2013 IL App (2d) 130339-U
No. 2-13-0339
Order filed November 20, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MARK J. HANUSIN, Petitioner-Appellant, and ALICE M. HANUSIN, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of McHenry County. No. 11-DV-240 Honorable Kevin G. Costello, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court did not err in its valuation and distribution of marital property, or in its rulings on child support, maintenance, and attorney fees.

¶ 2 On March 11, 2013, the circuit court of McHenry County entered an amended judgment dissolving the marriage between the petitioner, Mark Hanusin, and the respondent, Alice Hanusin. Mark now appeals, contending that the trial court erred in: (1) valuing Mark's interest in a business; (2) requiring Mark to reimburse the marital estate for the increase in value of a nonmarital asset, a 1965 Pontiac GTO; (3) setting the payment schedule for child support; (4)

setting the amount of maintenance Mark must pay Alice; and (5) requiring Mark to contribute toward Alice's attorney fees. We affirm.

¶ 3 BACKGROUND

¶ 4 Mark and Alice were married in 1994. They had two children: Katelyn, born March 19, 1997, and Bethany, born February 7, 2001. During the last few months of 2010, Mark moved out of the marital home. He filed a petition for dissolution in March 2011.

¶ 5 On October 23, 2012, the trial court entered an order adopting the parties' joint parenting agreement, pursuant to which the parties shared joint legal custody and Alice was the primary residential parent. That same day, trial began on the remaining issues in the divorce. Trial continued over four days in October and November 2012. The following facts are drawn from the evidence presented and the parties' statements in documents filed with the court and, except as noted, are not disputed.

¶ 6 KJS Marketing, Inc.

¶ 7 In 1997, Mark began working as a salesman for KJS Marketing, Inc. (KJS). KJS was a "manufacturer's rep" company, which meant that it acted as the sales agent to arrange contracts for manufacturing companies. About 90% of its business was derived from military contracts. KJS was a C corporation which, unlike an S corporation, is taxed separately from its owners.

¶ 8 In 2004, Mark and four others bought KJS from its owner, Ken Schroeder, under a stock purchase agreement (SPA). Mark and three of the new owners each bought 23% of the shares, while the remaining shareholder bought the last 8% of the shares. After the buyout in 2004, Mark became the president of KJS. Under the SPA, Schroeder was to receive 10% of the company's annual gross receipts each year for a 10-year period ending January 30, 2014. Although these payments initially were paid by the shareholders, by the spring of 2013 at the

latest, the payments to Schroeder were defined as salary for tax purposes and were paid by the corporation directly. As of the time of trial, Mark's share of the past payments to Schroeder totaled $373,737.42.

¶ 9 In about 2010, the shareholder who owned 8% of the shares, Gayle Anderson, was (according to Mark) charged with theft. A lawsuit involving her was eventually settled; in May 2012, KJS paid Anderson $12,000 or $15,000,[1] which Mark characterized as a "nuisance" value paid to conclude the litigation, and Anderson surrendered her shares of stock. As of the time of trial, the company had four shareholders, and employed three other salespeople and an administrative assistant.

¶ 10 The value of Mark's interest in KJS (a marital asset) was disputed. Alice propounded discovery to KJS and Mark, seeking financial statements and records from KJS, which had its main office in Missouri. KJS responded that it would not release any information without "compliance with Missouri law" and a formal request to its custodian of records, and even then, information would be made available only "for review in person" at the Missouri office, and no copies could be made. Shortly before trial, Alice moved to bar Mark's expert witness from testifying because the witness apparently had access to financial information about KJS (a recent financial statement) that was never produced to Alice. The trial court required Mark to provide

[1] There was conflicting evidence about the exact amount. Mark testified that KJS paid Anderson $12,000, and in his report, Mark's expert witness, Thomas Kammerait, stated that the amount paid was $12,000. However, in a letter from KJS's attorney that was attached to Kammerait's valuation report, the attorney stated that the amount paid was $15,000.

Alice with a copy of the financial statement and sanctioned Mark $2,957.50 for attorney fees expended because of his noncompliance with discovery, but declined to bar the expert witness.

¶ 11 Mark also moved to bar Alice's expert because the expert had a preexisting relationship with Alice's attorneys, in that the law firm often referred clients to the expert's company. The trial court denied this motion as well, stating that this type of relationship was not unusual and any inherent bias would go to the weight, not the admissibility, of the expert's opinion.

¶ 12 At trial, both parties presented expert evidence regarding the value of KJS. Mark's expert, Thomas Kammerait, had extensive experience in valuing manufacturer's rep firms. Kammerait calculated the book value of KJS at $75,000 and its commission business at $154,434, for a total gross value of $229,434. After factoring in a series of discounts for non-marketability of the shares and Mark's minority position, Kammerait put the value of Mark's shares at $18,997. Kammerait looked at financial information provided to him by Mark and KJS, and also spoke with various other shareholders of KJS, who provided him with information about the company and its contracts. Kammerait rejected the use of the price paid for the shares under the 2004 SPA on the grounds that the buyout occurred several years before and predated the "Great Recession" of 2008. Instead, he relied in part on the amount paid to Anderson in connection with the surrender of her shares in 2012, opining that it was an arms-length transaction that was appropriate to consider.

¶ 13 Alice's expert witness was Mary Miller, who had extensive experience in valuing businesses but previously had valued only one manufacturer's rep firm. As Miller was not provided with any access to KJS principals or financial statements, her opinion was based primarily on a review of the last five years of KJS's tax returns and the SPA. She stated that normally, she would prefer to examine financial records from a 10-year period, but these were

not available. Miller valued KJS using the "capitalization of excess earnings" approach, and also considered the price paid for the shares under the 2004 SPA. Like Kammerait, she applied a discount for the non-marketability of the shares and Mark's minority position. Taking all of these into account, she placed the value of Mark's shares at $324,000.

¶ 14 The Parties' Incomes and Standard of Living

¶ 15 As president of KJS, Mark had gross earnings of between $262,101 and $482,086 per year. His gross income for the first 10 months of 2012 was $308,718. According to Mark, about $89,000 of this annual income was in the form of salary, paid monthly; the remainder was from bonuses, paid quarterly. Mark and the other owners of KJS set the amount of their monthly salaries and their bonuses.

¶ 16 At trial, Mark did not identify any particular figure as his appropriate income for child support purposes, nor did he propose a payment schedule. Alice argued that the trial court should engage in income averaging over a five-year period. Although the five-year average of Mark's gross salary would be $340,000, Alice suggested using $300,000 as the base income for calculating the amount of monthly child support and requiring Mark to pay separately the guidelines percentage (28%) of any additional income.

¶ 17 During the marriage, the parties enjoyed a high standard of living that included ownership of a horse, flying and other aviation expenses, vacations, private school for one child, and a large home. Alice testified that the parties never lived with a budget.

¶ 18 Alice had a bachelor's degree in nursing, and she obtained a master's degree in nursing administration a few years before the marriage. She worked during the first three years of the parties' marriage, until she was pregnant with their first child. For the next 16 years, she cared for the children and the home. She did not work outside the home again until after the petition

for dissolution was filed. During the fall of 2011, she took a refresher course in nursing, which provided a certificate that Alice had current clinical experience. An accelerated version of that refresher course was offered in the spring of 2011, but she did not take it because of its more intense pace. After completing the course, she applied for a number of nursing and nursing administration jobs. She did not turn down any interviews or job offers. During the summer of 2012, she was hired as a private duty nurse. Beginning in September 2012, she was hired as a school nurse, a position that included insurance benefits. She testified that she planned to continue in school nursing, but would need two years of further work experience and graduate school to obtain certification as a school nurse. She continued to work private duty nursing jobs (overnight shifts) on weekends when the children were with Mark to supplement her income. Her gross monthly income from all of these jobs was $1,960. According to her financial affidavit, the monthly household expenses for Alice and the children were $9,170. At the time of trial, she was 50 years old. Alice requested maintenance; Mark argued that she was able-bodied and educated, and should receive none. Alice also requested a contribution toward her attorney fees, which Mark opposed.

¶ 19 The 1965 Pontiac GTO

¶ 20 In 1996, Mark's father gave him a 1965 Pontiac GTO. The GTO, which was damaged, was worth between $5,000 and $7,000 at the time Mark received it. He worked on it over nine years, installing new parts and restoring it. Alice submitted receipts and other evidence showing that about $4,500 of marital funds had been spent on parts for the GTO. At the time of trial, Mark contended that the GTO was worth $25,000, although he insured the GTO for $30,000. Alice contended that its value was $42,500. The parties agreed that it was Mark's nonmarital

asset, but disagreed regarding the GTO's increase in value during the marriage and whether the marital estate should be reimbursed for that increase in value.

¶ 21 The Trial Court's Rulings

¶ 22 On January 23, 2013, the trial court entered a judgment for dissolution of marriage and a memorandum opinion explaining its findings and rulings. As to the value of KJS, the trial court found that, although Kammerait had more experience than Miller in valuing manufacturer's rep companies, his disregard of the price paid for the shares under the 2004 SPA was contrary to Illinois law, which regards previous arm's-length sales of stock between a willing seller and a willing buyer as one of the most probative forms of evidence about the value of a business. Although Kammerait believed that the 2004 SPA was not relevant because it predated the "Great Recession" of 2008, the evidence showed that KJS's earnings continued to grow during and after that recession. Moreover, "the evidence raised serious questions as to whether the transfer of Ms. Anderson's stock was an arm's length transaction," and thus Kammerait reliance on that transfer was not justified. The trial court also found that Kammerait had applied a significant 25% discount because of expiring contracts but had not considered the regular renewal or replacement of such contracts with others that KJS's growth showed. Finally, the trial court noted that Kammerait relied on information provided to him by KJS principals. This undermined his conclusions because the behavior of those principals in providing him with information while stonewalling Alice's requests for information created "a strong inference of bias toward Mark and call[ed] into question the reliability" of the information they provided to Kammerait.

¶ 23 Although Miller had less experience in valuing manufacturer's rep companies, her approach was sound and contained no inherent flaws, although her opinions were not as well

developed as the court would have liked due to the limitations created by Mark's refusal to provide her with KJS's financial information. The trial court adopted Miller's reliance on the price paid under the 2004 SPA. It found that Miller's calculations regarding the total price paid under the SPA through the end of 2012 were reasonable. However, her projection of a 10% increase in revenue in 2013 and 2014 (the final two years of the SPA) was not reasonable, given the cuts to defense spending that were likely as a result of the federal budget sequestration process. Instead, the trial court found that revenues in each of these two years would likely be 10% lower than 2012. The trial court therefore found that the total amount paid to Schroeder for the shares over the entire 10-year period covered by the SPA would be $2,014,197.20, and Mark's 23% share of this would be $469,475.36. The trial court then discounted this price for non-marketability and minority, using the discount (35%) applied by Kammerait (Miller had applied a 28% discount), and applied a further 10% discount to account for the fact that payments under the SPA had been spread over a 10-year period. After applying these discounts, the trial court found that the value of Mark's shares of KJS was $274,643.08.

¶ 24 As to the GTO, the trial court began by finding that, even if no improvements had been made, the car would still have appreciated in value due to the passage of time. Using a NADA guide submitted into evidence, the trial court placed its present base value at $13,950, which was the low end of the range given, due to its initial poor condition. The trial court then found that its current actual value as restored was $30,000 (the sum for which Mark insured it). Thus, the GTO had increased in value by $16,050 that was attributable to the investment of marital assets—Mark's labor and the new parts installed, which cost at least $4,500 in marital funds. Pursuant to section 503(c)(2) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750

ILCS 5/503(c)(2) (West 2012)), the trial court ordered Mark to reimburse the marital estate $16,050.

¶ 25 As to Mark's income for child support purposes, the trial court noted that the five-year time frame for income averaging proposed by Alice (which would yield an average gross income of $340,000 per year) was longer than the customary three-year average (which would yield an average annual income of $303,000, if projected income for 2012 were included). However, the trial court found reasonable Alice's suggestion that a base figure of $300,000 gross per year ($193,990 net) be used. Accordingly, the trial court ordered Mark to pay 28% of his this amount ($4,526 per month) plus 28% of any additional income received by him above that amount.

¶ 26 In ruling on Alice's request for maintenance, the trial court expressly considered all of the factors under section 504 of the Act (750 ILCS 5/504 (West 2012)). The court noted that Alice was 50 years old, had been unemployed for 16 years during the parties' marriage, could not meet her living expenses, and would need at least two years of further education and experience before she could be certified as a school nurse, while Mark was currently earning a high income and would likely continue to do so. Further, the parties had enjoyed a high standard of living during the marriage that Alice could not approach through her own income, and the disparity in incomes was likely to continue even though it would decrease somewhat once Alice received her certification. The trial court awarded Alice rehabilitative maintenance of $3,233 per month (about 20% of Mark's income) for three years, reviewable at the end of that time or earlier upon the occurrence of specified events.

¶ 27 Finally, the trial court found that, applying the same section 504 factors, as directed by sections 508(a) and 503(j) of the Act (750 ILCS 5/508(a), 5/503(j) (West 2012)), Mark should contribute $20,000 toward Alice's outstanding attorney fees of $27,538, and should pay a further

$2,957.50 of the fees as a sanction for his noncompliance with Alice's KJS-related discovery requests.

¶ 28 Mark filed a motion to reconsider, raising various arguments. The trial court denied the motion, issuing another memorandum opinion to explain its reasoning. On the same date, it entered an amended judgment of dissolution that corrected a typographical error in the value of Mark's KJS stock and clarified certain details of the prior judgment relating to the sale of the marital home and the apportionment of the parties' debts. Mark filed a timely notice of appeal.

¶ 29 ANALYSIS

¶ 30 On appeal, Mark raises five issues. He argues that the trial court erred in: (1) calculating the value of his KJS stock; (2) ordering him to reimburse the marital estate for the increase in value of the GTO; (3) calculating his income for child support purposes and ordering monthly payments as it did; (4) setting the amount of maintenance he must pay Alice; and (5) requiring him to contribute toward Alice's attorney fees.

¶ 31 Valuation of KJS Marketing, Inc.

¶ 32 We begin with the KJS stock. In a bench trial such as a dissolution trial, the trial court sits as the trier of fact, hearing the witnesses and reviewing the direct presentation of the evidence, and it is in the best position to make credibility determinations and factual findings. *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946 (2007). We therefore will not reverse the factual findings or judgment of the trial court unless they are against the manifest weight of the evidence (*id.*); that is, unless "the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence" (*Samour, Inc. v. Board of Election Commissioners of the City of Chicago*, 224 Ill. 2d 530, 543 (2007)).

¶ 33 Citing *In re Marriage of Brenner*, 235 Ill. App. 3d 840, 845 (1992), Mark argues that the value of a closely held corporation should be calculated based on its book value and goodwill. However, *Brenner* merely states that this method of valuation is one appropriate method, not that it is the only appropriate one. To the contrary, relevant case law notes the existence of three possible methods of valuing a closely held corporation. See, *e.g.*, *In re Marriage of Cutler*, 334 Ill. App. 3d 731, 734 (2002) (expert witnesses agreed that there were three generally accepted methods for valuing a closely held corporation: the market approach, the income approach, and the asset approach). The income approach (specifically, using the capitalization of earnings) was applied by Miller here, and Miller and the trial court both applied the market approach in relying on the stock price paid under the 2004 SPA. Both of these methods have been used and approved of in several cases. See *In re Marriage of Grunsten*, 304 Ill. App. 3d 12, 17 (1999) (highlighting the importance of using previous arms-length sales of a closely held corporation's stock); *In re Marriage of Olson*, 223 Ill. App. 3d 636, 646 (1992) ("Both the future economic outlook and the capitalization of future earnings are important tools for valuing a closely held corporation."). As these were permissible methods of valuation, we reject Mark's argument that the trial court should have used the method he preferred.

¶ 34 Mark argues that the approach used by Miller, the capitalization of earnings method, was disapproved as a method for valuing a marital business in two cases, *Cutler*, 334 Ill. App. 3d 731, and *In re Marriage of Frazier*, 125 Ill. App. 3d 473 (1985). These cases are distinguishable, however, as both involved captive insurance agencies in which the terms of the contracts between the insurance company and the captive agency precluded any value of the business apart from the personal goodwill created by the spouse who worked at the agency. As the supreme court held in *In re Marriage of Schneider*, 214 Ill. 2d 152, 167 (2005), personal

goodwill cannot be included when valuing a spouse's business for the purposes of a dissolution. However, the supreme court specifically stated that companies such as these that depend almost entirely on the personal efforts of the spouse (including professional corporations of the type at issue in *Schneider*) are not the same as closely held corporations. *Id*. at 167-68. Indeed, the court in *Frazier* also noted this distinction, stating that the spouse's interest in the captive insurance agency at issue in that case was "not like shares of stock, which will produce income without further effort of the owner." *Frazier*, 125 Ill. App. 3d at 476; see also *In re Marriage of Olsher*, 78 Ill. App. 3d 627, 635 (1979) ("The shareholders of a close corporation, *** like those of any corporation, do realize a value from stock ownership in that they have certain rights of control or future profits."). Thus, we do not find *Frazier* or *Cutler* controlling here.

¶ 35 Mark also argues that trial court should not have taken the price paid for the stock under the 2004 SPA into account, pointing to *Olsher*, 78 Ill. App. 3d 627 (1979), in which the reviewing court held that the price paid four years earlier to buy back stock in a closely held corporation after a shareholder's death or withdrawal could not be considered "some evidence" of the stock's value. The court commented that the earlier price paid was not reliable evidence because, "[u]nlike land, which has a fairly stable value, the value of stock fluctuates freely with the operation of the business." *Id*. at 636. However, the court in *Olsher* cited no authority to support this proposition, and in recent years courts have moved away from this position. Indeed, a leading case in the valuation of closely held corporations is *In re Marriage of Grunsten*, in which the reviewing court approved the trial court's reliance on a four-year-old buyout in setting the value of such stock, stating:

> "Although valuation of a closely held corporation is subjective in nature, the process is obviously much less so when done with the benefit of viewing a similar

> transaction, particularly when the comparison transaction involves the same property. This is because fair value is best measured by what a willing buyer would pay a willing seller in a voluntary transaction." *Grunsten*, 304 Ill. App. 3d at 17.

In this case, the 2004 SPA involved a willing seller and willing buyers. It thus is relevant evidence regarding the value of KJS's stock. By contrast, the 2012 litigation settlement in which Anderson received the nuisance value of the suit and surrendered her shares does not appear to have been a purely voluntary transfer of the shares. Thus, we find no error in the trial court's reliance on the stock price paid under the 2004 SPA.

¶ 36 Mark also criticizes the trial court's reliance on projected revenues for KJS in 2013 and 2014 in determining the total amount that would be paid for the shares of KJS as of the end of the SPA, pointing out that marital assets are to be valued as of the date of the dissolution. We note that the trial court could have calculated the total amount without relying on projections, through the simple expedient of treating the amount paid through the end of 2012 as 80% of the value of the shares under the SPA (as those payments involved 8 out of the total 10 years of the contract). However, in that case the value of the shares would be higher than under the trial court's calculations, as the trial court discounted KJS's projected income for 2013 and 2014 to account for the effect of the federal defense cuts under sequestration. Thus, the trial court's use of projected 2013 and 2014 revenues did not prejudice or harm Mark, and cannot provide a reason for us to overturn its findings regarding the value of KJS.

¶ 37 Lastly, Mark argues that the trial court should have deducted the amounts that KJS would have to pay Schroeder in 2013 and 2014 (10% of its gross earnings) in calculating KJS's value. However, the trial court did in fact take these amounts into account. Indeed, its calculations

were based on the amounts paid for the stock by the KJS shareholders, not on the company's gross revenues. Accordingly, this argument lacks merit.

¶ 38 The trial court's determination of the value of Mark's interest in KJS was not against the manifest weight of the evidence. Accordingly, we also reject Mark's related argument that the trial court distributed the marital estate in an inequitable manner because of its "excessively high" valuation of Mark's KJS stock.

¶ 39 Reimbursement for the GTO's Increased Value

¶ 40 We next turn to the trial court's ruling that Mark must reimburse the marital estate for the increase in the value of his nonmarital property (the GTO) that was due to contributions from the marital estate. Section 503(a)(7) of the Act provides that the increase in value of nonmarital property during the marriage is also nonmarital, "subject to the right of reimbursement provided in subsection (c) of this Section." 750 ILCS 5/503(a)(7) (West 2012). Subsection (c), in turn, provides that when the marital estate makes a contribution to one spouse's nonmarital property through the "personal effort" of one of the spouses, the marital estate shall be reimbursed, so long as "the effort is significant and results in substantial appreciation of the non-marital property." 750 ILCS 5/503(c) (West 2012). We review deferentially a trial court's decision to order reimbursement pursuant to this section, and will reverse only if that decision is contrary to the manifest weight of the evidence. *In re Marriage of Jelinek*, 244 Ill. App. 3d 496, 503 (1993). The party requesting reimbursement bears the burden of proving the elements of the claim by clear and convincing evidence. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 647 (1994).

¶ 41 Mark criticizes the trial court's use of the NADA guide to determine what the present value of the GTO would have been in the absence of the work done by Mark, but he cites no authority for his argument and we therefore disregard it. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013);

Mikolajczyk v. Ford Motor Co., 374 Ill. App. 3d 646, 677 (2007). Mark also argues that Alice failed to prove that the increase in the GTO's value was due to his "significant personal effort," but he concedes that he worked on the car for nine years. We therefore reject this argument as well.

¶ 42 Mark's primary argument regarding the GTO is that the trial court erred in failing to take into account his own testimony that he asked for GTO parts as birthday and Christmas presents, and his family in fact gave him gifts of such parts. According to Mark, the trial court should have deducted these (nonmarital) gifts from the increase in value. However, Mark admits that he neither corroborated his testimony with any documentation of the gifts nor provided any evidence regarding the value of the gifts. Accordingly, he cannot complain that the trial court did not assign a value to those gifts and deduct them from the increase. *Cf. In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 64 (husband could not fail to present evidence of assets' value and then complain that the trial court erred in not placing a value on them). By contrast, Alice provided evidence that the marital estate had paid over $4,500 toward parts for the GTO. In addition, Mark's labor was itself a contribution by the marital estate. 750 ILCS 5/503(c) (West 2012) ("Personal effort of a spouse shall be deemed a contribution by the marital estate."). The trial court's ruling that Mark should reimburse the marital estate for the increase in the value of the GTO was not against the manifest weight of the evidence.

¶ 43 Child Support

¶ 44 We turn next to Mark's arguments relating to the issue of child support. A trial court's rulings regarding child support will be reversed only for an abuse of discretion. *In re Marriage of Brietenfeld*, 362 Ill. App. 3d 668, 675 (2005). A trial court abuses its discretion if its ruling is arbitrary, fanciful or unreasonable or no reasonable person would take the view adopted by the

trial court (*People v. Anderson*, 367 Ill. App. 3d 653, 664 (2006)), or if its ruling rests on an error of law (*Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 24 (2009)).

¶ 45 Mark argues that it was unjust for the trial court to order monthly child support payments of $4,526 in addition to monthly maintenance payments of $3,233, because his monthly salary is less than that and he receives the bulk of his income quarterly (via bonuses). Mark claims that he therefore must run a monthly deficit and that this is onerous, given that "his bills keep coming monthly, and the utility companies like to be paid on time." However, Alice's household bills also come monthly and her utility companies no doubt feel the same way. Moreover, Mark testified that he and the other KJS shareholders set the amount of their monthly salaries and quarterly bonuses. Accordingly, we do not find the trial court's ruling regarding the schedule of Mark's payments to be an abuse of discretion.

¶ 46 On appeal, Mark also argues that it was improper for the trial court to employ income averaging over a five-year period instead of the more customary three years, and that the trial court should have used 2009, 2010, and 2011 as the three most recent years rather than projecting his income for 2012 based on the first 10 months. However, Mark never raised these arguments in the trial court. Accordingly, he has forfeited them. *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 127 (2010) (reviewing courts will not consider arguments not presented to the trial court).

¶ 47 Maintenance

¶ 48 Mark also challenges the trial court's award of maintenance to Alice. An award of maintenance is within the trial court's discretion, and we will not reverse the trial court's determination unless it is clear that it has abused that discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). An abuse of discretion occurs where no reasonable person would

take the view of the trial court. *Id*. The party challenging the award of maintenance bears the burden of showing such an abuse of discretion. *Id*.

¶ 49 In making an award of maintenance, a trial court must consider the statutory factors listed in section 504(b) of the Act. 750 ILCS 5/504(b) (West 2012). However, no single factor is dispositive, and a trial court may consider other factors as well. *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10. "The benchmark for determining the amount of maintenance is the recipient's reasonable needs in light of standard of living established during the marriage." *In re Marriage of Culp*, 341 Ill. App. 3d 390, 394 (2003).

¶ 50 Mark argues that the trial court erred in its award of maintenance to Alice because Alice also received substantial liquid assets (approximately $353,000, excluding the equity in the house), and she is educated and healthy and is working "well below her pay potential." However, the evidence at trial established that the parties enjoyed a high standard of living during the marriage, Alice cannot begin to support herself in a similar lifestyle, and there will be a gross disparity of income for the foreseeable future. Accordingly, the trial court's award of maintenance was not an abuse of discretion.

¶ 51 Attorney Fees

¶ 52 The remaining issue raised on appeal is Mark's assertion that the trial court should not have ordered him to contribute $20,000 toward Alice's attorney fees pursuant to section 508(a) of the Act. 750 ILCS 5/508(a) (West 2012). Mark argues that the parties received roughly equal shares of the marital property and that Alice's income—taking into account child support, maintenance, and Alice's own employment—exceeds his own. Thus, he argues, Alice has not shown an inability to pay her own attorney fees. We review a trial court's award of attorney fees

under the abuse of discretion standard. *In re Marriage of Sobieski*, 2013 IL App (2d) 111146, ¶ 37.

¶ 53 Mark cites *In re Marriage of Schinelli*, 406 Ill. App. 3d 991, 996 (2011), for the proposition that the maintenance paid to a spouse may be considered as part of that spouse's income when considering the parties' relative financial circumstances and whether the requesting spouse is unable to pay his or her own attorney fees. *Schinelli* did not, however, consider child support as income to the receiving spouse; to the contrary, child support generally should not be considered as income in this context. *Sobieski*, 2013 IL App (2d) 111146, ¶ 47 (citing *In re Keon C.*, 344 Ill. App. 3d 1137, 1147 (2003) (child support payments could not be factored into whether custodial parent could pay her own attorney fees, as those monies were for child support and not for the parent's personal use or payment of attorney fees)). Here, when child support is not considered, Alice's gross income is about $62,000 per year (which is then subject to taxation), while Mark's income (net of all applicable reductions) is in excess of $100,000. Thus, their incomes are not equal. Moreover, our court has recently noted that *Schinelli* relied on older case law in looking solely to the parties' income and assets in determining "inability to pay," while the current version of section 508(a) requires a court to consider all of the various statutory factors contained in sections 503(j) and 504 of the Act, relating to the distribution of marital property and the award of maintenance. See *id.*, ¶ 49 (noting this reliance on older case law and that the phrase "inability to pay" does not appear in the current version of section 508(a)). Moreover, as Illinois courts have recognized, a spouse need not show that he or she is destitute in order to justify an award of attorney fees. *Schneider*, 214 Ill. 2d at 174; *In re Marriage of Pond*, 379 Ill. App. 3d 982, 987 (2005).

¶ 54 Here, the trial court properly considered all of the relevant statutory factors in determining the award of attorney fees, and we find no abuse of discretion in that award.

¶ 55 CONCLUSION

¶ 56 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 57 Affirmed.