be presumed to be marital property absent clear and convincing rebutting evidence." See *id.*

¶ 49 Before a trial court may dispose of property upon dissolution of marriage, the property must be classified as either marital or nonmarital. *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2009) (citing *In re Marriage of Didier*, 318 Ill. App. 3d 253, 258 (2000)). Once the trial court classifies the property, section 503(d) of the Act requires the trial court to divide the parties' marital property between them "in just proportions considering all the relevant factors. 750 ILCS 5/503(d) (West 2010). The relevant factors to be considered include:

> "(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including (i) any such decrease attributable to a payment deemed to have been an advance from the parties' marital estate under subsection (c-1)(2) of Section 501 and (ii) the contribution of a spouse as a homemaker or to the family unit;
>
> (2) the dissipation by each party of the marital or non-marital property;
>
> (3) the value of the property assigned to each spouse;
>
> (4) the duration of the marriage;
>
> (5) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;
>
> (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 respective economic circumstances of the parties." 750 ILCS 5/503(d) (West 2010).

¶ 50 The touchstone of proper apportionment is whether it is equitable, and each case rests on its own facts. *Romano*, 2012 IL App (2d) 091339, ¶ 33. An equitable division does not necessarily mean an equal division, and one spouse may be awarded a larger share of the assets if the relevant factors warrant such a result. *Id* (citing *In re Marriage of Henke*, 313 Ill. App. 3d 159, 175 (2000)). Determinations of the trial court regarding credibility, as the entity closest to the litigation and the trier of fact, are given great deference and there is a strong presumption the trial court made the right decision. *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641 (1997). A reviewing court applies the manifest-weight-of-the-evidence standard to the factual findings of each factor on which a trial court may base its property disposition, but it applies the abuse-of-discretion standard in reviewing the trial court's final property disposition. *Romano*, 2012 IL App (2d) 091339, ¶ 33 (citing *Vancura* 356 Ill. App. 3d at 205). A trial court abuses its discretion only where no reasonable person would have distributed the property as the trial court did. *Id*., ¶ 33 (citing *Henke*, 313 Ill. App. 3d at 175).

¶ 51 The parties challenged the classification and distribution of various assets during the course of the dissolution proceedings, some of which appeared to be more contentious than others. As such,

the trial court was faced with the task of classifying the entirety of the parties' combined property as either marital or nonmarital. See *Schmitt*, 391 Ill. App. 3d at 1017. As discussed previously, the trial court was then required to divide the marital property "in just proportions considering all the relevant factors." 750 ILCS 5/503(d) (West 2010). Among the difficult decisions made by the trial court was the distribution of marital assets such as the airline miles, which the trial court found difficult to value and awarded to respondent. In its modified judgment, the trial court classified and awarded petitioner the items identified as part of her nonmarital home decorating business.

¶ 52 We hold that the trial court did not abuse its discretion when it awarded 65% of the marital property to petitioner. While section 503(d)(1) of the Act states that the trial court must consider the contributions of the parties to the acquisition of marital property, respondent fails to acknowledge the other factors set forth for consideration under section 503(d). The factors notably include the parties' dissipation, the value of property assigned to each spouse, the relevant economic circumstances of each spouse, and the reasonable opportunity of each spouse for future acquisition of capital assets. 750 ILCS 5/503(d) (West 2010). While respondent may have indeed contributed more financially to the marriage than did petitioner, this did not require the trial court to divide the marital assets equally. See *Henke*, 313 Ill. App. 3d at 175. Although respondent's initial contributions may have come, in part, from assets he acquired prior to the marriage, those assets were nonetheless deemed marital property, and respondent failed to present clear and convincing evidence to the contrary. See *Johns*, 311 Ill. App. 3d at 703. After considering all of the relevant 503(d) factors, the trial court awarded a larger share of the marital assets to petitioner. The trial court's application of section 503(d) was reasonable and its distribution of marital property was not an abuse of discretion.

¶ 53 Respondent also argues that the trial court impermissibly modified the judgment when it determined the inventory from petitioner's home decorating business was nonmarital property. Respondent argues that this property should not have been awarded to petitioner because petitioner did not introduce evidence such as banking statements or business paperwork to show that she was operating a business. Respondent, however, presents no developed argument to persuade this court that the trial court's ruling was against the manifest weight of the evidence. See *Schmitt*, 391 Ill. App. 3d at 1017 (stating that the trial court's classification will not be disturbed on appeal unless it is against the manifest weight of the evidence). Rather, respondent argues that the trial court erred in finding that the home decorating business was nonmarital. We conclude the trial court's determination regarding petitioner's home decorating business was not against the manifest weight of the evidence, and its distribution of the items pertaining to petitioner's business was not an abuse of discretion.

¶ 54 Respondent next contends that the trial court erred when it awarded maintenance to petitioner. Respondent argues that petitioner did not adequately seek employment after resigning her teaching position during the first year of the marriage. Respondent acknowledges that petitioner assisted with the real estate sales; however, he asserts that petitioner demonstrated a lack of contribution to the marriage. According to respondent, the maintenance award was neither reasonable nor rehabilitative, but rather constituted an inequitable windfall to petitioner. Petitioner counters that she and respondent agreed upon her resignation from her teaching position and her work on the real estate sales constituted a significant contribution to the marriage. Petitioner maintains that the pursuit and acquisition of her real estate broker's license were evidence that she was pursuing a career in real estate.

¶ 55 Section 504(a) of the Act provides that a court may grant maintenance in an amount and of a duration as it deems just, after considering the relevant factors, which include:

"(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

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

(7) the duration of the marriage;

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

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

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

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a) (West 2010).

¶ 56 "As a general rule, 'a trial court's determination as to the awarding of maintenance is presumed to be correct.' " *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010) (quoting *Heroy*, 385 Ill. App. 3d at 650). The trial court is accorded broad discretion to determine the propriety, amount, and duration of maintenance, and its judgment will not be overturned absent an abuse of discretion. *In re Marriage of Shinn*, 313 Ill. App. 3d 317, 321-22 (2000); see also *Heroy*, 385 Ill. App. 3d at 650 (stating that maintenance awards are within the sound discretion of the trial court, and will not be disturbed absent an abuse of discretion). An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *Nord*, 402 Ill. App. 3d at 292 (citing *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005)). Finally, when a party claims the trial court abused its discretion in awarding maintenance, that party bears the burden of showing the trial court abused its discretion. *Id*.

¶ 57 In the present case, the trial court determined that an award of maintenance was appropriate. The trial court "considered all the applicable factors and weighed and considered them all in Section 504." After weighing the relevant factors, the trial court found that respondent "deplete[ed] cash resources by dissipation," and that petitioner "was staying at home by agreement." The trial court further found that petitioner's work on the real estate flips "provided some benefit to both of the parties," and that she needed "some time to get back on her feet and re-enter the job market." The trial court awarded petitioner maintenance in the amount of $2,700 per month, essentially extending the duration of its April 2009 court-ordered maintenance for two more years.

¶ 58 Respondent argues in the alternative to reversal, that maintenance should have been awarded for only one year, considering the maintenance that petitioner received before trial. Respondent cites section 504(a)(2) of the Act and argues that a court may consider "the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate." We note, however, that this language is derived from section 510(a-5)(2) of the Act, which pertains to the modification and termination of maintenance. See *Blum v. Koster*, 235 Ill. 2d 21, 31 (2009) (stating that section 510(a-5) "provides additional factors for the trial court to consider in determining whether modification or termination of maintenance is warranted. Specifically, section 510(a-5) states: *** (2) the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate.").

¶ 59 As stated previously, section 504(a) of the Act controls a trial court's award of maintenance. Properly cited, the relevant factors in section 504(a) include the income and property of each party, the present and future earning capacity of each party, and any impairment of present and future earning capacity of the recipient spouse due to devoting time to domestic duties or forgoing opportunities because of the marriage. *See supra* 750 ILCS 5/504(a) (West 2010). Notably, section 504(a) also permits the trial court to consider "any other factor that the trial court expressly finds to be just and equitable." *Id.* The trial court properly applied the relevant section 504 factors and appropriately considered them in light of respondent's dissipation. Respondent bore the burden of establishing that the trial court abused its discretion. See *Nord*, 402 Ill. App. 3d at 292. As petitioner correctly asserts, respondent has not met this burden. Because the trial court expressly stated that it had considered the statutory factors provided in section 504 of the Marriage Act and

the record fails to support respondent's claim, we decline to find otherwise. The award of maintenance was within the trial court's sound discretion, and we hold that the trial court did not abuse its discretion. See *Heroy*, 385 Ill. App. 3d at 650.

¶ 60 Finally, with respect to the issue of attorney fees, respondent contends that the trial court abused its discretion in awarding fees because it failed to articulate the basis for its fee award and judgment. In November 2009, the trial court had ordered respondent to pay petitioner's attorney fees relating to respondent's failure to produce financial documents during discovery. The trial court's award of attorney fees ultimately included $3,400 from the pretrial court order, plus an additional $10,000 from the trial court's finding that "the case was prolonged because of [respondent's] failure to fully disclose many things." Respondent argues that this award merely amounted to a "tack on" for punishment. Petitioner counters that respondent's lack of credibility and greater income justified the trial court's finding and argues that the award of attorney fees was appropriate.

¶ 61 Attorney fees are generally the responsibility of the party who incurred the fees. *In re Marriage of Cantrell*, 314 Ill. App. 3d 623, 630 (2000). Section 508(a) of the Act provides in part: "The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees." 750 ILCS 5/508(a) (West 2010). The propriety of an award of attorney fees is dependent upon a showing by the party seeking them an inability to pay and the ability of the other spouse to do so. *Schinelli*, 406 Ill. App. 3d at 995. The allowance of attorney fees in a dissolution case and the proportion to be paid by each party are within the trial court's discretion and will not be disturbed on appeal absent an abuse of that discretion. *In re Marriage of Pylawka*, 277 Ill. App. 3d 728, 735 (1996). Although awarding attorney fees rests largely in the trial

court's discretion, such an award will be reversed when the financial circumstances of both parties are substantially similar and the party seeking fees has not shown an inability to pay. *Schinelli*, 406 Ill. App. 3d at 995 (citing *In re Marriage of Roth*, 99 Ill. App. 3d 679, 686 (1981)).

¶ 62 In the present case, respondent relies upon phrases from section 508(b) of the Act for the contention that the trial court's award should have been limited to the attorney fees relating to a "proceeding for the enforcement of an order or judgment." Respondent further argues that an award of attorney fees requires a finding that a party violated a court order "without compelling cause or justification." Respondent's argument follows that, because the trial court never found a violation of a court order relating to the additional $10,000 award, that portion of the award was an unjustified abuse of discretion. We disagree with respondent.

¶ 63 Read in its entirety, the relevant language from section 508(b) of the Act provides:

> "In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party." 750 ILCS 5/508(b) (West 2010).

¶ 64 Contrary to respondent's assertions, section 508(b) is not the only provision by which a trial court may award attorney fees. Section 508(b) authorizes enforcement of fees awarded as a result of a party's failure to comply with an order, which section the trial court utilized when it awarded $3,400 in attorney fees to petitioner. However, with respect to the $10,000 award of attorney fees, section 508(a) is the appropriate section of the Act to be applied, which section authorizes the trial

court to award reasonable attorney fees "after considering the financial resources of the parties." See 750 ILCS 5/508(a) (West 2010).

¶ 65 Evidence presented during the trial showed a significant disparity between the respective incomes of petitioner and respondent. In support of its award to petitioner for attorney fees, the trial court further referenced respondent's lack of credibility and the dissipated marital assets. Given these circumstances and the trial court's finding that the case was "prolonged because of [respondent's] failure to fully disclose many things," the trial court's $13,400 award was reasonable and in accordance with section 508(a) of the Act. Respondent has not shown that the financial circumstances of both parties were substantially similar, has not shown an abuse of the trial court's discretion, or that reversal is warranted for another reason. *See Schinelli*, 406 Ill. App. 3d at 995. The award of attorney fees was within the trial court's discretion, and we hold that the trial court did not abuse its discretion.

¶ 66 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 67 Affirmed.