2013 IL App (2d) 120519-U
No. 2-12-0519
Order filed May 31, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MARTIN A. URBAN, Petitioner-Appellee, and SUSAN M. FOWELL, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 06-D-788 Honorable R. Craig Sahlstrom, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Burke and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in qualifying petitioner's witness, Patrick Simers, as an expert in business valuation, as he had extensive experience in the field. Also, the trial court's decision to not consider a debt incurred in respondent's medical practice as a marital debt was not against the manifest weight of the evidence because the trial court accounted for the debt in valuing respondent's medical practice at zero. Finally, while it was not against the manifest weight of the evidence for the trial court to accept Simers's valuation of petitioner's radiology practice under the "income approach," it was against the manifest weight of the evidence for the trial court to not assign the practice Simers's value under the "cost approach," excluding Simers's unexplained decision to subtract 10 days of operating expenses for liquidating the business. Therefore, we affirmed in part, modified in part, and remanded the cause.

¶ 2 At issue in this appeal from a dissolution judgment is the trial court's valuation of the medical practices of petitioner, Dr. Martin A. Urban, and respondent, Dr. Susan M. Fowell. Respondent argues that the trial court erred in: (1) qualifying petitioner's witness as an expert in business valuation; (2) valuing petitioner's radiology practice at $0; and (3) failing to consider the substantial debt that respondent incurred as part of her medical practice. We affirm as modified.

¶ 3 I. BACKGROUND

¶ 4 The parties were married on September 3, 1998, and their marriage was dissolved on December 15, 2011. Petitioner is a radiologist and became the sole shareholder of Camelot Radiology (Camelot) in 2008. Respondent is an ophthalmologist and the sole shareholder of Northern Illinois Retina (NIR).

¶ 5 A. Camelot

¶ 6 Petitioner began working at Camelot in 1988, interpreting x-rays and performing radiologic procedures. In 1990, he paid $5,000 for a 20% ownership interest with four other doctors. Later, additional partners bought in for $5,000 each, and in June 2006 there were eight partners. Each partner received a salary, and the business's earnings were equally divided. In 1990, the business's gross receipts were about $5 million per year. In 2010, the gross receipts were about $3.9 million.

¶ 7 Through June 2006, Camelot basically had one large contract with St. Anthony's Hospital which required it to interpret films. That work accounted for over 95% of the business. The contract allowed for a 60 or 90-day termination by either party without cause, and St. Anthony terminated the contract in early 2006. The group then disbanded, with the departing partners receiving the $5,000 they had paid in and their accounts receivables at the "collection rate."

¶ 8 Only respondent and "Dr. Tamayo" remained as partners in December 2006, and they equally split profits. Camelot obtained contracts with Freeport Memorial Hospital and Mercy Health Systems, and a contract with Rochelle Hospital was renegotiated; Camelot secured a total of three contracts at four facilities. Those contracts were still in place at the time of trial. The contracts were obtained by negotiating with the hospitals, which terminated the other groups they were working with to give Camelot the contracts. The contracts could be canceled in 60 to 90 days by either party, without cause.

¶ 9 Dr. Tamayo left in January 2008, and petitioner purchased his interest by paying him $5,000. Thus, petitioner was the sole shareholder of the business, which became a subchapter S corporation. The business did not own a facility, and its only assets were one or two laptops. However, Camelot owned an interest in Summit, an imaging center, through a holding company called Haven Holdings. Petitioner testified that Haven Holdings did not have any value but it was "on the books in an amount of about $43,000."

¶ 10 On June 30, 2009 (the valuation date), Camelot employed three full-time doctors and four part-time doctors. The employment contracts could be terminated by either party, without cause, with 60 to 90-day notice. The contracts contained non-compete covenants for 24 months within a 15-mile radius. At the time of the valuation date, Dr. Robert Pierce was a non-shareholder, full-time doctor. Petitioner paid him a salary and bonus equal to his own.

¶ 11 As of the same date, petitioner's duties fell into two main categories: reading films and administrative functions. He spent 35 to 45 hours per week reading films at various sites and about 10 to 15 hours per week on administrative functions. However, petitioner agreed that he previously told his expert that he spent seven to eight hours per week on administrative tasks. The hospital

contracts required him to meet with administrators, such as hospital CEOs, CFOs, and radiology directors. Petitioner also had to attend radiology department meetings, quality control meetings, and hospital staff meetings, and he served on several executive committees. Petitioner was the department chair or director of the radiology departments at all four of the contracting hospitals, and he had to develop procedures and protocols. Petitioner also reviewed the credentialing for all of Camelot's radiologists. The company employed a "night hawk" service to read some films at night, and there would be up to 40 radiologists whose credentials petitioner had to review. Petitioner checked the accuracy of payments, spent time with the accountant to make sure the books were correct, and spent "a fair amount of time" with the corporate attorney reviewing hospital and employee contracts. Camelot had a professional administrator until June 2008; that individual was paid $160,000 plus benefits. Petitioner took over all of his functions. Petitioner still had an office manager to do bookkeeping, and she was paid $60,000 per year.

¶ 12 The collection rate on the accounts receivable was currently about 20 to 21%, whereas it used to be around 40% with St. Anthony.

¶ 13 B. NIR

¶ 14 NIR was an S-corporation owned solely by respondent. It had 12 or 13 employees, but respondent was the only physician and the only revenue-generator. She specialized in retinal surgery and was one of just two full-time retinologists in Rockford. Respondent received the majority of her patients through referrals from ophthalmologists, optometrists, and sometimes other retinal surgeons. About 79% of NIR's patients were Medicare patients, and the collections rate on the accounts receivable for such patients was 12 to 15%.

¶ 15 In 2006, the practice borrowed $800,000 due to the misappropriation and mismanagement by a prior practice manager, John Flood. Respondent personally guaranteed the loans. Flood had been ordered to pay restitution of $487,000, but respondent had no expectation of collecting that amount. Respondent also took out a "loan to shareholders" from NIR in 2000 or 2001 that was on the books in the amount of $215,545, and she was slowly paying it back when there were "excess funds." To respondent's "best recollection," the money was put towards building the parties' vacation home.

¶ 16 Respondent's business was "a very equipment intense specialty," though some equipment was almost outdated while other equipment was new. Respondent had tried to hire additional doctors for her practice or sell her practice but had been unable to do so.

¶ 17 C. Expert Testimony

¶ 18 The parties agreed on a valuation date of June 30, 2009, for their respective practices, and each retained two experts: petitioner hired Bruce Hutler and Patrick Simers, and respondent hired Travis Chamberlain and William Condon.

¶ 19 1. Bruce Hutler

¶ 20 Hutler testified as an expert for petitioner. Hutler had an undergraduate degree in finance and real estate and an MBA. He had three professional designations: an Accredited Senior Appraiser (ASA); Chartered Financial Analyst (CFA); and Accredited Valuation Analyst (AVA). For the past 13 years he had been working at Baker Tilly, where he provided business valuations for litigation and tax purposes. Hutler had been retained by petitioner to render an opinion as to the values of Camelot and NIR as of the agreed valuation date.

¶ 21 a. Camelot - $78,000 Valuation

¶ 22 Hutler valued Camelot based on its fair market value, which was what a willing buyer would pay a willing seller if neither was under compulsion to transact and there was full access to information. There were three basic approaches to arrive at the fair market value: the market approach; the income approach; and the cost approach.

¶ 23 The market approach involved looking at transactions in the marketplace for similar entities. Baker Tilly had access to four databases of transactions of "post-sale" companies. An analyst would look at the sale prices for similar businesses. Hutler did not rely on the market approach to value Camelot because there were not enough sale transactions to compare it to. Also, Camelot was unique in that it contracted with just a few hospitals, and the contracts could be canceled in 90 days. Therefore, Hutler did not think Camelot had any goodwill (defined as the value above the adjusted fair market value of assets minus liabilities) that was transferrable.

¶ 24 The income approach took a look at the historical cash flow generated by the business and then placed a value on the right to receive that flow. Hutler looked at the last four years of earnings of Camelot but mostly relied on the last two years, 2008 and 2009, because the contracts for those years were more representative of what the future would look like. Under this approach, Hutler originally valued Camelot at $73,000. However, Hutler later revised his valuation after learning from Camelot's accountant that Hutler had used the incorrect compensation amounts for petitioner and Dr. Pierce. The doctors actually earned significantly more than Hutler's original figures, in which he used a $475,000 salary based on the 75th percentile of market compensation for such doctors in the Midwest. The doctors' combined compensation was actually $1.2 million in 2008 and $1.275 million in 2009. Hutler then determined that the doctors should be making in the 90th percentile of market compensation at $670,000 per physician ($1.34 million total) given the actual

time and effort they put in, along with respondent's significant administrative responsibilities, meaning that the doctors were undercompensated. Hutler therefore revised his valuation of Camelot under the income approach to a lower figure, $44,000.

¶ 25 The cost approach subtracted the fair market value of liabilities on the company's balance sheet from the fair market value of assets on the balance sheet. Such an approach provided a "floor value" because a company would not be sold for less that its liquidation value. The cost approach method resulted in a value of $78,000, and since this was above the income approach value, Hutler ultimately used this number as Camelot's value. This figure included Haven Holdings being valued at about $43,000.

¶ 26 Hutler had reviewed the report written by Travis Chamberlain, an expert hired by respondent. The primary difference in their valuation approaches was that Chamberlain used the industry median for the compensation of petitioner and Dr. Pierce whereas Hutler used the 90th percentile of compensation. Since Chamberlain used a lower number for the compensation, he concluded that there were excess earnings in Camelot that should be considered in its value.

¶ 27 b. NIR - $190,000 Valuation

¶ 28 Hutler valued NIR at $185,000 under the income approach, and he combined that value with analysis from the market approach to arrive at a final value of $190,000. In arriving at this figure, he weighted the income approach at 50%. He weighted the market approach at 25% each for ophthalmology and retinal/vitreous surgery, which both had almost identical goodwill values. Hutler valued respondent's services at $350,000, compared to her $240,000 annual compensation. Hutler incorporated the embezzlement of funds from NIR and the resulting debt, of which about $661,000 was still owed, into his analysis.

¶ 29 2. Patrick Simers

¶ 30 a. Qualifications

¶ 31 Before trial, respondent moved to disqualify Simers, arguing that he was not qualified as an expert. The trial court held a hearing on the motion, at which Simers testified as follows. He was the senior vice president of Principle Valuation, which focused "on the appraisal of healthcare properties for closely held enterprises for large corporations." Simers was in charge of business valuation work, and he did overall business valuations for health systems, "for purchase price allocation work," for SEC reporting work, and for "Stark regulations."[1]

¶ 32 Simers had been at Principle Valuation for three years. Before that, he was the National Director of Healthcare Services at American Appraisal Associates, where he did a lot of "purchase price allocation work" for when large corporations, such as community health systems, were bought and sold. He also appraised closely-held physician practices that were being purchased by hospitals. Simers had worked in the area of valuing businesses in the medical field for 20 to 25 years. He had valued 17 different imaging radiology practices in the past six years. Camelot was also a radiology practice, though it was somewhat unique in that it was a reader-only business without any equipment, whereas many imaging centers did both. The methodology Simers used to value Camelot was consistent with the methodology he used to value the other imaging centers and other healthcare practices.

¶ 33 Simers agreed that he was not an accountant or certified financial analyst. He majored in finance in college and was a certified general real estate appraiser. He had never previously

[1]Simers testified that Stark regulations require that hospital transactions with a physician be done at fair market value.

appraised a medical practice in a dissolution proceeding. His practice was largely involved with valuing acquisition prices for smaller practices being purchased by larger entities. However, the valuation method did not change if he was just valuing the small business.

¶ 34 The trial court denied respondent's motion to disqualify Simers, stating that Simers had extensive experience in the valuation of healthcare businesses and had 17 prior engagements directly related to the valuation of imaging and radiology practices. Although he was not an accountant and did not have any of the certifications of a financial analyst, his training and experience gave him a greater knowledge than the average person regarding the valuation of medical practices, and the trial court would allow him to render an opinion.

¶ 35 b. Camelot - $0 Valuation

¶ 36 In discussing the income approach, Simers stated that it was not uncommon in a closely-held business for the income statements to be negative or near zero because people tended to pay themselves as much as they possibly could to decrease their tax liability. Simers determined that, according to work relative value units (RVUs), which were a way to measure volume of work, the doctors at Camelot worked as hard as the doctors between the median and the 75th percentile. However, the practice was paying the doctors less than the median compensation for such doctors in the Midwest. Therefore, considering market-based compensation, the income approach resulted in a negative value.

¶ 37 Under the market approach, Simers considered the "guideline company analysis approach," but because Camelot did not have significant earnings, he did not think that approach would yield a reliable result. Also within the market approach, Simers considered the "guideline transaction

method," but there was not readily available information for similar companies without earnings and significant assets.

¶ 38 Under the cost approach, Simers reviewed Camelot's balance sheet. Its primary asset was the accounts receivable, which was listed on the books at $455,853. The actual collections over 18 months were about $101,166, a 22% collection rate. Using that figure, the total net assets were $72,825. Subtracting liabilities of $35,625 resulted in a value of $37,200. The net book value of furniture, fixtures, and equipment was $3,345, and adding that amount resulted in a value of $40,545. However, subtracting liquidation costs ("ten days associated with expenses for closing the door") of $100,790 would give the business a negative value.

¶ 39 Simers agreed that during the time in question, none of the doctors employed by Camelot left the practice for better compensation elsewhere. He agreed that a treatise in business valuation stated that RVUs do not accurately reflect the amount of work radiologists perform and should not be used to measure their productivity. However, it was consistent in the practice to use such a measurement. His business had just reviewed a contract between a hospital and a group very similar to Camelot where RVUs was a distinct benchmark that had to be met in terms of payments. It was also consistent in the Rockford market, where Simers had done a lot of work with Swedish American Hospital purchasing practices and with Rockford Health Systems, to use RVUs.

¶ 40 Simers agreed that he used post-June 30, 2009, collection data to determine accounts receivable collection amounts and payroll data. Simers was told by petitioner to not include Haven Holdings in his analysis.

¶ 41 Simers reviewed Chamberlain's and William Condon's reports and thought that the biggest difference was the figures they used as the reasonable compensation levels for petitioner and Dr.

Pierce. Respondent's experts both used median figures for what doctors at Camelot should be paid. However, looking at either RVUs or net collections, petitioner and Dr. Pierce were within the 75th percentile, so they should be paid, at a minimum, at that rate. Moreover, individuals in the 90th percentile usually included some level of reimbursement for administrative work, such as what petitioner was performing.

¶ 42 C. Travis Chamberlain

¶ 43 Chamberlain was retained as an expert for respondent. He had an undergraduate degree in accounting and had been employed by Clifton Gunderson for about 13 years. He was currently a senior manager in the valuation and forensic services group. Chamberlain was a CPA and held an "Accredited in Business Valuation" (ABV) designation and an ASA designation. He had not been the lead appraiser on a radiology evaluation and had never rendered an opinion on a radiology business but had been involved in valuing less then ten radiology practices and well over ten medical practices. Some of the valuations were for marriage dissolution proceedings.

¶ 44 a. Camelot - Value of $874,292 to $1,460,589

¶ 45 Chamberlain reviewed Camelot's economic information going back to 2006 but focused on the time petitioner took full ownership of the practice. He was unable to find a sufficient number of comparable companies to use the market approach. He therefore used the income approach to value petitioner's interest in Camelot; he considered that approach as the most appropriate and widely-used method to value an interest in a physician practice. Chamberlain opined that petitioner was able to derive a significant return on equity in excess of his return on labor for the practice, leading to the conclusion that there was "value and enterprise goodwill within the practice."

Chamberlain did not believe there was any personal goodwill because it was a multi-physician practice that obtained referrals based on the contractual relationships it had with hospitals.

¶ 46 Petitioner had indicated in discussions that he had a verbal agreement with Dr. Pierce to share the practice's profits. Dr. Pierce was 72 years old and very close to retirement. Petitioner expected that he could replace Dr. Pierce for about $450,000 to $500,000 and that his earnings would then go up.[2] Chamberlain came to two different valuations, one assuming that Dr. Pierce either did not retire or was replaced under a similar arrangement. The second valuation assumed that Dr. Pierce would be replaced at a salary of $450,000 to $500,000. Chamberlain opined that under the first scenario, Camelot would be valued at $874,292, and under the second scenario, the practice would be valued at $1,460,589.

¶ 47 In making his calculations, Chamberlain used a fair market value compensation of $500,000 for all physicians in the practice. He thought that compensation amount was reasonable, whether petitioner performed 7 or 20 hours of administrative work per week, because other doctors were being paid less than the assumed amount. Moreover, the statistics for salaries included all sources of income, including both a return on labor and a return on equity. Chamberlain used an "above the median" compensation amount because he did not think there was a basis to use the 75th or 90th percentiles. Thus, Chamberlain's analysis assumed petitioner was receiving more compensation than the fair market value compensation for his services. Chamberlain did not believe that petitioner possessed any unique skills or qualifications that would significantly differentiate him from any other radiologist at Camelot. He agreed that a significant value should be placed on the individual who

[2]Petitioner denied making this statement to Chamberlain and testified that the people he had hired in the last couple of years had been paid an average of $700,000 per year.

maintains the relationships between Camelot and the hospitals. He did not know that there was an office manager in 2008 who was paid about $160,000 per year for performing a lot of the administrative functions that petitioner now performed. However, he did not think that petitioner's administrative services were worth that amount because the practice formerly had more doctors and more collections.

¶ 48 Chamberlain agreed that if an administrative salary of $180,000 was added to the $500,000 average pay, petitioner would earn the approximately $700,000 as reflected on his 2009 tax return, resulting in little, if any, excess income. Chamberlain also acknowledged that petitioner and Dr. Pierce entered into an arms-length agreement regarding Dr. Pierce's salary of about $700,000, and since such agreements are typically considered reasonable, there would be no excess earnings for Dr. Pierce. However, Chamberlain believed that the dynamics of the situation were unique because Dr. Pierce was 72 years old and was planning to retire within two years.

¶ 49 Chamberlain considered the investment in Haven Holdings as part of his analysis, but he determined that it did not have a "direct value for the ownership interest" and did not ascribe a dollar value to it. Chamberlain testified that Haven Holdings potentially had an indirect value as a source of reading and professional services.

¶ 50 b. NIR - $0 Valuation

¶ 51 Chamberlain assumed a fair market compensation of $603,000 for respondent for 2008. Chamberlain opined that the total economic benefit respondent received from the practice, even before considering its substantial debt, was not in excess of fair market value compensation. In other words, respondent was being compensated for nothing more than her return on labor, so there were no excess earnings or goodwill in the practice.

¶ 52 Chamberlain reviewed five years of economic history for NIR because respondent had been the sole owner of the practice for that entire time. As of June 30, 2009, there was over $650,000 of outstanding debt resulting from the embezzlement. There was also an approximately $215,000 shareholder loan.

¶ 53 D. William Condon

¶ 54 Condon had been retained as an expert by respondent to critique the Principle Valuation report prepared by Simers. Condon was a CPA and had been an accountant since 1973. He had a B.S. in commerce, had done graduate studies in taxation, and had an ABV designation. He was also a certified financial and fraud analyst. He had provided expert opinions in over 100 family law cases.

¶ 55 Condon testified that Simers failed to follow American Society of Appraisers Standards in his report. Specifically, he failed to include sufficient information to enable the intended user to understand the report, such as the sources of information and the methodology. He did not include a discussion of marketability or liquidity discounts, and he failed to state the extent to which the company appraised contained elements of ownership. Further, in describing "Revenue Ruling 59-60," Simers deleted two of the standards and added two of his own. Simers also used language in the report that dealt with real estate appraisals and was inapplicable in this situation.

¶ 56 In Condon's experience, it was rare that a business had zero value. Also, if the business was a "going concern," there should not be an assumption of liquidation, but Simers included business expenses for an additional ten days. Simers additionally should not have considered anything past the valuation date, but he looked at the collection rate 18 months after the date. Simers did not value Haven Holdings because he was instructed not to include it, but the valuation should have been

independent. Simers further should not have used the RVU system to measure work production because it was not supposed to be used for radiologists.

¶ 57 Condon agreed that he had signed only one valuation report for a radiology business. He agreed that valuation was not an exact science and that precise rules for determining the value of closely held businesses could not be prescribed. Condon agreed that he was not necessarily criticizing Simers's end numbers, but rather that he did not describe all of the steps he took to reach those numbers.

¶ 58 Although Condon did not perform a business valuation, he believed that the average compensation for petitioner should be $493,519, according to industry data. Condon used a median figure rather than the 75th or 90th percentile. That figure did not take into account any administrative or managerial functions because Condon was led to believe that there was an office manager. That salary assumed that petitioner just read files and performed the services of a physician. However, the salary figures did not differentiate between income consisting of just an employee's salary and income that included a return on equity.

¶ 59 D. Trial Court Findings

¶ 60 The trial court found as follows. Each of the experts discussed the generally accepted appraisal methods of the asset approach (cost approach), the capitalization of earnings approach (income approach), and the market approach. Hutler valued Camelot at $78,000 under the cost approach. Simers also used the cost approach, and after adjusting for accounts receivable came up with a value of zero. Simers similarly arrived at a zero value under the income approach. Condon primarily criticized Simers's qualifications and the analysis Hutler used.[3] Chamberlain rejected the

[3]Condon's report and testimony is largely a critique of Simers's report and analysis.

cost approach and used the income approach, coming up with a value for Camelot of between $74,000 and $1,460,000. All of the experts rejected the market approach, as no sale comparable to Camelot could be found in the area.

¶ 61 The primary difference between the valuations of Simers and Chamberlain was the assumption that with petitioner's 2010 income of about $848,000, a purchaser could keep all costs and income the same and replace petitioner with someone at a lower pay rate, say $500,000. That is, anyone purchasing Camelot would be purchasing the excess profit between what petitioner earned and what replacing him with someone at a lower pay rate would yield. Everything seemed to come down to the question of whether petitioner was overcompensated.

¶ 62 The trial court could not accept that petitioner was overcompensated. In addition to reading film, petitioner was the chairman and director of the radiology department at the hospitals Camelot had contracts with. Petitioner had set up and reviewed policies and procedures for Camelot in the hospitals. He set credentials and dealt with "financial people" and hospital administrators. Petitioner was also the business manager, chief administrator, and personnel department for Camelot. The practice was unique to petitioner and his personal contacts appeared to be a major part of Camelot's success. Each hospital contract could be terminated without penalty within 60 days, and to suggest that any other radiologist could go to the client hospitals as the new owner of Camelot and expect to keep the contracts in place seemed unlikely. Petitioner's compensation was in line with the upper-end compensation for his profession and was appropriate for the aforementioned reasons. Therefore, the trial court accepted Simers's valuation of zero for the business.

¶ 63 Regarding NIR, Hutler valued the practice at $190,000, and Chamberlain valued it at zero. The trial court accepted Chamberlain's valuation for the reasons Chamberlain gave during his testimony.

¶ 64 The trial court awarded each party his/her respective business and stated that it was "considering the businesses, essentially, to offset one another."

¶ 65 In her posttrial motion, respondent raised the issues of the qualification of Simers as an expert; the valuation of Camelot at zero dollars; the trial court's failure to include respondent's $215,545 shareholder loan from NIR in the division of liabilities; and the trial court's failure to apportion the remaining $400,000 of the loan to NIR acquired due to the embezzlement.

¶ 66 The trial court restated its rationale for Simers's qualification as an expert and the valuation of Camelot at zero. Regarding the shareholder loan, the trial court stated that it did not recall the subject coming up in the course of the trial and therefore did not have anything to reconsider on the issue. On the subject of the loan to NIR that respondent personally guaranteed, the trial court stated that it factored the loan in when valuing the practice at zero.

¶ 67 Respondent timely appealed.

¶ 68 II. ANALYSIS

¶ 69 A. Simers's Qualifications as Expert

¶ 70 1. Simers's Education and Experience

¶ 71 Respondent first argues that the trial court erred in qualifying Simers as an expert in business valuation. Expert testimony is admissible if the expert is qualified by knowledge, skill, experience, training, or education, and the testimony would assist in understanding the evidence. *Snelson v. Kamm*, 204 Ill. 2d 1, 24 (2003). The expert's testimony should also reflect generally accepted

scientific or technical principles. *People v. Randall*, 363 Ill. App. 3d 1124, 1131 (2006). A witness may be qualified as an expert once it is shown that he or she possesses special knowledge beyond that of an average person on a factual matter relevant to the litigation. *National Surety Corp. v. Fast Motor Service, Inc.*, 213 Ill. App. 3d 500, 508 (1991). The decision of whether to admit expert testimony is within the trial court's sound discretion. *Thompson v. Gordon*, 221 Ill. 2d 414, 428 (2006).

¶ 72 Respondent argues that Simers lacked the necessary education, experience, and training to be qualified as an expert in business valuation. She points out that all of the other experts had numerous credentials in the fields of accounting and business valuation, whereas Simers's only recognized professional credential was as a certified general real estate appraiser in Georgia. Plaintiff argues that Simers lacked the required accounting credentials and was not even familiar with certain key standards used in business valuations.

¶ 73 Respondent further argues that although expertise can come from experience, Simers's experience was limited to Stark law disclosures of small practice groups and larger hospital health systems. Respondent maintains that Simers was impeached with his deposition testimony when he admitted that a large hospital health system would not purchase a practice like Camelot.

¶ 74 Respondent's argument is without merit. Simers's lack of accounting credentials would not automatically disqualify him as an expert, as there is no predetermined formula for how the expert acquires specialized knowledge or experience, and practical experience may qualify the expert as well as academic training. *Thompson*, 221 Ill. 2d at 428-29. Also, the expert needs only knowledge and experience beyond that of an average citizen. *Id.* at 429. Simers had a finance degree and 20 to 25 years of experience in valuing businesses in the medical field. Further, in the previous six

years he had been involved in valuing 17 radiology practices. Thus, Simers's experience gave him the background necessary to be qualified as an expert.

¶ 75 We further note that respondent's characterization of Simers's deposition testimony is inaccurate. Simers was asked if there was any indication that petitioner's radiology practice might or could be purchased by one of the three hospitals in Rockford, and Simers responded that he did not believe that it would be purchased "in this market." Moreover, even if the practice was unlikely to be purchased by a large hospital, it does not equate to Simers lacking the requisite knowledge and experience to value it.

¶ 76 2. Generally-Accepted Principles of Business Valuation

¶ 77 Respondent also argues that Simers's opinion was not based on generally-accepted principles of business valuation. See *Randall*, 363 Ill. App. 3d at 1131 (expert's testimony should reflect generally accepted scientific or technical principles). Respondent argues that all of the other experts used a definition of fair market value of what a willing seller would pay a willing buyer in an arms-length transaction, whereas Simers used a real estate definition under Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (see 12 U.S.C. § 331 *et. seq.* (2006)) and cited real estate tax regulations. Respondent also argues that Simers recited facts in his report relevant to real estate appraisals but irrelevant to business valuations.

¶ 78 A review of Simers's report shows that his definition of fair market value is consistent with that espoused by respondent, rendering her argument on this issue baseless. We further agree with petitioner that the references to real estate principles in Simers's report did not impact his business valuation methods.

¶ 79 Respondent further argues that Simers used only six of eight standards from Revenue Ruling 59-60 and then added two additional standards. Respondent cites *In re Marriage of Rossi*, 113 Ill. App. 3d 55, 60 (1983), for the proposition that the revenue ruling is the proper standard for valuing closely held corporations. However, the *Rossi* court discussed the revenue ruling only because the expert purported to rely on it but then violated the rule in his analysis. *Id.* As petitioner points out, Chamberlain, respondent's own expert, testified that the revenue ruling is not necessarily required to be followed under any particular professional standard. We further agree with petitioner that Simers's report indicates that he considered all of the appropriate factors under Revenue Ruling 59-60 in his methodology.

¶ 80 Respondent argues that Simers's committed a cardinal sin of business appraisal by repeatedly using post-valuation data, unlike all of the other experts and contrary to various business valuation standards. Respondent argues that Simers discussed economic conditions that occurred in the first quarter of 2010; income statements as of December 31, 2009; actual collection rates for the 18-month period after June 30, 2009, to apply a downward adjustment to the accounts receivable; and payroll summaries from July 2009 to June 2010.

¶ 81 We agree with petitioner that the record does not support respondent's assertion that Simers used income statements as of December 31, 2009. He did use subsequent payroll summaries to arrive at a salary figure for nonprofessional staff and post-valuation date information to determine actual collection rates. We agree with petitioner that the figures Simers used were consistent with those of other experts. Respondent counters that it does not matter whether the use of post-valuation data impacted Simers's conclusion, but rather that he used such data at all, which is "in direct contravention of *** every applicable business valuation standard." However, given Simers's

extensive experience in valuing medical practices, the fact that he may have violated accounting principles under certain standards by considering limited post-valuation data in interpreting the pertinent information does not render him incompetent to testify as an expert, especially considering that the conclusions he derived from the disputed information are consistent with the other experts. See also *Trout Ranch, LLC v. Commissioner of Internal Revenue*, 493 F. App'x. 944, 954 (10th Cir. 2012) (tax court acted within its discretion in incorporating post-valuation data into its income analysis, as it allowed it to make an informed finding regarding value).

¶ 82 Respondent argues that Simers further demonstrated his lack of qualifications and lack of independence by simply excluding Camelot's interest in Haven Holdings. We disagree, as Simers's report clearly states that he was excluding Haven Holdings from the valuation of Camelot at petitioner's request. Therefore, Simers was open and direct about the parameters of his report, and the lack of information about Haven Holdings did not undermine his expertise. Moreover, Chamberlain, respondent's own expert, testified that he ascribed no value to Haven Holdings. Chamberlain's report states that "there was no significant value to this investment as Summit [the imaging center in which the interest was held] failed to generate positive operating income in 2009 and is also heavily leveraged."

¶ 83 Finally, respondent argues that Simers demonstrated confusion about whether Camelot should be valued as a going concern or according to its liquidation value. Respondent argues that it is unclear why Simers thought it was appropriate to assume that costs associated with liquidation should be considered in estimating the value of the business as a going concern.

¶ 84 We discuss the issue of Simers's allocated costs for "closing the door" in the next section of our disposition. However, the fact that Simers included such costs does not undermine his qualifications as an expert.

¶ 85 In sum, Simers's background and decades of experience in valuing medical practices gave him the expertise necessary to be qualified as an expert. Moreover, his report and testimony show that he used the same three generally-accepted valuation approaches (cost, market, and income) in determining Camelot's value. Accordingly, we conclude that the trial court acted within it discretion in allowing Simers to testify as an expert in business valuation.

¶ 86 B. Trial Court's Acceptance of Simers's Valuation of Camelot

¶ 87 Respondent next argues that even if the trial court did not abuse its discretion in qualifying Simers as an expert, the trial court should have either stricken his testimony or given it no consideration in valuing Camelot. The valuation of marital assets is a question of fact, and the trial court's determination of value will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 151-52 (2005).

¶ 88 Respondent restates her arguments regarding Revenue Ruling 59-60 and Simers's use of post-valuation data. We have already addressed these issues and need not discuss them further. Respondent additionally restates her argument regarding Simers's failure to value Haven Holdings. As discussed, respondent's expert Chamberlain did not ascribe any value to Haven Holdings, so the trial court's ultimate acceptance of a zero value of this interest is not against the manifest weight of the evidence.

¶ 89 Respondent also argues that, in violation of accepted standards, Simers's report contained insufficient information to allow the reader to understand his report and failed to discuss the extent

that the interest in Camelot contained elements of ownership. We agree with petitioner that respondent's latter assertion is questionable, as the practice was solely-owned by petitioner. Further, while Condon offered the opinions underlying these arguments, it is within the trial court's discretion to determine whether the underlying facts or data upon which an expert bases an opinion are the type reasonably relied on by experts in the field. *Donaldson v. Central Illinois Public Service Co.*, 313 Ill. App. 3d 1061, 1075 (2000). Here, the trial court did not abuse its discretion in determining that Simers's report had a sufficient foundation.

¶ 90 Respondent argues that some of Simers's most significant errors involved his application of the income approach, as he applied RVUs to determine the appropriate compensation for Camelot physicians despite a well-known and accepted treatise on business valuation specially stating that the use of RVUs for radiology practices was inappropriate. However, Simers had significant experience in valuing medical practices and radiology practices in particular. He testified that it was consistent in his practice and in the Rockford market to use RVUs for radiology practices. He testified that a practice similar to Camelot paid the radiologist based on the RVUs they produced. Although other experts regarded the use of RVUs as inappropriate, it is the trial court's role to resolve the conflicts between the experts' testimony and determine their credibility. *Flynn v. Cohn*, 154 Ill. 2d 160, 169 (1992). Further, Simers testified that, even putting aside RVUs, data of net collections indicated that petitioner and Dr. Pierce should be compensated, at a minimum, at the 75th percentile.

¶ 91 Respondent also argues that Simers erred by adjusting the fair market compensation rates of the employee physicians. Respondent maintains that the other experts did not make any such adjustment, and Chamberlain testified that the generally accepted practice was not to make any

adjustment to the assumed compensation of any physician other than the ones holding equity interests in the business, because a non-owner physician's salary negotiated at arm's length is presumed to be fair. Respondent argues that it is an advantage to Camelot that its workforce in place is less expensive than a similarly-sized workforce that a potential buyer could recruit on the open market if that person started his or her own practice, especially considering the two-year non-compete clauses in the Camelot contracts.

¶ 92 Simers offered an explanation for his salary adjustment and stated that petitioner employed an older group of people, with three of them near 70 years of age. Simers testified that there would probably be turnover, with new hires demanding pay based on their output. Thus, the distinction in experts' analyses on this issue was yet another conflict for the trial court to resolve.

¶ 93 Respondent argues that regardless of how this court rules on the validity or weight of Simers's testimony, we should find that Hutler's valuation of Camelot was also against the manifest weight of the evidence. Respondent argues that Hutler changed the fair market compensation benchmarks from a 75th percentile median amount to a 90th percentile median amount after he realized that his original analysis assumed a total compensation for petitioner and Dr. Pierce that was about $200,000 to $300,000 too low. Respondent argues that Hutler did not realize that Dr. Pierce was going to change to part-time employment in the very near future. Respondent argues that Hutler also applied inconsistent reasoning and methods to his valuation of NIR and Camelot by refusing to apply a market approach to Camelot. Respondent maintains that, at a minimum, the trial court was bound by the floor value of Camelot of $78,000 set by Hutler.

¶ 94 Respondent maintains that we should accord the greatest weight to Chamberlain's opinion, as it was the only valuation of Camelot: that employed accurate data from the rendering of the initial

opinion, that did not change its benchmark earnings assumption when additional data suggesting a higher value for Camelot under the income approach came to light, and that was based on elements reasonably recognized as a proper valuation technique by business valuation experts. Respondent argues that this court should set a value of Camelot within Chamberlain's suggested range.

¶ 95 We note that while respondent faults Hutler for failing to employ a market approach to valuing Camelot, Chamberlain, the expert who respondent urges us to follow, similarly concluded that the market approach was inappropriate based on a lack of sales of comparable companies.

¶ 96 More importantly, Hutler and Simers both testified that the main distinction between their calculations and those of Chamberlain was the compensation level ascribed to petitioner and Dr. Pierce. Thus, the trial court's finding that the primary difference among the experts was valuing the appropriate compensation level was not against the manifest weight of the evidence. See *Staes & Scallan, P.C. v. Orlich*, 2012 IL App (1st) 112974, ¶ 35 (we defer to the trial court's factual findings unless they are contrary to the manifest weight of the evidence).

¶ 97 Chamberlain used a salary of $500,000 as the fair market compensation for these doctors, representing an "above the median" compensation rather than compensation at the 75th or 90th percentiles. Therefore, his analysis assumed that petitioner was receiving more compensation than the fair market value for his services. Importantly, Chamberlain did not believe that petitioner possessed any unique skills or qualifications that significantly distinguished him from the other radiologists at Camelot. Chamberlain also did not know that the practice used to have an office manager in 2008 who was paid about $160,000 per year, plus benefits, for performing many of the administrative functions that petitioner now performed. He acknowledged that if an administrative salary of $180,000 was added to the $500,000 average pay he ascribed, petitioner would be earning

approximately the amount reflected on his 2009 tax return, resulting in little, if any, excess income. Petitioner testified about his extensive administrative duties, which included meeting with hospital administrators and serving as the department chair or director of the radiology departments at all of the contracting hospitals. Moreover, the evidence showed that the hospital contracts could be terminated without cause within 60 to 90 days. Chamberlain also acknowledged that the salary for Dr. Pierce was negotiated in an arms-length deal, and arms-length agreements are generally considered reasonable.

¶ 98 The trial court found that the practice was unique to petitioner and that his personal contacts were a major part of the business's success, so it was unlikely that a new radiologist could take over and maintain the same hospital contracts. The trial court found that petitioner's compensation was in line with the upper-end compensation for his profession and was appropriate based on petitioner's administrative duties and role in maintaining Camelot's contracts with the hospitals. While Chamberlain offered a contrary rationale to support his salary figures, this case amounts to a classic battle of the experts, "a situation in which reviewing courts are especially loathe to second-guess the findings made by the trier of fact." *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 216 (2005). We cannot say that the trial court's aforementioned findings are against the manifest weight of the evidence. Correspondingly, it was not against the manifest weight of the evidence for the trial court to find that under the income approach, the practice did not have any value.

¶ 99 That being said, Hutler testified that the cost approach provided a minimum value for a company because a business would not be sold for less than its liquidation value. Simers's report similarly states that "if the value of the assets if sold separately has an overall value greater than the

economic value derived by continued operation of the business, the adjusted book value [cost] approach is deemed to have considerable weight in deriving a final value estimate." See also *In re Marriage of Brenner*, 235 Ill. App. 3d 840, 845 (1992) (book value is an appropriate starting point to determine the value of a closely-held corporation).

¶ 100 Hutler testified that the cost approach method resulted in a value of $78,000, which included Haven Holdings being valued at about $43,000. Simers arrived at a value of $40,545 under the cost approach, which is a similar figure to Hutler's when the Haven Holdings interest is excluded. However, Simers then subtracted liquidation costs of Camelot's average daily operating expenses for ten days, which includes salary payments. At the same time, Simers's report states that it is applying the cost approach to the "value of a going concern business ***." As Condon critiqued, operating expenses for a 10-day dissolution period is inconsistent with the premise of value of an ongoing business. Furthermore, since Simers included the payment of salaries during the 10-day period, he should have logically also included the revenue generated by the physicians during that time. Accordingly, while it was not against the manifest weight of the evidence for the trial court to accept Simers's valuation of the income approach yielding a $0 value for Camelot, it was against the manifest weight of the evidence for the trial court to not then account for the minimum value of Camelot arrived under Simers's cost approach if the arbitrary 10 days of operating expenses are excluded. Therefore, we modify the trial court's ruling and set the value of Camelot at $40,545, representing the value of the business under Simers's cost approach without the 10-day liquidation expenses.

¶ 101 C. Respondent's Debt Related to NIR

¶ 102 Last, respondent argues that because the trial court found that NIR had a zero value, it should have considered respondent's shareholder loan and embezzlement loan as marital liabilities and apportioned them between the parties.

¶ 103 Respondent testified that she took out the shareholder loan from NIR in 2000 or 2001 and used the money to help pay for building the parties' vacation home. The loan was listed on NIR's books in the amount of $215,545. Separately, respondent testified that NIR took out about $800,000 in loans in 2006, which she personally guaranteed, due to Flood's embezzlement. Hutler testified that about $661,000 was still owed on the loan as of the valuation date. Respondent's written closing argument stated that the balance was $486,573 as of August 30, 2011.

¶ 104 Regarding the shareholder loan, respondent argues that even petitioner's expert Hutler admitted that the loan should be listed on the marital balance sheet as a liability for respondent because a buyer of NIR would not assume this debt, leaving respondent liable for it. Respondent maintains that the trial court should have equitably divided this liability between the parties or compensated her for assuming the entire liability by awarding her additional marital assets.

¶ 105 Petitioner argues that respondent forfeited her shareholder loan argument because she never asked the trial court to consider the loan to be part of the marital estate until her motion to reconsider the dissolution judgment. An issue that is not raised in the trial court is forfeited and may not be raised for the first time on review. *Mauvais-Jarvis v. Wong*, 2013 IL App (1st) 120070, ¶ 102. Moreover, new factual arguments or new legal theories may not be raised for the first time in a motion to reconsider or a motion for a new hearing. *Sewickley, LLC v. Chicago Title Land Trust Co.*, 2012 IL App (1st) 112977, ¶ 37.

¶ 106 Respondent argues that in her written closing argument, she criticized Hutler's valuation of NIR in part because of his failure to "offset" the shareholder loan personally pledged by respondent. She argues that her closing argument further stated that the shareholder loan should be offset on the marital balance sheet by the amount of personal debt she owed. Respondent maintains that even if we find that the shareholder loan argument was not presented exactly the same way in her closing argument as on appeal, she sufficiently presented the issue of how the loan should be treated through both the argument of counsel and through testimony.

¶ 107 We agree with petitioner that respondent forfeited her argument about the shareholder loan as marital debt by failing to sufficiently articulate this argument until her motion to reconsider. While petitioner raised the shareholder loan issue through testimony and briefly alluded to it in her written closing argument, the issue was couched in terms of criticizing Hutler's valuation of NIR rather than as an independent marital debt that needed to be apportioned. Tellingly, respondent's list of marital assets and debts attached as an exhibit to her closing argument includes $486,573 in loans remaining from the embezzlement as marital debt but makes no mention of the shareholder loan. Respondent's failure to properly raise the issue explains why the trial court did not even recall the subject when ruling on respondent's motion to reconsider. Therefore, the issue is forfeited.

¶ 108 Respondent further argues that the trial court should have found the embezzlement loan to be marital debt, as she personally guaranteed the loan and $661,000 was still owing as of the valuation date. Respondent argues that Hutler testified that a seller would have to pay back this debt and Chamberlain testified that had he arrived at a positive value for NIR under the income approach, he would have deducted this debt. Respondent maintains that because Chamberlain testified that he

did not include this debt in his valuation and because the trial court accepted his valuation of NIR, the trial court erred when it failed to consider the debt as a marital liability.

¶ 109 We review a trial court's valuation of marital assets under a manifest weight of the evidence standard, and we review its division of property under an abuse of discretion standard. *In re Marriage of Abrell*, 236 Ill. 2d 249, 275 (2010) (citing *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 699-700 (2006)).

¶ 110 We conclude that the trial court's decision to not consider the shareholder loan as a marital debt is not against the manifest weight of the evidence. As petitioner points out, although respondent personally guaranteed the loan, the loan itself was a debt of NIR and the evidence showed that it was being repaid by the business.[4] Additionally, Chamberlain testified that he took the embezzlement loan into consideration in arriving at a zero value for NIR. Though Chamberlain also testified that he would have deducted the debt had he arrived at a positive value under the income-based approach, he did not testify to what extent the debt would have been deducted, as that scenario was not before him. Moreover, Chamberlain clearly accounted for this debt in his report's cost approach analysis. Had the debt been excluded, the practice would have been valued at hundreds of thousands of dollars. As discussed, according to the experts, the cost approach provides a minimum or floor value for a business, so even if the debt could not have been fully accounted for under the income approach, its application in the cost approach clearly contributed to the final zero valuation.

[4]As mentioned, Hutler testified that about $661,000 was still owing as of the valuation date (June 30, 2009), and respondent's written closing argument stated that the balance was $486,573 as of August 30, 2011.

Correspondingly, in denying respondent's motion to reconsider, the trial court stated that it factored the loan in when valuing NIR at zero. This finding is supported by the evidence.

¶ 111 III. CONCLUSION

¶ 112 For the reasons stated, we affirm the trial court's decisions to accept Simers as an expert and to not consider the embezzlement loan to NIR as a marital debt. We conclude that respondent forfeited her argument regarding the shareholder loan. We further conclude that it was not against the manifest weight of the evidence for the trial court to accept Simers's opinion that under the income approach, Camelot did not have any value. However, given that the experts largely agreed that the cost approach represents a minimum value for a business, the trial court should have at least valued the practice at $40,545, which represents Simers's value under the cost approach when the unsubstantiated subtraction of ten days of operating expenses is excluded. Therefore, we modify the trial court's valuation of Camelot from $0 to $40,545. We further remand the cause for the trial court to reconsider the marital distribution of property in light of an increase in the valuation of Camelot to $40,545 through any orders that are just and equitable in light of this modification.

¶ 113 Affirmed in part and modified in part; cause remanded.