2014 IL App (2d) 130788-U
No. 2-13-0788
Order filed June 18, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF LAURA FRAZIER, Petitioner-Appellee and Cross-Appellant, and ERIC FRAZIER, Respondent-Appellant and Cross-Appellee.	)))))))))))	Appeal from the Circuit Court of McHenry County. No. 11-DV-122 Honorable Mark R. Gerhardt, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in: its valuation or classification of the marital property; ordering child support pursuant to the statutory guidelines; and, ordering maintenance at $1,000 per month. In addition, Laura forfeited her dissipation claim. Therefore, we affirmed.

¶ 2 Following a trial, the trial court entered a decision dissolving the marriage of petitioner, Laura Frazier, and respondent, Eric Frazier. Both parties moved to reconsider various parts of the trial court's decision, and the court denied these motions. Eric appeals, arguing that the trial court erred in its valuation of the marital property. Laura cross-appeals, arguing that the trial

court erred by: (1) valuing the property as one-half marital and one-half non-marital; (2) not requiring Eric to contribute to the children's private school tuition; (3) awarding her maintenance of only $1,000 per month; and (4) determining that Eric had not dissipated part of his 2011 bonus and all of his 2012 bonus. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Eric and Laura were married on June 29, 2003. They had two children: Eric Isaac (Isaac), born January 25, 2005, and Luke, born December 6, 2006. In February 2011, Laura filed a petition for legal separation, followed by a petition for dissolution of marriage on October 27, 2011. A six-day trial began in August 2012 and concluded in November 2012.

¶ 5 A. Stipulations and Trial Testimony

¶ 6 The parties agreed to the following stipulations. At the time of trial, Laura was 48 years old, and Eric was 64 years old. Laura was a tenured art teacher in the Rockford public school district and held a part-time position teaching three days per week. In 2011, her gross income was $24,130. Eric was employed by United Laboratories, and his current gross income was $220,667 per year. Eric also had a car allowance of $9,600 and a country club allowance of $6,000. Eric's gross bonus in 2012 was $18,000, and his net bonus in 2011 was $250,582.

¶ 7 When the parties married in 2003, Eric and his former wife Marie owned a residence in Marengo (the property)[1]. There was no mortgage on the property, and Eric owned one-half of it. In August 2004, Eric obtained a mortgage of $229,100, from which he paid $180,000 to Marie pursuant to their divorce agreement. Marie then quitclaimed her interest in the property to Eric. The property now carried an equity loan with a balance of $78,000.

[1] The "property" included one lot with a residence and an adjoining, vacant lot.

¶ 8 Laura testified as follows. Beginning in 1997, she taught full-time as an art teacher in Rockford. Laura stopped working after their first year of marriage (2003) because she was pregnant with Isaac. Eric wanted her to stay home with the children, which she did for the first 2½ years. Then, she began teaching one day per week. Two years later, she worked two days a week. In 2011, she went to three days a week to improve their income but remained part-time to be available for the children.

¶ 9 Laura admitted that she had not tried to find employment during the summer months of 2011 or 2012, and she had not yet applied for a full-time position with the Rockford public school district. Laura explained that she had not done so because she was transitioning during the divorce and because the children had been sick a lot and needed her to be more available. If a full-time teaching position opened up that fit the family's needs, Laura would apply.

¶ 10 Laura had a bachelor's degree, and she and Eric had paid off her student debt. To maintain her certification, Laura took continuing education classes. Annually, she needed three to five credits, and each credit cost between $250 to $500 per credit. Laura's future plan was to increase her income by earning a master's degree. She had already acquired some college credits and could complete a master's degree in two to four years. Laura testified that there were three possible schools in the area, and the cost was approximately $25,000 for such a degree. Laura would continue to teach during this time, although she had not decided whether it would be part-time or full-time; part-time "would be easier." Laura wanted to obtain a master's degree because it was expected by her employers and because it was the only way to significantly increase her salary.

¶ 11 Regarding the children's health, Isaac, who was now seven years old, had asthma and allergic rhinitis. Luke, who was now five years old, had severe asthma, allergic rhinitis, and

severe food allergies, including nuts. He had also suffered kidney failure in the past and needed to be watched to make sure he stayed hydrated.

¶ 12 In terms of schooling, both Laura and Eric decided that the children should attend Rockford Christian, and marriage funds were used to pay for it. It was a highly rated school, and Isaac tested at the third and fourth grade level. Isaac was starting second grade at Rockford Christian, which would be his fifth year at that school having also attended pre-K3, pre-K4, kindergarten, and first grade there. Luke had gone to Rockford Christian for two years (pre-K3 and pre-K4) and was starting kindergarten. The tuition at Rockford Christian for 2012 to 2013 was $6,030 for Isaac and $5,730 for Luke. Besides tuition, there were school registration payments of $425 and $450.

¶ 13 Laura testified that both Isaac and Luke were "connected socially and emotionally to their [school] friends and environment." Isaac had an adjustment disorder, meaning he had a hard time adjusting to change. Because he was already adjusting to changes in his personal life with the divorce, Laura did not think it would be good if he changed schools. Also, both children were in counseling.

¶ 14 Laura testified regarding the property. The residence, which was 4,200 to 4,500 square feet, had two stories with six bedrooms, a formal dining room, a hearth room, a gourmet-size kitchen with Sub-Zero appliances, and a studio above the garage for extra storage. She and Eric had updated the kitchen with granite counter tops and purchased a washer and dryer, a new furnace in 2010, and an air conditioning unit. Marital funds were used to pay the real estate taxes for the property.

¶ 15 The property was appraised by Harris Bank when it was remortgaged in 2006. Laura testified that the overall value of the property was $720,000. She based this value on the 2006

appraisal, assessments from Century 21 and Harding Realty, and her knowledge of other houses in the area that were also on the market. The other houses had "comparable square footage, comparable amenities and acreage." Regarding the value of the property, Laura admitted stating in her July 9, 2012, financial affidavit that it was worth $500,000. Laura testified that $500,000 was an error because she did not include the entire property in that figure.

¶ 16 The first mortgage of approximately $230,000 was used to pay Marie $180,000 in order to buy out her share of the property. The remainder of that mortgage was used to pay hospital bills from Isaac's birth and items for the children. Eric offered to add Laura's name to the title of the property, although he never did add her name. A home equity loan was taken out later. Laura did not sign the mortgage or home equity loan.

¶ 17 Eric testified as follows. He bought the property in 1980 with his first wife, Marie. Laura's name was not on the property's title or the financing, and her name was not on the real estate tax bills. Eric never intended to make a gift of any part of the property to Laura. Based on the market, Eric thought that the current value of the adjoining, vacant lot was $50,000. He had talked to the bank earlier that day about property values, and the bank indicated that that lot was worth "probably" $40,000 to $50,000 at that time. The last appraisal for the property was done in 2006 and was close to $700,000. However, that was at the height of the real estate market when prices were inflated.

¶ 18 Regarding employment, Eric had worked on and off for the same chemical company, United Laboratories, for 25 years. He had worked there consistently since 2005 and became president in April 2009. In 2011, he received a bonus of about $250,000, which he used to pay off the first mortgage on the property. He also used the 2011 bonus to create a $14,000 college

fund for the children; he donated $10,000 to a charity he formed called Operation Child's Hope; and he paid off medical and other bills.

¶ 19 In terms of the children's school, they liked attending Rockford Christian and had told him so. The children were doing "very well" there. Eric did not have any objection to Rockford Christian, given that it was a private school with a Christian background, other than a financial one. Rockford Christian was "the first choice" as long as there was "financial support to do that." Currently, he was paying Laura $5,000 of unallocated monthly support plus 100% of the schooling. Eric did not know how to "put that into the budget" and thought the children should go to a public school until they could figure it out. He had been using his home equity loan to "stay above water."

¶ 20 B. Trial Court's Decision

¶ 21 The trial court made factual findings on January 30, 2013, which were incorporated into an "Order on Decision" on March 11, 2013. The trial court found as follows. It awarded Laura sole custody of the children and ordered Eric to pay child support. Based on Eric's net income of $13,100 per month, the 28% statutory guideline rate amounted to $3,668 of child support per month. Eric was also ordered to pay 28% of any bonus he received.

¶ 22 The court found no dissipation by either party. The marriage was of short duration, and the parties were not similarly situated in their economic circumstances. Eric's immediate opportunity for acquiring assets and income far exceeded Laura's. However, based on her age, Laura's long-term future for acquisition of assets and income far exceeded Eric's.

¶ 23 Regarding marital property, both parties had marital retirement plans. The parties would divide equally Eric's 401(k) plan ($91,000) and his employee stock ownership plan ($78,000), whereas Laura would keep 100% of her Teachers Retirement System retirement plan ($23,000).

Eric's non-marital assets included his IRA or 401(k) plans from his employment prior to his marriage, which totaled $375,000.

¶ 24 The court then addressed the property. The property was purchased by Eric prior to his marriage to Laura, and the presumption was that it was non-marital property. Furthermore, there was no evidence that Eric made a gift of this property to the marriage. He never added Laura's name to the title, and any refinancing during the marriage was at Eric's discretion. However, at the time Eric and Laura were married, Eric owned only one-half of the property. Pursuant to Eric's 2002 marital settlement agreement with his former wife Marie, they each received a one-half interest in the property. Then, during Eric's marriage to Laura, the parties purchased Marie's one-half interest for $180,000. The court reasoned that because this one-half interest was purchased during the marriage, it was presumed to be marital property.

¶ 25 The court further noted that there was no mortgage on the property when the parties married. They took out a mortgage of approximately $230,000 during their marriage to purchase Marie's one-half interest in the property. Eric then used his 2011 bonus, a marital asset, to pay off the first mortgage, meaning that Eric's bonus was used to purchase the marital portion of the property. The remainder of his 2011 bonus check was used to pay for marital debts, a tithe, and a college fund for the children. A second mortgage (home equity loan) had a balance of $78,000, and the court assigned this debt to Eric.

¶ 26 According to the court, the "last value" placed on the property was close to $700,000 in 2006. The court stated that it was "unclear if or to what extent the property's value [had] changed since that time." Eric was awarded the property, although he was to pay Laura $175,000 for her one-quarter interest in it.

¶ 27 Regarding maintenance, the court found that there was no impairment of Laura's future earning capacity. Although she had devoted time to domestic duties, there was no credible evidence that this hampered her future earning ability or that she had foregone or delayed education training. The court noted that Laura wished to seek further education, but the evidence did not "support that this [was] necessary to support herself, only to support herself at a higher earning potential." Furthermore, although Laura expected to earn "in the mid $20,000s," she was currently employed "at 60% time." If Laura were employed full-time, she "would actually be earning $40,000 per year," and "it was not credibly established that she could not earn said amount." There was a large disparity in the age of the parties, and Eric sought to retire soon. In addition, the marriage was of moderate duration, and the standard of living was one of comfort but not extravagance. "Weighing all the factors and particularly taking into account the unequal division of marital property, including the assignment of $78,000 of debt" to Eric, the $23,000 teacher's pension to Laura, and her ability "in the near future" to be "self-supporting," the court awarded Laura maintenance of $1,000 per month for three years.

¶ 28 C. Ruling on Motions to Reconsider

¶ 29 Both parties filed motions to reconsider various aspects of the trial court's decision. The trial court denied all of the parties' claims in another written ruling, and we summarize its reasoning regarding the issues relevant on appeal.

¶ 30 First, the court rejected Eric's argument that it erred in its valuation of the property. The court stated, "in this particular vein of testimony specifically, the parties failed to be persuasive, lacked credibility, and their testimony tended to be self-serving." According to the court, the testimony regarding the property was "contradictory at best." It was "unclear and muddled" as to whether the property values discussed by the parties included both lots, one lot, and

improvements. Both parties' values were " 'guesstimates' " as to the property's actual value. In addition, the court did "not accept" Eric's argument to adopt the tax assessor's valuation. According to the court, "[t]here was no testimony that an assessor's recitation of value is truly indicative of fair market value." While the court agreed with Eric that the property should be valued as close to the date of trial as possible, "it was impractical to make such determination at the time of the Court's Decision for the reasons given above."

¶ 31 The court reasoned that the closest date that had any reliability was 2006 in that both parties agreed that an appraisal was done that year and that the value of the home was between $700,000 and $720,000. Given that this was "the only credible testimony or evidence indicating the value" of the property, the court was "left with no option but to choose it." The court recognized that the testimony regarding the 2006 appraisal was hearsay, but neither party objected to it during trial. Also, the court noted that it was the parties' obligation to present sufficient evidence regarding the property's value. Last, the court noted that although a property owner was generally competent to render an opinion of the property's value, the court "found that specific testimony by the parties not credible."

¶ 32 In addition, the court addressed Laura's claim that it erred by not ordering Eric to pay for the children's tuition at Rockford Christian. At the outset, the court noted that there was no agreement by the parties that the children should continue to go to school there. Still, Laura, as sole custodian, was free to send the children to Rockford Christian. The gist of Laura's argument was that she wanted Eric pay for the schooling, or at least a portion of it. However, the court had ordered child support using the statutory guidelines, and the evidence did not support a deviation from those guidelines. Also, the court found "no credible testimony" that Rockford

Christian "would meet the children's educational needs and that other schooling would fail to do so."

¶ 33 Eric timely appealed, and Laura timely cross-appealed.

¶ 34 II. ANALYSIS

¶ 35 A. Eric's Appeal

¶ 36 Eric's sole argument on appeal is that the trial court erred in its valuation of the property. "A trial court's determination of the value of marital assets in a division-of-property proceeding will not be disturbed on appeal unless it is against the manifest weight of the evidence." *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 203 (2005). A decision is against the manifest weight of the evidence only where the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary, or not based on the evidence presented. *McBride v. McBride*, 2013 IL App (1st) 112255, ¶ 24.

¶ 37 Eric argues that the trial court erred by relying on a 2006 appraisal, an appraisal that neither party introduced into evidence, to value the property at $700,000. He argues that the court failed to value the property at or near the date of trial, in contravention of section 503(f) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(f) (West 2012)) (in determining the value of property in a dissolution proceeding, the court "shall value the property as of the date of trial or some other date as close to the date of trial as is practicable"). Eric argues that, instead of relying on the 2006 appraisal, the court should have relied on the 2011 real estate tax bill and his financial affidavit, as they provided the most recent value of the property. The 2011 real estate tax bill listed the fair cash value of the property at $455,112, and

Eric's financial affidavit[2] listed the value of the property at $405,000, which was consistent with the tax assessor's value. For the following reasons, Eric's argument regarding the property valuation is without merit.

¶ 38 First, while it is true that a property owner is generally held to be qualified to express his opinion of its value by virtue of his ownership (see *Department of Transportation v. Harper*, 64 Ill. App. 3d 732, 735 (1978)), such as in Eric's financial affidavit, the trial court expressly rejected both parties' testimony and opinions in determining the value of the property. In particular, the court found the parties' testimony to be self-serving, muddled, and not credible. See *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 56 (we will defer to the trial court's findings because the trial court, by virtue of its ability to actually observe the conduct and demeanor of the witnesses, is in the best position to assess their credibility). Thus, the parties' opinions, including Eric's financial affidavit, did not provide a basis for the court to value the property.

¶ 39 Second, Eric submitted no additional evidence regarding value, and it is the parties' obligation to present the court with sufficient evidence of the property's value. *In re Marriage of Reppen-Sonneson*, 299 Ill. App. 3d 691, 693 (1998). Having presented no independent evidence of the property's current value, Eric now clings to Laura's exhibit, a 2011 real estate tax bill for the property, as the proper basis for valuing the property. However, as the court pointed out, Eric has cited no authority for the proposition that a tax assessor's value reflects fair market value. *Cf. Department of Public Works & Buildings v. Cohen*, 9 Ill. App. 3d 85, 89 (1972) (in a condemnation case, the court noted the "general unreliability of tax assessments as an indication

[2] Though Eric refers to his three financial affidavits, his cites to only one in the record.

of market value"). Indeed, his only reasoning is that the real estate tax bill is more recent than the 2006 appraisal.

¶ 40 The trial court agreed that the property should be valued as close to the date of trial as possible but noted "it was impractical to make such determination" in this case based on the lack of credible testimony or evidence. As a result, the court determined that the most "reliable" and "credible" evidence regarding the value of the property dated back to the 2006 appraisal, which both parties agreed valued the property between $700,000 and $720,000. Because the 2006 appraisal was the only independent and reliable evidence of the property's value, the trial court cannot be faulted for relying on it to value the property at $700,000.

¶ 41 Having provided no independent or current evidence of the property's value, Eric cannot now complain that the 2006 appraisal was remote in time; that the 2006 appraisal was not introduced into evidence; or that the property had depreciated. See *In re Marriage of Steel*, 2011 IL App (2d) 080974, ¶ 102 (this court refused to entertain the petitioner's complaint about the quality of the evidence on valuation where she herself did not attempt to introduce any better evidence); *In re Marriage of Landwehr*, 225 Ill. App. 3d 149, 153 (1992) ("the appellate court has criticized the practice of parties in dissolution proceedings to challenge the trial judge's determination of the value of property where the parties, themselves, have failed to provide evidence upon which a purportedly more fair valuation might be made"); see also *In re Marriage of Smith*, 114 Ill. App. 3d 47, 54 (1983) (the court's lack of adequate information to be used in valuing the respondent's pension rights was not attributable to the court because it was the parties' responsibility to present the requisite data to the trial court).

¶ 42 Finally, the cases cited by Eric do not compel a different conclusion. See *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 152 (2005) (although the parties stipulated to the value of the

retirement account, the court should have rejected that stipulation in light of the undisputed evidence that the asset had significantly decreased in value); *In re Marriage of Brenner*, 235 Ill. App. 3d 840, 848 (1992) (the husband forfeited his argument that the appraisal of the property was outdated because he did not contest the wife's appraisal at trial and did not provide the court with a more recent valuation of the property); *In re Marriage of Rubinstein*, 145 Ill. App. 3d 31, 35 (1986) (where there were adequate financial records to permit a more exact valuation of the corporation on the date of dissolution, the trial court should have used that evidence rather than evidence from nine months before). Therefore, the trial court's valuation of the property was not against the manifest weight of the evidence.

¶ 43 B. Laura's Cross Appeal

¶ 44 1. Classification of Property

¶ 45 Laura's first argument on appeal is that the trial court erred by classifying the property as one-half non-marital and one-half marital. According to Laura, the property should have been classified as entirely marital.

¶ 46 Before the trial court may distribute property upon the dissolution of a marriage, the court must first classify the property as either marital or non-marital. *In re Marriage of Dann*, 2012 IL App (2d) 100343, ¶ 63. Under the Act, all property acquired by either spouse subsequent to the marriage is presumed to be marital property. 750 ILCS 5/503(a) (West 2012); *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 670 (2008) (the Act creates a rebuttable presumption that all property acquired after the date of the marriage is marital property, regardless of the manner in which title is held). Conversely, property acquired before the marriage constitutes non-marital property. 750 ILCS 5/503(a)(6) (West 2012); *In re Marriage of Mouschovias*, 359 Ill. App. 3d

348, 354 (2005). We will not disturb a trial court's classification of marital assets unless it is against the manifest weight of the evidence. *In re Marriage of Heroy*, 385 Ill. App. 3d at 669.

¶ 47 In this case, it is undisputed that Eric owned a one-half interest in the property prior to his marriage to Laura, which the trial court properly classified as non-marital property. It is also undisputed that during Eric and Laura's marriage, Eric took out a mortgage to purchase the other half of the property. Eric paid off the mortgage with his work bonus, a marital asset, leading the court to classify this one-half interest in the property as marital. Valuing the property at $700,000, the court thus awarded Laura one-half of the marital portion ($350,000), which was $175,000.

¶ 48 Laura argues that the court erred by classifying the property as one-half non-marital and one-half marital because such a hybrid classification is improper. For this proposition, she cites *In re Marriage of Parr*, 103 Ill. App. 3d 199, 205 (1981), which states that under section 503(a) of the Act, all property must be classified as either marital or non-marital; it cannot be both. See also *In re Marriage of Mouschovias*, 359 Ill. App. 3d at 360 (Appleton, J., dissenting) (under section 503, each item of property is either entirely marital or entirely non-marital, not a hybrid of the two, and that rule holds true despite the commingling of marital and non-marital property).

¶ 49 Laura concedes that Eric possessed a non-marital interest in the property prior to their marriage. However, she argues that Eric's non-marital interest was commingled with marital contributions, causing the property to transmute entirely into marital property. See 750 ILCS 5/503(c)(1) (West 2012) (if, in the commingling of the two estates, both estates commingle into new property and thereby lose their identities, the new property is marital property). She points out that Eric took out a mortgage on the property to buy out his ex-wife's share; the property was the marital residence where they lived and raised the children; marital funds paid the mortgages

and real estate taxes; and the parties made improvements and repairs to the property. Laura further argues that the mortgage and equity loan that Eric took out on the property were akin to purchasing a new home during the marriage, further supporting the theory that it was marital property. According to Laura, the court should have classified the property as entirely marital rather than a combination of the two.

¶ 50 Eric responds that a court may classify property as both marital and non-marital. He cites *In re Marriage of Davis*, 215 Ill. App. 3d 763, 773-74 (1991), where the court identified the non-marital and marital portions of a pension plan. Laura acknowledges *Davis* but argues that it and other cases considering retirement benefits are "a distinct line of cases concerning retirement benefits." Laura contrasts cases involving retirement benefits, which classify shares earned prior to marriage as non-marital and shares earned subsequent to marriage as marital (see *Davis*, 215 Ill. App. 3d at 773), from cases involving a single of piece of property, which is the situation here.

¶ 51 If the property cannot be classified as one-half marital and one-half non-marital, Eric makes the alternative argument that the property is entirely non-marital. Eric points out that he never intended to make a gift of his half of the property to the marriage; Laura's name was never added to the title; and, the financing was done solely in Eric's name and at his discretion. He argues that when marital funds are contributed to non-marital property, they are transmuted to the non-marital estate subject to reimbursement. See 750 ILCS 5/503(c)(1) (West 2012) (when marital and non-marital property are commingled by contributing one estate of property into another resulting in a loss of identity of the contributed property, the classification of the contributed property is transmuted to the estate receiving the contribution); see also 750 ILCS 5/503(c)(2) (West 2012) (when one estate of property makes a contribution to another estate of

property, the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation; provided, that no such reimbursement shall be made with respect to a contribution which is not retraceable by clear and convincing evidence).

¶ 52 The trial court rejected both parties' arguments that the property was either entirely marital or non-marital. In particular, it rejected Laura's argument that Eric's non-marital property was transmuted into marital property. According to the court, there was no evidence that Eric intended to make a gift of his half of the property to the marriage, in that he never added Laura's name to the title or to any of the financing documents. Given these undisputed facts, the trial court's finding that Eric's one-half interest in the property remained non-marital was not against the manifest weight of the evidence.

¶ 53 Turning to Laura's argument that the property cannot be classified as both marital and non-marital property, if Eric's non-marital portion did not transmute into marital property, the alternative is that the marital property transmuted into non-marital property. Though the contributed marital property would be subject to reimbursement, classifying the property as entirely non-marital would likely be less beneficial to Laura than the trial court's one-half marital and one-half non-marital classification.

¶ 54 Based on the unique facts in this case, we see no reason to disturb the trial court's hybrid classification. Given that one-half of the property was acquired before the marriage, the other half of the property was acquired after the marriage, and the court properly found that Eric's non-marital property did not transmute into marital property, the court's classification was not against the manifest weight of the evidence. Moreover, Laura does not argue on appeal that she was entitled to a greater share of the property. See *In re Marriage of Mouschovias*, 359 Ill. App.

3d at 354 (even if the trial court erred in its classification, the reviewing court found no error because the court's distribution of assets was proper).

¶ 55 2. Failure to Order School Tuition

¶ 56 Laura next argues that the trial court erred by failing to order Eric to pay for the children's tuition at Rockford Christian. In essence, Laura argues that the evidence supported an upward deviation in child support so that the children could attend Rockford Christian.

¶ 57 Under section 505(a) of the Act, a court may order a parent to pay child support in an amount reasonable and necessary for the support of the child. 750 ILCS 5/503(a) (West 2012). The statutory guidelines provide that the minimum amount of support for two children is 28% of the party's net income. 750 ILCS 5/503(a)(1) (West 2012). The court may deviate from the guidelines if it determines that such action is appropriate after considering the best interest of the child in light of the evidence, including, but not limited to, the financial resources and needs of the child and both parents, the standard of living the child would have enjoyed had the marriage not been dissolved, and the physical, mental, emotional, and educational needs of the child. 750 ILCS 5/503(a)(2) (West 2012). If the court deviates from the guidelines, it shall state the reason or reasons for the variance. *Id*. We review the trial court's award of child support for an abuse of discretion. *In re Marriage of Sobieski*, 2013 IL App (2d) 11146, ¶ 52.

¶ 58 For child support, the trial court followed the statutory guidelines in ordering Eric to pay 28% of his net income, or $3,668 (28% of $13,100) per month. In addition, the court ordered Eric to pay 28% of any bonus he received. In arguing that the evidence supported an upward deviation of child support for the school tuition, Laura points out that Eric's income far exceeded her income. While she does not dispute the trial court's determination of Eric's net income at

$13,100 per month, she points out that Eric was able to afford Rockford Christian when the parties were married, and there was no evidence he cannot do so now.

¶ 59 The trial court did not abuse its discretion in determining that the evidence did not support an upward deviation of child support. The child support award was $3,668 per month, and the tuition at Rockford Christian for the 2012 to 2013 school year was approximately $12,000. As the trial court noted, Laura was free to continue sending the children to Rockford Christian, given the level of child support she was receiving. See *In re Keon C.*, 344 Ill. App. 3d 1137, 1141-42 (2003) (section 505(a) creates a rebuttable presumption that a specified percentage of a non-custodial parent's income represents an appropriate child-support award, and compelling reasons must exist in order to overcome that presumption and permit the court to deviate from the guidelines). In addition, while Laura points to Eric's income and bonuses as proof of his ability to pay the tuition, Eric was ordered to pay 28% of any bonus he received as child support, thus increasing Laura's ability to pay the tuition.

¶ 60 Laura further argues that the children were accustomed to attending Rockford Christian and that it was the standard of living the children would have enjoyed had the marriage not been dissolved. She also argues that Rockford Christian met the children's emotional needs. To this end, Laura points out that the children had attended Rockford Christian for years; the school provided stability as the children adjusted to the divorce; and both children were in counseling. According to Laura, both Isaac and Luke were connected socially and emotionally to their school friends and environment, and Isaac had a hard time adjusting to change.

¶ 61 While we agree with Laura that the children were accustomed to attending Rockford Christian, we also note that the children were still young and had not attended Rockford Christian all that long. Half of Isaac's four-year history at Rockford Christian consisted of pre-

kindergarten years (pre-K3, pre-K4), and all of Luke's experience there was pre-kindergarten (pre-K3 and pre-K4). For this reason, the emotional impact of changing schools for Isaac and Luke would be much less than in the case cited by Laura, *In re Marriage of Alexander*, 231 Ill. App. 3d 950 (1992).

¶ 62 In *Alexander*, the child had attended private parochial school for five years (since fourth grade) without any objection from the noncustodial parent. *Id*. at 955. After the noncustodial parent lost income due to a strike against his employer, he moved for a reduction or abatement of child support. *Id*. at 951-52. The custodial parent requested that when the noncustodial parent returned to work, he be ordered to pay one-half of the child's high school tuition. *Id*. at 952. The noncustodial parent objected, arguing that the custodial parent should not be allowed to unilaterally enroll the child in private school and then require him to contribute. *Id*. at 953-54. The trial court ordered the noncustodial parent to pay one-half of the private school tuition, and the appellate court affirmed. *Id*. at 956. The court noted that the child had received a parochial school education for several years and that it was appropriate to allow him to continue this education, even if it entailed some cost to his parents. *Id*. at 955.

¶ 63 Again, *Alexander* is distinguishable from the case at bar because the child had attended parochial school as an older child for a longer period. Equally important, the noncustodial parent in *Alexander* was not providing near the same level of support as Eric was ordered to pay here. As stated, it was Laura's decision where the children would attend school, and we agree with the trial court that the current child support award allowed her to continue their schooling at Rockford Christian.

¶ 64 Finally, Laura argues that there was no support for the trial court's comment that there was no credible testimony that Rockford Christian would meet the children's educational needs.

However, the court's full statement was that there was no evidence that Rockford Christian would meet the children's educational needs and that another school would fail to do so. The trial court's statement was accurate. Other than testifying that Rockford Christian was highly rated and that Isaac was testing one or two grades beyond his age, there was no evidence regarding public school or alternatives to Rockford Christian. For all of these reasons, the trial court did not abuse its discretion when it determined that the evidence did not warrant an upward deviation of child support.

¶ 65 3. Maintenance Award

¶ 66 Laura's third argument on appeal is that the trial court abused its discretion by awarding maintenance of only $1,000 per month for three years. Laura argues that the evidence supports a higher maintenance award.

¶ 67 Section 504(a) of the Act provides that the court may grant a temporary or permanent maintenance award in amounts and for periods of time that the court deems just, after consideration of all relevant factors, including 12 enumerated factors:

> "(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;
>
> (2) the needs of each party;
>
> (3) the present and future earning capacity of each party;
>
> (4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;
>
> (5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to

support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

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

(7) the duration of the marriage;

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

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

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

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a) (West 2012).

¶ 68 As a general rule, the court's determination of a maintenance award is presumed to be correct. *In re Marriage of Heroy*, 385 Ill. App. 3d at 650. Because a maintenance award is within the sound discretion of the trial court, we will not disturb such an award absent an abuse of discretion. *Id*. at 650-51. The party challenging the maintenance award bears the burden of showing an abuse of discretion. *Id*. at 651. No one factor is determinative when considering the duration and amount of a maintenance award. *Id*.

¶ 69 Laura makes several arguments as to why the trial court's maintenance award was too low. First, she argues that her gross income of $24,000 plus $12,000 maintenance ($36,000) did not support the standard of living she enjoyed during the marriage. According to Laura, Eric had the ability to pay more, having earned a gross income of $254,000 in 2012 ($254,000 equals salary plus bonus, car allowance and country club allowance).

¶ 70 Second, she argues that by imputing an income to her of $40,000 per year, the trial court "seemed to penalize her" for working only part-time. Laura points out that she stopped working when they had children, which Eric requested her to do. After that, she worked part-time but still remained the children's primary caretaker. While Laura agrees that she can eventually obtain a teaching position that pays $40,000, she argues that $1,000 per month in maintenance is not sufficient to allow her time to rehabilitate and become self-supporting. Relatedly, she argues that the court also appeared to penalize her for wanting to obtain a master's degree, even though the purpose of rehabilitative maintenance is to obtain skills and education to increase her earning potential.

¶ 71 Third, Laura argues that Eric was left with between $375,000 to $400,00 in non-marital IRA and 401(k) assets, plus his non-marital share of the property. She, on the other hand, did not have a non-marital estate and would need to purchase a home for her and the children.

¶ 72 Given the evidence, the trial court did not abuse its discretion by awarding maintenance of $1,000 per month. Laura's arguments overlook the relatively short duration of the marriage; her future earning capacity; the disparity in the age of the parties; and the trial court's unequal division of the marital property.

¶ 73 At the time the petition for dissolution of marriage was filed, the parties had been married only eight years. When they married, Laura was a tenured teacher who taught full-time. About 1½ years later, they had Isaac and then Luke, and Laura left her teaching position to stay at home with the children for 2½ years. Gradually, Laura began working part-time, up to three days a week, earning a gross income of $24,000. During the marriage, the parties paid off Laura's student loan, and she took continuing education classes to maintain her certification. Because she was out of the workforce for such a short time period and maintained her credentials, this is

not a case where her marketability or workplace skills have depreciated. *Cf. In re Marriage of Carpel*, 232 Ill. App. 3d 806, 829 (1992) (where wife stayed home to raise the children for 17 years, this absence from the workforce significantly depreciated her marketability and the workplace skills she formerly possessed). Rather, as the trial court noted, there was no impairment of Laura's future earning capacity, and Laura herself admitted that she could obtain a full-time teaching position and earn $40,000. Moreover, the fact that the children were now both in grade school would make it easier for Laura to work full-time.

¶ 74 Regarding income, Laura is correct that Eric's income greatly surpassed hers. However, the trial court correctly noted that the disparity in age affected the parties' future earning potential. Laura was only 48 years old, and her long-term future for acquiring assets and income far exceeded Eric's. Eric was 64 years old and planned to retire soon.

¶ 75 While Laura's wish to obtain her master's degree was commendable, it would take two to four years to complete the program, and she testified that it would be easier to teach part-time in the interim. Laura's part-time salary was only $24,000 compared to $40,000 if she taught full-time, meaning that Laura would need a higher amount of maintenance while obtaining a master's degree. Depending on the length of the program, Eric would be 66 or 68 years old when she was done, thus requiring a potentially longer period of maintenance than three years. Essentially, the trial court did not penalize Laura for wanting to obtain her master's degree, it merely noted that she was currently employable at a salary adequate to support her. According to the court, the parties' standard of living was one of comfort, not extravagance, meaning that a master's degree was not "necessary to support herself, only to support herself at a higher earning potential."

¶ 76 Last, Laura points out that Eric's non-marital estate was greater than hers and that the trial court should have offset this disparity by awarding more maintenance. However, Laura

ignores the fact that the court made an unequal division of marital property. For example, the court awarded Laura 100% of her Teachers Retirement System interest ($23,000) and assigned the second mortgage debt ($78,000) to Eric. In addition, Laura will receive 50% of the marital portion of the property ($175,000), which she can use to buy a home.

¶ 77 In sum, the court stated that it weighed all the factors in awarding Laura maintenance of $1,000 per month for three years, and there was no abuse of discretion.

¶ 78 4. Dissipation

¶ 79 Laura's final argument on appeal is that Eric dissipated a portion of his 2011 bonus and all of his 2012 bonus. However, as Eric points out, this argument was never raised in the trial court. In fact, Laura's counsel conceded at the hearing on the parties' motions to reconsider that no dissipation claim had been made. In her reply brief, Laura argues the merits of her dissipation claim but does not argue that the issue was preserved for appeal. Because this issue was not raised in the trial court, it cannot be raised for the first time on appeal. See *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 377 (2008) (issues not raised in the trial court are forfeited and cannot be argued for the first time on appeal).

¶ 80 III. CONCLUSION

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

¶ 82 Affirmed.