2012 IL App (2d) 110325
No. 2-11-0325
Order filed September 13, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF PHILLIP C. SEEGER, Petitioner and Counterrespondent-Appellee, and COLLEEN A. SEEGER, Respondent and Counterpetitioner-Appellant.	))))))))))))	Appeal from the Circuit Court of Lake County. No. 08-D-1220 Honorable David P. Brodsky, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

Held: In divorce litigation, the trial court did not err in rejecting respondent's contention that consolidation of stock shares onto a single stock certificate, where some of the shares were undisputedly marital, transmuted all remaining shares into marital property. There also was no error in the trial court's award of maintenance to respondent and denial of her request for contribution to her attorneys fees. Finally, respondent forfeited, for lack of development, her argument that the trial court erred in denying her request for contribution to the college expenses of the parties' children.

¶ 1 Respondent, Colleen Seeger, appeals from the order of the trial court dissolving her marriage to petitioner, Phillip Seeger. She contests the trial court's rulings on various issues including asset classification, maintenance, attorneys fees, and the college expenses of their children. We affirm.

¶ 2 At the outset, we address respondent's request that we "disregard (or discount)" the statement of facts in petitioner's appellee's brief because it is argumentative, omits certain material facts, and lacks record citations for some of its assertions. See Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008) (the statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate references to the pages of the record on appeal"). Material omissions in an appellee's statement of facts are not *per se* inappropriate, as the appellee is not required to file any statement of facts at all, and any statement that the appellee does file need only be in the nature of a supplement. See Ill S. Ct. R. 341(i) (eff. July 2, 2008) (a statement of facts "need not be included [in an appellee's brief] except to the extent that the presentation by the appellant is deemed unsatisfactory."). However, an omission that, in context, constitutes an implied misrepresentation about the record is improper for appellee and appellant alike. Respondent, however, has identified nothing in petitioner's statement of facts that amounts to an implied misrepresentation. Nor do we agree with respondent that petitioner's statement of facts is argumentative. Finally, we do agree with respondent that petitioner has not provided record citations for each assertion. This infraction, however, is not so pervasive as to warrant our ignoring the statement of facts in its entirety. Instead, we disregard the offending portions and admonish petitioner that the supreme court rules "are not advisory suggestions, but rules to be followed" (*In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 51)).

¶ 3 We are compelled to add that respondent likewise is guilty of rule infractions, and to a greater degree than petitioner. If we applied the supreme court rules to respondent with the same severity she asks us to apply them to petitioner, we would arguably be justified in striking respondent's entire brief. If petitioner's *optional* statement of facts is, at times, out of compliance with Rule 341(h)(6), respondent's *required* statement of facts is egregiously noncompliant. Only a small portion of the relevant background is contained in her statement of facts. The balance of those facts do not appear until the argument section, where they are not set apart but rather are woven into the discussion of each of the four main issues that respondent raises. Thus, unlike petitioner, respondent has hardly attempted even the pretense of a formal separation between facts and argument. Respondent by far deserves the sterner admonition here.

¶ 4 We proceed to the merits of the appeal. The parties were married on May 11, 1985. Three children were born from the marriage: Garrett, born October 3, 1986; Cody, born November 30, 1990; and Bretton, born February 2, 1992. The parties were separated in early 2008 when petitioner moved out of the marital residence. Respondent remained in the residence and was still living there as of trial. On June 16, 2008, petitioner filed his petition for dissolution of marriage. Respondent counter-petitioned on October 8, 2008. The trial court entered its judgment of dissolution on December 8, 2010.

¶ 5 We present additional facts as we discuss each issue.

¶ 6 I. Asset Classification - Shares of Medcor, Inc.

¶ 7 Respondent argues that the trial court erred in classifying as nonmarital property 155,400 of the 229,150 shares of Medcor, Inc., held by petitioner as of trial. The 155,400 shares were acquired by petitioner before the marriage. The remaining 73,750 shares were acquired during the

marriage, and petitioner conceded at trial that they were marital. Respondent argues that the 155,400 shares were commingled with the marital shares and hence were transmuted into marital property. She alternatively argues that petitioner is barred, under the doctrines of equitable and promissory estoppel, from denying that his shares of Medcor acquired before the marriage are in fact marital property. We reject both arguments.

¶ 8 A. Background

¶ 9 1. The History of Medcor and the Issuance of Various Stock Certificates

¶ 10 The following is taken from the testimony of petitioner and Matt Hafter, an attorney for Medcor. The essential facts are undisputed, but variances in the testimony will be noted.

¶ 11 Petitioner is president of Medcor, which specializes in workplace health management services. Medcor initially operated as a division of Tek Ambulance. In October 1984, Medcor became an independent company and filed its articles of incorporation in Illinois. On several occasions from 1984 through 2007, Medcor and a related corporation, Medcor Holdings, Inc. (Holdings), issued petitioner stock. Certificates representing that stock were introduced into evidence at trial. There were also occasions when certificates were issued, not to represent new shares, but to consolidate existing shares, or divide consolidated shares by their dates of issuance. These certificates also were introduced at trial.

¶ 12 In October 1984, upon the incorporation of Medcor, petitioner received 250 shares from the company. Petitioner was issued Certificate 1, dated October 30, 1984. In 1996, due to an infusion of cash from a group of investors called Crobern Partners, Medcor announced a 1000:1 stock split. Certificate 1 was cancelled, and petitioner was issued Certificate 7, dated April 2, 1996, for 250,000 shares. Also on April 2, 1996, petitioner sold 94,600 shares back to Medcor, retaining 155,400

shares. Certificate 7 was cancelled, but there is no replacement stock certificate in the record reflecting petitioner's ownership of the 155,400 shares. Chronologically, the next certificate in the record is Certificate 13, dated December 20, 2006, for 155,400 shares of Holdings. There is no dispute, however, that petitioner owned 155,400 shares of Medcor as of April 2, 1996.

¶ 13 Shortly after the investment by the Crobern Group, Medcor began to contemplate the purchase of a New York company called CHD Meridian (Meridian). To facilitate the purchase of Meridian and to encourage further growth of Medcor, the board of directors decided to create a holding company to take ownership of Medcor. The board determined that a Delaware domicile for the holding company was best because that State's favorable corporate law would attract investors. The board also determined that tax liability could be minimized if the transfer of interests was accomplished through a "reverse triangular merger." The shareholders approved the board's recommendation, and a two-stage merger process began. The first stage was the creation of two entities. The first was Holdings, a Delaware corporation formed as a wholly owned subsidiary of Medcor. The second entity was Medcor Merging, an Illinois corporation formed as a wholly owned subsidiary of Holdings. The second stage of the process was the merging of Medcor Merging into Medcor. Consequently, Medcor became a wholly owned subsidiary of Holdings. According to Hafter, "all of the stock that had previously been owned by the individual stockholders of Medcor was converted into the same number of shares of [Holdings]." Petitioner was issued Certificate 13, dated December 20, 1996, for 155,400 hundred shares of Holdings stock. Petitioner testified that, following the merger, Holdings and Medcor had the same officers and boards of directors.

¶ 14 In March 1998, petitioner purchased 37,500 shares of Holdings stock. The shares were reflected on Certificate A-118, dated March 18, 1998. As of that date, petitioner had a total of

192,900 shares of Holdings. Petitioner stipulated at trial that the 37,500 shares of Holdings were marital property.

¶ 15 In May 2000, Holdings implemented a stock compensation program in which shareholders were issued stock subject to forfeiture if the company did not meet certain performance standards. Petitioner was provisionally granted 75,000 shares of Holdings. The shares were reflected on Certificate A-141, dated May 9, 2000.

¶ 16 In 2003, the boards of Holdings and Medcor decided to merge Holdings into Medcor. Hafter explained that the original rationale for the holding company structure no longer existed: Holdings and Medcor never acquired Meridian as planned, and the "costs of keeping [Holdings] in place exceeded the benefits." Holdings was merged into Medcor in late 2003. Hafter testified that, as a result of the merger, Medcor issued new shares to replace the shares of Holdings.

¶ 17 After the merger, petitioner was issued two stock certificates from Medcor, both dated January 1, 2004. The first was Certificate I-336 for 211,650 shares of Medcor. The second was Certificate I-337 for 56,250 shares of Medcor. Across the face of Certificate I-337 is written "VOID." Petitioner and Hafter explained that Certificate I-337 was void when issued and represented the amount of shares that petitioner did not earn from the May 2000 conditional stock grant of 75,000 shares. Hafter further explained that, when shares acquired in a conditional stock granted are forfeited, a voided certificate for the forfeited shares is issued.

¶ 18 Certificate I-336 does not differentiate at all among the 211,650 shares. Petitioner testified that the 211,650 shares were the aggregate of the following quantities of shares: (1) 155,400; (2) 37,500; and (3) 18,750. The 155,400 shares were traceable immediately to the 155,400 shares of Holdings stock represented on Certificate 13, and ultimately to the 250,000 Medcor shares

(represented on Certificate 7) that petitioner received after the stock split in April 1996. The 37,500 shares were carried over from Certificate A-118 issued in March 1998. Finally, the 18,750 shares represented the amount that petitioner earned from the conditional stock grant in May 2000. The forfeited shares, 56,250, were represented in Certificate I-337.

¶ 19 Hafter testified that Certificate I-336 "bundled" the entirety of petitioner's Medcor stock. According to Hafter, though the shares were aggregated on the certificate, it was possible to "determine the[ir] origin" by "trac[ing] them from the original certificates from which [they] derive." Hafter also noted that the shares represented in Certificate I-336 had different tax bases. Hafter testified that, in January 2009, he, at the request of Ben Peterson of Medcor, cancelled Certificate I-336 and replaced it with the "three certificates from where it came."

¶ 20 In June 2005, Medcor issued another conditional stock grant. Petitioner received Certificate I-352, dated June 3, 2005, for 17,500 shares. Certificate I-352 was later cancelled. Petitioner testified that he earned all 17,500 shares, but at two different stages. First, on April 18, 2007, petitioner was issued Certificates I-398, for 14,000 shares, and I-399, for 3,500 shares. The words "not earned" appear on Certificate I-399. Second, petitioner was issued Certificate I-445 on May 26, 2009, for 3,500 shares. Here, petitioner explained, he earned the balance of the 17,500 shares. Petitioner stipulated that the 17,500 shares were marital property.

¶ 21 Three additional stock certificates were introduced at trial, all dated January 19, 2009. Certificate I-434 was for 18,750 shares, I-435 for 37,500, and I-436 for 155,400. Hafter identified these certificates as those he arranged to be issued when Peterson directed him to cancel Certificate I-336 and issue certificates dividing the 211,650 shares by origin.

¶ 22 As a result of the foregoing events, petitioner held 229,150 shares of Medcor as of trial. He stipulated at trial that 55,000 of those shares were marital, consisting of (1) the 37,500 shares represented on Certificate A-118, (2) the 14,000 shares represented on Certificate I-398, and (3) the 3,500 shares represented on Certificate I-445. In his written closing argument, however, petitioner claimed as nonmarital only 155,400 shares of Medcor, apparently conceding that the 18,750 shares acquired as a result of the May 9, 2000, stock grant were marital as well. The 155,400 shares were, as noted, acquired by petitioner before the marriage.

¶ 23 B. The Trial Court's Decision

¶ 24 Following the evidence, respondent argued on two main grounds that all 229,150 shares of Medcor held by petitioner were marital property. First, respondent asserted that, due to the various corporate mergers, it was impossible to trace any of the 229,150 shares back to the original 250 shares that petitioner received in October 1984. Respondent does not reassert this argument on appeal. Respondent's second argument below was that, when all 211,650 shares of Medcor were combined into a single stock certificate, I-336, any then-nonmarital shares commingled with the (stipulated) marital shares, transmuting all the shares into marital property. See 750 ILCS 5/503(c) (West 2010).

¶ 25 In its written dissolution judgment, the trial court addressed and rejected both arguments. As to respondent's argument based on Certificate I-336, the court said:

> "[T]he fact that [petitioner's] non-marital shares and the marital shares of Medcor acquired during the marriage were briefly evidenced by a single stock certificate, does not change their character or defeat their traceability. The stock certificate is not the stock itself, but is the evidence of the aliquot portion of the holder's ownership in the stock. *Bombal v. Peoples*

> *State Bank of Ramsey*, [367 Ill. 113, 117 (1937)]. To hold otherwise would be [to] discourage creative and aggressive entrepreneurs from taking steps to expand their businesses for fear of loosing [*sic*] their original ownership interests."

¶ 26 C. Analysis

¶ 27 Respondent reasserts on appeal that the aggregation of the 211,650 of Medcor shares onto a single stock certificate, I-336, obliterated any distinction among them and, hence, transmuted any nonmarital shares into marital property. We disagree.

¶ 28 The trial court must classify property as marital or nonmarital before it can distribute it. *In re Marriage of Henke*, 313 Ill. App. 3d 159, 166 (2000). Section 503(a) of the Illinois Marriage and Dissolution Act (Act) (750 ILCS 5/503(a) (West 2010)) establishes a rebuttable presumption that "all property acquired by either spouse subsequent to the marriage" is marital property. A party can overcome this presumption only by a showing of clear and convincing evidence that the property falls within one of eight exceptions listed in section 503(a). *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2009). Property acquired before marriage constitutes one of those exceptions. See 750 ILCS 5/503(a)(6) (West 2010). The 155,400 shares of Medcor stock at issue here were acquired by petitioner before the marriage. However, even what would otherwise be nonmarital property may lose that classification if commingled with marital property. Sections 503(c)(1) and (c)(2) of the Act state:

> (c) Commingled marital and nonmarital property shall be treated in the following manner, unless otherwise agreed by the spouses:
>
> (1) When marital and non-marital property are commingled by contributing one estate of property into another resulting in a loss of identity of the contributed

> property, the classification of the contributed property is transmuted to the estate receiving the contribution, subject to the provisions of paragraph (2) of this subsection; provided that if marital and non-marital property are commingled into newly acquired property resulting in a loss of identity of the contributing estates, the commingled property shall be deemed transmuted to marital property, subject to the provisions of paragraph (2) of this subsection.
>
> (2) When one estate of property makes a contribution to another estate of property, or when a spouse contributes personal effort to non-marital property, the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation; provided, that no such reimbursement shall be made with respect to a contribution which is not retraceable by clear and convincing evidence, or was a gift, or, in the case of a contribution of personal effort of a spouse to non-marital property, unless the effort is significant and results in substantial appreciation of the non-marital property. Personal effort of a spouse shall be deemed a contribution by the marital estate. The court may provide for reimbursement out of the marital property to be divided or by imposing a lien against the non-marital property which received the contribution."

The trial court's property classification is reviewed *de novo* if, as here, the material facts are not in dispute. *In re Marriage of Abrell,* 236 Ill. 2d 249, 255 (2010). Any doubts as to the nature of the property are resolved in favor of classifying the property as marital. *Schmitt*, 391 Ill. App. 3d at 1017.

¶ 29 Respondent asserts that, by virtue of Certificate I-336, the 155,400 shares of Medcor stock claimed by petitioner to be nonmarital were "commingled" with the remaining, marital shares. Section 503(c) identifies two ways by which property from one estate may "los[e] [its] identity" by being commingled with property from another estate. The first clause of section (c)(1) speaks of commingling that occurs when one estate is "contribut[ed] *** into another resulting in loss of identity of the contributed property." 750 ILCS 5/503(c)(1) (West 2010). The second clause of section (c)(1) addresses "loss of identity" that occurs when "marital and non-marital property are commingled into newly acquired property resulting in a loss of identity of the contributing estates." 750 ILCS 5/503(c)(1) (West 2010).

¶ 30 Respondent has not established that the 155,400 shares of Medcor lost their identity under either section 503(c)(1) or (c)(2). Respondent states that she "takes no quarrel" with the observation in *Bombal*, cited by the trial court, that a "stock certificate is not the stock itself but is *the evidence* of the aliquot part of the holder's ownership in the stock" (emphasis added) (*Bombal*, 367 Ill. at 117). Respondent nonetheless contends:

> "While [petitioner's] stock certificates may only be evidence of the aliquot part of his ownership in [Medcor], *** merging of his marital and non-marital stock into one certificate caused transmutation of the underlying asset from non-marital property to marital and has legal significance for that reason. In other words, it refined the contours of the ownership interest. Indeed, the *consolidated* certificate evinced the *singular* nature of their aliquot part of the company's ownership." (Emphasis in original.)

On the notion that modifications to a stock certificate can impact ownership in the stock, and thus its classification under the Act, respondent likens a stock certificate to a title deed:

> "[C]hanges made to the title of real estate can and do impact its characterization of the underlying asset as marital or non-marital property; e.g., non-marital real estate which was originally held in one spouse's name is transmuted to marital property when it is transferred into joint ownership."

¶ 31 Respondent is correct that there is an analogy, but she misconceives its nature. A redesignation of ownership on a stock certificate, like a redesignation on a title deed, is (if valid) a self-executing measure that can shift the asset between estates of property; such a simple transfer circumvents any "commingling" analysis under section 503(c)(1) and (c)(2). We can conceive of no change to a stock certificate, aside from a redesignation of ownership, that would evidence a transfer of shares to another. Any other modification would simply leave the aliquot portion(s) of company ownership with the present owner(s). Here there was aggregation, on a single stock certificate, of shares *already owned* by the same individual. Such an action does not, quite obviously, signify a change in ownership. If anything, it confirms that all of those shares are owned by that individual. Thus, if we considered simply the face of the stock certificate, the "singular nature" (to use respondent's term) of the stock would be ownership by *petitioner alone* since he alone is listed as owner; this, obviously, would defeat respondent's position. If the aggregation signified some underlying action, it would, of course, be relevant to property classification, yet at bottom it evinces nothing but perhaps a desire for documentary simplicity on the part of petitioner, Medcor, or both. Since Certificate I-336 represents a simple arithmetical operation, and no underlying action, there could be no "commingling" under either clause of section 503(c)(1). The authorities that respondent cites, *In re Marriage of Mouschovias*, 359 Ill. App. 3d 348 (2005), and *In re Marriage of Davis*, 215 Ill. App. 3d 763 (1991), are readily distinguishable. Both cases

involved actual transfers of property, while here the numerical aggregation of petitioner's stock signified no underlying action.

¶ 32 Even if we accepted respondent's premise that the aggregation signified an actual merger of all 211, 650 shares into one estate of property—though, again, we cannot conceive how that would have been accomplished absent a redesignation of ownership—section 503(c) would provide absolutely no means for deciding which estate merged with the other. Under the first clause of section 503(c)(1), the operative action is that of "contribution," without which there can be no loss of identity. Contribution, however, presupposes a contributing estate and a recipient estate. See 750 ILCS 5/503(c)(1) (West 2010) ("the classification of the contributed property is transmuted to the estate receiving the contribution"). Where marital and nonmarital shares are simply combined (again, whatever that might look like absent a redesignation of ownership), as respondent claims occurred here, section 503(c)(1) provides no guidance as to which estate has contributed to which. Respondent's claim that the *marital* estate would have received the contribution is without any support in the text of section 503(c)(1). As for the second clause of section 503(c)(1), we cannot see how the combination of shares would constitute "newly acquired property" as there would be no "property" distinct from the shares themselves.

¶ 33 Even if there was commingling that either constituted "contribution" under the first clause of section 503(c)(1), or resulted in "newly acquired property" under the second clause of 503(c)(1), there was no loss of identity. Hafter testified that, after Certificate I-336 was issued, it remained possible to "determine the origin" of the shares by "trac[ing] them from the original certificates from which [they] derive." The evidence confirms that the 211,650 shares consist of the following groups with distinct origins: (1) 155,400 shares that were originally Medcor stock, were reissued as

Holdings stock (Certificate 13, dated December 20, 2006), and ultimately were reissued again as Medcor stock; (2) 37,500 shares of Medcor stock represented on Certificate A-118, dated March 18, 1998; and (3) 18,750 shares of Medcor stock ultimately earned from the 75,000-share stock grant represented on Certificate A-141, dated May 9, 2000. Respondent does not dispute that petitioner was issued stock in these amounts on these dates.

¶ 34 *Mouschovias* and *Davis* are distinguishable on the issue of tracing as well. The property in question in *Mouschovias* consisted of two accounts that the husband had opened before the marriage with undisputedly nonmarital funds. During the marriage, undisputedly marital funds were deposited into the accounts. The appellate court held that the accounts were entirely marital under section 503(c)(1) because it was not clear "exactly what funds were owned by [the husband] immediately prior to the marriage," and because "myriad transfers" occurred between the allegedly nonmarital accounts and certain undisputedly marital accounts. *Mouschovias*, 359 Ill. App. 3d at 356.

¶ 35 The issue in *Davis* was the classification of a cash management account (the 10002 account) for a money market known as the CMA Money Fund, held by the husband. "By virtue of the structure and operation of the * * * account, no deposited funds were held in cash." *Davis*, 215 Ill. App. 3d at at 769. Rather, "[b]y the end of the month, deposited funds had been used to purchase other stocks, bonds, or shares in the * * * CMA Money Fund." *Id.* Over the course of several years, the husband deposited into the 1002 account both marital and nonmarital property, with which he bought shares in the CMA Money Fund. *Id.* The appellate court held that, in these purchases, marital and nonmarital funds were "commingled into newly acquired property" (750 ILCS 5/503(c)(1) (West 2010)). There was "loss of identity of the contributing estates" (750 ILCS 5/503(c)(1) (West 2010)) because "no distinction could be made between" the shares bought with

marital funds and those bought with nonmarital funds. *Id.* at 769-70. Therefore, the entire 10002 account was transmuted into marital property. *Id.*

¶ 36 Here, unlike in *Mouschovias* and *Davis*, there was no loss of identity because, as noted, the origin of each of the 211,650 shares aggregated on Certificate I-336 can be traced.

¶ 37 We note that, in the midst of her argument on Certificate I-336, respondent makes the following comment:

> "[Petitioner's Medcor] stock does not have sufficient identity or integrity to support a non-marital classification, given the numerous mutations and transformations his stock and the marital stock have undergone."

This remark is reminiscent of respondent's argument below that the various mergers in Medcor's history have made it impossible to trace petitioner's current Medcor holdings to the stock he acquired before the marriage. As respondent does not develop this assertion, and cites no authority, the point is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) ("[a]rgument *** shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities *** relied on," and "[p]oints not argued are waived").

¶ 38 Respondent alternatively contends that petitioner is estopped from denying that the 155,400 shares of Medcor are marital property. This argument revolves around a note, handwritten by petitioner, that respondent introduced at trial. The note reads:

> "BEN [PETERSON] —
>
> PER OUR CONVERSATION, PLEASE REISSUE MY MEDCOR STOCK CERTIFICATES TO REFLECT OWNERSHIP IN BOTH COLLEEN A. SEEGER AND MY NAME JOINTLY.

THANKS

/s/ [Petitioner's signature]" (As petitioner testified that "Ben" was Ben Peterson, chief executive officer and secretary of Medcor, the note is hereinafter referred to as the "Peterson note").

¶ 39 Respondent elicited the following testimony from petitioner regarding the Peterson note. Petitioner testified that, in 2006 or 2007, he and respondent met with an estate planning attorney. The attorney suggested to petitioner, in respondent's presence, that he should place his Medcor shares in joint tenancy. This suggestion turned the situation "awkward" for petitioner. He then wrote the Peterson note in respondent's presence. While petitioner testified at one point that he did not know whether respondent saw him write the note, he also testified that he wrote the note for the specific purpose of placating respondent and thus avoiding a conversation with her regarding ownership of the Medcor shares. At the same time, however, petitioner insisted that he did not write the Peterson note to "fool [respondent] into thinking that [he was] putting the stock into joint names." Petitioner denied that he ever spoke to Peterson about adding respondent's name to the shares. Petitioner never delivered the Peterson note to respondent or Peterson, but placed the note in his personal estate-planning file.

¶ 40 Peterson corroborated petitioner's testimony that he and Peterson never discussed transferring the Medcor shares into joint tenancy.

¶ 41 Respondent's account of the Peterson note parted dramatically from petitioner's. She testified that petitioner wrote the Peterson note in her presence at O'Hare Airport before leaving by plane on a business trip. She and petitioner had had many conversations about their assets, and in these discussions petitioner communicated his "intention that [they] own[] everything together,"

including the Medcor stock. At O'Hare on the day in question, petitioner was worried by the fact that he had no will and that the Medcor stock was titled in his name only. After writing the note, petitioner told respondent that Peterson was aware of petitioner's intent to retitle the stock in both his and respondent's names. Petitioner told respondent to keep the Peterson note in case something happened to him. Respondent never had another conversation with petitioner about the note, as she "trusted him" and "didn't think [she] needed to talk about it anymore." Respondent kept the Peterson note in her night stand until she produced it for trial.

¶ 42 In rebuttal, petitioner denied that he and respondent had the conversation at O'Hare airport that she described. He testified that respondent never drove him to the airport unless they were traveling together. Petitioner reiterated that he never gave the Peterson note to respondent.

¶ 43 Respondent argues that the trial court should have determined that the doctrines of promissory and equitable estoppel applied to bar petitioner from contending that the 115,400 shares of Medcor stock were his nonmarital property. Petitioner responds that respondent's estoppel arguments are forfeited because she did not raise them below until her motion to reconsider. Petitioner is correct that respondent did not raise estoppel until she moved for reconsideration. We disagree, however, that the issue here is one of forfeiture on appeal. "Underlying the doctrine of waiver is a desire to 'to preserve finite judicial resources by creating an incentive for litigants to bring to trial courts' attention alleged errors, thereby giving trial courts an opportunity to correct their mistakes.' " *Cambridge Engineering, Inc. v. Mercury Partners 90 BI, Inc.*, 378 Ill. App. 3d 437, 460 (2007) (quoting *People v. McKay*, 282 Ill. App. 3d 108, 111 (1996)). Respondent did present the estoppel issue to the trial court, albeit with less than optimal timing. Nevertheless, the trial court had discretion to hear the estoppel argument even though it was presented for the first time in a motion

to reconsider. See *Delgatto v. Brandon Associates, Ltd.*, 131 Ill. 2d 183, 195 (1989) ("The submission of a new matter [in a motion to reconsider] *** lies in the discretion of the trial court."). The more analytically precise issue here is whether the trial court erred in denying the motion to reconsider.

¶ 44 In analyzing this issue, we note first that the parties disagree as to whether an estoppel argument was at least functionally raised at trial. While respondent introduced the Peterson note into evidence and elicited substantial testimony on it, she never invoked estoppel. The parties submitted briefs as closing arguments. Respondent's brief was divided into four main sections, "Introduction," "Facts, "Argument," and "Conclusion." Under "Facts," there were several subsections, including one entitled "[Petitioner's] Credibility." Respondent wrote at the beginning of this subsection: "The testimony and exhibits taken at trial demonstrated [petitioner's] manipulation of evidence, attempted deception of [respondent][,] and fraudulent efforts to deprive [her] [of] support." Under a heading, "[Petitioner's] Efforts to Deceive [Respondent]," respondent set forth the testimony on the Peterson note. Respondent, however, never asserted that estoppel applied. Later, under the "Argument" section, respondent addressed the classification of the Medcor shares, but never mentioned the Peterson note or claimed estoppel.

¶ 45 In its December 8, 2010, judgment of dissolution, the trial court mentioned the Peterson note in the course of awarding maintenance:

> "[T]he note['s] effect on [respondent's] belief about her financial future is obvious. Consequently, while this Court agrees that the facts of this case do not rise to the level necessary to equalize the parties' net disposable incomes, [petitioner], having authored a

deceptive note that he had no intention of acting upon, does not come with clean hands when he argues about the amount and nature of maintenance that [respondent] should receive."

The trial court did not mention the Peterson note elsewhere, including, as is relevant here, in its discussion of the Medcor shares.

¶ 46 The estoppel argument, then, was not raised at trial. In her motion to reconsider, respondent addressed the following main issues: (1) classification of the Medcor stock; (2) distribution of marital property; (3) maintenance; and (4) contribution toward attorneys fees. In the argument on classification, she reiterated the commingling arguments that she had made at trial. She also, for the first time, asserted estoppel, yet criticized the trial court for failing to apply the doctrine in its judgment of dissolution:

> "While this Court commented on the impact of [petitioner's] fraudulent and deceitful conduct on [respondent's] maintenance, it mistakenly afforded it no relevance to [petitioner's] specious claim that his Medcor stock was his non-marital property and apparently overlooked the impact of [petitioner's] misconduct on the classification of the stock.
>
> * * *
>
> This Court's express finding regarding [petitioner's] unclean hands should have been determinative as to the Court's characterization of his Medcor stock. In applying the unclean hands doctrine, the Court should have barred [petitioner] from claiming that the 115,400 shares of Medcor that he has held are his non-marital property."

In his written response to the motion to reconsider, and at the hearing on the motion, petitioner asserted that respondent forfeited her estoppel argument. At the hearing, the trial court commented that, but for an issue regarding recent distributions from Medcor, there was

> "not really one new piece of evidence that was presented ***. There are no changes in the law, there were no errors in the Court's application of the law. And I will just say that it's a case respectfully that [r]espondent simply just does not agree with the Court's ruling in that matter."

Despite finding that nearly of all the arguments in the motion were improper for a motion to reconsider, the court addressed some of them on their merits. Yet the court never mentioned the estoppel argument. The court denied the motion to reconsider.

¶ 47 Respondent, insisting that she did raise the issue at trial, notes that "significant time was spent on what the trial court found to be [petitioner's] deliberate deception of [respondent] regarding the [Medcor] stock and his promise to put it into a joint tenancy." She states: "Clearly, there was no other point for such evidence than [to] show [petitioner's] unclean hands and that the equities weighed heavily in [her] favor." The phrase "unclean hands" first appeared in this case in the trial court's dissolution judgment. Respondent never mentioned "unclean hands," or any other doctrine, in the part of her closing argument that she devoted to the Peterson note. Instead, she used the Peterson note in a broad attack on petitioner's credibility. The trial court was bound to take respondent's arguments as they lay, and she never argued any estoppel theory at trial.

¶ 48 Since respondent did not raise an estoppel theory until her motion to reconsider, her present argument is, properly construed, not a challenge to the dissolution judgment, but to the denial of the motion to reconsider. This district has noted that " 'the purpose of a motion to reconsider is to bring

to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law.' " *Itasca Bank and Trust Co. v. Thorleif Larsen and Son, Inc.*, 352 Ill. App. 3d 262, 265 (2004) (quoting *Farmers Automobile Insurance Ass'n v. Universal Underwriters Insurance Co.*, 348 Ill. App. 3d 418, 422 (2004)). The trial court evidently believed that the estoppel argument did not meet any of these criteria, and we agree. The estoppel argument was not based on newly discovered evidence or a change in the law. Moreover, respondent could not argue that the trial court erred in applying estoppel, as respondent had not previously argued the doctrine to the court. Generally, a decision on a motion to reconsider is reviewed *de novo*. *River Village I, LLC v. Central Insurance Cos.*, 396 Ill. App. 3d 480, 492 (2009). When, however, the denial is based on the fact that the court was presented with new matters, such as additional facts or new arguments that were not previously presented during the course of proceedings leading to the order being challenged, the denial is reviewed for an abuse of discretion. *Id.* See also *Delgatto*, 131 Ill. 2d at 195 ("The submission of a new matter [in a motion to reconsider] *** lies in the discretion of the trial court."). Respondent offers no argument that the court erred in refusing to consider the estoppel argument, but rather defends simply the merits of the argument. We find no abuse of discretion in the denial of the motion to reconsider.

¶ 49 Respondent states that, if we agree with her that some or all of the 155,400 shares of Medcor stock are marital, then we should remand this case for the trial court to determine whether respondent dissipated marital assets in the form of distributions from those shares. Since we have found no error in the trial court's determination that the 155,400 shares are nonmarital, we do not reach the issue of dissipation.

¶ 50 II. MAINTENANCE AND ATTORNEYS FEES

¶ 51 Respondent next argues that the trial court awarded her inadequate maintenance and erred in declining her request at the close of trial for contribution toward her attorneys fees. We disagree.

¶ 52 We consider the maintenance and fees issues together, as they are related. First, as to maintenance, section 504(a) of the Act (750 ILCS 5/504(a) (West 2010)), sets forth the following factors for a trial court to consider in deciding whether to award maintenance and in what amount:

> "(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."

We will disturb a maintenance determination only if the trial court abused its discretion. *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 52. "[I]it is well established that an abuse of discretion will be found only where no reasonable person would take the view adopted by the trial court." *Id.*

¶ 53 As for the fees issue, the governing standard is found in section 503(j) of the Act (750 ILCS 503(j) (West 2010)):

"(j) After proofs have closed in the final hearing on all other issues between the parties (or in conjunction with the final hearing, if all parties so stipulate) and before judgment is entered, a party's petition for contribution to fees and costs incurred in the proceeding shall be heard and decided, in accordance with the following provisions:

***

(2) *Any award of contribution to one party from the other party shall be based on the criteria for division of marital property under this Section 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under Section 504."* (Emphasis added.)

We have already set forth the criteria for a maintenance determination. Property division is governed by the multiple factors set forth in section 503(d) of the Act (750 ILCS 5/503(d) (West 2010)). These, in summary, include:

> "the contributions of each party in the acquisition of the marital property including a spouse's contribution as a homemaker; the value of the property awarded to each spouse; the duration of the marriage; the economic circumstances of each spouse; the age, health, occupation, amount and sources of income, employability, and needs of each of the parties; whether the apportionment is in lieu of or in addition to maintenance; the reasonable opportunity of each spouse for future acquisition of assets and income; and the tax consequences of the property division." *In re Marriage of Swigers*, 176 Ill. App. 3d 795, 799-800 (1988).

"The propriety of an award of attorney fees is dependent upon a showing by the party seeking them of an inability to pay and a demonstration of the ability of the other spouse to do so." [Internal quotation marks omitted.]. *In re Marriage of Hasabnis*, 322 Ill. App. 3d 582, 598 (2001). As with a maintenance determination, the decision whether to order contribution toward attorneys fees is committed to the sound discretion of the trial court. *Id.*

¶ 54 Here, the trial court valued the total marital estate at $2,136,692. The court apportioned $1,128,003, or 53%, to respondent and $1,008,689 to petitioner. The asset division was as follows:

Asset	Value	To Petitioner	To Respondent
Marital Residence - Cuba Road in Barrington	$453,976	$226,988	$226,988
Winter Park Condo E202	$65,625		$65,625
Winter Park Condo F104	$115,000	$115,000	
73,750 shares of Medcor stock at $10.44 per share	$769,950		

McCollum Lake partnership	Unknown	To petitioner	
Hunting property on Illinois River	Unknown	To petitioner	
Shares of Pharmacy OnceSource	$217,112	$217,112	
Shares of National Residential, Inc.	Unknown	50% of shares	50% of shares
Shares and Convertible Debentures of SleepMed	Unknown	50% of shares	50% of shares
Convertible Debentures of Keen Mobility	$25,000	$25,000	
Interest in Saw Mill Lake, Inc.	Unknown	To petitioner	
Merrill Lynch Account #10131	$6,109	$6,109	
Merrill Lynch Account #10132	$70,000	$70,000	
Rock Valley Account #2704	Unknown	50%	50%
Home State Bank Account #3806	Unknown	50%	50%
Home State Bank Account #4701	Unknown	50%	50%
Petitioner's IRA #80086	$52,873	$52,873	
Petitioner's Pension	$15,452	$15,452	
Petitioner's Medcor 401K	$252,155	$252,155	
Respondent's IRA #17155	$50,440		$50,440

Nissan Murano	$15,000		$15,000
Corvette	$28,000	$28,000	
Chevy Tahoe		To petitioner	
Ford Ranger			To respondent
Total	**Marital Estate**	**Petitioner**	**Respondent**
	$2,136,692	$1,008,689	$1,128,003

For the Chevy Tahoe and Ford Ranger, no values were shown nor did the trial court indicate that the values were unknown. The trial court directed the parties to place the Barrington marital residence for sale, the proceeds (anticipated at $453,976) to be divided between them. (There are suggestions in the parties' briefs that the sale has occurred and the proceeds received, but our analysis is the same whether or not the sale has occurred.)

¶ 55 The court denied petitioner's request to award him all 73,750 marital shares of Medcor. The court reasoned that were "not sufficient marital assets to award [to respondent] to offset awarding all of the Medcor [s]tock to [petitioner]." The offset "could not be accomplished by awarding [respondent] all of the [parties'] real property [with] it[s] attendant debt, tax liability, and risk associated with the current market." The court awarded all 73,750 marital shares to respondent.

¶ 56 The trial court determined that petitioner's nonmarital property consisted of: (1) 155,400 shares of Medcor stock, acquired before the marriage and valued at $10.44 per share; (2) a residence in Cedarburg, purchased with petitioner's inherited funds and valued at $320,000; (3) additional shares in National Residential, Inc., valued at $165,000; (4) shares of All American Escrow and Closing Co., valued at $199,800; (5) McCollum Lake partnership;[1] and (6) respondent's Harris Bank Account #2792, with a balance of $160,000 as of trial. The court determined that respondent's

[1] It is not clear if this is the same asset listed as part of the marital estate.

nonmarital property consisted of a $18,625 share in the Winter Park Condo E202, a separate interest in which was listed as part of the parties' marital estate.

¶ 57 The trial court also awarded respondent permanent maintenance. We quote at length the trial court's decision on maintenance, as it accurately and succinctly describes the facts relevant to maintenance and attorneys fees.

> "The Court has considered all of the [section 504(a) factors] as they relate to the evidence in this case and finds as follows: [petitioner and respondent] have been married 26 years. The parties are 51 and 50 years old respectively. [Respondent] has a college degree in accounting and experience with computer software, but has not worked in either of those fields since 1993, devoting her full time efforts to raising the parties' three children. All three children are now emancipated and there will be no child support order made in connection with this case. During the marriage, while [respondent] was making her contribution as a homemaker to the family unit, [petitioner] expended extraordinary efforts in transforming Medcor from a company which at the time of the parties' marriage made zero profit, into a very profitable business worth tens of millions of dollars. During the course of the marriage [petitioner's] income increased from 10s of thousands of dollars in 1985, to an adjusted gross income of over a million dollars per years in 2007, 2008[,] and 2009. [Petitioner] works full-time for Medcor , and the bulk of his income comes from Medcor wages and income related to his ownership of Medcor stock. [Petitioner's] work with Medcor has always required a great deal of travel (sometimes up to 70% of his week) and long hours, yet he managed to maintain a strong connection to his children and family.

[Petitioner] also receives certain perks related to his Medcor employment such as a $1,100 per month car allowance.

While [petitioner's] financial contribution during the marriage (which was both to his non-marital and marital estates) can be measured in dollars, [respondent's] contributions, while harder to quantify, were equally significant. [Petitioner] had both a successful work and home life. In order to achieve this, when someone works as long and hard as [petitioner], that person[']s spouse must work equally as hard on the home front. The parties raised 3 children that were athletic, law-abiding, and are either in or have graduated from college. The parties maintained a large home, properties in Colorado[,], and vacationed with the children. [Petitioner] could not have worked as hard, made Medcor so successful and profitable, [and] had the home-life he had if it were not for [respondent's] extraordinary efforts at home and her readiness to have a husband spend the majority of his time and energy away from the home. [Petitioner's] efforts with Medcor contributed greatly to [the] marital and [his] non-marital estates, while [respondent's] efforts contributed greatly to the marital estate and to [petitioner's] non-marital estate. Marriage is a partnership. Spouses are coequals, and homemaker services must be equitably recognized when the economic incidents of divorced are determined. [Respondent] should not be penalized for having performed her assignment under the agreed-upon division of labor within the family. It is inequitable upon dissolution to saddle [respondent] with the burden of her reduced earning potential and to allow [petitioner] to continue in the advantageous position he reached through their joint efforts. [Citation.]

[Respondent] clearly suffered impairment of her present and future earning capacity as a result of her having devoted time to domestic duties and having forgone and delayed employment and career opportunities due to the marriage. Her marriage to [petitioner] spanned from age 24 to age 50. She has not worked outside the home for 17 years (since 1993 when she [was] 33 years old). During this time she did not build a career in accounting or computer software, and to begin a career in either of those fields at age 50, when she has not worked in 17 years, and those fields have changed significantly, is clearly an impairment of her present and future earning capacity. At the same time, [respondent's] contributions to [petitioner's] career and career potential were considerable, with [petitioner's] career still seemingly on the rise. He is 51 years old, the president of a company that he started 27 years ago, and is now earning over 1 million dollars annually. What makes an award of maintenance in this case more compelling is the standard of living and financial security which all of the members of this family enjoyed prior to the dissolution of marriage and which [petitioner] will enjoy thereafter. [Petitioner] is currently engaged to be married to a fiancee that has additional financial resources. Together they have purchased and furnished a home, taken vacations, and [petitioner] has purchased her a $40,000 engagement ring. If [respondent] were to engage in a relationship as significant she would loose [sic] her eligibility for maintenance.

While [petitioner] complains that [respondent] has not attempted to secure employment since he filed for divorce, the fact is that the youngest child just graduated high school this year. [Respondent's] remaining home until the parties[']youngest graduated was not an unreasonable expectation considering the family's lifestyle since 1993. Prior to

> [petitioner] filing for divorce he did not communicate to [respondent] that he ever expected her to work."

The court then mentioned the Peterson note. As we related earlier, the court found that, because of petitioner's deception in writing the note, he did not "come with clean hands when he argue[d] about the amount and nature of the maintenance that [respondent] should receive." The court awarded respondent "indefinite", or permanent, maintenance of $9,000 per month.

¶ 58 The court denied, however, respondent's request for contribution to her attorneys fees. The court noted that, because respondent had been at a "substantial disadvantage" in paying her fees earlier in the litigation, the court made two interim awards: (1) $150,000 on October 22, 2009; and (2) $50,000 on May 5, 2010. The court observed that, as of trial, respondent's attorneys had been paid a total of $269,200 from the marital estate and were still owed $217,539. Petitioner had paid his attorneys $200,000 from the Harris Bank account (that the court determined was his nonmarital property), and still owed them "in excess of $200,000." The court held that each party would be responsible for his or her own fees. In doing so, the court acknowledged that "[f]inancial inability to pay [attorneys fees] exists where requiring a party to pay would strip that party of his or her means of support or undermine the party's financial stability." See *Hasabnis*, 322 Ill. App. 3d at 598. The court determined that, based on respondent's nonmarital property, and both the marital property and maintenance awarded her, she had the ability to pay her fees.

¶ 59 We turn to respondent's specific contentions. She has harsh words for the trial court's maintenance determination. She asserts that the award is "shockingly discordant with [the court's] own findings and contravenes the very goals that it seemingly attempted to accomplish." Respondent calls the award "relatively parsimonious" and "little more than a mere gratuity after a

25-year marriage." Respondent's cause is not served by such overstatements, which diminish the obvious care and diligence that the court displayed, particularly in giving full recognition to respondent's sacrificial contributions as a homemaker. Moreover, these complaints are rather hollow given that the recurring amounts that the court awarded respondent actually exceeded what she requested at the close of trial. In her closing argument, she asked for Medcor stock in lieu of maintenance. Specifically, she asked for 144,365 of the 229,150 shares that she claimed were marital. Respondent noted that the evidence showed that, for each of the past five years, Medcor paid $1.50 in distributions per share. Respondent calculated that, from the 144,365 shares alone, she would receive $216,547.50 per year, which, she commented, would be "in keeping with her lifestyle and needs as proven" in her financial affidavit, which calculated her monthly expenses at $18,738 per month, or $224,856 per year. Because it was "uncertain" whether Medcor would continue to pay distributions as it had over the past five years, respondent asked that maintenance "be reserved."

¶ 60 As it happened, respondent was awarded a greater recurring amount than she requested. The court awarded her all 73,750 shares of Medcor stock that it classified as marital. If each share pays $1.50 yearly, these shares will yield $110,625 per year. Additionally, the trial court awarded respondent permanent maintenance of $108,000 yearly. Thus, respondent received a total recurring amount of $218,625 per year—$2,000 more than she requested.

¶ 61 The trial court, in ruling on respondent's motion to reconsider, suggested that she had little cause for complaint:

> "Regarding the accusation that somehow [respondent] was not treated fairly or equitably in the distribution of the marital assets, I will say that the Court went out of its way to take a look at what the situation was and apply the law fairly. Respondent's only position

> that [she] took *** in [her] closing brief was that 100 percent of shares of Medcor stock were marital and that justice could only be served by [respondent] receiving the majority of those shares, even more of those shares than [petitioner]. ***
>
> And the Court found that *** [respondent's] position was incorrect, that those shares were not marital. And I would say that in [her] closing briefs, [respondent] stated that she didn't want maintenance. She did not ask for maintenance in her closing brief. [Her] position was, give us the majority of the shares of Medcor stock and don't give [me] any maintenance.
>
> In spite of that, the Court awarded her indefinite or permanent maintenance in the amount of $9,000 a month. I gave her 100 percent of the marital shares of Medcor which are 73,750 shares [or] one-third of the total shares, marital and nonmarital, she's got a third of them, along with the dividends that they produce every year. And she's got a slightly disproportionate share of the marital estate as well."

We agree with these sentiments.

¶ 62 Respondent also alludes to the trial court's property division. She notes that the trial court ordered the marital residence, valued at $459,976, to be sold and the proceeds divided equally between the parties. Respondent had asked the trial court to award her the marital residence. Her proposed asset division showed a total marital estate of $5,792,517, with $3,258,398, or 56%, awarded to her and $2,317,006 to petitioner. As noted, the trial court valued the total marital estate at $2,136,692—far below respondent's proposal. Much of the disparity lay in the fact that the court determined that only 73,750 Medcor shares were marital (where respondent claimed that all 229,150 shares were marital), and that respondent included in the marital estate $719,900 in alleged

dissipation by petitioner, a figure that the court ultimately rejected. The trial court awarded respondent $1,128,003, or 52%, of the marital estate. Respondent now states that the anticipated proceeds of the sale, $226,988, will be absorbed almost entirely by the $217,539 in attorney fees that she owed as of the dissolution judgment and as to which the trial court denied her contribution. Respondent claims that she "has no liquid assets except for the house-sale proceeds[,][2] and the illiquid assets which she was awarded are needed to provide her income to live." We recognize that the "[t]he spouse seeking the award of attorney fees need not be destitute," but, rather, "[i]t is sufficient that payment would exhaust the spouse's estate or strip the spouse's means of support or undermine the spouse's economic stability." *Hasabnis*, 322 Ill. App. 3d at 598. Respondent, however, overlooks the maintenance award as a source of "income to live." She received as much and more recurring income as she requested from the trial court. Respondent's outstanding fees are considerable, but her marital assets are in excess of $1 million, and her maintenance payments will afford her ongoing financial security even if she must use marital assets to pay the fee balance.

¶ 63 Respondent claims, however, that she is in no position "to purchase anything close to the former marital residence," which was a six-bedroom house located on 10 acres in Barrington, with a swimming pool, a wine cellar, and a barn. She claims that $226,988, the amount allotted to her from the proceeds of the marital home, "cannot even buy a *townhouse* in Barrington" (emphasis added). "In determining both the amount and duration of maintenance, the trial court must balance the goal of encouraging the recipient to become financially independent against a realistic appraisal of the likelihood the former spouse will be able to support him or herself in some reasonable approximation of the standard of living established during the marriage." *In re Marriage of Culp*,

[2] This seems to imply that respondent has the sale proceeds already.

341 Ill. App. 3d 390, 392 (2003). See also *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 833 (1994) ("The dependent former spouse is entitled to continue to live in some approximation to the standard of living established during the marriage, unless the payor spouse's financial situation indicates otherwise."). Respondent has not established that a "*reasonable* approximation" of her former standard of living requires continued residency in Barrington.

¶ 64 Moreover, the evidence is unclear whether respondent's claimed monthly expenses of $20,000 were based on current information. Respondent introduced two documents to prove her expenses: her financial affidavit, dated December 10, 2008, and a spreadsheet for the period January 1 though December 31, 2008. The financial affidavit lists total monthly living expenses of $18,738. It is this document that respondent cites in remarking that she "requires approximately $20,000 per month, after tax, to maintain the parties' opulent pre-separation standard of living." On direct examination, respondent testified that the affidavit was based on the spreadsheet for 2008 as well as "previous years worth of data." Respondent confirmed on cross-examination that she used data from the year 2007. According to respondent, however, she and petitioner did not separate until January 2008. At the time of the separation, the parties had two minor children, Cody and Bretton, residing at home, while the oldest, Garrett, was at college in Iowa and visiting home periodically. Asked on direct examination about her tally of "household expenses," respondent testified that the expenses represented "[her] and [the parties'] three boys." Respondent added that Jenna, petitioner's daughter by a previous marriage, and her boyfriend were living at the marital residence for a portion of the time represented in the affidavit. On cross-examination, however, respondent testified as follows:

"Q. *** [Y]ou testified this morning that you used records that were for the years 2007 and 2008, correct, ma'am?

A. To the best of my recollection, yes.

Q. And [in] 2007, you had two minor children, a college age child coming back and forth, and [petitioner] living in the residence, correct, ma'am?

A. Correct.

Q. And all of the expenses that you used to arrive at your household expenses are for that period of time, correct. ma'am?

A. Correct. I took—I took all those expenses and tried to come up with a reasonable—tried to—and came up with these numbers."

Thus, the record is hazy as to whether the expenses included petitioner, who obviously will no longer be residing with respondent. Even if petitioner was not included, there were changes in the marital household since the affidavit was prepared in December 2008. As of trial in 2009, the oldest child, Garrett, had graduated from college and was residing elsewhere, and the middle child, Cody, was now in college in Iowa. Such changes could potentially have affected respondent's household expenses, but she never addressed them at trial.

¶ 65 Respondent makes some additional points, none of which have merit. First, she observes that the maintenance award was, net of taxes, below even what petitioner had asked the court to give her. This is disingenuous. Petitioner did recommend that respondent receive $7,000 (net of taxes), but only as "rehabilitative" maintenance subject to review at the end of four months. Moreover, petitioner asked that *all* marital shares of Medcor be apportioned to him. The trial court, however,

awarded respondent not only Medcor shares but also *permanent* maintenance. Respondent cannot credibly suggest that the trial court served her more poorly than petitioner recommended.

¶ 66 Second, respondent continually emphasizes that petitioner is capable of paying much more in maintenance. Respondent could have cited this consideration below and asked for more recurring payments than the $216,547.50 per year that she requested. As it stands, the permanent maintenance, combined with recurring stock dividends that respondent is anticipated to receive, exceed the recurring payments that she requested below. Also, ability to pay is but one of twelve factors set forth in section 503(a). The well-established rule is that "[t]he dependent former spouse is entitled to continue to live in some approximation to the standard of living established during the marriage, unless the payor spouse's financial situation indicates otherwise," in which case a lesser amount of maintenance is appropriate. *Dunseth*, 260 Ill. App. 3d at 833. We know of no authority requiring the trial court to ensure *more* than an approximate standard of living for the dependent spouse just because the payor spouse can afford it. In a thoughtful and thorough analysis, the trial court took due note of all relevant circumstances here, particularly respondent's severely diminished earning capacity, and its property division and maintenance award will ensure respondent a lifestyle reasonably approximating what the parties had during the marriage.

¶ 67 For the foregoing reasons, we find no error in the trial court's decisions on maintenance and attorneys fees.

¶ 68 III. College Expenses

¶ 69 Respondent's final argument is two-fold. First, she argues that the trial court violated her due process rights by "refusing," both at trial and on reconsideration, to rule on her request that petitioner be ordered to contribute to Bretton's and Cody's college expenses. Second, she argues

that, even if the trial court did not "completely fail[] to make a decision [on] [her] repeated requests," the trial court's action was erroneous on the merits because respondent clearly was entitled to contribution toward higher-education expenses.

¶ 70 Section 513 of the Act (750 ILCS 5/513 (West 2010)) permits a spouse to seek contribution from the other spouse for the educational expenses of their children. Section 513(b) provides the following factors for consideration:

> "(1) The financial resources of both parents.
>
> (2) The standard of living the child would have enjoyed had the marriage not been dissolved.
>
> (3) The financial resources of the child.
>
> (4) The child's academic performance." 750 ILCS 5/513(b) (West 2010).

The decision whether to award contribution toward education expenses lies within the sound discretion of the trial court. *In re Marriage of Treacy*, 204 Ill. App. 3d 282, 286 (1990).

¶ 71 Respondent labors for seven pages explaining the constitutional principles that guarantee litigants the right to an adjudication, and criticizes the trial court for "punt[ing]" on the issue of college expenses. While the dissolution judgment does not mention education expenses, the court did discuss the issue with respondent at the hearing on the motion to reconsider:

> "MR ADAMS [respondent's attorney]: [A]nother complication with this Court's decision is it leaves the college children's expenses as an unknown. This Court heard testimony that there are certain college [savings] accounts, but there is no allocation of the responsibility to pay for the parties'—to pay for the college education. Respectfully—

THE COURT: Wasn't the testimony I heard that the accounts were going to be anticipated to be sufficient to cover the kids' college expenses?

MR. ADAMS: No, that's not my understanding, your Honor.

THE COURT: But I will tell you this. It may not your understanding. That was the evidence that the Court received, the only unrebutted evidence the Court received. It did not hear anything to contradict that. That those funds were going to be sufficient to cover. So that's what the Court recalls the testimony and the evidence to be. But you can continue on that point.

MR. ADAMS: All right. If I may have a moment here—

MS. YACONA [respondent's attorney]: Judge, there was testimony from [respondent], and it said it in our closing brief, February 24, 2010, from the record of proceedings that—and she testified that there were insufficient funds in those accounts to fully cover their college expenses, just so your Honor is aware.

THE COURT: Okay, thank you."

The trial court's written order denied the motion to reconsider in its entirety, for the reasons stated on the record. We presume that the court ruled on the issue of college expenses, even if — as respondent alleged—the court had a faulty recollection of the trial testimony.

¶ 72 On the merits of the court's decision, respondent quotes the factors in section 513(b) and then offers the following by way of argument:

"For the sake of brevity and to avoid redundancy in this brief, [respondent] adopts by reference the arguments regarding the parties' relative financial resources and their standard of living which is contained in her above arguments on the issues of maintenance and

> attorney fees. Clearly, both of these questions involve exactly the same considerations as does subsection 513(b) and therefore this Court does not need a reiteration of those discussions. [Respondent] would simply add that both Brett and Cody are receiving partial academic scholarships at Drake University. So, thus both boys are not only doing well in school, but their academic performance is helping to offset the cost of their education. Consequently, the contribution that [petitioner] would be asked to make is relatively small. Further, [respondent] only asked that [petitioner] be required to pay for those expenses which were not covered by the boys' scholarships and college accounts. This was a very modest and reasonable request to make of a father who the trial court found earns over $1 million per year."

This argument contains no citations to the record. Certainly, respondent was entitled to incorporate into her argument facts and contentions, contained elsewhere in her brief, that related to "[t]he financial resources of both parents," the factor under section 503(b)(1). Regarding however, the scholarships the children are receiving and the "relatively small" amount that petitioner might be expected to pay, respondent neither includes any record citations nor attempts to incorporate material from elsewhere in her opening brief. Indeed, no such material appears anywhere in respondent's opening *or* reply briefs. Therefore, this argument is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relief on," and "[p]oints not argued are waived").

¶ 73 IV. Conclusion

¶ 74 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 75 Affirmed.