2014 IL App (2d) 140681-U
No. 2-14-0681
Order filed October 31, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF KATIE JANE SCHEELER, Petitioner-Appellee, and CARL J. SCHEELER, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 13-F-408 Honorable Linda E. Davenport, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The judgment for dissolution of marriage was affirmed where (1) this court lacked jurisdiction to review the trial court's calculation of child support, (2) respondent forfeited two issues on appeal by failing to cite authority, (3) the court's custody determination was not against the manifest weight of the evidence, (4) the court did not abuse its discretion in imputing income to respondent, and (5) the court did not abuse its discretion in ordering respondent to contribute $15,000 toward petitioner's attorney fees.

¶ 2 Respondent, Carl Scheeler, appeals from the judgment dissolving his marriage to petitioner, Katie Scheeler, and awarding her sole custody of the parties' six minor children. Carl challenges the court's custody decision, its child support award, its order directing him not to

sleep in the same bed with the children during visits, its valuation and division of marital property, and its decision ordering him to pay $15,000 of Katie's attorney fees. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Carl and Katie were married on November 23, 2002, in Steubenville, Ohio. Between February 2003 and December 2010, they had six children. Prior to their separation, the parties resided in a townhome they purchased in Villa Park, Illinois. Carl has a master's degree in theology and worked as the director of religious education at a parish in Elmhurst, Illinois. Katie lacks a high school degree and did not work outside the home.

¶ 5 On July 17, 2013, Carl filed a petition for custody and an emergency petition to compel Katie to return the children to Illinois. He alleged that the parties had travelled to Ohio for vacation and that, at the conclusion of the trip, Katie had refused to return to Illinois with the children. The record reflects that Katie returned to Illinois with the children in August 2013.

¶ 6 On August 13, 2013, Katie obtained an order of protection against Carl in case No. 13-OP-1094. In her verified petition for order of protection, which is in the record, Katie detailed a number of incidents, including that Carl frequently "required [Katie] to stay awake and be with him until he decide[d] to go to bed" and that he "would not let her alone until she agreed with him" during arguments. The petition also described other incidents, including one in which Carl "verbally abused" Katie and "accus[ed] her of abandoning him and the children" when she traveled to California for a family member's funeral. Another incident took place in Ohio in June 2013 when Carl allegedly attempted to take the parties' two-year-old son on a canoe without a life vest and then got into a physical altercation with Katie's sister when the sister attempted to put a life vest on the child. The order of protection was effective for six months and prohibited Carl from coming within 1,000 feet of Katie. In the order, Katie was granted

temporary sole custody of the children, and Carl was granted visitation on Tuesday evenings and on alternating weekends. The order prohibited Carl from going to the marital home to pick up the children.

¶ 7 On September 9, 2013, Katie petitioned for dissolution of marriage on the basis of extreme and repeated mental cruelty. She sought sole custody of the children.

¶ 8 On September 17, 2013, Carl was arrested for violating the order of protection. According to Carl, he had "paced off" a distance of 1,000 feet from the marital home and would stand in that location while his mother retrieved the children from Katie for the scheduled visits. On the day of the arrest, when he went to retrieve the children in this manner, a police officer arrested him because he was standing only 600 feet from the marital residence. Shortly after his arrest, Carl lost his job as director of religious education at the parish. The record reflects that Carl was never prosecuted for violating the order of protection.

¶ 9 On September 30, 2013, Carl moved for appointment of a child custody evaluator pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/604(b) (West 2012)). The court appointed Dr. Robert Shapiro, who recommended in his report that Katie be awarded sole custody of the children and that Carl have visitation.

¶ 10 On November 26, 2013, Katie filed a petition to remove the children from Illinois so that she could move with them to Ohio. Shortly before trial, Katie withdrew the petition.

¶ 11 A bench trial was conducted over four days on May 30 and June 6, 10, and 11, 2014. Carl was *pro se* throughout the trial, while Katie was represented by counsel. The court first heard testimony concerning the grounds for dissolution. Because the decision to dissolve the marriage is not at issue on appeal, we need not recite in detail the testimony from this portion of the trial. In short, consistent with the allegations in her verified petition for order of protection,

Katie testified that Carl had a history of mental cruelty toward her, including that he would deprive her of sleep, be "extremely controlling," and "corner" her in long arguments. Carl denied these behaviors. He testified that "[m]ost of the time that [they] were up late it was to watch a show." He further testified that, when he and Katie stayed up late arguing, "it was by mutual consent as evidenced by the rules for arguing that was [*sic*] presented last summer, which stated specifically that we wouldn't go to sleep angry with one another."[1] At the conclusion of the testimony, the court found that Katie had proven grounds for dissolution.

¶ 12 The court next heard testimony concerning matters ancillary to the dissolution, including custody, visitation, child support, and division of property. Because a number of witnesses testified twice, being called in both Katie's and Carl's cases-in-chief, we summarize the testimony by witness, rather than chronologically. In addition, because we conclude below that we lack jurisdiction to review one of the issues Carl raises on appeal, and that Carl has forfeited two other issues, we discuss only the testimony that is relevant to the surviving issues.

¶ 13 Katie testified as follows. Since the birth of the parties' first child, she had been the children's primary caregiver, never working outside the home. She made sure the children got to school on time, picked up the children from school, and did the laundry and grocery shopping. Two of the children had special needs. The oldest child, who was eleven years old at the time of trial, was diagnosed with high-functioning autism, and another child, who was three-years-old, had a speech delay. Both children had individualized educational plans.

[1] Carl apparently was referencing evidence from the hearing on the order of protection; however, the record does not contain a transcript of the hearing.

¶ 14 Katie testified that, prior to the parties' separation, Carl would walk the children to school and then go to work between 11 a.m. and 1 p.m. He worked late, often not arriving home until 10 p.m. He would be home for the children's bedtime one or two days per week at the most. Overall, his interaction with the children was "sporadic." Following the parties' separation, Carl had been "much, much more active" in the children's lives. However, Katie was concerned that, during visits with Carl, each child did not have his or her own bed, and she wanted to ensure that the children were not sleeping in Carl's bed.

¶ 15 Katie testified that, when she returned to Illinois from Ohio, she enrolled the children in religious education at a new parish, because continuing to attend Carl's parish would have been difficult due to the order of protection. She denied that she intended to cause Carl to lose his job when she called the police regarding violation of the order of protection. She testified that she called the police because she felt threatened and scared upon witnessing Carl standing within sight of her when he came to pick up the children. Katie admitted that she told the children about the divorce on Tuesday, September 10, 2013, just before their visit with Carl. She explained that she wanted the children to be prepared in case Carl said anything about it.

¶ 16 Katie testified that, when the parties purchased the townhome in Villa Park, they did not intend to remain there permanently. The home had three bedrooms and 1 ½ bathrooms.

¶ 17 Carl testified that he was living with his mother in Northfield, Illinois, and intended to remain there. If the children lived with him, he would permit Katie to call "any time that she wanted within reason." He believed that his mother's home was "extremely suitable" for raising children. The schools were "nationally recognized," the house and yard had plenty of space, and the neighborhood was safe and had children the same ages as the parties' children.

¶ 18 Carl testified that, when the children visited him, each child was given his or her own bed. However, sometimes the children crawled out of bed and climbed into Carl's bed. On multiple occasions, Carl had pushed two queen beds together because there were "so many kids crawling in[to] bed" with him. He believed that it was appropriate and made the children calmer.

¶ 19 Carl believed that Katie could not foster or encourage a close and continuing relationship between him and the children, given her "pattern of interference," which began when she "cut off communication" during the trip to Ohio.

¶ 20 Regarding his arrest, Carl testified that he had "mismeasured" when he "paced off the distance" from the marital home. He accepted responsibility for his mistake. However, he believed that a single email or phone call from Katie or her mother could have resolved the situation without needing to call the police. Otherwise, he had complied with the protective order. He had stopped calling, emailing, or texting Katie. Carl testified that he was angry at Katie but that he had not and would not express this anger to his children.

¶ 21 Carl disagreed with Dr. Shapiro's statement in his report that it was a "questionable decision" for Carl to tell his nine-year-old daughter about his father's suicide, which occurred during Carl's childhood. Carl explained that he told his daughter about the suicide because his older brother had already told his children about it, and Carl did not want his daughter to find out about it from her cousins. Dr. Shapiro never asked Carl why he told his daughter about it.

¶ 22 Carl testified that he had a new job, which was not "ideal" but was "what [he] could find." Carl worked approximately 25 hours per week for Follow Your Nose, a business that provided pet sitting services. He was paid biweekly as an independent contractor, and his pay varied depending on the location of the homes he visited and the services he provided. He spent approximately $300 per month on gas while working. He admitted that his financial disclosure

statement reported $700 per month in taxable income, which he testified was accurate. He believed that the flexible hours of his job would allow him to be "more present" for his children, both "in the physical sense" and "emotionally" and "spiritually." He explained that his new job did not "pre-occupy [his] mind the way [his] former employment did."

¶ 23 Asked about his job search efforts, Carl testified that he had not sent his resume to any parishes or other prospective employers. He denied that his brother, who worked for an insurance company, had offered him an opportunity to interview for a position. When asked if he would interview for a position with his brother if given the opportunity, Carl said no. He explained that for years his brother had spent "dozens of hours" at work every day to become established in the company, and doing the same would "detract from [his] ability to be a good father."

¶ 24 Katie's mother, Terri Bennette, testified that she lived in Stuebenville, Ohio. From August 13, 2013, to May 17, 2014, she stayed with Katie in Villa Park and helped with household chores. Based on her observations of Katie, Bennette believed that Katie met all of her children's needs and showed affection toward them and had fun with them. She had not observed any behavior that would make her think that Katie was depressed.

¶ 25 Carl also called Bennette as a witness. He asked her a series of questions relating to whether she agreed with Dr. Shapiro's assessment in his report that Katie's childhood might be partly responsible for Katie's "issues related to anxiety and depression." The court sustained objections to a number of these questions on grounds of relevance and then instructed Carl that the focus of the hearing was Carl's and Katie's parenting, not Bennette's parenting of Katie.

¶ 26 Called during Katie's case, Stephanie Litton testified that she had known Katie and Carl for approximately two years and lived in the same neighborhood in Villa Park. Based on her

observations of the family, she believed that Katie did a good job as a mother and handled the majority of the parenting responsibilities, while Carl was "more of a playmate" to the children. Litton recalled a time when she and Katie went to Target and left the six Scheeler children and the four Litton children with Carl. The children ranged in age from two to nine years old. After approximately two hours, Litton and Katie returned to find Carl inside at his computer and most of the children, including the two-year-old, playing unsupervised at a park near the marital home.

¶ 27 Called during Carl's case, Litton testified that, before the Scheelers' trip to Ohio in 2013, "[t]here was some indication" that Katie was planning not to return. Katie had complained to Litton about Carl. Katie also had told Litton about changes that Carl had agreed to make, including not having a seventh child and starting to go to bed earlier. Litton denied ever seeing Carl do anything cruel or unkind to anyone around him. She admitted to witnessing Carl mediate disputes among the children. Litton knew that Katie had been going through a difficult time, and she had witnessed Katie crying.

¶ 28 Katie's final witness was Melissa Slinn, who testified that she lived four houses down from the Scheeler marital home. Slinn, who had three children, testified that she and Katie saw each other almost every day, because they alternated taking the children to school and picking them up. She believed that Katie was loving and affectionate with her children. She had observed Katie discipline her children by talking them through a situation and explaining to them what was wrong. Slinn believed that Katie was responsible and that she appropriately supervised the children. If the children were outside playing, Katie was always outside with them. Slinn testified that, a few years ago, Carl would sometimes drive the Slinn and the Scheeler children to school. Slinn found out that Carl was allowing some of the children to sit in the front seat when they were still required to be in the back seat in a booster seat. While Carl and Katie were still

living together, Slinn had observed Katie being "very, very stressed," because Carl would get home late most nights and was not helping with the parenting responsibilities.

¶ 29 Carl called Father Scott Huggins, who testified that he knew Carl from the parish at which Huggins was a pastor. He testified that he terminated Carl's employment, because a number of families were aware of Carl's family situation and arrest and were threatening to remove their children from religious education at the parish if Carl remained employed. Huggins testified that, if not for Carl's arrest, he probably would not have fired him.

¶ 30 Carl's mother, Diana Scheeler, testified that she had a master's degree in education and would be willing to help with the children's education if Carl were awarded custody and lived with the children in her home. She described her house, where Carl would live with the children if he were awarded custody, as having five bedrooms and three full bathrooms, a well-stocked playroom, a large family room with a table that seated 12 people, a large kitchen, and a large back yard with a swing set. Asked about Carl's reaction when one of the children misbehaved in his presence, Diana testified that he usually sat the child down, talked to him or her, and helped the child understand the situation so that he or she could deal with it in a better way.

¶ 31 Diana testified that, on the day Carl was arrested, she and Carl had picked up the children and were beginning a game of miniature golf when Carl received a call from a police officer, requesting that he return to the Scheeler home. After they returned to the home, police arrested Carl in front of the children. Carl did not react with anger but, rather, told the children that maybe Katie was right that he had been less than 1,000 feet from the house.

¶ 32 Diana testified that she had a number of concerns if Katie were awarded custody of the children, including "whether the children will be oriented toward success," "[w]hether their

negative attitudes that they've picked up will have a negative affect [*sic*] on their life [*sic*]," and whether they will "be able to take responsibility for their own actions instead of blaming others."

¶ 33 On June 17, 2014, the court entered its judgment for dissolution of marriage. Regarding custody, the court found that Katie had been the primary caregiver for the children, responsible for all of the children's day-to-day needs. Based on Katie's testimony and that of her two neighbors, the court found that, "many nights per week," Carl was not home until after the children had gone to bed. The court found that "[n]either party offered any evidence that the children [were] not adjusted to their home, school and community." The court found that neither parent was able to facilitate or encourage a close and continuing relationship between the other parent and the children, because "Katie fears Carl and Carl will not admit that the children are well under Katie's care." The court found that, although Carl's mother expressed concerns about the children living with Katie, she was "so biased as to make her testimony incredible."

¶ 34 Addressing the parties' physical and mental health, the court discussed the evidence that gave rise to the order of protection, including Katie's testimony that "Carl demanded she remain up with him until after he got home from work and not go to bed until Carl said she could," that Carl had punched his fist through the basement door and through a piece of drywall, that Carl had accused Katie of abandoning him and the children when she travelled to her grandmother's funeral, and that Carl had agreed to see a marriage counselor if Katie "would see an exorcist."

¶ 35 The court then discussed Dr. Shapiro's custody evaluation report, which it found was "totally credible and unimpeached." The court found that, as reported by Dr. Shapiro, Carl's test results "indicated he was unwilling or unable to view himself from a psychological standpoint and tended to have very limited insight into himself." In addition, he "showed a rigidity and stubbornness with efforts to control the world in terms of rules and regulations." Katie's test

results "presented a picture of multiple physical problems and a reduced level of psychological functioning," reflecting "fatigue, vague pain and weakness." In addition, her test results revealed "major elevations for anxiety and major depression," as well as "signs of being submissive, self-effacing and non-competitive." Addressing Carl's argument that Katie should not be awarded custody due to her "mental health," the court found that Carl "ignored the test data about himself and Dr. Shapiro's statements that he can be demanding, controlling and manipulative when speaking to the children about the divorce and sharing his father's suicide with his young daughter."

¶ 36 After considering all of the evidence, the court found that awarding Katie sole custody was in the children's best interests. The court granted Carl visitation consisting of every Wednesday evening and alternating weekends and holidays. The court ordered that "[e]ach child shall have his/her own bed at all times and Carl shall not sleep with any of the children."

¶ 37 Regarding child support, the court found that, following the termination of his job at the parish, Carl had "made no effort to find work because he had no reason to do so," since Carl's mother "was and is providing for all of his needs." It further found that Carl had admitted to refusing to consider an offer of employment from his brother, which the court found was "unreasonable and done for the sole purpose of evading his support obligation." The court further found that Carl's failure to seek more lucrative employment "was a deliberate effort to discourage Katie from seeking a divorce and gaining custody of the children" and had resulted in Katie and the children receiving public aid and food stamps. Based on its finding that "Carl's refusal to secure meaningful employment [was] voluntary," the court imputed "minimum income" to Carl of $25,000 per year. Based on this amount, the court calculated the guideline

amount of child support to be $1,074 per month. The court deviated upward from the guideline amount, because Carl had "no living expenses," and awarded child support of $1,400 per month.

¶ 38 Addressing the parties' property, the court found that there was "no equity" in the marital home and awarded it to Katie, along with the associated liabilities. The court awarded the parties' 2000 Mazda minivan to Katie but assigned it no value, finding that neither party offered evidence of its value and that it was in need of repairs. The court found that Carl had dissipated a total of $42,376 from the parties' joint bank accounts and ordered Carl to pay $21,188 to Katie within 14 days to "equalize the division of the marital estate."

¶ 39 The court also ordered Carl to contribute $15,000 toward Katie's attorney fees, which totaled approximately $27,000 at the time of trial. The court found that Carl had no debt and that his mother had paid over $14,000 in attorney fees for an attorney who represented Carl during a portion of the proceedings prior to trial. The court further found that Katie was unable to pay the fees, because she had accrued significant credit card debt following the parties' separation while incurring necessary living expenses and paying attorney fees.

¶ 40 The trial court reserved the issue of maintenance, finding that Carl "does not have the financial ability to pay maintenance at this time."

¶ 41 Carl timely appealed.

¶ 42 II. ANALYSIS

¶ 43 On appeal, Carl challenges the trial court's decisions (1) awarding Katie sole custody of the parties' six minor children; (2) imputing income to him; (3) ordering him to pay $1,400 per month in child support; (4) directing him not to sleep in the same bed with the children during visits; (5) valuing and dividing the parties' marital property; and (6) ordering him to pay $15,000 of Katie's attorney fees. Before addressing any of Carl's arguments on the merits, we must

address a jurisdictional issue that Katie raises, as well as the issue of Carl's failure to support his arguments with citations of relevant authority.

¶ 44 A. Jurisdiction

¶ 45 Katie argues that, because Carl's notice of appeal did not indicate that he was challenging the trial court's calculation of child support, this court lacks jurisdiction to address the issue.

¶ 46 Supreme Court Rule 303(b)(2) (eff. May 30, 2008) requires that a notice of appeal "specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." The appellate court acquires no jurisdiction to review parts of judgments that are not specified in or inferred from the notice of appeal. *Fitch v. McDermott, Will & Emery, LLP*, 401 Ill. App. 3d 1006, 1014 (2010). The purpose of the notice of appeal is to inform the prevailing party of the nature of the appeal. *Fitch*, 401 Ill. App. 3d at 1014. A notice of appeal is to be liberally construed. *Fitch*, 401 Ill. App. 3d at 1014.

¶ 47 Carl's notice of appeal indicated that he was appealing the June 17, 2014, judgment of dissolution "regarding the following opinions, judgments and orders." It then specified the parts of the judgment being appealed, including those addressing custody, sleeping arrangements, valuation and division of assets, and attorney fees. It further specified that Carl was appealing "[v]arious assertions and findings in the Letter Opinion of June 17, 2004, especially with regard to the Mental and Physical Health of the parties and findings with regard to Petitioner-Appellant's employment circumstances and supposed dissipation of the marital estate." The notice indicated that Carl sought "for these judgments and orders to be overturned."

¶ 48 We agree with Katie that we lack jurisdiction to address Carl's arguments concerning the calculation of child support. Nowhere in his notice of appeal is there any mention of child support. The only portion of the notice potentially relating to child support is its reference to

"findings with regard to Petitioner-Appellant's employment circumstances." This potentially relates to child support insofar as the court imputed income to Carl. However, the trial court's decision to impute income to Carl is separate from its calculation of child support, which involved calculating a guideline amount of support and then deviating upward from that amount. Even liberally construing the notice of appeal, it did not inform Katie that the court's calculation of child support, including its decision to deviate from the guidelines, was at issue on appeal.

¶ 49 B. Forfeiture

¶ 50 The supreme court rules governing the content and format of briefs apply regardless of whether a party appears *pro se*. *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38. Among those rules is Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), which requires an appellant's brief to contain argument supported by citations of the authorities and the pages of the record relied on. "A failure to cite relevant authority violates Rule 341 and can cause a party to forfeit consideration of the issue." *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. This court "is not a depository in which the appellant may dump the burden of argument and research." (Internal quotation marks omitted.) *Kic*, 2011 IL App (1st) 100622, ¶ 23.

¶ 51 Carl does not cite a single authority to support two of the five arguments that this court has jurisdiction to address. Specifically, he cites no authority to support his argument that the court "erred and exceeded the limits of its authority and competence" when it ordered him not to sleep in the same bed as the children during visits. Similarly, he cites no authority to support his argument that the court erred in valuing and dividing the marital assets. These issues are not straightforward, and we decline to *sua sponte* research the issues, formulate arguments, and then decide the issues. See *Skidis v. Industrial Comm'n*, 309 Ill. App. 3d 720, 724 (1999) ("[T]his

court will not become the advocate for, as well as the judge of, points an appellant seeks to raise.").

¶ 52 C. Child Custody

¶ 53 Section 602 of the Act provides that a trial court must determine custody in accordance with the best interests of the children, taking into account all relevant factors. 750 ILCS 5/602 (West 2012). The statute provides a non-exhaustive list of 10 factors for the court to consider in making its determination, including the wishes of the children's parents and of the children themselves; the interaction and interrelationship among the children and parents; the children's adjustment to their home, school, and community; the mental and physical health of all individuals involved; the presence of physical violence or the threat of physical violence; and the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the children and the other parent. 750 ILCS 5/602 (West 2012).

¶ 54 " '[A] trial court's custody determination is afforded 'great deference' because the trial court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child.' " *In re Marriage of Lonvick*, 2013 IL App (2d) 120865, ¶ 33 (quoting *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 177 (2002)). A reviewing court will not disturb a trial court's custody determination unless it is against the manifest weight of the evidence. *Lonvick*, 2013 IL App (2d) 120865, ¶ 33. A judgment is against the manifest weight of the evidence when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based upon evidence. *Lonvick*, 2013 IL App (2d) 120865, ¶ 33.

¶ 55 Carl posits three reasons for why the trial court's custody determination was in error: (1) the court failed to recognize the "stark contrast" between his and Katie's physical and mental health, (2) the court erroneously determined that Carl was unable and unwilling to facilitate a

close and continuing relationship between Katie and the children, and (3) the court overlooked that Carl acted in ways that were "consistently oriented to [*sic*] the children's best interests."

¶ 56 With respect to his first argument, Carl maintains that the trial court's custody determination was error because, while Katie exhibited "serious mental disorders," Carl exhibited only "possible personality flaws." According to Carl, the court "completely glosse[d] over the radical difference between the mental and physical health of the two parties."

¶ 57 Carl supports his argument with excerpts from Dr. Shapiro's report. In the report, Dr. Shapiro concluded that "[t]here is no doubt that Katie is struggling with issues of anxiety and depression." Regarding Carl, Dr. Shapiro concluded that he "tend[ed] to construct the world in terms of rules and regulations" and "to be rigid and stubborn." He wrote that Carl's traits were "possible personality characteristics and they do not rise to the level of a diagnosable disorder."

¶ 58 Carl's contention that the trial court ignored a "radical difference" between the parties' mental and physical health misses the mark. While Dr. Shapiro's report may have highlighted significant differences in the parties' personalities and affects, nothing in the report suggested that Katie was a poor candidate for having sole custody of the children, or that Carl was a better candidate than Katie. Carl goes so far as to assert that, when "one parent's mental and physical health is so impaired as Katie's, and the other parent's mental and physical health is as unimpaired as Carl's, this factor must be deemed controlling." However, he cites to nothing in the evidence suggesting that Katie's struggles with anxiety or depression impacted her parenting of the children. To the contrary, the evidence revealed that Katie was substantially more involved in parenting than was Carl, as the trial court found. Indeed, Dr. Shapiro recommended that Katie be awarded sole custody despite his conclusions regarding her mental and physical

health. Dr. Shapiro stated that "[w]hatever problems [Katie] seems to be struggling with, they do not seem to have compromised her ability to successfully parent."

¶ 59 Turning to Carl's second argument regarding custody, he contends that the court erroneously determined that he was unable and unwilling to facilitate a close and continuing relationship between Katie and the children. With respect to this factor, the trial court found that neither parent was able to facilitate or encourage a close and continuing relationship between the other parent and the children, because "Katie fears Carl and Carl will not admit that the children are well under Katie's care." Carl contends that he "was never asked and therefore never had the opportunity to admit or deny whether the children are well under Katie's care."

¶ 60 Carl ignores that, over the course of the four-day trial, he had ample opportunity to present any relevant evidence he desired. When Carl testified during his case-in-chief, he said that he was angry at Katie. Much of his questioning of witnesses was aimed at painting a picture of Katie as a depressed and anxious person. Moreover, many of his arguments below and on appeal focus on Katie's alleged "serious mental disorders." This type of mudslinging is difficult to reconcile with Carl's contention that, if he were awarded custody, "Katie would have as much access to the children as she wanted and would be consulted on all matters of child-rearing." Viewed as a whole, the evidence presented at trial, including Carl's actions leading to the order of protection, revealed the parties' inability to communicate or cooperate. The trial court's finding that neither party had the ability to facilitate a relationship between the other parent and the children was not against the manifest weight of the evidence.

¶ 61 Carl's third argument regarding custody is that the court overlooked that his actions were "consistently oriented to [*sic*] the children's best interests." Katie testified that, following the parties' separation, Carl had been "much, much more active" in the children's lives. Carl and his

mother both testified to Carl's positive interactions with the children during visits. While this evidence may have established that Carl was a loving parent, this consideration alone does not render the court's custody determination against the manifest weight of the evidence.

¶ 62 Moreover, the evidence of Carl's involvement with the children following the parties' separation presents an incomplete picture. Katie testified that, prior to the parties' separation, Carl's interaction with the children was "sporadic." Carl would arrive home late many nights per week, leaving Katie to feed six children and put them to bed. Katie's testimony was buttressed by that of her two neighbors, Litton and Slinn. Litton testified that Katie handled the majority of the parenting responsibilities, while Carl was more of a "playmate" to the children. According to Litton, on one occasion, Carl had let the children, including a two-year-old, play unsupervised in a park outside the parties' townhome. According to Slinn, prior to the parties' separation, Carl had allowed some of the children to sit in the front seat of the car when they were still required to be in the back seat in a booster seat. Slinn further testified that, while Carl and Katie were still living together, she had observed Katie being "very, very stressed," because Carl would get home late most nights and was not helping with the parenting responsibilities. In addition, Slinn testified that Katie was loving and affectionate to the children and would always supervise them while they were outside playing. Based on this evidence, the court appropriately found that Katie was the primary caregiver for the parties' children, which supported its custody decision.

¶ 63 Having thoroughly reviewed the voluminous testimony in this case, we conclude that the trial court's custody determination was not against the manifest weight of the evidence.

¶ 64 D. Imputation of Income

¶ 65 It is well established that courts have the authority to compel parties to pay support at a level commensurate with their earning potential. *In re Marriage of Adams*, 348 Ill. App. 3d 340,

344 (2004). "[I]f a court finds that a party is not making a good-faith effort to earn sufficient income, the court may set or continue that party's support obligation at a higher level appropriate to the party's skills and experience." *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 107 (2000). Stated another way, "[a] court may impute additional income to a noncustodial parent who is voluntarily underemployed." *Adams*, 348 Ill. App. 3d at 344. A trial court's decision to impute income is reviewed for abuse of discretion. *In re Marriage of Schuster*, 224 Ill. App. 3d 958, 974 (1992). A court abuses its discretion when no reasonable person would take the view adopted by the trial court. *In re Marriage of Arjmand*, 2013 IL App (2d) 120639, ¶ 32.

¶ 66 Carl contends that the trial court abused its discretion in finding that he refused to secure "meaningful employment" and that his behavior "was a deliberate effort to discourage Katie from seeking a divorce and gaining custody of the children." Carl maintains that he is "gainfully employed" at Follow Your Nose and that he took the job so that, if he were awarded custody, he could spend more time with the children while also providing for them financially.

¶ 67 The evidence at trial established that Carl has a master's degree in theology and worked for 10 years as the director of religious education at a parish in Elmhurst, Illinois. In 2013, which was his last year of employment at the parish, Carl's gross income was $49,676. Father Huggins testified that he terminated Carl's employment at the parish following his arrest for violating the order of protection. After his termination, Carl began working for Follow Your Nose, where his taxable income at the time of trial was approximately $700 per month.

¶ 68 Even accepting Carl's argument that he would be unable to obtain another position in the field of religious education, we conclude that the trial court did not abuse its discretion in imputing additional income to him. The court imputed "minimum income" to Carl of $25,000 per year. Given his educational background and his earning history, this was a conservative

estimate of his earning capacity. Even if Carl cannot work again as a director of religious education, he has the ability to earn more than $700 per month, or $8,400 per year. In fact, Carl asserts in his brief that he is now earning $1,850 per month at Follow Your Nose, which amounts to $22,500 per year. This alone undermines his argument that it was an abuse of discretion to impute additional income to him.

¶ 69 Carl also maintains that the court misconstrued his testimony when it found that he had refused to consider an offer of employment from his brother. Although we agree that Carl did not testify that his brother had offered him a position, this does not alter our conclusion that the court properly imputed additional income to him. Carl testified that, even if his brother gave him the opportunity to interview for a position, he would not accept the opportunity. This testimony, combined with Carl's testimony that he had not sent his resume to any employers, supported the trial court's finding that Carl's underemployment was voluntary.

¶ 70 E. Attorney Fees

¶ 71 Carl's final argument is that the trial court abused its discretion in ordering him to contribute $15,000 toward Katie's attorney fees. He contends that, at the time of trial, he had only $2,761.28 to his name and that the trial court failed to consider his inability to pay the fees.

¶ 72 Section 508(a) of the Act permits a trial court to order one party to pay the other party's reasonable attorney fees incurred in a dissolution proceeding. 750 ILCS 5/508(a) (West 2012). It provides that, "[a]t the conclusion of any pre-judgment dissolution proceeding under this subsection, contribution to attorney's fees and costs may be awarded from the opposing party in accordance with subsection (j) of Section 503 ***." 750 ILCS 5/508(a) (West 2012). Section 503(j)(2) of the Act, in turn, provides that "[a]ny award of contribution to one party from the other party shall be based on the criteria for division of marital property under this Section 503

and, if maintenance has been awarded, on the criteria for an award of maintenance under Section 504." 750 ILCS 5/503(j)(2) (West 2012). A trial court's award of attorney fees under the Act is reviewed for an abuse of discretion. *In re Marriage of Sobieski*, 2013 IL App (2d) 111146, ¶ 40. A court abuses its discretion when no reasonable person would take the view adopted by the trial court. *Arjmand*, 2013 IL App (2d) 120639, ¶ 32.

¶ 73 Here, maintenance was not awarded, so only the factors in section 503 apply. Section 503(d) lists 12 factors for division of marital property, which are: (1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or nonmarital property; (2) dissipation of the property; (3) the value of the property of each spouse; (4) marriage duration; (5) the relevant economic circumstances of each spouse; (6) obligations from prior marriages; (7) antenuptial agreements; (8) the age, health, occupation, amount and sources of income, employability, job skills, liabilities, and needs of the parties; (9) custodial provisions for any children; (10) whether apportionment is in lieu of or in addition to maintenance; (11) reasonable opportunity for future earning or income; and (12) tax consequences. 750 ILCS 5/503(d) (West 2012); *Sobieski*, 2013 IL App (2d) 111146, ¶ 40.

¶ 74 In the context of deciding whether to order contribution to attorney fees, the factors listed in section 503(d) help the trial court "to compare the relative financial standings of the parties" and provide "a framework within which to compare the relative means of parties to pay their attorney fees." *Sobieski*, 2013 IL App (2d) 111146, ¶ 49. In general, the spouse seeking a contribution to fees must establish his or her inability to pay the fees and the other spouse's ability to pay. *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 113. "A party has the financial inability to pay attorney fees if the payment of the fees would strip that party of his or

her means of support or undermine the party's financial stability." *Patel*, 2013 IL App (1st) 112571, ¶ 113.

¶ 75 In arguing that he has an inability to contribute to Katie's attorney fees, Carl focuses on the balance of his bank account at the time of trial and on his low income from his part-time position at Follow Your Nose. However, the value of Carl's property and the amount of his income are only 2 of the 12 factors the court was to consider under section 503(d). Other factors included the relevant economic circumstances of the parties; the employability, job skills, liabilities, and needs of the parties; the custodial provisions for the children; and the parties' reasonable opportunities for future earning or income.

¶ 76 As revealed by the evidence at trial, Carl's economic circumstances are that he is debt free and living at his mother's house, where he pays no rent or utilities. Other than child support, his monthly expenses primarily consist of a cell phone, gas, and food. He also enjoys the use of his mother's minivan, which she purchased during the dissolution proceedings to transport the children. Although Carl represented himself throughout most of the proceedings, his mother paid $14,000 to an attorney who represented Carl for a portion of the pretrial proceedings. By contrast, Katie was awarded the marital home, along with its mortgages. She will bear the cost of the mortgage, property taxes, and utilities. She also will incur significantly greater expenses than Carl by virtue of being awarded sole custody of the parties' six children. In addition, Katie was represented by counsel and testified that she had incurred approximately $27,000 in attorney fees, plus additional credit card debt. Furthermore, as discussed above, Carl's educational background and earning capacity established that he is more employable and will have greater opportunities to earn income than Katie, who lacks a high school degree. Furthermore, at the

time of trial, Carl was earning an income, while Katie earned no income, received no maintenance, and relied on food stamps and Medicaid.

¶ 77 Viewing the evidence in light of the relevant factors in section 503(d), we cannot say that the trial court abused its discretion in ordering Carl to contribute $15,000 toward Katie's attorney fees. Considering Carl's lack of debt, the substantial support he receives from his mother, his relatively low living expenses, and his greater earning capacity, the court's attorney fee award will not strip him of his means of support or undermine his financial stability.

¶ 78 III. CONCLUSION

¶ 79 For the reasons stated, we affirm the judgment of the circuit court of Du Page county.

¶ 80 Affirmed.