2019 IL App (2d) 170579-U
No. 2-17-0579
Order filed October 4, 2019

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MARSHA TATE,	)	Appeal from the Circuit Court
	)	of Du Page County.
Petitioner-Appellee,	)	
	)	
and	)	No. 14-D-1936
	)	
WESLEY TATE,	)	Honorable
	)	John W. Demling,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Trial court's allocation of certain marital assets and its failure to allocate others required matter to be remanded to trial court for reallocation of marital estate; but (2) trial court's maintenance award was not an abuse of discretion; and (3) husband's claim that the trial court's property distribution was inequitable was premature in light of remand for reallocation.

¶ 2 On May 31, 2017, the circuit court of Du Page County rendered in open court a judgment dissolving the 30-year marriage of respondent Wesley Tate (Wesley) and petitioner Marsha "Tolly" Tate (Marsha). The court, which later reduced its judgment of dissolution to writing, also made findings of fact pertaining to the parties' marital and non-marital estates and distributed the marital estate between the parties. Ultimately, the court awarded Wesley 37.6%

of the marital estate and Marsha 62.4% of the marital estate. The court further ordered that Wesley pay Marsha monthly maintenance in the amount of $15,000 as well as 40% of any annual income over $450,000. Wesley appeals certain aspects of the judgment. Notably, Wesley asserts that the trial court abused its discretion in allocating the parties' assets and liabilities because it results in "gross economic disparity post-divorce" while "creat[ing] an illusion of parity." In this regard, Wesley raises several sub-issues challenging: (1) the allocation of outstanding forgivable "loans" and related taxes; (2) the award of certain receivable assets to him; (3) the treatment of certain pretrial orders related to his payment of Marsha's interim attorney fees and income taxes; (4) the trial court's understanding of the Internal Revenue Code with respect to the taxation of retirement assets; and (5) the trial court's finding that he dissipated more than $750,000 in marital assets. Wesley also argues that the judgment is inequitable because the "actual value" of his property award is $1.6 million less than the value assigned to it by the trial court and consists of "illiquid, non-income producing assets" whereas Marsha received a $7.35 million share of the marital estate, including over $5 million in "readily accessible liquid assets," plus a maintenance award of 40% of his income. For the reasons set forth below, we affirm in part, reverse in part, and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 The parties were married in May 1987. Two children were born of the marriage, both of whom are now emancipated. For the majority of the marriage, Marsha did not work outside of the home. Wesley was employed as a financial advisor, most recently for UBS. The parties separated in or about September 2012. On September 19, 2014, Marsha filed a petition for dissolution of marriage. On November 12, 2015, Wesley filed a counter-petition for dissolution of marriage.

¶ 5 Prior to trial, both parties filed notices of intent to claim dissipation. Marsha's notice of intent to claim dissipation, filed on October 8, 2015, alleged more than $9 million in dissipation by Wesley between September 2011 and February 2015. On September 30, 2016, Marsha served Wesley with two reports written by her expert, Lee Gould. The first report contained an analysis of the parties' income and cash flow for the years 2011 through 2015 (Cash Flow Report). The second report contained an analysis of Wesley's withdrawals and spending during the period from November 2010 through August 2016 (Spending Report). In the Spending Report, Gould attributed to Wesley almost $1.229 million in withdrawals and expenditures, which he divided into six categories: (1) cash payments to Sarah Hunt (Hunt) (Wesley's paramour) and Hunt's family ($40,426); (2) cash and automatic teller machine (ATM) withdrawals ($587,901); (3) jewelry and clothing ($171,281); (4) unknown transfers or withdrawals ($240,727); (5) travel ($44,640); and (6) uncategorized expenditures ($143,693). The Spending Report also identified an additional $974,404 of expenditures attributable to Wesley for automobiles and boats ($812,154) and decorating and home furnishings ($162,249).

¶ 6 On October 14, 2016, Marsha served on Wesley her "Amended and Supplemental Notice of Intent to Claim Dissipation." On the same date, Marsha submitted a supplemental report from Gould (Supplemental Spending Report), which modified his September 2016 Spending Report. In the Supplemental Spending Report, Gould represented that he received additional information and documentation since the production of the September 2016 Spending Report, which caused him to reduce Wesley's alleged dissipation to $920,909. Specifically, Gould reduced the following four categories of dissipation: (1) cash and ATM withdrawals from $587,901 to $364,693; (2) jewelry and clothing from $171,281 to $166,722; (3) unknown transfers or withdrawals from $240,727 to $170,735; and (4) uncategorized expenses from $143,693 to

$133,693.

¶ 7 Prior to trial, the parties filed various motions *in limine*. Among these was Wesley's motion *in limine* to bar Gould's Supplemental Spending Report. Wesley argued that the Supplemental Spending Report was untimely because it was submitted after September 30, 2016, the deadline set by the trial court for the submission of all expert reports. Wesley further asserted that he received inadequate notice of Marsha's Amended Notice of Dissipation and that the Amended Notice of Dissipation violated the spirit of the dissipation statute. In response, Marsha argued that the Supplemental Spending Report did not add any new claims of dissipation, but rather, based on new information, *reduced* the dissipation claims against Wesley. The trial court denied the motion *in limine*, finding that the Supplemental Spending Report was an update of Gould's September 2016 Spending Report, which was timely served.

¶ 8 Trial began on October 17, 2016, and, excluding the hearing on contribution to attorney fees, lasted 22 non-consecutive days. During the trial, the parties stipulated that the irretrievable breakdown of the marriage began to occur in October 2010. In addition, throughout the proceeding, the court accepted several stipulations by the parties with respect to various matters, including the value of certain items of real and personal property. The majority of the evidence at trial was adduced through the testimony of the parties and Gould. In addition, the court heard testimony from other witnesses, including: (1) Dennis Christiansen, the branch manager of the UBS office where Wesley works; (2) John Cencig, a tax accountant who had prepared the parties' tax returns for 15 years; and (3) Hunt. As set forth below, the trial testimony focused in large part on Wesley's income, the parties' lifestyle, and the allegations of dissipation.

¶ 9 At the time the trial commenced, Marsha was 55 years old and Wesley was 62 years old. Marsha has a bachelor's degree in English from Virginia Polytechnic Institute. When the parties

married, Marsha was a salesperson for James River Corporation (James River). Marsha's highest annual salary at James River was $33,000. Marsha last worked for James River in 1991. Thereafter, other than a part-time, six-week stint selling shoes at Neiman Marcus in the late nineties, Marsha devoted her time to being a homemaker and a mother to the parties' two daughters. Marsha testified that other than the support she receives from Wesley, she has no sources of income.

¶ 10 Wesley is also a college graduate. At all times during the marriage, Wesley was employed as a financial advisor, first for Kidder Peabody and then for Smith Barney. In 2006, Wesley left his employment at Smith Barney and accepted a financial advisor position at Morgan Stanley. At Morgan Stanley, Wesley participated in an "employee transition program," or ETP, a type of compensation structure utilized in the financial services industry to recruit and retain employees. Pursuant to an ETP, an employee receives money at the time of hire based on recent revenue produced. The upfront payments are in the form of "loans" that are forgiven annually over an extended contract period. However, the loans are only forgiven as long as the recipient remains employed at the company throughout the contract term. If an employee leaves the company or dies, any outstanding loans must be repaid.

¶ 11 Through Morgan Stanley's ETP, Wesley received nearly $3 million in loans, which were forgivable over a five-year period. Wesley left Morgan Stanley in July 2011, after more than five years of service. Nevertheless, Morgan Stanley claimed that Wesley owed it $1.4 million because he had not worked long enough for all of his ETP loans to be forgiven. Morgan Stanley issued a tax form to Wesley for 2013, reporting that he had earned $520,000 that year, even though he had left the firm in 2011. The parties reported this income on their 2013 tax returns. In 2015, Wesley settled his dispute with Morgan Stanley via arbitration. Subsequently, Wesley

filed amended 2013 federal and state tax returns, through which he challenged the income from Morgan Stanley. If the amended returns are accepted by the taxing authorities, the parties will receive federal and state tax refunds for 2013 totaling $261,609.

¶ 12 Wesley began working for UBS in 2011. Before accepting the position with UBS, Wesley discussed with Marsha the move to the firm, including the compensation package, which had a commission component and an ETP similar to the one Wesley had at Morgan Stanley. When Wesley started working for UBS in 2011, he received a cash loan for $4,287,000, subject to an eight-year term (First ETP Loan). It followed that one-eighth of the First ETP Loan plus interest would be forgiven each year. The amount forgiven each year is treated as taxable income in the year it is forgiven, even though the actual $4,287,000 was paid in 2011. As was true with Morgan Stanley, loan forgiveness only occurs so long as Wesley's employment with UBS continues. In addition to the First ETP Loan, Wesley's compensation package with UBS gave him the potential to receive six more ETP loans based on performance levels, for a total of seven ETP loans by the fall of 2014. At the time of trial, Wesley had received all seven ETP loans as well as three "deferred cash awards." A deferred cash award is another form of incentive compensation at UBS, also paid in the form of a forgivable loan.

¶ 13 For each of the seven ETP loans and the three deferred cash awards, Wesley signed a promissory note, outlining the forgiveness schedule and interest rate for the particular loan or award (collectively, the Notes). Also, for each ETP loan, a corresponding "Transition Agreement" was executed, and in the case of the three deferred cash awards, "Deferred Cash Award Agreements" were signed (collectively, the Agreements). The Agreements outlined the annual schedule of taxable income that would be attributed to Wesley for the loan forgiveness each year under the various Notes. For example, with respect to the First ETP Loan, the first

annual loan payment of $535,925 plus interest from Wesley to UBS was due on July 11, 2012. On that same date, a corresponding payment was made to Wesley by UBS in an amount equal to the principal and interest of $638,822. These transactions are reflected on Wesley's form W-2 and earnings statement and UBS withholds money each month from Wesley's pay for the taxes on the income. Christiansen testified that these payments cost Wesley nothing because UBS gives Wesley the money with which he then pays his debt. Gould agreed that the Internal Revenue Code considers these transactions as a form of forgiveness of indebtedness, but noted that the tax obligation on the forgiven debt must be paid.

¶ 14 As of April 16, 2016, Wesley had received $8,653,383, pursuant to the 10 Notes. Pursuant to the Agreements, by the end of 2015, Wesley's remaining principal and interest on the Notes totaled approximately $5.2 million, which could be forgiven over the period between 2016 and 2022, until all 10 Notes (including the deferred cash awards) are forgiven. Gould estimated that the federal taxes due on the $5.2 million would be about $2.065 million. However, between January 2016 and September 2016, approximately $401,000 was withheld from Wesley's pay, resulting in a net remaining tax liability of $1.664 million. In addition, Gould estimated that the most UBS will deduct from Wesley's pay each month for taxes attributable to the debt forgiveness will be $44,500. Two of the 10 Notes will be fully forgiven by the end of 2018. Moreover, the debt forgiveness goes down substantially after 2019, when five notes are in the final year. After 2019, only three of the 10 Notes will remain to be amortized. Thus, the amount to be forgiven in 2019 will be $1,080,989, but in 2020, the amount goes down to $53,317. The last Note will be fully forgiven by the end of 2022. Wesley is not eligible for any further ETP loans from UBS, although he is still eligible for additional deferred cash awards.

¶ 15 At that time of the trial, Wesley managed money for 508 clients and had approximately $450 million in assets under his management. Wesley acknowledged that this figure is significantly higher than what it was when he joined UBS. Christiansen confirmed that at the time of trial, the assets under Wesley's management were more than double what they were when Wesley began to work for UBS. Moreover, Wesley had achieved the title of "managing director" at UBS, which is the highest title UBS can bestow upon him, and was a member of the Pinnacle Council. Christiansen noted that to be part of the Pinnacle Council, a financial advisor must have at least $3.5 million in commission business, have a clean compliance record, and be a good employee. Christiansen also testified that as of October 2016, Wesley's 12-month trailing commission is $900,000 more than it was at the time he joined UBS.

¶ 16 Although Wesley opined that he could not do his job for another 10 years because of the stress and his poor health, including high blood pressure, high cholesterol, and heart disease, Christiansen recounted that he had not had any conversations with Wesley regarding retirement. With respect to retirement, Wesley is eligible to participate in the UBS Aspiring Legacy Financial Advisor (ALFA) Program. Under the ALFA Program, a financial advisor who wishes to retire may transition his or her business to another financial advisor, while continuing to receive compensation for those accounts for up to five years, subject to certain conditions. The retiring financial advisor is considered active for the first two years under the ALFA Program, and for the remaining three years is deemed retired. During the two-year period of active service, the principal and interest due on the Notes per the Agreements continue to be forgiven. Once retired, a financial advisor's Note forgiveness ceases. Christiansen testified that a financial advisor may not enter the retirement portion of the ALFA period with any loans outstanding.

¶ 17 In his Cash Flow Report, Gould analyzed the parties' after-tax income and after-tax cash

flow for the years 2011 through 2015. Gould's analysis determined as follows:

Year	After-Tax Income	After-Tax Cash Flow
2011	$680,607	$6,462,266
2012	$1,209,285	$449,876
2013	$1,181,708	$1,650,671
2014	$1,1388,120	$1,602,732
2015	$1,603,556	$318,646
TOTALS	**$6,063,276**	**$10,484,192**

Gould explained that the cash flow was significantly higher in 2011 because Wesley received funds pursuant to the first tranche of ETP loans. That amount is incorporated into cash flow, but is not a taxable event at that time. Gould further explained that the cash flow in 2012 was only about $450,000 because the ETP loans received that year did not amount to a lot and the debt forgiveness process began for the ETP loans received in 2011. Discrepancies in after-tax income and after-tax cash flow in other years is due to the same reasons.

¶ 18 As reflected in federal tax returns, the parties' adjusted gross income (AGI) was as follows: (1) $1,846,390 in 2009; (2) $2,236,968 in 2010; (3) $971,388 in 2011; (4) $1,759,629 in 2012; (5) $1,523,024 in 2013 (as amended); and (6) $2,213,026 in 2014. Wesley testified that 2011 was the transition year when he left Morgan Stanley. In addition, Wesley filed an individual return in 2015, using the single filing status. The 2015 return includes an adjustment of $94,785 for alimony paid. Wesley's total income prior to the adjustment for alimony paid was $2,523,255.

¶ 19 During the marriage, the parties accumulated extensive real estate holdings. The parties purchased their first marital residence in the late eighties. In 2003, they purchased and tore down

an existing house on Garfield Street in Hinsdale, Illinois and built a new residence in its place (Hinsdale Residence). In August or September 2012, Wesley moved out of the Hinsdale Residence, which he had quitclaimed to Marsha in March 2012. Upon moving out of the Hinsdale Residence, Wesley purchased and moved into a condominium in Burr Ridge, Illinois (Burr Ridge Condominium). The parties stipulated to the value of the Burr Ridge Condominium at $320,000.

¶ 20 The parties' other real-estate holdings include a vacation home in Three Rivers, Michigan (Michigan Residence), a house on Corona Street in Denver, Colorado (Corona Street Residence), and a home in Marco Island, Florida (Marco Island Residence). The Michigan Residence was built in or about 2008. Marsha estimated the value of the Michigan Residence at $575,000. The Corona Street Residence was purchased in 2012 or 2013. One of the parties' daughters resides in the Corona Street Residence with her fiancé. The parties' stipulated to the fair market value of the Corona Street Residence at $750,000.

¶ 21 With respect to the Marco Island Residence, the parties had been scouting properties in Florida since approximately 2005, but did not purchase anything. In December 2012, Wesley purchased a vacant lot in Marco Island for approximately $610,000. After the parties' separation, Wesley hired an architect to design a house to build on the site, as well as a general contractor, Aqua Construction. Building began on the Marco Island residence in 2013, and Wesley received an occupancy permit for the residence in December 2014. Wesley purchased items of furniture and furnishings for the Marco Island residence. The Marco Island Residence has a mortgage of $1.4 million, $400,000 of which is outside the marital estate. When Wesley refinanced the loan on the Marco Island Residence, he signed a loan application listing the market value of the property at $2,585,000.

¶ 22 In September 2014, the parties sold the Hinsdale Residence for $2,037,500. At that time, Marsha moved into a rental condominium. The net proceeds of the sale of the Hinsdale Residence, which totaled $701,224.56, were deposited into Marsha's Resource Management Account at UBS (UBS Account 6200), which is titled solely in Marsha's name. However, without Marsha's knowledge or consent, Wesley transferred $650,574 from UBS Account 6200 into accounts titled exclusively in his name at UBS, including one of his individual retirement accounts (IRAs). Wesley informed Marsha that he used the money to purchase the Corona Street Residence, but that home was purchased several months before the sale of the Hinsdale Residence. Wesley later testified that he used a line of credit to purchase the Corona Street Residence, but used the proceeds from the sale of the Hinsdale Residence to pay off the line of credit.

¶ 23 When the trial commenced, Marsha resided in a home on Williams Street in Denver, Colorado (Williams Street Residence). The parties stipulated to the value of the Williams Street Residence at $1.14 million. Due to structural problems with the Williams Street Residence, in December 2016, during the trial, Marsha sold the property back to the builder for $1,202,500, and moved into an apartment.

¶ 24 Marsha has two vehicles, a white Porsche Cayenne and a Porsche 911 convertible, both of which were purchased for her by Wesley. During the marriage, Wesley purchased various vehicles, including a 2013 Toyota Camry, two Jeeps, and a 2015 Mercedes S550. In addition, the parties have a boat and several other watercrafts at the Michigan home. Marsha testified that Wesley has purchased her jewelry, including a diamond ring, pearls, a watch, and a diamond necklace. The parties also have various bank, investment, and retirement accounts as well as interests in five businesses: (1) Apriva, LLC; (2) Burr Ridge Bank & Trust; (3) Engagement

Health; (4) Quick Filter; and (5) TRB Bank Corp.

¶ 25 During the marriage, Marsha traveled extensively. Marsha vacationed internationally in places such as Africa, Greece, Israel, Hong Kong, Italy, Jamaica, Mexico, Japan, Turkey, Paris, London, and Canada. She also traveled domestically to various locations, including the Grand Canyon, Colorado (Beaver Creek and a "dude ranch"), Georgia (Sea Island), Florida, California, Michigan, Washington, Virginia, and North Carolina. The parties paid for members of their immediate and extended families to attend most of these trips. Sometimes Wesley would accompany Marsha; sometimes he would not.

¶ 26 During the trial, Wesley was questioned about the charges set forth in Gould's Spending and Supplemental Spending Reports. In the category for "Cash and ATM Withdrawals," there were hundreds of transactions from November 2010 through August 2016. The majority of these withdrawals came from Citibank account 7239. According to Wesley, both he and Marsha had the ability to withdraw funds from that account. Wesley could not remember the purpose for each cash withdrawal. However, he said that the cash withdrawals were made for his family, often at their request to pay for household help or whatever the children needed. Wesley denied that his cash withdrawals increased after the parties' marriage started breaking down.

¶ 27 Regarding the "Jewelry and Clothing" category, Wesley testified that he could not tell generally which of the expenditures he made. He admitted buying jewelry for Hunt: (1) a David Yurman bracelet, ring, necklace, and enhancer from Neiman Marcus in March/April 2014; (2) another David Yurman piece in January 2016; and (3) possibly a Christmas gift from Nordstrom on December 26, 2013. Wesley also purchased some clothing for himself at a Ralph Lauren Outlet Store and Gucci shoes. Apart from these few items, however, Wesley stated all expenses were incurred for his wife and daughters.

¶ 28 Regarding the "Unknown Transfers or Withdrawal" category, Wesley could not remember the payment of a loan from Bank of America or the details of why he paid funds to UBS, though he speculated UBS had demanded the funds due to an arrearage and that his failure to comply could have affected his employment. Wesley also confirmed that transfers to Chase Account 8957 were for Sara Jean Waggoner, whom he hired to assist in overseeing the construction of the Marco Island Residence. Wesley testified that a transfer to Emich Volkswagen for $25,959 was for the purchase of a vehicle for his daughter's fiancé, which was specifically requested by Marsha.

¶ 29 When questioned about the "Travel" category, Wesley explained that some of the travel expenses listed were for business purposes only and some were for other people, including his daughter's fiancé. There were charges in San Antonio, Texas, for a trip taken by Marsha and the children and charges for the Marco Island Marriott. Wesley admitted that Hunt had traveled with him to Florida on occasion, approximately three times in 2013 and 2014, and that they stayed at the Ritz Carlton. Hunt also accompanied Wesley on two visits to see his mother, who lives in a Macon, Georgia nursing home. While there, they stayed at a Homewood Suites. Wesley testified that he usually paid for Hunt's airfare, but there was no additional charge for having her stay with him at the hotels. Wesley further testified that Hunt accompanied him on some work trips, including a UBS Pinnacle Council meeting in Geneva, Switzerland, and to Santa Barbara, California, for a wine festival sponsored by UBS. With respect to the business trips, Wesley testified that some of the charges for Hunt were reimbursed and others were not.

¶ 30 Wesley was also questioned about the expenses in the "Uncategorized" section. He identified payments related to his employment, such as payments to an event coordinator and for the sponsorships of events and for construction of the Marco Island Residence, *e.g.*, closing

costs, tile, lighting fixtures, electrician, pool cover and repair, landscaping, architect, repair of columns on the residence and the installation of new gutters. Wesley explained that one of the charges was for his tennis club, another was for his boat insurance, and one was for a boat tow. Wesley recalled providing funds to Waggoner totaling $17,350 to help pay for medical treatment. This category also contained approximately $3200 in charges on the Discover card, which Wesley stated was used exclusively by Marsha.

¶ 31 Finally, Wesley addressed expenditures in the "Other" category, *i.e.*, the $812,154 on autos and boats and the $162,249 on decorating and home furnishings. Included in the "Autos and Boats" section were two cars—a 2013 Kia Optima for $11,214 and a 2012 Chevy Cruze for $16,000 that Wesley had purchased for each of his long-term secretaries. When questioned about the decorating and home furnishings expenditures, Wesley recounted that payments to Weber Design Group, Interior Expressions, Custom Closets and More, Superior Stone, and Aloha Pool and Spa were for fixtures or construction services for the Marco Island Residence. Wesley testified that other expenses listed in the "Other" category, including payments to Room & Board, Art & Frames, Terri Tito, Rainmakers, and Pottery Barn, were made by, or for, others.

¶ 32 Marsha was questioned about cash withdrawals she made from August 2012 through November 2014 as set forth in Wesley's Notice of Dissipation Claim. Marsha could not explain how she spent four checks written to "cash" in 2012 totaling $85,020. Marsha also could not account for $208,500 in cash that she withdrew in 2013, and $482,500 in 2014, other than to say it most likely went into her checking account and from there was used for her expenses. Marsha could not identify the purpose of most of the expenditures made from her checking account. For instance, when asked what she bought from Neiman Marcus on March 14, 2012, for $1073 and for whom, she responded, "[s]omething that Neiman Marcus sells," and used that response

repeatedly throughout her testimony. Marsha could not remember how she spent her ATM cash withdrawals and claimed that her spending of cash had not changed significantly over the past 10 years. From December 2009 through September 2016, Marsha spent the following amounts from her checking account in each approximate calendar year: (1) 2010-$149,506; (2) 2011-$336,929; (3) 2012-$259,199; (4) 2013-$247,121; (5) 2014-$546,816; (6) 2015-$509,665; and (7) 2016 through September-$209,280.

¶ 33 Marsha testified that Wesley transferred funds out of her account without her permission. In 2014, for instance, Wesley transferred over $1 million out of Marsha's UBS Account 6200, funds Marsha did not have access to after the withdrawals were made by Wesley. Marsha testified that she pays her utility bills, credit card bills, grocery bills, grooming expenses, property taxes, veterinarian bills, attorney fees, country club dues, and out-of-pocket medical expenses for her daughters from her Chase account. Marsha has also transferred funds to her daughters from the Chase account. Marsha testified that she also withdrew cash from the Chase account which she uses to pay the cleaning person and landscaper, dry cleaning, pharmacy, and gas station. Marsha admitted that during the time period from December 2009 through September 2016, she did not make any mortgage payments, car payments, or health-insurance payments, and she did not pay for the majority of any real estate taxes. Marsha testified that her monthly expenses have decreased since she completed her November 2014 financial disclosure, from about $32,000 a month to about $27,000 per month. Marsha testified that the items she purchased at the department stores varied and included clothing, shoes, accessories, cosmetics, fragrances, lingerie, and linens. Marsha also testified that she returned "a lot" of the items she purchased because she does not like to try on clothing at stores.

¶ 34 On May 31, 2017, the trial court rendered its judgment in open court. Initially, the court

determined that Wesley had dissipated more than $665,000 over the six categories of spending identified by Gould in his reports. The first category, expenditures for Hunt and her family members, totaled $40,426. As to the second category, cash withdrawals and disbursements, the court found that cash withdrawals of $500 per week represented a reasonable expenditure for Wesley's personal, family, and business expenses, so that additional withdrawals above that amount, *i.e.*, $214,193, constituted dissipation. With respect to the third category, jewelry and clothing purchases, the court found that Wesley had dissipated $156,732. The court excluded from the third category non-regular, periodic purchases for the parties' daughters, reasoning that the parties regularly purchased presents and gifts for their daughters throughout the marriage such that similar activity during the breakdown was not contrary to the marital purposes established by the parties and the agreed standard of living. In the fourth category, unknown transfers and withdrawals, the court found that Wesley had dissipated $104,735. As for the fifth category, the court found that Wesley had dissipated $30,500 in travel with Hunt. Finally, as for the sixth category, uncategorized expenses, the court found that Wesley had dissipated $118,998 in assets. In addition, the court found that the following expenditures by Wesley constituted dissipation: (1) the purchase of two cars for his secretaries in the amount of $27,214; (2) proceeds from the sale of a 2015 Porsche in the amount of $50,000; and (3) proceeds from the sale of three motorcycles in the amount of $10,000. The aggregate value of the assets dissipated by Wesley was $752,438. The court found no dissipation on the part of Marsha.

¶ 35 The trial court awarded Wesley as his non-marital property, an escrow account held by his attorney. The trial court awarded Marsha the following assets as her non-marital property: (1) jewelry received as gifts during the marriage; (2) furniture gifted to her or inherited from her parents and grandparents; (3) a 2012 Porsche 911; (4) a grandfather clock; and (5) a chandelier.

The trial court did not assign a value to any of the assets in the parties' non-marital estates except for the 2012 Porsche 911, which it valued at $40,000.

¶ 36 In determining the disposition of the marital property, the court considered the factors set forth in section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d) (West 2016)). Among other things, the court found: (1) Wesley has a far greater ability than Marsha to acquire capital assets and income in the future given his position as a financial advisor; (2) both parties contributed towards the acquisition and preservation of the assets throughout the marriage, with Wesley being the primary wage earner while Marsha was a homemaker who stayed at home, primarily raising the parties' children and supporting Wesley in his professional growth; (3) both parties will be in a relatively strong economic position when the division of property becomes effective given the extent of the marital estate; (4) neither party has a significant advantage over the other with respect to age or health; and (5) Wesley has greater employment skills and employability. In addition, the court noted that "there are certain tax consequences in play *** in that a significant portion of the distributable assets will be in retirement accounts." The court found that while Marsha "cannot reach the [retirement] accounts without significant penalty," Wesley "would not have to pay a penalty for distribution from the retirement accounts." Ultimately, the court concluded that a disproportionate split of the marital assets is equitable under the circumstances. The trial court divided the marital estate into the following categories: (1) cash and equivalents; (2) investment accounts; (3) retirement accounts; (4) business interests; (5) real property; (6) vehicles and other personal property; (7) insurance policies; (8) dissipation; (9) receivables and other assets; and (10) predistributions. The court allocated the marital estate as follows[1]:

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[1] In addition to the values set forth in the table, certain assets in the "retirement accounts"

Category	Total Value	Allocated to Marsha	Allocated to Wesley
Cash and Equivalents	$42,502	$31,045	$11,457
Investment Accounts	$37,649	$31,701	$5,948
Retirement Accounts	$4,798,100	$4,030,903	$767,197
Business Interests	Divide in Kind	60%	40%
Real Property (net values)	$4,370,000	$2,465,000	$1,905,000
Vehicles and Other Personal Property	$738,987	$74,500	$664,487
Insurance Policies	Unvalued	--	--
Dissipation	$752,438	--	$752,438
Receivables and Other Assets	$327,503	--	$327,503
Predistributions	$724,000	$724,000	--

Thus, the trial court valued the marital estate at $11,791,179, and awarded Marsha 62.40% of the marital estate (valued at $7,357,149) and Wesley 37.6% of the marital estate (valued at $4,434,030).

¶ 37 The court found that the primary indebtedness of the parties is the loan balances to UBS as a result of the Notes related to Wesley's employment. The court found that this indebtedness constituted "contingent indebtedness" with "the exact outstanding balance [dependent] on

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and "vehicles and other personal property" categories were divided in kind 60% to Marsha and 40% to Wesley. Moreover, one asset in the "receivables and other assets" category was divided in kind 50% to Marsha and 50% to Wesley. Finally, of the $738,987 in assets categorized as "Vehicles and Other Personal Property," the court noted that there were stipulations or prior dispositions totaling $429,238 and held that the fair market value of the remaining unstipulated personal property and vehicles was $279,749.

Wesley's employment with UBS." The court further found that the indebtedness is "affected by the ALFA program which will reduce the indebtedness to UBS for these loans in the event of Wesley's retirement." Accordingly, the court assigned to Wesley "any and all indebtedness to UBS as a result of the outstanding loans through his employment with UBS." The court noted that a tax liability accrues each time a loan is forgiven. The court assigned this tax liability to Wesley subject to an offset in relation to the calculation of maintenance as discussed below.

¶ 38 With respect to maintenance, the trial court considered all relevant factors in section 504(a) of the Act (750 ILCS 5/504(a) (West 2016)) and concluded that an award of maintenance was appropriate, but that the statutory guidelines as to the amount and duration of maintenance were not applicable. Ultimately, the court ordered Wesley to pay Marsha maintenance of $15,000 per month. In addition, the court ordered Wesley to pay Marsha additional maintenance equal to 40% of his annual gross income over $450,000. The court permitted Wesley to deduct amounts withheld by UBS for the tax liability incurred for forgiveness of the Notes when calculating his gross income. In support of the maintenance award, the court made the following findings: (1) each party would receive significant assets from the distribution of the marital estate, but many of the assets received by Marsha would be in the form of retirement accounts or real estate, "neither of which is liquid, particularly given Marsha's age and adverse tax consequences from liquidating retirement accounts;" (2) Marsha has not been employed outside of the home for a significant period of time and spent the majority of the marriage performing family duties, taking care of the parties' children, and supporting Wesley in his professional endeavors; (3) Marsha does not have a realistic capacity in earning any significant income; (4) the parties had been married for over 27 years at the time the dissolution petition was filed; (5) the parties "enjoyed a significant lifestyle which could be described as opulent;" (6) both parties

are in relatively good health; and (7) Wesley is 62 years old and "may be nearing retirement, [but] he is *** fully employed, and there was no credible evidence indicating that there were plans to retire at any time in the near future." The court further ordered that Wesley's obligation to pay maintenance to Marsha is modifiable and terminable pursuant to the statutory criteria set forth in the Act.

¶ 39 Finally, the court addressed the issue of Marsha's petition for contribution to attorney fees. The court found that Wesley failed to disclose significant assets throughout the pendency of the case and engaged in a pattern of conduct in an attempt to evade or hide the nature and extent of certain assets, all of which made discovery more complicated and extensive and unnecessarily increased the time and cost of the case. The court considered the evidence presented, including the billing statements, and its own knowledge of the facts presented throughout the case, and determined that 1225 hours billed by Marsha's attorneys were unnecessarily spent as a result of Wesley's conduct. Contribution was then awarded at a rate of $400 per hour for the 1225 hours. The court held that Wesley was required to contribute $490,000 to Marsha's fees pursuant to section 503(j) of the Act (750 ILCS 5/503(j) (West 2016)).

¶ 40 On July 17, 2017, the trial court entered its written judgment of dissolution. On July 31, 2017, Wesley filed a notice of appeal from the trial court's ruling.

¶ 41 II. ANALYSIS

¶ 42 A. Allocation of Marital Estate

¶ 43 On appeal, Wesley initially contends that the trial court abused its discretion in allocating the parties' marital assets and liabilities because it results in "gross economic disparity post-divorce" while "creat[ing] an illusion of parity." Parity, however, which is defined as "[t]he

quality, state, or condition of being *equal*" (Emphasis added.) (*Black's Law Dictionary* (11th ed. 2019)), is not the statutory standard. Rather, section 503(d) of the Act (750 ILCS 5/503(d) (West 2016)) requires the trial court to divide marital property in "just proportions," considering the relevant factors set forth in the statute. Hence, the touchstone of the allocation of marital property is whether it is equitable in nature. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 121. An equitable division does not mean an equal division, and each case rests on its own facts. *Romano*, 2012 IL App (2d) 091339, ¶ 121; *In re Marriage of Miller*, 112 Ill. App. 3d 203, 207 (1983) (noting that the Act does not require that marital property be divided equally between the parties). As such, one spouse may be awarded a larger share of the assets if the relevant factors warrant such a result. *Romano*, 2012 IL App (2d) 091339, ¶ 121.

¶ 44 As the trier of fact, the trial court's credibility determinations are given great deference and there is a strong presumption that the trial court made the proper decision. *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641 (1997). We apply the manifest-weight-of-the-evidence standard to the trial court's factual findings as to each section 503(d) factor, but the abuse-of-discretion standard in reviewing the trial court's final property division. *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 205 (2005). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding is arbitrary, unreasonable, or not based upon the evidence. *Romano*, 2012 IL App (2d) 091339, ¶ 86. A trial court abuses its discretion only if no reasonable person would have divided the property in the same manner as the trial court. *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 183 (2002).

¶ 45 As noted above, the trial court, excluding assets divided in kind, valued the marital estate at $11,791,179. The court concluded that a disproportionate split of the marital assets was equitable under the circumstances and the trial court awarded Marsha property totaling

$7,357,149, or 62.4% of the marital estate, and Wesley property totaling $4,434,030, or 37.6% of the marital estate. Wesley challenges the trial court's allocation, raising several sub-issues, challenging: (1) the allocation of outstanding forgivable "loans" and related taxes; (2) the award of certain receivable assets to him; (3) the treatment of certain pretrial orders related to his payment of Marsha's interim attorney fees and certain taxes; (4) the court's understanding of the Internal Revenue Code with respect to the taxation of retirement assets; and (5) the finding that he dissipated more than $750,000 in marital assets. We address each sub-issue below.

¶ 46 1. Loans and Related Tax Liability

¶ 47 As noted above, the trial court found that the primary indebtedness of the parties is the loan balances to UBS as a result of the Notes related to Wesley's employment. The court assigned to Wesley "any and all indebtedness to UBS as a result of the outstanding loans through his employment with UBS." The court also noted that a tax liability accrues each time a loan is forgiven. The court assigned this tax liability to Wesley subject to an offset in relation to the calculation of maintenance. Wesley disputes the allocation of the Notes and the associated tax liability.

¶ 48 Initially, Wesley contends that it was an error for the trial court to allocate 100% of the Note-related debt to him given that both parties enjoyed the proceeds of the Notes. Marsha counters that Wesley's claim is without merit because the "so-called 'loans' owed to UBS are *** illusory, simply being a technique used for his employment compensation."

¶ 49 We agree with Marsha that the indebtedness Wesley owes to UBS is illusory because so long as he remains employed, he owes only the taxes on the loans as they are forgiven. In this regard, the record establishes that pursuant to the employment agreement between Wesley and UBS, each Note represents a "loan" with a specific schedule of repayment due dates and the

yearly principal amounts Wesley is to "pay" UBS plus interest. The repayment schedule in the Note corresponds to a separate schedule of payments UBS is to pay Wesley as set forth in the associated Transition or Deferred Cash Agreement. Thus, the payments effectively cancel each other out. Christiansen confirmed that these "loan" payments cost Wesley nothing, because UBS gives Wesley the money with which he then pays the debt. Likewise, Gould agreed that the Internal Revenue Code considers these transactions as a form of forgiveness of indebtedness, but noted that the tax obligation on the forgiven debt must be paid.

¶ 50 Even if Wesley were to retire, under UBS's ALFA Program, his first two years of retirement would count as active service such that the ETP and Deferred Cash loans that he has outstanding would be forgiven for those two years. For this reason, the trial court recognized that the indebtedness arising from the Notes "is affected by the ALFA program which will reduce the indebtedness to UBS for these loans in the event of Wesley's retirement." Wesley disputes this statement from the trial court, asserting that "*nothing* could defray the amounts owed under the Notes except years of active service to UBS through 2022." However, the trial court's statement was simply an acknowledgment that should Wesley participate in the ALFA program, there would be an impact on the indebtedness. This was confirmed by the testimony at trial as detailed above. Accordingly, the trial court did not err in assigning the Note-related "indebtedness" to Wesley. However, even if we were to conclude that the "loans" were not illusory, there is an independent basis supporting the decision of the trial court.

¶ 51 Significantly, we note that case law provides that "[w]here one party is substantially responsible for the creation of the debt and has a substantially greater capacity to earn money, it is not an abuse of discretion for the trial court to assign the overwhelming majority of debt to that party." *In re Marriage of Werries*, 247 Ill. App. 3d 639, 649-51 (1993). The trial court clearly

found this to be the case here. As noted, the court found that the primary indebtedness of the parties was the loan balances to UBS as a result of the Notes related to Wesley's employment. Further, the court found that Wesley has greater employment skills and employability than Marsha and that he has a far greater ability than Marsha to acquire capital assets and income in the future. These findings by the trial court are supported by the evidence of record. At the time the trial commenced, Marsha was 55 years old and Wesley was 62 years old. During the marriage, Marsha devoted her time to homemaking, raising the parties' two daughters, and supporting Wesley's professional growth. Marsha has a bachelor's degree in English, but, other than a part-time, six-week stint selling shoes in the late nineties, she has not worked outside of the home since 1991 and her highest annual salary was $33,000. In contrast, Wesley has been a successful financial advisor since the start of the marriage. At that time of the trial, Wesley managed money for 508 clients and had approximately $450 million in assets under his management. This was twice the amount of assets under Wesley's management at the time he joined UBS. Moreover, as of October 2016, Wesley's 12-month trailing commission was $900,000 more than it was at the time he began working for UBS. In addition, Wesley achieved the title of "managing director" at UBS, which is the highest title UBS can bestow upon him, and was a member of the Pinnacle Council, signifying that he had at least $3.5 million in commission business. Hence, the trial court's findings that Wesley has greater employment skills, employability, and ability to acquire capital assets and income than Marsha are well supported by the record and are not against the manifest weight of the evidence. As such, it was not an abuse of discretion for the trial court to assign any indebtedness associated with the Notes related to Wesley's employment to Wesley.

¶ 52 Relatedly, Wesley also contends that it was error for the trial court to make him

"exclusively responsible" for the tax liability arising from the forgiveness of the Notes. In support of his argument, Wesley asserts that Marsha should share the tax burden associated with the forgiveness of the Notes because she enjoyed use of the loan proceeds during the marriage and received "a disproportionate share of assets deriving therefrom as a result of the judgment." We disagree with Wesley's contention that Marsha does not share in the tax burden associated with the forgiveness of the Notes. With respect to this matter, the judgment of dissolution provides that "[t]he tax liability [that] accrues each time a loan is forgiven *** is likewise assigned to Wesley, *subject to an offset* for some of the tax liability actually incurred as set forth *** in Article II, Paragraph d." Article II(d) concerns maintenance. It states that for purpose of the maintenance to be paid to Marsha, "Wesley may deduct from his gross income, his income tax obligations that he actually pays arising due to loans forgiven by his employer that were received by Wesley prior to January 1, 2015, as well as loan proceeds that were shared with Marsha pursuant to [a] January 8, 2015 Court Order that were subsequently forgiven and upon which Wesley paid taxes." Thus, although the court assigned the tax liability to Wesley, it also ordered that it be "subject to an offset" against the computation of maintenance to be paid to Marsha. Accordingly, Marsha does share in the tax burden associated with the forgiveness of the Notes.

¶ 53 Alternatively, Wesley complains that the deduction for maintenance only burdens Marsha with 40% of the tax liability. Wesley asserts that this is inconsistent with the court's stated intent to divide the marital estate approximately 60% to Marsha and 40% to him. However, as Marsha correctly notes, the court did not treat future taxes on future deferred income as a liability in the property settlement. Instead, it treated this as an income issue—that is, the deferred income arising from the annual forgiveness accompanies the deferred tax liability. Thus, Wesley may

annually deduct that deferred tax liability from his gross income before paying 40% to Marsha as maintenance, and keeping 60% of his income after maintenance. For the foregoing reasons, we find no abuse of discretion in the trial court's ruling on this issue.

¶ 54 2. Receivables

¶ 55 We next address Wesley's claim that the trial court erred by awarding him "phantom" receivables of $327,503 that are "contingent, nonexistent or valueless." Specifically, Wesley challenges the allocation to him by the trial court of: (1) a loan to his brother, David Tate, for $10,000; (2) a receivable of $6773 for a pool cover for the Marco Island Residence; (3) refunds totaling $261,609 from the parties' 2013 amended federal and state income tax returns; and (4) a $49,121 tax refund from the parties' 2015 state income tax return.

¶ 56 With respect to the receivable to David Tate, Wesley initially denied making a $10,000 loan to his brother. However, after being confronted with his deposition testimony, Wesley acknowledged that he had given David $10,000. Wesley's deposition testimony indicated that the check was a "pre-distribution" of David's future inheritance from the brothers' parents. Wesley further indicated in his deposition testimony that there was an understanding that when the last surviving parent dies, Wesley would receive $10,000 from David's share of the inheritance. Based on this evidence, it was reasonable for the trial court to treat this transaction as a receivable to Wesley, and we find no error.

¶ 57 As for the pool cover, Wesley testified that in November 2013, he wrote a check to Vincent Flugella, Jr., LLC in the amount of $6733 for an automatic pool cover for the Marco Island Residence. The pool cover was never installed. The trial court awarded this to Wesley as a receivable. Citing his trial testimony, Wesley asserts that the pool cover will be installed and that he will not receive a refund for these funds. Even if true, Wesley received the pool cover at

cost. As such, the trial court did not err in allocating this asset to Wesley as his share of the marital property.

¶ 58 Wesley's next two arguments concern the status of certain income tax refunds. Wesley's first argument involves the trial court's allocation to him of tax refunds totaling $261,609 from the amendment of the parties' 2013 federal ($232,967) and state ($28,642) tax returns. Regarding these amendments, the record establishes that after Wesley left Morgan Stanley in 2011, the firm claimed that Wesley owed it $1.4 million because he had not worked long enough for all of his ETP loans to be forgiven. Morgan Stanley issued a tax form to Wesley for 2013, reporting that he had earned $520,000 that year, even though he had left the firm in 2011. This income was included on the parties' 2013 income tax returns. In 2015, Wesley settled his dispute with Morgan Stanley via arbitration. Wesley contacted Cencig late in 2015 to amend the 2013 returns to remove the income reported on the tax form issued by Morgan Stanley in 2013. The amended tax returns used Wesley's Burr Ridge address for the refunds. Cencig testified that he knew that the parties were divorcing at the time he prepared the amended returns, but did not speak to Marsha directly about them. Because amended returns cannot be electronically filed, Cencig mailed them to Wesley with instructions that two signatures were required. Cencig was not aware whether Marsha saw the amendments or signed them. Cencig testified that Wesley asked him when he could "expect a refund." Cencig responded that it would "take a long time," he would not be surprised if the amendments generate "a notice first," and that the refunds would probably not issue "automatically."

¶ 59 Wesley argues that the trial court erred in allocating to him the $261,609 in tax refunds from the parties' 2013 amended tax returns because "the potential refund [*sic*] can only be considered a contingent receivable." In support of his claim that the refunds are contingent,

Wesley notes that, as of the trial, the amended returns had yet to be accepted by the taxing authorities and that Cencig testified that "it is unlikely that the parties will automatically receive a refund check." Marsha disputes that this is a contingent asset, reasoning that both Wesley and Cencig believed that Wesley was entitled to this refund and signed the amended return based on their beliefs. "Contingent" is defined as something that is "[p]ossible; uncertain; [or] unpredictable." *Black's Law Dictionary* (11th ed. 2019). Regardless of whether Wesley and Cencig "believed" that the tax refunds were forthcoming, the fact of the matter is they had not been received at the time the trial court made the allocation. Indeed, as Cencig noted, the refunds would not likely be "automatic[]" and would probably generate a notice from the taxing authorities. We agree that until the taxing authorities actually issue the refunds, their value remains highly speculative. See *In re Marriage of Zells*, 197 Ill. App. 3d 232, 237, *affirmed in part and reversed in part*, 143 Ill. 2d 251 (1991) (concluding that the husband's contingent legal fees were not properly considered asset of either marital estate, or of law practice from which it is derived, because contingent fee represents merely an unenforceable expectation of future income). Under these circumstances, we agree with Wesley that the amount of the refunds, if any, were uncertain and unpredictable, and therefore contingent. We therefore remand the matter for a reallocation in light of this finding. Nevertheless, we point out that income tax refunds and liabilities based upon income during the marriage are marital property even if the refund is not received or the liability assessed until after the marriage is dissolved. *In re Marriage of Charles*, 284 Ill. App. 3d 339, 345-46 (1996) (tax liability); *In re Marriage of Orminston*, 168 Ill. App. 3d 1016, 1018-19 (1988) (tax refund). Thus, to the extent that the taxing authorities have addressed the status of the 2013 amendments by the time of remand, the trial court should revisit this issue.

¶ 60 Wesley also challenges the court's allocation to him of the 2015 Illinois state tax refund of $49,121 as a receivable. The record shows that Wesley filed 2015 federal and state income tax returns using the single filing status and took an adjustment for maintenance paid to Marsha. Wesley had not received a refund from his state return at the time the judgment was entered. The trial court found that it was improper for Wesley to file the 2015 returns using the single filing status because the parties were neither legally separated nor divorced in 2015 and the support payments ordered had not yet been determined to be deductible by the payor. The court further found that Wesley intentionally filed the 2015 return without notifying Marsha notwithstanding the parties' prior practice of filing joint returns. As a result, the court ordered the parties to prepare an amended tax return with any additional tax obligation incurred as a result of the amended filing assigned to Wesley. Wesley asserts that the trial court erred in allocating the 2015 Illinois state income tax refund to him as a receivable because it was not offset by any future tax liability arising from any future amendments. Marsha responds that Wesley's argument is purely speculative as there is no evidence of future tax liability. However, as Marsha acknowledges Cencig did prepare draft joint 2015 federal and state income tax returns. Those drafts reflect smaller refunds than the returns filed by Wesley as a single taxpayer. Thus, any tax refund or liability associated with the 2015 returns is also a contingent receivable. We therefore remand the matter for a reallocation in light of this finding. Nevertheless, as with the 2013 amendments, to the extent that amended returns have been filed for 2015 and the taxing authorities have addressed the status of the 2015 amendments by the time of remand, the trial court should revisit this issue.

¶ 61 In short, we reject Wesley's claim that the trial court improperly allocated to him as a receivable, the loan to his brother for $10,000 and the $6973 cost of the pool cover for the Marco

Island Residence. We agree, however, that, under the factual scenario present here, the assignment of the tax refunds was error and requires a remand for reallocation.

¶ 62 3. Pretrial Orders

¶ 63 Wesley also raises three claims of error alleging the trial court failed to consider the impact of certain pretrial orders on the marital balance sheet. First, Wesley contends that although the court required him, pursuant to section 503(j) of the Act (750 ILCS 5/503(j) (West 2016)), to contribute $490,000 from his share of the marital estate to Marsha's attorney fees, it "overlooked" its prior allocation to Marsha of $400,000 in marital funds as a predistribution for the payment of fees. According to Wesley, 40% of these funds belonged to him. Thus, he reasons, the aggregate effect of the court's ruling increased his contribution to Marsha's fees by an additional $160,000 from the ordered $490,000 to $650,000. Wesley requests that the contribution order be reduced by $160,000, from $490,000 to $330,000. We find this argument unpersuasive.

¶ 64 The $400,000 predistribution of marital property at issue was an interim fee award charged entirely against Marsha's share of the marital estate pursuant to section 501(c-1)(2) of the Act (750 ILCS 5/501(c-1)(2) (West 2016)). Wesley does not cite any authority that he is entitled to any particular share of prejudgment assets. In fact, the only authority Wesley cites in support of his argument is *Charles*, 284 Ill. App. 3d 339. According to Wesley, the *Charles* court "found that the trial court had erred by ordering that marital assets be used to pay the husband's legal fees because it essentially required the wife to contribute to the husband's legal fees." We disagree. In *Charles*, the reviewing court held that the trial court erred in ordering that liquidated marital assets be used to pay the husband's attorney fees where the record established that the husband had the ability to pay his own attorney fees. *Charles*, 284 Ill. App.

3d at 346. Wesley does not explain how this factual scenario applies here. Thus, we find Wesley's reliance on *Charles* misplaced, and we reject his argument on this issue.

¶ 65 Wesley also claims the trial court failed to allocate certain marital tax liabilities that had been reserved, including: (1) $109,664 paid from Wesley's non-marital funds which the trial court ordered be applied to the parties' 2016 tax liability and (2) the tax liability that resulted from predistributions from Wesley's IRA before trial.

¶ 66 Regarding the 2016 tax-liability issue, the record shows that on October 13, 2016, Wesley filed an "Emergency Motion to Compel Refinance and for Other Relief," in which he requested to refinance the mortgage on the Marco Island Residence. Wesley proposed a refinance loan amount $400,000 greater than the previous loan amount, with the additional $400,000 used to pay support to Marsha, bills, and costs associated with the dissolution action, and stated that he would "assum[e] full responsibility for the additional $400,000." The trial court granted Wesley's emergency motion, ordering the funds held in escrow in the trust account of Wesley's attorney until further order of the court. After trial, Wesley filed a "Motion for Release of Funds." In the motion, Wesley asserted that of the $400,000 loan increase, he received funds in the amount of $376,351 and that pursuant to court orders in December 2016 and April 2017, certain funds were released, leaving a balance of $109,667 in escrow. Wesley requested an additional release of funds "for the purposes of paying the parties' 2016 income tax obligation" in order to partially satisfy an "estimated outstanding 2016 federal income tax liability of $151,782." In an order dated April 18, 2017, the trial court granted the motion in part "with the restriction that the funds deposited with the IRS for payment of 2016 taxes will be deposited on behalf of both parties, listing both parties' social security numbers and names" and reserving "[t]he issue of how the 2016 estimated taxes will be applied." Wesley reasons that he

should not be required to use his non-marital assets to pay the 2016 federal tax liability because both parties benefited from the use of the 2016 income and the tax liability is a marital debt. Marsha responds that this issue was "correctly resolved" because Wesley chose to use the proceeds from the loan to pay the 2016 income taxes with the specific understanding that he was not to be paid back for any part of that loan. However, the court specifically reserved "the issue of how the 2016 estimated taxes will be applied," and neither party directs us to any place in the judgment of dissolution or elsewhere in the record where this matter was resolved. Accordingly, we agree with Wesley that because the 2016 income tax liability, if any, is marital debt (see *Charles*, 284 Ill. App. 3d at 345-46), and the trial court reserved the allocation of the 2016 tax liability, its failure to address it was error and requires a remand.

¶ 67 With respect to any tax liability that resulted from predistributions from Wesley's IRA before trial, the record discloses the following. On June 13, 2016, the trial court entered an order awarding Marsha $400,000 in interim attorney fees and expert fees. On August 9, 2016, the trial court entered an "Agreed Order" providing that $200,000 of the interim fee award shall be paid from Wesley's UBS IRA account ending in 0779 and that the balance of the interim fee award shall be paid from "the UBS IRA account ending in 0779 or from another source." In addition, the August 9, 2016, order reserved "[t]he issue of the allocation of any tax liability arising out of the IRA withdrawals" and required Wesley to "provide evidence of the source of payments." Wesley now argues that despite its reservation of this issue, the trial court failed to allocate the tax liability resulting from the $400,000 predistribution. Marsha does not dispute that the trial court failed to allocate this tax liability, but contends that it was Wesley's own choice to pay the interim fee award from IRA assets so as to "maintain his pretense of illiquidity." However, the agreed order required that $200,000 of the interim fee award shall be paid from the IRA.

Moreover, we agree with Wesley that it was error for the trial court to reserve the issue of the allocation of any tax liability arising out of the IRA withdrawals and not address it in its judgment, especially given that the August 9, 2016, order was an agreed order. We remand the matter to the trial court for a determination as to what portion of the $400,000 interim fee award was paid with IRA withdrawals, the amount of any tax liability as a result thereof, and the allocation of the tax liability.

¶ 68 In short, we conclude that the trial court did not "overlook" its prior allocation to Marsha of $400,000 in marital funds as a predistribution for the payment of fees. However, we agree with Wesley that the trial court's treatment of certain pretrial orders related to the parties' income taxes returns was improper and requires a remand.

¶ 69 4. Internal Revenue Code

¶ 70 Next, Wesley argues that the court's allocation was based on an inaccurate understanding of the Internal Revenue Code (Code). As part of its consideration of the section 503(d) factors, the trial court considered that "a significant portion of the distributable assets" awarded to Marsha will be in retirement accounts which Marsha could not access "without significant penalty and the payment of taxes." See 750 ILCS 5/503(d)(12) (West 2016) (listing the tax consequences of the property division as a factor to consider in dividing marital property). The court acknowledged that Wesley will have to pay taxes on distributions from the retirement accounts, but would not have to pay a penalty. Ultimately, the court awarded Marsha $4,030,904 in retirement assets while Wesley was awarded $767,197. Wesley contends that the trial court was mistaken as to the tax consequences to Marsha as she could have "immediate access to the retirement income without penalty as a matter of law."

¶ 71 Section 61(a) of the Code provides that "gross income means all income from whatever

source derived." 26 U.S.C. § 61(a) (2016). Thus, as a general rule, distributions from a qualified retirement plan are includible in gross income by the payee. 26 U.S.C. §§ 61(a), 72, 408(d)(1), 4974(c) (2016); see also *Arnold v. Commissioner of Internal Revenue*, 111 T.C. 250, 253 (1998). Moreover, a taxpayer who receives a distribution from a qualified retirement plan prior to the date upon which he or she attains the age of 59½ is, with certain exceptions, subject to an additional tax of 10% computed on "the portion of such [distribution] which is includible in gross income." 26 U.S.C. §§ 72(t)(1), (2)(A)(i) (2016). Marsha was 56 at the time of the judgment and therefore would be subject to the 10% additional tax until such time as she attained age 59½. Thus, the trial court properly determined that Marsha's property award would be adversely impacted due to it consisting largely of untaxed retirement funds.

¶ 72 Nevertheless, Wesley notes that there are exceptions to the 10% additional tax, including one under section 72(t)(2)(A)(iv) of the Code (26 U.S.C. § 72(t)(2)(A)(iv) (2016)) for situations in which the distributions are "part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee." Wesley asserts that Marsha could have immediate access to the retirement income without penalty by invoking this exception to the additional tax. Thus, he asserts, it was error for the trial court to use the imposition of the additional tax as a basis to provide Marsha with a disproportionate share of marital assets or the majority of the retirement assets. Contrary to Wesley's claim, the tax-planning technique he suggests is not the "immediate access without penalty" claimed by Wesley as it would require Marsha to establish a plan to annually withdraw cash installments, with the amount dependent on her life expectancy. As such, we reject Wesley's claim that the court's allocation was based on an inaccurate understanding of the Code.

¶ 73 5. Dissipation

¶ 74 Dissipation is one of the factors in section 503(d) of the Act that a trial court must consider in allocating marital property equitably in just proportions. 750 ILCS 5/503(d)(2) (West 2016); *In re Marriage of Schneeweis*, 2016 IL App (2d) 140147, ¶ 33. As noted above, the trial court concluded that Wesley dissipated $752,438 of the marital estate, but found no dissipation on the part of Marsha. Wesley challenges the trial court's dissipation findings on various grounds. Initially, Wesley challenges the timing of Marsha's dissipation claim.

¶ 75 Section 503(d)(2) of the Act (750 ILCS 5/503(d)(2) (West 2016)), provides that a party's claim of dissipation is subject to the following conditions:

> "(i) a notice of intent to claim dissipation shall be given no later than 60 days before trial or 30 days after discovery closes, whichever is later;
>
> (ii) the notice of intent to claim dissipation shall contain, at a minimum, a date or period of time during which the marriage began undergoing an irretrievable breakdown, an identification of the property dissipated, and a date or period of time during which the dissipation occurred;
>
> (iii) a certificate of service of the notice of intent to claim dissipation shall be filed with the clerk of the court and be served pursuant to applicable rules; [and]
>
> (iv) no dissipation shall be deemed to have occurred prior to 3 years after the party claiming dissipation knew or should have known of the dissipation, but in no event prior to five years before the filing of the petition for dissolution of marriage." 750 ILCS 5/503(d)(2)(i)-(iv) (West 2016).

We review whether Marsha's notice of intent to claim dissipation complied with the statutory requirements *de novo*. See *Huber v. American Accounting Ass'n*, 2014 IL 117293, ¶ 9 (noting that determination of whether a notice of appeal was timely presents a legal question subject to

de novo review); see also *In re Marriage of Hamilton*, 2019 IL App (5th) 170295, ¶¶ 73-77 (tacitly applying *de novo* review in addressing compliance with statute governing notice of intent to claim dissipation).

¶ 76 Here, the trial court entered an agreed order on August 30, 2016, providing in relevant part that: (1) all expert reports and written discovery was due by September 30, 2016; (2) all other discovery, including depositions, shall be completed on or before October 5, 2016; and (3) trial was set to commence on October 17, 2016. Marsha filed her initial notice of intent to claim dissipation with the clerk of the circuit court on October 8, 2015, which was more than one year prior to the commencement of trial. As such, Marsha's initial notice of intent to claim dissipation was timely under the express terms of section 503(d)(2)(i) of the Act (750 ILCS 5/503(d)(2)(i) (West 2016)). Marsha filed her "Amended and Supplemental Notice of Intent to Claim Dissipation" (Amended Notice) on October 14, 2016, which was less than 30 days after the discovery deadline set forth in the August 30, 2016, agreed order. Hence, Marsha's Amended Notice was also timely under the express terms of section 503(d)(2)(i). See *Hamilton*, 2019 IL App (5th) 170295, ¶ 73 (holding that notice of intent to claim dissipation filed on April 10, 2015, was timely where discovery closed on March 23, 2015).

¶ 77 Wesley nevertheless argues that Marsha's Amended Notice violated the "intent" of the statute because her dissipation claim "remained a moving target" ultimately providing him with only three days to respond to $920,909 in alleged dissipatory expenses. We disagree. As long as a claim of dissipation complies with the express requirements of section 503(d)(2) and comports with notions of fairness, a court should consider it. *Hamilton*, 2019 IL App (5th) 170295, ¶ 76. As we have already discussed, both of Marsha's notices of intent to claim dissipation complied with the timing requirement of section 503(d)(2)(i). Moreover, Wesley's claim that he only had

three days to respond to $920,909 in alleged dissipatory expenses misrepresents the procedural history of the case. Marsha's October 2015 notice of intent to claim dissipation alleged more than $9 million in dissipation by Wesley between September 2011 and February 2015. However, Marsha expressly reserved the right to supplement and amend her dissipation claim "as additional information is obtained" because "discovery and depositions have not been completed in this matter." Marsha subsequently filed Gould's September 2016 Spending Report, which alleged dissipation by Wesley of almost $1.229 million between November 2010 and August 2016. Gould's Spending Report was supported by exhibits identifying the property allegedly dissipated and the dates when the dissipation allegedly occurred. Wesley acknowledged in his motion *in limine* to bar Gould's Supplemental Spending Report that the September 2016 Spending Report was timely, and he raised no objection to the September 2016 Spending Report when it was offered into evidence at trial. Marsha represents, and Wesley does not dispute, that Wesley was deposed on the dissipation claims in the September 2016 Spending Report and his attorney met with Marsha's counsel on multiple occasions regarding these claims along with engaging in a pretrial conference with the court. Thereafter, Gould prepared his Supplemental Spending Report, dated October 14, 2016. More than $300,000 in dissipation items were *removed* from the September 2016 Report, but no items were added. Under these circumstances, Wesley had ample notice of the dissipation at issue. Thus, the question of dissipation was properly considered by the trial court.

¶ 78 Alternatively, Wesley argues that Marsha "abandoned" all but $170,195 of her claim of dissipation because the time period overlap between the October 8, 2015, Notice of Intent and Gould's September 2016 Spending Report was only three years and had only $170,195 of claimed dissipation in common. However, "the facts underlying claims of dissipation often

remain hidden until they are uncovered during the process of discovery or even through testimony at trial." *Hamilton*, 2019 IL App (5th) 170295, ¶ 76. Indeed, as noted above, Marsha expressly reserved the right to supplement and amend her dissipation claim "as additional information is obtained" because "discovery and depositions have not been completed in this matter." Marsha's claim evolved as she received information through the discovery process. Gould's September 2016 Spending Report was the contemplated amendment of the dissipation referenced in Marsha's original notice of intent to claim dissipation. Wesley made no objection to that report and he admitted in his motion *in limine* that it was timely. We therefore reject Wesley's alternative claim that Marsha abandoned all but $170,195 of her claim of dissipation.

¶ 79 Having addressed the procedural aspects of Wesley's dissipation argument, we now turn to the substantive challenges. Dissipation is defined as the use of marital property for a purpose that is not related to the marriage and benefits but one spouse after the point at which the marriage has undergone an irreconcilable breakdown. *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497 (1990). An act may constitute dissipation even though a spouse does not necessarily derive a personal benefit from it if the expenditure has some detrimental effect upon the marital estate. *In re Marriage of Brown*, 2015 IL App (5th) 140062, ¶ 67. The spouse alleging dissipation must first make a preliminary showing that dissipation has occurred. *Brown*, 2015 IL App (5th) 140062, ¶ 66. Once this showing has been made, the burden shifts to the other spouse to refute the accusations. *Brown*, 2015 IL App (5th) 140062, ¶ 66. The spouse charged with dissipation must prove by clear and convincing evidence that the funds in question were spent for a purpose related to the marriage. *Brown*, 2015 IL App (5th) 140062, ¶ 66. "[V]ague and general testimony that the funds were used for marital expenses is inadequate to meet this burden." *Schneeweis*, 2016 IL App (2d) 140147, ¶ 37. Whether dissipation occurred is a question of fact,

which we review under the manifest-weight-of-the-evidence standard. *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 374 (2008). A factual determination will be found to be against the manifest weight of the evidence only when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based on the evidence. *Romano*, 2012 IL App (2d) 091339, ¶ 86.

¶ 80 Wesley claims that Marsha's approach to dissipation in this case was to claim that nearly all of his expenditures constituted dissipation, and then compel him to provide an explanation for each. According to Wesley, this improperly shifted the burden of proof to him and excused Marsha from making a *prima facie* showing of dissipation. We disagree. Rather, the record shows that Marsha selected specific transactions from Wesley's spending over a number of years and, with the help of Gould, developed categories for each. In this regard, Marsha represents, and Wesley does not dispute, that his spending from his individual accounts during the relevant period totaled more than $8.8 million. Marsha's dissipation claim of $920,909, therefore, involved only a fraction of Wesley's expenditures. Moreover, Gould testified the methodology used in preparing his reports involved finding suspect transactions in each of various categories to determine if they could be explained as being for purposes of the marriage. For instance, with respect to the "Jewelry and Clothing" category, Gould testified that he included as dissipation purchases Hunt identified in her deposition and excluded purchases Marsha identified as being for herself or for the parties' daughters. Further, with respect to specific cash transactions, Gould considered whether the funds were deposited into known accounts or if they went into "an account that we had no knowledge of or that we couldn't substantiate." After additional information was received, Gould then prepared the Supplemental Report to remove any transactions that could be traced to a marital purpose.

¶ 81 Although we disagree with Wesley's contention that Marsha's dissipation claim consisted of her simply listing nearly all of his expenditures and then compelling him to provide an explanation for each one, we also point out that evidence of withdrawals that add up over a period of time has been found to be sufficient to establish a *prima facie* case of dissipation. For instance, in *Hamilton*, 2019 IL App (5th) 170295, the wife testified that bank statements showed that the husband deposited $441,696 into his bank account over a period of 5½ years. During the same period, the husband withdrew $271,848 from the account for "identified expenses" and $174,483 in cash and other unidentified expenditures. Receipts provided by the husband also showed that he used approximately $6500 to pay for marital expenses in cash. After taking into account the receipts for marital expenses paid for with cash, the unaccounted-for cash withdrawals from the husband's account for the period in question totaled $167,819. The wife testified that she did not know how the unaccounted-for funds were spent. Based on this evidence, the *Hamilton* court held that the wife's evidence was sufficient to make a *prima facie* showing of dissipation which shifted the burden to the husband to refute the charge of dissipation. *Hamilton*, 2019 IL App (5th) 170295, ¶¶ 78-87.

¶ 82 Similarly, in *In re Marriage of Berberet*, 2012 IL App (4th) 110749, the wife presented evidence that the husband spent $21,725 from his workers' compensation settlement over a period of 11 months, including $4200 in cash withdrawals from an account he opened with the proceeds of the settlement. Although the husband could not recall the nature of specific expenditures or the dates for the expenditures, he provided the court with financial records and testified to his routine use of cash. The trial court found that no dissipation had occurred because the husband was credible and "adequately explained" his use of the funds. In upholding the trial court's ruling, the reviewing court emphasized that the husband bore the burden of showing how

the money from the workers' compensation settlement was spent. *Berberet*, 2012 IL App (4th) 110749, ¶ 55. Thus, the wife's evidence of unexplained expenditures and withdrawals over the period in question was sufficient to shift the burden to the husband.

¶ 83 In *In re Marriage of Davis*, 215 Ill. App. 3d 763 (1991), the wife showed that the husband deposited marital funds into a separate account and made withdrawals from that account over time. The husband used the account to pay for his own living expenses and for vacations with his children. The trial court found that the husband did not dissipate the funds, and the appellate court upheld the trial court's ruling. *Davis*, 215 Ill. App. 3d at 778. In doing so, the court emphasized that the husband "was meticulous about documenting his expenditures and that he accounted for every check written." *Davis*, 215 Ill. App. 3d at 777. Although the *Davis* court did not directly address the question of what needs to be shown to make a *prima facie* case of dissipation, it tacitly found the wife's evidence sufficient to make such a showing.

¶ 84 Even *In re Marriage of Manker*, 375 Ill. App. 3d 465 (2007), a case cited by Wesley in support of his position, suggests that a *prima facie* showing of dissipation can be made by showing that cash withdrawn or funds spent by a spouse over a period of months or years added up to a substantial amount. In *Manker*, the wife alleged that several withdrawals of cash made by the husband from the parties' savings account constituted dissipation. In support of her claim, the wife listed the amounts withdrawn and claimed that it was the husband's burden to prove how the funds were spent. The trial court found that the wife failed to make a *prima facie* showing of dissipation and that the husband's explanation for how he used the funds was credible. The appellate court implied that it disagreed with the first of these findings, underscoring that once a *prima facie* showing of dissipation has been made, the burden shifts to the other party to show how the funds were spent. *Manker*, 375 Ill. App. 3d at 477. The

appellate court then noted that "[t]he trial court emphasized that it 'believed' [the husband's] testimony regarding the withdrawals." *Manker*, 375 Ill. App. 3d at 477. The appellate court deferred to the trial court's credibility determination and affirmed the lower court's ruling on the basis of its finding that the husband demonstrated that his use of the funds was for rent and reasonable living expenses. *Manker*, 375 Ill. App. 3d at 477. Thus, contrary to Wesley's claim, the *Manker* court's reasoning implies that the evidence of withdrawals that add up over a period of time is sufficient to make a *prima facie* case for dissipation.

¶ 85 Wesley complains, however, that a finding that a *prima facie* showing of dissipation can be made by showing that cash withdrawn or funds spent by a spouse over a period of time added up to a substantial amount would mean that anyone charged with dissipation would be forced to defend spending that may have occurred in the ordinary course and that may be unremarkable or unmemorable, especially if remote in time. This concern was addressed in *Hamilton*. There, the court acknowledged that "it would be impossible for any party to account for every penny of cash spent over the course of" a lengthy period of time. *Hamilton*, 2019 IL App (5th), ¶ 87. The court explained, however, that a credible summary of expenditures during the relevant period or other representative samples of the expenses could suffice to establish that the funds in question were spent for a purpose related to the marriage. *Hamilton*, 2019 IL App (5th), ¶ 87; see also *Manker*, 375 Ill. App. 3d at 477 (affirming trial court's finding that the husband's use of marital funds for rent and living expenses was reasonable and did not constitute dissipation where, although the husband did not have documentation to support every withdrawal, he presented receipts that he claimed were a "representative example" of his expenditures and he credibly testified to his routine withdrawal of funds from the ATM and bank account for regular living expenses); *In re Marriage of Tietz*, 238 Ill. App. 3d 965, 981-84 (1992) (holding that the

husband's summary of his major expenses during the relevant period was sufficient to establish that the money withdrawn was used for appropriate purposes). For the foregoing reasons, we reject Wesley's claim that the burden of proof in this case was improperly shifted to him and excused Marsha from making a *prima facie* showing of dissipation.

¶ 86 Next, Wesley disputes the amount of dissipation found by the trial court. As noted above, Marsha alleged that Wesley dissipated $920,909 in marital assets. The trial court found that Wesley had dissipated $752,438. Wesley does not seriously dispute that he dissipated $131,140, consisting of spending on Hunt and her family members and gifts to his secretaries and Waggoner. However, he contends that the trial court erred in finding that he dissipated the remaining $621,298, because such spending was consistent with the "opulent" lifestyle the trial court noted that the parties enjoyed during the marriage. See *Davis*, 215 Ill. App. 3d at 777-78 ("Maintaining the lifestyle established during the marriage does not support a claim of dissipation.") Yet, Wesley directs us to no evidence of record presenting his version of the marital lifestyle or how his spending after October 2010 (the date the parties stipulated that the marriage began to undergo an irreconcilable breakdown) was consistent with the marital lifestyle. Moreover, the *Davis* court specifically distinguished cases where the spouse charged with dissipation "spent funds during the marriage on a girl friend [citation], on other nonfamily purposes [citation], or secreted funds in other places without explanation." *Davis*, 215 Ill. App. 3d at 777-78.

¶ 87 Wesley also contends that the trial court failed to reduce the dissipation by amounts Marsha recanted and that he explained with specificity. Wesley's argument focuses on three categories of dissipation: travel, jewelry and clothing, and uncategorized expenditures.

¶ 88 Based on Gould's reports, Marsha initially alleged dissipation by Wesley in the amount

of $44,640 for travel. At trial, however, Marsha admitted that $10,225 in travel-related charges was incurred by her or her parties' children. According to Wesley, this reduction is not reflected in the judgment. Wesley further asserts that the court ignored specific explanations he provided at trial for the following travel expenses: (1) $1463 on Alaska Airlines for his daughter's boyfriend; (2) $2724 for Marsha and the children to travel to San Antonio, Texas; and (3) $1691 in travel charges made on a Discover Card that Wesley never used. With respect to travel, the court found that Wesley dissipated $30,500 "in travel with Sarah Hunt." In other words, the court reduced Marsha's claim in this category by $14,140, or $3915 more than Marsha's concession at trial. However, in light of Marsha's admission, Wesley's testimony regarding the three expenditures detailed above (which Marsha does not even address in her brief), and Gould's reports, we conclude that the trial court should have reduced this category of dissipation by a total of $16,103 ($10,225 + $1463 + $2724 + 1691), or $1963 more than it did. We remand this matter for reallocation in light of this error.

¶ 89 Based on Gould's Supplemental Spending Report, Marsha alleged dissipation by Wesley in the amount of $166,722 for jewelry and clothing expenditures. In her brief, Marsha admits that the trial court "may have overlooked" $37,600 in corrections she made at trial. Indeed, the judgment reflects that the trial court reduced dissipation in this category by only $10,350, to $156,372. Given Marsha's admission, we find that the trial court should have reduced the dissipation in this category by an additional $27,250 ($37,600 minus $10,350) to $129,122. We remand this matter for reallocation in light of this error.

¶ 90 Based on Gould's Supplemental Spending Report, Marsha alleged dissipation by Wesley in the amount of $133,693 for "uncategorized" expenditures. In its judgment, the trial court reduced this amount by $14,695, to $118,998. Wesley argues that this category should have

been reduced by an additional $105,273 because he identified the purpose of all but $13,725 of the expenditures in this category. However, the explanation given by the spouse charged with dissipation as to how funds were spent requires the trial court to assess the spouse's credibility. *Tietz*, 238 Ill. App. 3d at 984; see also *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 830 (1994) (noting that the explanation given by the spouse charged with dissipation as to how the funds were spent requires the court to assess his or her credibility); *In re Marriage of Lord*, 125 Ill. App. 3d 1, 6 (1984) (same). Thus, the expenditures must be documented adequately by the spouse charged with dissipation (*Tietz*, 238 Ill. App. 3d at 984) and "vague and general testimony that the funds were used for marital expenses is inadequate to meet this burden" (*Schneeweis*, 2016 IL App (2d) 140147, ¶ 37). In this case, the trial court noted at the outset of its judgment of dissolution that it had considered the credibility of the witnesses, their demeanor, and their manner while testifying. The court questioned Wesley's credibility, noting that he failed to disclose significant assets throughout the pendency of the case, engaged in a pattern of conduct in an attempt to evade or hide the nature and extent of certain assets, and circumvented certain court orders. Moreover, while Wesley claims that he identified the purpose of all but $13,725 of the expenditures in this category, the record does not bear this out. When responding to questions regarding the purpose of many of the individual expenditures in this category, Wesley often answered "I don't remember," "I have no idea," "[I] couldn't even guess," or that the expenditure was for "some business expense." At other times, Wesley was equivocal regarding the purpose of a particular expense, gave vague and general testimony that the funds were used for a marital expense, or speculated as to the purpose of the expenditure. Given this evidence, we conclude that the trial court's finding that Wesley dissipated uncategorized expenditures totaling $118,998 was not against the manifest weight of the evidence.

¶ 91 Next, Wesley maintains that the trial court's finding that he dissipated $214,193 in cash withdrawals is against the manifest weight of the evidence. In this regard, Wesley faults the court for determining that $500 cash per week was "reasonable" for his personal, family, and business expenses. According to Wesley, the trial court's finding was wholly without basis and incompatible with the parties' historic standard of living. Gould's reports demonstrate that Wesley withdrew large amounts of cash from the beginning of the breakdown of the marriage, including $17,900 in December 2011, $16,603 in April 2013, $17,934 in October 2013, $8100 in February 2014, $14,400 in December 2015, $24,600 in March 2016, $21,800 in April 2016, $34,500 in May 2016, $23,000 in June 2016, $24,500 in July 2016, and $13,300 in August 2016. As noted above, once the burden shifts to the spouse charged with dissipation, he or she must prove by clear and convincing evidence that the funds in question were spent for a purpose related to the marriage. *Brown*, 2015 IL App (5th) 140062, ¶ 66. While Wesley claims that his use of cash has not changed in 10 years, he does not direct us to any evidence of record regarding how much cash he spent during the marriage or what he used that cash for. Moreover, at trial, Wesley merely testified generally that he could not remember the purpose of each cash withdrawal, but that they were made for his family. Based on this record, the trial court could have reasonably concluded that Wesley failed to prove by clear and convincing evidence that the funds in question were spent for a purpose related to the marriage. See *Schneeweis*, 2016 IL App (2d) 140147, ¶ 37 (noting that vague and general testimony that funds were used for marital expenses is insufficient to meet burden of establishing that funds were used for a marital purpose). We simply cannot say, given the evidence before us, that a conclusion opposite that of the trial court is clearly evident or that the trial court's finding is arbitrary, unreasonable, or not based on the evidence.

¶ 92 Next, Wesley asserts that the trial court's $162,249 award for the furniture and furnishings at the Marco Island Residence is additional disguised dissipation which is already reflected in the value of the Marco Island Residence. We disagree. The record reflects that the Marco Island Residence was valued at $2,285,000 based on the only appraisal in evidence. The appraisal made no reference to the furniture or furnishings of the Marco Island Residence. Indeed, the appraiser, whose deposition testimony was admitted into evidence, recounted that he considered the size, age, view, upgrades, the quality of the build, and comparable properties in rendering his opinion, but never mentioned the furniture or furnishings in determining the property's value. Therefore, this argument lacks merit.

¶ 93 In a related argument, Wesley contends that some of the expenditures in the furniture and furnishing category constituted "architectural and construction" services necessary to building the Marco Island Residence and therefore were already reflected in the value of the home. Specifically, Wesley contends that he incurred: (1) a $2200 charge from Weber Design Group for architectural services; (2) $89,811 in charges from Interior Expressions for paint, lighting fixtures, and window coverings; (3) $12,328 in charges from Custom Closets and More for closets; (4) $1,436 in charges from Superior Stone for decorative stone; and (5) $4,154 in charges from Aloha Pool and Spa for pool repairs. In support of his claim, Wesley cites to his own testimony. However, with respect to questions regarding a majority of these expenses, Wesley responded in vague or general terms or was unable to recall the purpose of specific purchases. For instance, Wesley could not recall the purpose of a December 2, 2013, charge for $1250 from Interior Expressions other than it was "for the [Marco Island] house." Wesley "assum[ed]" a December 3, 2014, charge for $5000 from Interior Expressions "would be the cost of the occasional furniture item." He testified that a March 31, 2015, charge for $24,519 and a

June 1, 2015, charge for $29,971, both from Interior Expressions, were for "everything" that Interior Expressions did. In addition, Wesley could not recall the purpose of a June 20, 2015, charge for $5456 from Interior Expressions. And while Wesley did provide less ambiguous explanations for some of the other items he references, the trial court was not obligated to credit this testimony, especially given that Wesley's credibility was at issue and he failed to support his testimony with any objective evidence such as invoices or receipts. *Tietz*, 238 Ill. App. 3d at 983-84; *Schneeweis*, 2016 IL App (2d) 140147, ¶ 37.

¶ 94 Wesley also maintains that many of the charges included in the decorating and home furnishings category and allocated to him were not for the Marco Island Residence or were made by or for others. Specifically, Wesley notes that Marsha's counsel conceded during Wesley's testimony that two of the charges listed—Jonathan Adler for $4850 and Sleep Country for $3842—were for Grace and were to be excluded from the analysis. Given Marsha's concession at trial, we agree that these two charges were improperly categorized as dissipation.

¶ 95 Wesley also challenges several other expenditures in the decorations and home furnishings category. However, the trial court was not obligated to credit Wesley's testimony, especially given that Wesley's credibility was at issue, he provided vague, general, and wavering explanations for the expenses, and he failed to support his testimony with any objective evidence such as invoices or receipts. For instance, Wesley claims that two charges from Pottery Barn totaling $3551 were not made by him because "he did not shop there." However, Wesley did not testify that he did not shop at Pottery Barn, but rather that he does not "like" the retailer. Indeed, when asked about these charges, Wesley testified that he did not know what the charges were for, he did not "think" the charges belonged to him, and he did not know who made them. In addition, Wesley contends that a $718 charge to a store called Art & Frames was for his mother.

However, at trial, Wesley testimony regarding this expenditure was equivocal. Wesley initially testified that he had "no idea what that is." He later stated, "I think it was something for my mom, because she's an artist, and she wanted to try to paint again." Wesley argues that two charges to Teri Tito totaling $6500 were for art that was in Marsha's possession. Wesley testified that he had the art in his Burr Ridge Condominium but Marsha "walked out with them." Marsha disputed Wesley's version of events, testifying that Wesley "offered" the art to her. According to Marsha, Wesley obtained the artwork from a woman he was dating, but no longer wanted it. Because Marsha was already shipping items to the parties' daughter in Colorado, Wesley helped Marsha move the paintings onto the moving truck. Currently, one painting is hanging in the daughter's house in Colorado and the other is in storage. Thus, Marsha simply facilitated the transfer of one of the paintings to the parties' daughter and placed the other in storage because Wesley did not want them. Marsha testified that Wesley was free to take the paintings back if he wants them. Further, when asked about a charge on August 22, 2014, to Rainmakers for $1100, Wesley responded, "I think that is the Michigan house" and when asked to elaborate stated, "I just paid a bill that was due, because the sprinkling system is screwed up." Finally, Wesley "believe[d]" a December 22, 2013, charge for $5200 to Room & Board was in reference to his "apartment," but did not state what it was for. Given this record, petitioner has failed to establish that the trial court's findings that the items from Pottery Barn, Arts & Frames, and Terri Tito constituted dissipation were against the manifest weight of the evidence.

¶ 96 To summarize, we find the trial court erred in finding dissipation with respect to $1963 in travel expenditures, $27,250 in jewelry and clothing expenditures, $4850 for the Jonathan Adler purchase, and $3842 for the Sleep Country purchase. We note that the total value of these assets is $37,906, or 0.32% of the total marital estate which was valued at $11,791,179. Although these

amounts may be considered *de minimis* (see, *e.g.*, *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 664 (2008) (holding that trial court's failure to consider $145,000 shareholder loan as part of marital estate was harmless in light of $8.7 million valuation of marital estate); *In re Marriage of Alexander*, 368 Ill. App. 3d 192, 205 (concluding that error which decreased total value of parties' property by less than one-half of one percent was *de minimis* and did not require reversal)), we remand to the trial court for reallocation since we are remanding the matter for other purposes as well.

¶ 97 B. Maintenance

¶ 98 Next, we address Wesley's challenge to the maintenance award imposed by the trial court. A trial court's award of maintenance is presumed to be correct. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010). As such, a maintenance award will be reversed on appeal only if the trial court abuses its discretion. *In re Marriage of Cole*, 2016 IL App (5th) 150224, ¶ 10. An abuse of discretion occurs only where the trial court's ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the court. *In re Marriage of Johnson*, 2016 IL App (5th) 140479, ¶ 93. The party claiming the trial court's maintenance award was improper bears the burden of showing the trial court abused its discretion. See *Nord*, 402 Ill. App. at 292.

¶ 99 Section 504(a) of the Act (750 ILCS 5/504(a) (West 2016)) provides that in a dissolution proceeding, the trial court may grant maintenance for either spouse "in amounts and for periods of time as the court deems just." Section 504(a) sets forth a list of factors for the trial court to consider in determining whether a maintenance award is appropriate. 750 ILCS 5/504(a) (West 2016)). If the court determines that an award of maintenance is appropriate, it must then set the amount and duration of maintenance. 750 ILCS 5/504(b-1) (West 2016). Where the parties'

combined gross annual income is less than $250,000 and the payor spouse has no obligation to pay child support or maintenance from a prior relationship, the amount and duration of maintenance is established according to statutory guidelines. 750 ILCS 5/504(b-1) (West 2016).[2] However, where the parties' combined gross annual income is greater than $250,000, the trial court may impose a non-guidelines award of maintenance after consideration of the relevant statutory factors in section 504(a) of the Act (750 ILCS 5/504(a) (West 2016)). 750 ILCS 5/504(b-1), (b-2) (West 2016). The Act requires the trial court to make specific findings of fact "stat[ing] its reasoning for awarding or not awarding maintenance and * * * includ[ing] references to each relevant factor set forth in [section 504(a)]." 750 ILCS 5/504(b-2)(1) (West 2016).

¶ 100 Here, the trial court considered the relevant statutory factors in section 504(a) of the Act and concluded that an award of maintenance was appropriate, but that the statutory guidelines as to the amount and duration of maintenance were not applicable. Ultimately, the court ordered Wesley to pay Marsha maintenance of $15,000 per month, *i.e.*, 40% of $450,000 annually, as well as 40% of Wesley's gross annual income over $450,000. The court's order allows Wesley to deduct amounts withheld by UBS for the tax liability incurred for forgiveness of the Notes when calculating his gross annual income. Further, Wesley's obligation to pay maintenance to Marsha is modifiable and terminable pursuant to the statutory criteria set forth in the Act.

¶ 101 In support of the maintenance award, the court made the following findings: (1) each party would receive significant assets from the distribution of the marital estate, but many of the

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[2]Section 504(b-1) has since been amended to provide that the statutory guidelines apply in situations when the combined gross annual income of the parties is less than $500,000. See P.A. 100-520, § 15, eff. Jan. 1, 2018 (amending 750 ILCS 5/504(b-1) (West 2016)).

assets received by Marsha would be in the form of retirement accounts or real estate, "neither of which is liquid, particularly given Marsha's age and adverse tax consequences from liquidating retirement accounts;" (2) Marsha has not been employed outside of the home for a significant period of time and spent the majority of the marriage performing family duties, taking care of the parties' children, and supporting Wesley in his professional endeavors; (3) Marsha does not have a realistic capacity of earning any significant income; (4) the parties had been married for over 27 years at the time the dissolution petition was filed; (5) the parties "enjoyed a significant lifestyle which could be described as opulent;" (6) both parties are in relatively good health; and (7) Wesley is 62 years old and "may be nearing retirement, [but] he is *** fully employed, and there was no credible evidence indicating that there were plans to retire at any time in the near future." Given the length of the marriage, the historic standard of living, the parties' work histories, and Wesley's substantial earning ability, we cannot say that the trial court's maintenance award was arbitrary, fanciful, or unreasonable, or that no reasonable person would take the view adopted by the court. We also point out that the trial court expressly made the maintenance award "modifiable and terminable pursuant to the statutory criteria set forth in the Act." See 750 ILCS 5/510(a-5) (West 2016) (providing that an order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances). Under the totality of the circumstances, we therefore conclude that the trial court's maintenance award did not constitute an abuse of discretion.

¶ 102 Despite the trial court's thorough and cogent analysis, Wesley complains that the trial court abused its discretion in awarding maintenance to Marsha equivalent to 40% of his income because it makes it impossible for him to "even maintain lifestyle, let alone acquire assets." Specifically, Wesley complains that while the trial court's maintenance award "appears to

obligate Marsha to pay 40% of the tax liabilities," for Marsha to bear 40% for deferred tax liability, he must annually earn $984,000 because, as of the date of trial, his annual tax withheld for the Note forgiveness was $534,000. Wesley contends that if he fails to earn this annual amount, he must pay the shortfall for the deferred tax liability from his own funds. Wesley therefore concludes that the combined effect of the maintenance and property awards is financially devastating to him and permanently places Marsha in a vastly superior economic position. Wesley's argument is unpersuasive and belied by historical facts in this case.

¶ 103 Wesley began working for UBS in July 2011. According to an analysis in Gould's Cash Flow Report, Wesley's income, net of federal and state taxes, has never been less than $984,000 in any of the full calendar years he has worked for UBS for which documentation has been introduced. Moreover, Christiansen testified that the assets under Wesley's management have doubled since jointing UBS, to more than $460 million, and that as of October 2016, Wesley's 12-month trailing commission is $900,000 more than it was at the time he joined UBS. The record also shows that forgiveness on the ETP loans end in 2019 and Wesley is not eligible for any additional ETP loans. At that time, Wesley's cash flow increases because the annual deferred income due to forgiveness drops by more than $1 million to less than $55,000 per year. Accordingly, the extra payroll taxes deducted annually is also reduced due to Wesley no longer being taxed on more than $1 million in deferred income. In short, given Wesley's income level and the maintenance award being modifiable if circumstances substantially change, we cannot say that the trial court abused its discretion in awarding maintenance as provided in the dissolution judgment.

¶ 104 C. Equity

¶ 105 Next, Wesley argues that the judgment is inequitable because although he was awarded

$4.4 million of the marital estate, the "actual value" of his property award is $2.8 million of "illiquid, non-income producing assets." In contrast, he asserts that Marsha received a $7.35 million share of the marital estate, including over $5 million in "readily accessible liquid assets," plus a maintenance award of 40% of his income. Because we are remanding this matter for a reallocation of marital assets, it would be premature to address the scope of what would constitute an equitable property award in this case. Nevertheless, we find it necessary to comment upon Wesley's misperception that the majority of the marital estate awarded to Marsha consisted of "readily accessible liquid assets." The trial court found to the contrary, noting that "much of the assets received by Marsha will be in the form of retirement accounts or real estate, neither of which is liquid, particularly given Marsha's age and adverse tax consequences from liquidating retirement accounts." The record supports the trial court's finding. Significantly, although Marsha was assigned $4 million in retirement assets, these were pre-tax dollars. As such, they are subject to income tax upon withdrawal from the accounts plus an additional tax of 10% if Marsha takes a withdrawal prior to turning 59½. These tax obligations will substantially reduce Marsha's award of retirement assets. Thus, Wesley's argument that Marsha had $5 million in "readily accessible liquid assets" is misplaced.

¶ 106 III. CONCLUSION

¶ 107 For the reasons set forth above, we conclude that the trial court erred in its allocation of certain marital assets, namely the refunds from the 2013 amended tax returns, the refund from the 2015 state tax return, the tax issues that had been reserved in pretrial orders, and certain items of dissipation as detailed above. In light of these findings, this matter is remanded to the trial court for a reallocation of the marital property consistent with this order. We affirm the judgment of the circuit court of Du Page County in all other respects.

¶ 108 Affirmed in part, reversed in part, and remanded with directions.