2012 IL App (2d) 111239-U
No. 2-11-1239
Order filed September 19, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF KAREN A. RIGGIO, Petitioner-Appellant, and STEVEN RIGGIO, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of McHenry County. No. 09-DV-609 Honorable Michael J. Chmiel, Judge, Presiding.

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

ORDER

Held: Where the trial court's valuation of the parties' marital business was not against the manifest weight of the evidence, and the trial court did not abuse its discretion in its award of maintenance to petitioner or in its denial of petitioner's motion to reconsider, the judgment of dissolution was affirmed.

¶ 1 Petitioner, Karen A. Riggio, appeals from the trial court's judgment dissolving her marriage to respondent, Steven Riggio. Karen argues that the trial court erred in valuating certain marital property, abused its discretion in the amount and duration of maintenance it awarded to her, and abused its discretion in denying her motion to reconsider. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 Karen and Steven were married on May 3, 1986. They had no children together. On June 17, 2009, Karen filed a petition for dissolution of marriage under the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq*. (West 2008)). Steven filed a counterpetition on July 10, 2009. The court subsequently awarded Karen $4,000 per month of temporary support and granted exclusive possession of the parties' marital home in Barrington Hills, Illinois, to Steven and exclusive possession of the parties' home in Michigan to Karen. A three-day trial commenced on February 9, 2011, at which time the parties stipulated to the foundation for all of their exhibits. They also agreed that each of them would testify once, rather than in each of their separate cases-in-chief.

¶ 4 Karen testified that she was currently 47 years old. She had worked at Riggio Boron, Ltd. (RB) since 1991. RB was an exterior restoration company that was owned 60% by Steven and 40% by Keith Boron. Steven was responsible for most of RB's contracts, primarily with large corporate clients for work on high-rise buildings in the Chicago area. RB operated from industrial property in Elgin, Illinois, owned by the parties[1] and leased to RB. Karen was the bookkeeper and only office employee. She was responsible for RB's general ledger, accounts payable, accounts receivable, and payroll. Karen provided information to RB's accountants, who prepared the business's tax returns. The parties filed joint personal tax returns, also prepared by the accountants with information provided by Karen. Karen's annual base salary was $60,000. RB paid for the parties' health insurance and medical expenses and also provided the parties with a car allowance and cell phones.

[1]The property consisted of two adjacent units; Keith and Sharon Boron owned the other unit.

Karen testified that RB also paid the parties' personal expenses, such as vacations and dinners. She estimated that, between 2005 and 2009, the parties had taken at least 10 vacations to destinations such as Italy, South Africa, Cancun, and New Orleans. RB paid all of the credit cards each month. Steven had a personal credit card, which he paid online and then told Karen how much to take out of RB and how to "expense it."

¶ 5 Karen testified that Steven fired her on June 15, 2009. She began receiving unemployment benefits of $770 every two weeks. Karen was seeking full-time employment and had applied for more than 50 jobs. She had four interviews but no job offers. Karen testified that she did not have a college degree but had taken three college accounting classes and was skilled in the use of accounting software. At the time of trial, Karen was performing accounting services for her sister's law office about 10 hours per week for $15 per hour. From her wages and unemployment benefits, Karen's monthly income at the time of trial was $2,040.

¶ 6 Karen further testified that she recently created summaries of personal expenses that RB had paid on Steven's behalf in 2007, 2008, and 2009. She created the summaries in preparation for trial and gave them to William Polash, whom she retained to valuate RB and calculate Steven's income. Karen used the prior years' credit card statements to determine the amounts in the summaries. Karen acknowledged that she had not calculated those expenses in the years in which they occurred and never reported them to the accountants. She agreed that this resulted in the accountants' underreporting the parties' income on the tax returns for those years. When asked if it was her decision to commit tax fraud by not reporting the income included in her summaries, Karen replied, "I did as I was told." Karen explained that she was given instructions on how to code "[c]ertain expenses." Reviewing the parties' previously filed 2007 personal tax return and her recently

prepared summary for 2007, Karen admitted that, as the bookkeeper, she had failed to report almost $190,000 of income. Similarly, she agreed that she underreported $284,251 of income in 2008. Karen acknowledged that the summaries differed from what had been provided on tax returns in the past. Karen testified that she understood that her reclassification of expenses created a better basis for her to receive maintenance. Karen agreed that it was a crime to underreport income but was not aware of the potential taxes and penalties that could be imposed as a result.

¶ 7 Steven testified next. He was 56 years old at the time of trial. Steven had completed 1 ½ years of college but never took an accounting course. In 1976, Steven began working summers at his father's company, Riggio Caulk & Company, including cultivating client relationships. After Riggio Caulk went bankrupt in the mid-1990s, Steven formed RB. Steven testified that he was "the face of the company." Steven's net weekly pay was about $930. Although he was not sure how to classify it, he also received a monthly check of $4,000. Steven testified that he decided how much he got paid. RB paid for his health insurance, medical expenses, and car expenses. Steven met with clients almost daily and always picked up the tab. He used the parties' Michigan home for entertaining clients. RB's entertainment expenses also included vacations with clients.

¶ 8 Steven testified that he did not look at monthly statements but just trusted the people who worked for him. Karen decided if expenses were personal or business. Steven "never directed Karen to do anything" and did not recall ever discussing expense coding with her. Karen never told him that she was intentionally underreporting income. Steven did not review the information given to the accountants. He said that he signed tax returns without reviewing them.

¶ 9 William Polash testified next. He was a certified public accountant and partner in FGMK, LLC, in charge of its business valuation and dispute consulting services group. Karen hired him to

provide a business valuation of RB and to analyze Steven's income. Polash had done at least a couple of hundred business valuations for all types of businesses, including some restoration companies. Income analysis was part of virtually every valuation. Polash was also a certified valuation analyst (CVA) and certified fraud examiner. He had testified as an expert witness in court about 8 times in the past and in depositions about 20 times. The court accepted Polash as an expert in business valuations and forensic accounting.

¶ 10 Polash used the "capitalization of cash flow" method of business valuation, which was also known as the "capitalization of earnings" method. Polash interviewed Karen. He did not talk to Steven, though he did review Steven's deposition transcript. Polash examined RB's tax returns for 2005 through 2009, and financial statements for the "trailing twelve-month period" from July 2009 through June 2010. In determining RB's annual cash flow, Polash made "normalization adjustments" to account for "unusual items in the business, or items that have nothing to do with the business, or non-recurring items." These adjustments consisted of adding back into RB's cash flow the amount of Steven's personal expenses paid by RB. Polash determined the amount to add back by conducting a forensic accounting analysis. He reviewed Karen's summaries and "traced the payee in [*sic*] amounts to the actual bank statements to make sure they were right." He also determined whether Karen's classifications were reasonable. Polash excluded some items from Karen's summary because they "seemed like legitimate business expenses." For example, Polash determined that RB's payment of the real estate taxes on the Elgin property was a legitimate business expense because RB was responsible for the taxes under the lease agreement.

¶ 11 Polash calculated RB's gross value at $1.37 million. He took 60% of that to valuate Steven's interest in the company. He then applied a 10% "marketability discount" to take into account the

time and cost that would be associated with selling the business. Polash opined that Steven's 60% interest in RB was worth $738,000.

¶ 12 With respect to Steven's total compensation, Polash opined that it ranged from $310,000 to $379,000 per year. The total compensation amount was based on information from 2008, 2009, and the trailing twelve-month period. The total included Steven's salary, as found on tax returns and business records, and his nonbusiness expenses that RB paid.

¶ 13 Polash further testified that he reviewed the valuation report created by Steven's expert, Mr. Craig Farmer. He explained that, although both he and Farmer used the same methodology, their valuations differed because Farmer did not account for the nonbusiness expenses paid by RB and because Farmer valuated only a 30% interest in the company. Polash explained that, since Steven owned a controlling 60% interest, the "minority interest" discount applied by Farmer was erroneous.

¶ 14 Polash testified on cross-examination that he was not aware of Karen's testimony about intentionally underreporting income. He acknowledged having written in his report that Karen was a person on whom he would typically rely in performing a personal expense analysis. When asked whether he would still rely on Karen had he known that she intentionally underreported income, he replied in the affirmative. He qualified his answer by noting that he "would also test the analysis," which he said he did anyway. Polash testified that, although he was provided with personal tax returns and viewed some of them, he did not rely on them to form his opinion. Polash agreed that the primary reason for his normalization adjustments was that Karen brought the issue of nonbusiness expenses to his attention. He acknowledged that it was possible that "in any business there are going to be certain expenses that could go either way, that could either be personal, or they could be business, depending upon the explanation given." Polash agreed that, if Steven were to

retain his ownership of RB after the divorce, he would also retain ownership in RB's liabilities and contingent liabilities. Polash acknowledged the possibility that Keith Boron might have a claim against Steven for some of the money Steven received from RB for his own personal expenses.

¶ 15 Upon completion of the parties' examinations of Polash, the court asked Polash why he did not interview Steven. Polash explained that, although Steven was a "key employee," he really did not "know anything about the books and records" as evidenced from his deposition and trial testimony. The court then asked what, if anything, Polash had garnered from reviewing the parties' personal tax returns. Polash recalled that Steven's "W-2 income" in 2008 was $57,750. The court asked Polash to explain "the disconnect" between that amount and Polash's estimate of Steven's compensation as over $300,000. Polash replied that "the main difference [wa]s the personal expenses that were being paid for by the business."

¶ 16 Steven called Craig Farmer to testify. Farmer testified that he had been a certified public accountant with Farmer, Poklop, Hoppa & Company since 1990. Farmer was not yet a CVA; though he had recently taken the valuation course and passed the CVA exam, he still needed to complete the required case study valuation. Over the last five years, Farmer had performed about four business valuations per year; prior to that, he averaged about three per year. Farmer said that 80% of his clients were subchapter S closely held corporations, like RB. Farmer had provided expert testimony in court three times in the past. Upon Steven's request to allow Farmer to testify as an expert in accounting and business valuations, Karen objected based on Farmer's lack of CVA certification. The court accepted Farmer as requested, ruling that Farmer's experience was sufficient to provide the court with some level of information and assistance. The court then explained that accepting Farmer as an expert "doesn't mean that I'm locked into whatever the opinion is, and I say

that respectfully to both of the experts now that I've brought them in."

¶ 17 Farmer testified that Steven retained him to perform a business valuation of his interest in RB. Farmer valuated the fair market value of a 30% minority interest in the company, that being one-half of Steven's 60% interest. He used the capitalization of earnings method. Farmer spoke with Steven, who produced personal and corporate tax returns, financial statements, and a response to Farmer's questionnaire. Farmer reviewed five years of RB's financial statements, including the balance sheets and the income statements, and the corporate tax returns. He explained that, because RB was a subchapter S corporation, it did not pay federal income tax. Instead, RB issued K-1 forms to its shareholders, who then claimed the corporation's income on their personal tax returns. Farmer "search[ed] for normalizing adjustments" by comparing RB to over 200 similar companies in the industry to see if there were any significant variances. Farmer concluded that RB's income statements were "very comparable without normalizing adjustments."

¶ 18 Farmer testified that RB's equity value was $332,000. Farmer applied a minority interest discount of 30.8%, which he would not have applied had he been valuating a controlling 60% interest. He then applied a 20% marketability discount, which he believed was a low percentage, based on restricted stock studies showing the average was about 30%. Farmer opined that a 30% interest in RB had a value of $54,800.

¶ 19 Farmer explained that the biggest difference between his valuation and Polash's was Polash's adding back nonbusiness expenses in his normalizing adjustments. He said that the other major difference was the minority interest discount that he (Farmer) applied. When asked to assume hypothetically that he had not applied the minority interest discount, Farmer opined that a 60% interest in RB was worth $160,000.

¶ 20 Farmer testified that, based on Polash's estimates, the total amount of the parties' underreported income was $1.4 million. Farmer said that the taxes and penalties for fraud on that amount would create a contingent liability of $1.12 million.

¶ 21 On cross-examination, Farmer agreed that he had not taken the valuation course until one month after he completed RB's valuation. Farmer testified that, based on a telephone conversation with Steven in May or June 2010, he was under the impression that Steven wanted him to valuate a 30% interest. Farmer was aware of Karen's previous role at RB but did not interview her.

¶ 22 Farmer further testified on cross-examination that he considered the amount of money that RB spent on travel and entertainment by reviewing its tax returns. He believed that the percentage RB spent was comparable to other companies in the industry. Farmer did not know if the 200-plus companies in his comparison were RB's competitors. Farmer did not see how Polash's add-backs "could be real." Farmer determined that normalizing adjustments were not necessary after he compared RB with other companies regarding "the typicals" such as officers' compensation. Farmer explained that, based on Steven's unique ability to establish customer relationships, he had to consider what it would cost a buyer to replace Steven. Farmer reiterated his opinion that a 60% interest in RB was worth $160,000. He explained, "I would have [$]332,000 in equity value. I would take a 20 percent discount, which would be about 666, which would give me about [$]265,000 in adjusted equity, and when I took 60 percent of that, it would step it down to one sixty."

¶ 23 Upon completion of the parties' examination of Farmer, the court asked Farmer if his opinion would change if personal expenses were being paid by RB. Farmer replied that he "would have to weigh whether [he] felt it was motivated by any other reasons." If the financial statements looked normal, he would test a few of the items. If he felt it was going to significantly impact his valuation,

he would do further testing. When the court asked why Farmer did not talk to anyone other than Steven, he said that he obtained what he needed from Steven and that, despite the context of the divorce proceedings, he felt confident in not verifying the information because he relied on financial documents prepared by a CPA that had a high degree of trustworthiness. Farmer noted that if Steven had controlled the books, he might have questioned their reliability.

¶ 24 After the parties rested, the court ordered that closing arguments be submitted in writing. The court issued its memorandum opinion and judgment of dissolution on July 15, 2011. The court found the parties' testimony to be generally "credible though self-serving." The court elaborated:

> "The testimony of [Karen] is found to be challenging where she knowingly participated in the so-called 'marital business' by keeping the books of the business from its inception through the commencement of these proceedings, and where she often (typically) participated in certain activities charged to the business, yet she suggests somehow that her spouse single-handedly worked to perpetrate a fraud on taxing authorities. The testimony of [Steven] is found to be challenging where he engaged in certain questionable activities, and where he ran the business as its majority owner, yet he claimed to know little detail about the actual financial affairs of the business."

¶ 25 With respect to the issue of maintenance, the court found that Karen was underemployed, in part due to Steven's firing her, and that she was earning $2,040 per month, including her unemployment benefits. Karen needed an "undetermined amount of time" to achieve full employment. The court found that Steven was earning $9,330 per month but that he was earning or had the capacity to earn more, though such earnings were not proved through "competent discernible evidence." The court further found that the purported tax fraud, though beyond the court's

jurisdiction, might impact RB and Steven's source of income. With respect to the marital standard of living, the court found it was "moderately high through the intersection of work and pleasure" and that Karen's "perceived" need to achieve that standard on a "personal level" was a "bit illusory." The court awarded Karen maintenance in the amount of $5,000 per month for five years. The court expressly made no finding as to the reviewability of the award but noted its belief that all maintenance was subject to review under section 510 of the Act (750 ILCS 5/510 (West 2008)).

¶ 26 With regard to the division of property, the court found that all marital property should be divided evenly. The court noted that the "main property issue" was RB, which the court found to be marital property. The court found that the experts' testimony was generally credible "though lacking in part and errant in part." The court noted that Polash had a few more credentials but found each expert "sufficiently credentialed" and able to assist the court "to certain degrees with certain aspects of the valuation." The court found the fact that neither expert spoke to the opposing party "[m]ost notable" since each party had a special role in the business.

¶ 27 Addressing Polash's report, the court stated:

> "To an important and significant degree, the work relies upon subjective and self-serving calculations provided by [Karen], which augur in favor of higher income for [Steven] and value for RB. The Court finds [Karen] assumed the marital interest in RB would be awarded to [Steven] in that [Karen] does not argue for it; as such, a greater valuation would serve to yield a greater payout to [Karen]."

The court found that Polash's analysis failed to take into account the parties' personal tax returns and failed to recognize or explain Karen's role "in the purported mess." The court further found that RB's sales were declining and its future was uncertain. The court found that Steven was the "key

factor in RB," that Polash had "unduly discounted" Steven's role in RB, and that the lack of marketability discount should have been considerably higher than that applied by Polash.

¶ 28 Turning to Farmer's valuation, the court found that it was "more reliable once it [wa]s dissected, reviewed, and corrected," noting that Farmer's valuation of a 30% minority interest was "[s]ignificantly errant." The court found that Farmer's report explained his framework, summarized his sources, reviewed methodology, and provided financial analysis explaining his valuation of $54,800 for a 30% interest in RB. The court noted that Farmer's testimony explained his opinion that a 60% interest would be worth $160,000 and how his valuation differed from Polash's.

¶ 29 The court found that RB had to be valuated as a closely held corporation with less marketability than if it were publicly held, and that it must be recognized that without Steven, RB's "value would suffer." The court agreed with Farmer's valuation of $160,000 for a 60% interest in RB. The court awarded RB to Steven with Karen receiving $80,000 of its value.

¶ 30 After determining the value of all of the marital property and subtracting outstanding liens against such to calculate the net value, the court divided the property equally between the parties. As a result, Steven was ordered to pay Karen $225,000.

¶ 31 Karen filed a motion to reconsider, which the court denied. Karen timely appeals.

¶ 32 ANALYSIS

¶ 33 Karen argues that the trial court's (1) valuation of RB was against the manifest weight of the evidence, (2) maintenance award was an abuse of discretion, and (3) denial of her motion to reconsider was an abuse of discretion. We address each in turn.

¶ 34 Karen maintains that the trial court erred in using Farmer's valuation because Farmer "lacked the credentials and expertise to form a credible opinion" of RB's valuation. "The decision of

whether to admit expert testimony is within the sound discretion of the trial court." *Snelson v. Kamm*, 204 Ill. 2d 1, 24 (2003). "Expert testimony is admissible if the proffered expert is qualified by knowledge, skill, experience, training, or education, and the testimony will assist the trier of fact in understanding the evidence." *Snelson*, 204 Ill. 2d at 24. Here, Farmer testified that he was a licensed CPA and had completed an average of four business valuations per year over the past five years, and three per year prior to that. Notwithstanding Karen's assertion to the contrary, the lack of a CVA license did not render Farmer incompetent to provide the court with some level of information and assistance. See *Thompson v. Gordon*, 356 Ill. App. 3d 447, 459 (2005) (stating that the expert engineer's lack of an Illinois license went to the weight to be given his testimony, not to his competency to testify). Accordingly, the trial court did not abuse its discretion in accepting Farmer as an expert.

¶ 35 Nevertheless, Karen asserts that the trial court erred in relying on Farmer's valuation because he valuated only a 30% interest in RB when Steven owned a 60% interest. Karen also takes issue with the trial court's reliance on Farmer's "cursory reference" at trial as to the valuation of a 60% interest in RB.

¶ 36 Section 503(d) of the Act provides that the court shall divide marital property in "just proportions." 750 ILCS 5/503(d) (West 2008). In order to do so, the court must determine the value of marital assets. *In re Marriage of Lundahl*, 396 Ill. App. 3d 495, 504 (2009). We review the trial court's valuation of marital assets under the manifest-weight-of-the-evidence standard. *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 203 (2005). "A decision 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." *In re Marriage of Romano*,

2012 IL App (2d) 091339, ¶ 44.

¶ 37 In the instant case, the trial court found that Farmer was "[s]ignificantly errant" in valuating only a 30% interest. Furthermore, the issue was addressed at trial when Farmer not only opined as to the valuation of a 60% interest, but also, as the trial court found, explained it. The hypothetical posed to Farmer at trial changed only the application of a minority discount. In other words, all of the processes and calculations he used to generate his report were assumed in the hypothetical. Moreover, Karen pursued the issue on cross-examination, when Farmer specifically explained, "I would have [$]332,000 in equity value. I would take a 20 percent discount, which would be about 666, which would give me about [$]265,000 in adjusted equity, and when I took 60 percent of that, it would step it down to one sixty." Consequently, Farmer's 60% valuation was not merely a cursory reference,[2] but was based on the evidence of Farmer's report as explained in his testimony.

¶ 38 Karen further contends that the trial court's valuation was against the manifest weight of the evidence because Farmer erroneously failed to consider the nonbusiness expenses that RB paid on Steven's behalf. "Testimony concerning the valuation of assets in an action for dissolution of marriage are matters to be resolved by the trier of fact." *In re Marriage of Grunsten*, 304 Ill. App. 3d 12, 17 (1999). Reviewing courts have found acceptable trial courts' valuations between opposing values in evidence when the record contains conflicting evidence on the valuation. *In re Marriage of Cutler*, 334 Ill. App. 3d 731, 736 (2002). The trial court's role in placing a value on marital

[2]In support of this argument, Karen relies on *In re Marriage of Cutler*, 334 Ill. App. 3d 731 (2002), which we discuss in detail below. At this point, suffice it to say that *Cutler* is inapposite to this argument because the court's holding in *Cutler* was not based on the expert's noted lack of qualifications.

property is to determine the experts' credibility, the reasonableness of their testimony, their expertise, and the weight to be given to each. *Grunsten*, 304 Ill. App. 3d at 17 (citing *In re Marriage of Gunn*, 233 Ill. App. 3d 165, 183 (1992)).

¶ 39 Here, the record establishes that Farmer considered whether any normalization adjustments for the personal expenses allegedly paid were necessary. Farmer testified that he "search[ed] for normalizing adjustments" by comparing RB's financial statements to over 200 similar companies. He concluded that RB's income statements were "very comparable without normalizing adjustments." Farmer elaborated on cross-examination that the travel and entertainment expenditures reflected on RB's tax returns were comparable, as a percentage, to other companies in the industry. Thus, Karen's contention that Farmer did not consider the issue of RB's payment of purported personal expenses is without merit.

¶ 40 Moreover, the trial court was clearly aware of the issue. At trial, the court itself posed questions to each expert about the purported personal expenses being paid by RB. In its written opinion, the court extensively discussed the issue. The court noted Polash's reliance on Karen's "subjective and self-serving calculations," his lack of contact with Steven about why certain expenses were covered by RB, and his failure to examine the parties' personal tax returns, especially given the allegation of underreported income. The court concluded that Polash's $738,000 valuation was "overstated." Considering Farmer's report, the court noted that Farmer was "[s]ignificantly errant" in valuating only a minority interest in RB, but nonetheless found Farmer's report more reliable. The court found that Farmer explained his opinion, as elicited at trial, that a 60% interest in RB was worth $160,000. Because the trial court made reasoned determinations as to the experts' expertise and credibility, the reasonableness of their testimony, and the weight to be given to each

(see *Grunsten*, 304 Ill. App. 3d at 17), we cannot say that the court's valuation of the marital interest in RB at $160,000 was unreasonable, arbitrary, or not based on the evidence. Accordingly, the court's valuation was not against the manifest weight of the evidence.

¶ 41 Karen's reliance on *Cutler* and *Grunsten* is unavailing. In *Cutler*, the marital property at issue was the husband's insurance agency, which was a "captive agency" limited to selling only Geico products and had no market. *Cutler*, 334 Ill. App. 3d at 736. The trial court valuated the business at $243,000, an amount between the wife's expert's valuation of $270,000 and the husband's expert's valuation of $32,000. *Cutler*, 334 Ill. App. 3d at 736. The appellate court, noting that a trial court's selection of a valuation between opposing values in evidence was generally acceptable, held that the trial court's valuation was against the manifest weight of the evidence. *Cutler*, 334 Ill. App. 3d at 736-37. The court noted that the wife's expert's valuation lacked a proper foundation for failing to take into account, *inter alia*, the lack of a market for the captive agency. *Cutler*, 334 Ill. App. 3d at 737. Thus, it was improper for the trial court to select a valuation in the range between the two experts. *Cutler*, 334 Ill. App. 3d at 737. The court then held that the trial court's specific valuation was based on an improper valuation method, and that, even assuming the method were proper, it was unsupported by the record because it was based on the wife's expert's cursory reference to a valuation he calculated as a "sanity check." *Cutler*, 334 Ill. App. 3d at 736-37.

¶ 42 In *Grunsten*, the appellate court reversed the trial court's valuation because, although it was within the range of the valuations given by the parties' respective experts, it failed to give sufficient consideration to a recent sale in which the husband had bought out the widow of his deceased partner. *Grunsten*, 304 Ill. App. 3d at 17. Noting that valuating a closely held corporation is subjective, the court stated that the process was much less so when done with the benefit of a recent

transaction involving the same property. *Grunsten*, 304 Ill. App. 3d at 17. Here, unlike either *Cutler* or *Grunsten*, Farmer did not ignore a crucial factor in his valuation. As discussed above, he considered and rejected the need for any normalizing adjustments.

¶ 43 Yet, Karen points out that Farmer admitted that he would have done additional investigation had he reviewed Polash's normalizing adjustments before he completed his report[3] and that Polash calculated his normalizing adjustments after verifying Karen's information. Karen fails to recognize that the trial court, as the finder of fact, listened to all of the testimony and reviewed all of the exhibits pertaining to the issue of the normalizing adjustments. Indeed, the court specifically questioned Farmer about his "admission." Furthermore, Karen overstates Polash's verification efforts. Although Polash traced the payee and amounts in Karen's summaries back to the bank statements, that had nothing to do with whether the expenditures themselves were for personal or business reasons. While Polash also testified that he determined whether Karen's classifications were reasonable and even excluded some items that seemed like legitimate business expenses, other than the Elgin property taxes, Polash offered no explanation as to which expenses were excluded, and more importantly, no reason for their exclusion. Indeed, Polash acknowledged at trial that certain expenses could be classified as personal or business, "depending upon the explanation given." However, as the trial court noted, Polash did not seek an explanation from Steven, the one person who incurred the expenses at issue.[4] On this record, neither Farmer's "admission" nor

[3]Farmer's report was dated June 5, 2010, and provided a valuation as of December 31, 2009. Polash's report was dated January 18, 2011, and provided a valuation as of June 30, 2010.

[4]Upon questioning by the trial court, Polash testified that he did not interview Steven because Steven knew nothing about RB's books. This testimony was unpersuasive because, despite Steven's

Polash's verification renders the trial court's valuation against the manifest weight of the evidence.

¶ 44 Karen next argues that the trial court abused its discretion in awarding her only $5,000 per month of maintenance for five years, thus taking issue with both the amount and duration of the maintenance award. Section 504(a) of the Act provides that the trial court may award maintenance in an amount and of a duration that seems just, after considering certain enumerated factors, including: each party's income and property; each party's needs; each party's present and future earning capacity, and any impairment thereof due to devotion of time to domestic duties or foregoing opportunities for the marriage; the time needed for the recipient spouse to obtain appropriate education, training, and employment; the standard of living established during the marriage; the duration of the marriage; and any other factor the court finds just and equitable. 750 ILCS 5/504(a) (West 2008); *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 9. "The reasonable needs of the party seeking maintenance are to be measured by the standard of living the parties enjoyed during the marriage." *In re Marriage of Keip*, 332 Ill. App. 3d 876, 880 (2002). The award of maintenance is within the sound discretion of the trial court, and we will not reverse a maintenance award unless "it is obvious that the trial court acted arbitrarily and without conscientious judgment." *In re Marriage of Severino*, 298 Ill. App. 3d 224, 226 (1998).

¶ 45 In the present case, Karen contends specifically that the court failed to account for the length of the marriage, Steven's actual income and superior earning capacity, and the parties' lifestyle during the marriage. The record establishes that the court considered each of the statutory factors.

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testimony claiming ignorance, during extensive examination by Karen's counsel about specific transactions, Steven was able to account for particular entertainment expenses, even naming the particular clients involved.

The court noted that the parties were married in 1986. The court found that Steven was earning gross monthly income of $9,330, "along with certain benefits (such as insurance) and certain perceived benefits (such as participation in leisure activities financed by RB, which often involved its customers)." The court found that Steven was earning or had the capacity to earn more, but was "unable to discern exactly which expenses were errantly paid by RB and not reported as personal income" and observed that Karen "would have participated in the same." With respect to Karen's income and earning capacity, the court found that she was earning a gross monthly income of $2,040 and that Steven had fired her for unknown reasons. The court reasoned that Karen had "skills and abilities developed through the years of managing books of operating businesses." However, the court found it uncertain as to when Karen might achieve "fuller employment" and that she needed support for an "undetermined amount of time" to allow her to achieve such. With regard to the marital standard of living, the court found that it was "moderately high through the intersection of work and pleasure" as "certain luxuries" enjoyed during the marriage were mostly related to conducting RB's business by developing or maintaining client relationships. The court concluded that "the perceived need of [Karen] to achieve on a personal level, the standard of living established during the marriage through the intersection of work and pleasure, [wa]s a bit illusory." The court also found significant that Karen accused Steven of tax fraud, "which may ultimately impact RB and [Steven's] source of income." After considering each of section 504's factors, the court awarded maintenance to Karen in the amount of $5,000 per month for five years.

¶ 46 Although section 504 requires consideration of all of the relevant factors, it does not require that they be given equal weight, "so long as the balance struck by the court is reasonable under the circumstances." *In re Marriage of Dunlap*, 294 Ill. App. 3d 768, 772 (1998) (quoting *In re Marriage*

of Miller, 231 Ill. App. 3d 480, 485 (1992)). In the present case, the parties' conduct of the business and alleged tax fraud were obviously central to the court's analysis. We note that Karen does not challenge the court's findings that RB's future was generally uncertain and that, within the particular context of the purported tax fraud, Steven's future income could be impacted. Nor does she challenge the court's finding that the luxuries enjoyed during the marriage were mostly related to the conduct of the business. The amount of the maintenance award approximately equals Karen's annual salary at RB ($5,000 x 12 months = $60,000). The award also constitutes more than 50% of Steven's monthly income of $9,330. Furthermore, as Steven points out, in addition to the Michigan home (unencumbered by any debt), Karen was awarded $225,000 in the property distribution, which should be considered. See *In re Marriage of Drury*, 317 Ill. App. 3d 201, 209 (2000) ("An award of maintenance must be balanced against the marital property award."). While potential maintenance recipients are not required to liquidate assets to generate income on which to live (*Keip*, 332 Ill. App. 3d at 882), the cash distribution Karen received constitutes a liquid asset and a substantial sum for investing. In contrast, Steven's property award, including RB, the marital home, and the industrial property, constituted illiquid assets encumbered by significant debt for which he is responsible. We cannot say that the court acted arbitrarily with regard to the amount of the maintenance award.

¶ 47 With respect to the duration of the maintenance award, Karen contends that she will never be able to approximate the marital standard of living and that limited-duration maintenance was contradictory to the court's finding that Karen needed an "undetermined" amount of time to achieve full employment. Permanent maintenance is appropriate when the court finds that the recipient spouse is unemployable or is "employable only at an income that is substantially lower than the previous standard of living." *Brankin*, 2012 IL App (2d) 110203, ¶ 9 (quoting *In re Marriage of*

Murphy, 359 Ill. App. 3d 289, 303 (2005)). In contrast, rehabilitative maintenance is designed to allow a dependent spouse to become financially independent. *Brankin*, 2012 IL App (2d) 110203, ¶ 9. The situation here is not analogous to the classic permanent maintenance case where, because a spouse has devoted years to raising children and foregone educational and employment opportunities, he or she will never be able to achieve the marital standard of living. See, *e.g.*, *Drury*, 317 Ill. App. 3d at 205-06, 210 (holding that a three-year award was an abuse of discretion because permanent maintenance was required where the wife gave up her teaching career to raise the parties' children). Nor is the present case one in which rehabilitative maintenance is needed to give a dependent spouse time to become financially independent. Karen was not dependent on Steven during the marriage but rather earned a substantial income. However, the court recognized that Karen's financial independence was thwarted when Steven terminated her. The court found that, while Karen had gained valuable employment experience during her years at RB, she would need time to achieve full employment again. Under the unique facts of this case, the court struck a reasonable balance under the circumstances. That Karen will not be able to participate in entertaining RB clients anymore does not compel a different conclusion. Accordingly, we cannot say that the trial court abused its discretion in awarding Karen $5,000 of monthly maintenance for five years as the court acted neither arbitrarily nor without conscientious judgment.

¶ 48 Karen's reliance on *Dunlap* is misplaced. *Dunlap* involved a 26-year marriage during which the wife had been a homemaker while assisting her husband on his farm and with his position as a sales manager by making phone calls, running errands, and hosting clients. *Dunlap*, 294 Ill. App. 3d at 771. The appellate court reversed the trial court's award of $1,500 per month of maintenance to cease upon the husband's retirement (he was 62 years old when the judgment of dissolution was

entered). *Dunlap*, 294 Ill. App. 3d at 774. The appellate court reasoned that, because none of the trial testimony was clearly standard-of-living evidence and because the trial court had made no specific finding on the issue, remand was necessary for a proper consideration of the marital standard of living. *Dunlap*, 294 Ill. App. 3d at 773-74. *Dunlap* is inapposite because the wife there did not have any marketable skills, whereas here, the trial court specifically found that, in addition to her course work, Karen had gained valuable business experience during her work at RB. Moreover, unlike in *Dunlap*, the trial court here made specific findings about the marital standard of living.

¶ 49 Karen's contention that the trial court abused its discretion in not making the maintenance award reviewable is similarly unavailing. Section 510(a-5) of the Act provides for modification of maintenance upon a showing of a substantial change in circumstances. 750 ILCS 5/510(a-5) (West 2008). The difference between the trial court's award of maintenance for a fixed five-year period, and an order making it expressly reviewable in five years, is the burden of proof. *In re Marriage of Mayhall*, 311 Ill. App. 3d 765, 770 (2000). Fixed-term maintenance awards may be extended or shortened. *Mayhall*, 311 Ill. App. 3d at 770. As it stands, if Karen seeks modification to extend the award under section 510(a-5), she will bear the burden of proving a substantial change in circumstances. Similarly, if Steven seeks modification to shorten the duration, he will bear the burden of proof. The record is clear that the court carefully considered reviewability and modification. In the judgment of dissolution, the court explicitly stated that it made no finding as to the award's reviewability but noted its belief that all maintenance was subject to review under section 510 of the Act. In the order denying Karen's motion to reconsider, the court stated, "Prognostication on the circumstances which have given rise to the [maintenance] award is challenging for the Court, and *** the Court believes it to be best to *** deal with modification if

and when circumstances call for the same." Because it is evident that the court did not act arbitrarily or without conscientious judgment in its decision to not expressly provide for reviewability, there was no abuse of discretion.

¶ 50 Karen finally argues that the trial court abused its discretion in denying her motion to reconsider based on newly discovered evidence, namely, the parties' 2010 personal and business tax returns. She asserts that the tax returns were not available at the time of trial, that Steven was in complete control of the information regarding the 2010 tax returns—specifically for the last six months of 2010—and that Steven had a duty pursuant to Illinois Supreme Court Rule 214 (eff. Jan. 1, 1996) to seasonably supplement his discovery. Karen also contends that the evidence is material as it demonstrates that Steven's compensation was in line with Polash's estimate of about $300,000. Steven counters that Karen did not exercise due diligence in seeking the evidence because, as the trial court found, the "tax filings merely organize[d] certain information which actually existed in the previous calendar year, into a form required by the taxing authority."

¶ 51 In *In re Marriage of Wolff*, 355 Ill. App. 3d 403 (2005), this court explained:

> "To justify setting aside a prior order based on newly discovered evidence, (1) the party seeking to overturn the order must show due diligence in discovering the evidence; (2) the party must also show that he could not have produced the evidence at the first trial by exercising due diligence; (3) the party must demonstrate that the evidence is so conclusive that it would probably change the trial result; (4) the evidence must be material and relate to the issues; and (5) the evidence cannot be merely cumulative or serve the sole purpose of impeachment." *Wolff*, 355 Ill. App. 3d at 409-10.

We review for abuse of discretion a trial court's decision on a motion to reconsider. *Wolff*, 355 Ill.

App. 3d at 409.

¶ 52 In *Wolff*, the trial court granted sole custody of the parties' children to the wife. *Wolff*, 355 Ill. App. 3d at 405. The husband subsequently filed an amended motion to reconsider, arguing that he had newly discovered evidence consisting of the wife's statement to him, made one month after the judgment of dissolution was entered, that she was going to move with the children to Quincy, Illinois, some 300 miles away. *Wolff*, 355 Ill. App. 3d at 405-06. The trial court granted the motion to reconsider after an evidentiary hearing, at which the wife admitted signing a lease on a farmhouse in Quincy prior to the judgment of dissolution but testified that moving was only one possibility at the time. *Wolff*, 355 Ill. App. 3d at 406-07. The court then granted a new trial on the issue of custody and awarded sole custody to the husband. *Wolff*, 355 Ill. App. 3d at 407.

¶ 53 On appeal, the wife argued that the trial court abused its discretion in granting the motion to reconsider because it raised evidence that occurred after the entry of the judgment of dissolution and was not in existence at the time of trial. *Wolff*, 355 Ill. App. 3d at 409. The husband maintained that it was "not the statement, but [the wife's] prior intent as evidenced by the statement" that was at issue. *Wolff*, 355 Ill. App. 3d at 409. The court framed the question as whether the wife's posttrial statement (that she was moving to Quincy with the children) was newly discovered evidence that could be used to prove a fact in existence at the time of the trial (her intent to move). *Wolff*, 355 Ill. App. 3d at 410. The court answered the question in the affirmative. *Wolff*, 355 Ill. App. 3d at 411.

¶ 54 Here, the 2010 tax returns were not newly discovered evidence. To fit into the *Wolff* rubric, Karen would have to be seeking the 2010 tax returns as newly discovered evidence to prove a fact in existence at the time of trial, that Steven's income and RB's valuation were higher than his and Farmer's testimony indicated. However, as reflected in her motion to reconsider, Karen essentially

sought to use the classification of expenses as shown in line 17 of the parties' 2010 form 1040 tax return.[5] In other words, Steven's 2010 K-1 statement, issued by RB, apparently reflected a higher income for RB being passed through to Steven's personal income on line 17 of the 1040 tax return. See *In re Marriage of Joynt*, 375 Ill. App. 3d 817, 820-821 (2007) (stating that a "subchapter S corporation is a pass-through entity utilized for federal tax purposes" and that the "corporation's income is taxed directly to its shareholders based on their ownership of corporate stock"). However, although the expenditures had been made at the time of the trial, the classification of those expenditures did not exist at the time of trial. Thus, under *Wolff*, the 2010 tax returns cannot qualify as newly discovered evidence because they cannot prove a fact in existence at the time of trial.

¶ 55 Additionally, Karen has failed to demonstrate due diligence in discovering or producing the evidence. Karen was RB's former bookkeeper and had in her possession its financial data for the first six months of 2010. She was aware of the existence of the financial data for the last six months of 2010, and the trial did not commence until February 2011. Yet, Karen points to nothing in the record to indicate that she ever requested the information. Nor are we persuaded by Karen's attempt to shift the burden to Steven via Rule 214's duty to seasonably supplement discovery. Rule 214 provides that "[a] party has a duty to seasonably supplement any prior response to the extent of documents, objects or tangible things which subsequently come into that party's possession or

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[5]Apparently, Karen also sought to use RB's net taxable income for 2010, as reflected on its tax return. Karen testified at trial that Steven's 2007 and 2008 K-1 forms showed business income of $47,300 and $64,316, respectively. According to Karen's motion to reconsider, line 17 of the parties' 2010 personal tax return showed $211,492, which she said was "substantially comprised" of income from RB "and other entities controlled by Steven."

control or become known to that party." Ill. S. Ct. R. 214 (eff. Jan. 1, 1996). However, assuming *arguendo* that Steven was derelict in his discovery duties, Karen cites no authority in support of the proposition that one party's noncompliance with the rule's requirement to supplement discovery somehow equates with due diligence on the part of the other party to obtain the material. Moreover, as the trial court noted, the tax returns themselves merely organized the financial data from all of 2010 into the form required by the taxing authority. Karen's assertion that the tax returns were not completed until June 2011 must be viewed in context. The judgment of dissolution was not entered until July 15, 2011. Karen has not demonstrated any attempt, let alone due diligence, to obtain either the financial data or the 2010 tax returns prior to trial, or even prior to the entry of the court's judgment. Accordingly, the trial court did not abuse its discretion in denying Karen's motion to reconsider.

¶ 56 For the foregoing reasons, we affirm the judgment of the circuit court of McHenry County.

¶ 57 Affirmed.