2013 IL App (4th) 120368-U

NO. 4-12-0368

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 17, 2013
Carla Bender
4th District Appellate
Court, IL

In re: the Marriage of	)	Appeal from
CHRISTINA JANSSEN,	)	Circuit Court of
Petitioner-Appellant and	)	Adams County
Cross-Appellee,	)	No. 09D301
and	)	
GREG JANSSEN,	)	Honorable
Respondent-Appellee and	)	Chet W. Vahle,
Cross-Appellant.	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Where the trial court divided the marital estate equally, it erred by failing to include respondent's half of the marital contribution to nonmarital property in the property division.

¶ 2 Where the trial court assigned respondent $10,000 cash from a safe in the property division because the court believed he did not testify about what happened to the money, the court should address the matter on remand since the record shows respondent did testify about the money and a credibility determination needs to be made.

¶ 3 Where several of the parties' appellate arguments are contrary to the record and the record supports the trial court's findings, we affirm the remainder of the trial court's judgment.

¶ 4 In November 2009, petitioner, Christina Janssen, filed a petition for the dissolution of her marriage to respondent, Greg Janssen. In September 2010, the Adams County circuit court dissolved the bonds of matrimony. In March 2012, the court entered a lengthy

judgment of dissolution, resolving the parties' many issues.

¶ 5 Petitioner appeals, asserting the trial court erred (1) in its valuation of the "other farm assets," (2) in its valuation of the marital contribution to the Clayton Farm, (3) by failing to assess a value for the marital contribution of tiling to the Clayton Farm, (4) by determining there should be an equal division of the marital estate, (5) in its calculation of the equalization payment, (6) by providing child support and maintenance could be modified as the result of the method of dividing the marital property, and (7) by awarding respondent all of the dependency exemptions for the parties' minor children. Respondent cross-appeals, asserting the court erred (1) by finding the Haschemeyer Farm was marital property, (2) by finding the Bowman Family Trust was not a discernable nonmarital asset, (3) in its valuation of gold and silver, (4) in its equal distribution of the marital estate, (5) by awarding respondent "cash from the safe," (6) in its calculation of child support, and (7) in its maintenance award. We affirm in part, reverse in part, and remand with directions.

¶ 6 I. BACKGROUND

¶ 7 The parties married in September 1990 and had three children, Jacqueline (born in 1993), Jayley (born in 1996), and Janette (born in 1999). As stated, petitioner filed her petition for dissolution in November 2009.

¶ 8 On September 29, 2010, the trial court commenced the hearing on the dissolution petition. On that day, it entered an order dissolving the bonds of matrimony and continued the cause to resolve the remaining issues. The remainder of the evidence was heard on nine different dates, ending on December 22, 2010. Petitioner testified on her own behalf, called respondent as an adverse witness, and presented the testimony of Rosemary Nesbit, a certified public

accountant; Jacqueline Janssen, the parties' oldest daughter; and Jayley Janssen, the parties' middle daughter. She also submitted around 23 exhibits. Respondent testified on his own behalf and presented the testimony of Susan Eddington, vice president of Marine Bank and Trust; Sue Ann Gerveler, a certified public accountant; James Kay Lord, real estate broker; Pamela Leffringhouse, petitioner's mother; Doug Janssen, respondent's cousin; and Gene Janssen, respondent's father. He also submitted approximately 75 exhibits. Accordingly, an enormous amount of evidence was presented in this case. The parties are familiar with that evidence, and thus we do not repeat it here. Any facts necessary to the resolution of the issues on appeal are noted in our analysis of those issues.

¶ 9 After the evidence was presented, the parties submitted written closing arguments. On July 14, 2011, the trial court filed its 70-page memorandum of findings that addressed all of the remaining issues except the amount of child support and maintenance. As to those two issues, the court asked the parties to make the child-support calculation and submit their proposals of net income. On July 27, 2011, respondent filed a petition to reduce child support, noting the court's memorandum of findings had set forth the statutory percentage for three children and the parties' oldest daughter had reached majority. On September 7, 2011, petitioner filed a motion, noting that she filed her child-support proposal on August 2, 2011, and respondent filed his on August 11, 2011. Neither child-support proposal is included in the record on appeal. Petitioner's motion further asserted respondent did not follow the guidelines set out by the court in its memorandum of findings.

¶ 10 On September 15, 2011, the trial court filed its supplement to the memorandum of findings. The court noted it accepted "Document A" in respondent's submission and found

respondent had a net income available for child support of $110,162. The court used the statutory minimum of 28% for two children and ordered respondent to pay $2,570 per month in child support. The court also set permanent maintenance at $2,000 per month. On March 20, 2012, the court entered the judgment of dissolution based on its memorandum of findings and the supplement to it.

¶ 11 On April 18, 2012, petitioner filed a timely notice of appeal in compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008). On April 26, 2012, respondent filed his timely notice of cross-appeal in compliance with Rule 303. Thus, this court has jurisdiction of both appeals under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 12 II. ANALYSIS

¶ 13 A. Property Division

¶ 14 1. *Classification of Property*

¶ 15 Respondent asserts the trial court erred by finding the Haschemeyer Farm was marital property. We disagree.

¶ 16 Prior to dividing the property in a dissolution, the trial court must classify the property as either marital or nonmarital. *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017, 909 N.E.2d 221, 228 (2009). Section 503(b)(1) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/503(b)(1) (West 2008)) provides a rebuttable presumption that all property acquired by either spouse after the date of marriage but before the entry of judgment of dissolution is marital property, *regardless of how title is held*. A party can overcome this presumption by a showing of clear and convincing evidence the property falls within one of the exceptions set forth in section 503(a) of the Dissolution Act (750 ILCS

5/503(a) (West 2006)). *Schmitt*, 391 Ill. App. 3d at 1017, 909 N.E.2d at 228. Here, respondent purchased the Haschemeyer Farm in 2000 for $220,777, which was during the parties' marriage. Thus, under section 503(b)(1) of the Dissolution Act, the Haschemeyer Farm is presumed marital, and respondent had the burden of overcoming that presumption.

¶ 17 Respondent claims he proved the Haschemeyer Farm, which was titled only in his name, was nonmarital property. Respondent notes he purchased the Haschemeyer Farm, in part, by a like-kind exchange with the DeGroot Farm, which was nonmarital property. When marital and nonmarital property are commingled resulting in a loss of identity of the contributing estates, the commingled property is deemed transmuted to marital property. 750 ILCS 5/503(c)(1) (West 2008). Section 503(c) of the Dissolution Act also provides, that notwithstanding any transmutation, the contributing estate shall be reimbursed from the estate receiving the contribution, unless the contribution cannot be retraced by clear and convincing evidence or was a gift. 750 ILCS 5/503(c)(2) (West 2008). Respondent acknowledges that, if the Haschemeyer Farm is nonmarital, the marital estate would be entitled to reimbursement for its contributions to the farm.

¶ 18 "The party claiming that the property is nonmarital has the burden of proof, and any doubts as to the nature of the property are resolved in favor of finding that the property is marital." *Schmitt*, 391 Ill. App. 3d at 1017, 909 N.E.2d at 228. A reviewing court will not disturb a trial court's classification of property unless it is contrary to the manifest weight of the evidence. *Schmitt*, 391 Ill. App. 3d at 1017, 909 N.E.2d at 228. "A judgment is against the manifest weight of the evidence when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *In re Marriage of Levinson*,

2012 IL App (1st) 112567, ¶ 33, 975 N.E.2d 270.

¶ 19 In addition to the DeGroot Farm, the purchase of the Haschemeyer Farm included a $30,500 cash payment that the trial court found came from marital funds. Respondent does not challenge that finding. Thus, it is undisputed marital and nonmarital funds were used to purchase the Haschemeyer Farm.

¶ 20 Moreover, respondent still owed $85,000 for the purchase of the DeGroot Farm when the parties' married. Respondent notes the payment of the lien for the purchase of the DeGroot Farm came from the operation of his nonmarital farms but acknowledges the marital estate contributed the $85,000 to the purchase of the Haschemeyer Farm, for a total contribution of $115,500. The $85,000 was marital property as section 503(a)(8) of the Dissolution Act (750 ILCS 5/503(a)(8) (West 2008)) provides income from a spouse's nonmarital property is marital income if the income is attributable to the personal effort of a spouse. *In re Marriage of Bradley*, 2011 IL App (4th) 110392, ¶ 47, 961 N.E.2d 980. Thus, the marital estate contributed more than half of the purchase price of the Haschemeyer Farm. In his farming operation, respondent did nothing to distinguish the marital and nonmarital contributions to the Haschemeyer Farm. On that basis alone, the evidence was sufficient to find both that transmutation occurred and respondent failed to overcome the presumption of marital property. The $20,000 payment for tiling on the Haschemeyer Farm from the marital estate further supports a finding the property is marital. We note the trial court treated the tiling on the Haschemeyer Farm differently from the other tiling payments because, unlike the other tiling payments, the evidence on the Haschemeyer tiling was specific as to when it was done and its costs. Accordingly, we need not address whether the increase of the farm's value during the marriage also supports a finding the property

is marital because more than enough evidence exists to support the court's finding respondent failed to prove the Haschemeyer Farm was nonmarital property.

¶ 21 Thus, the trial court's finding the Haschemeyer Farm was marital property was not against the manifest weight of the evidence.

¶ 22 2. *Valuation of Property*

¶ 23 Petitioner challenges the trial court's valuation of the "other farm assets," and respondent challenges the court's valuation of the Victor Bowman Trust and the parties' gold and silver.

¶ 24 Our supreme court recently declared that, with bifurcated divorce proceedings, Illinois courts must use the date the court enters the judgment for dissolution following a trial on grounds for dissolution or another date near it as the valuation date for the parties' property. *In re Marriage of Mathis*, 2012 IL 113496, ¶ 30, __ N.E.2d ___. In this case, the court dissolved the parties' marriage on September 29, 2010. Thus, the proper valuation date for the parties' property was September 29, 2010. As with the classification of property, this court will not disturb a trial court's assignment of value to an asset unless it is against the manifest weight of the evidence. *In re Marriage of Lundahl*, 396 Ill. App. 3d 495, 504-05, 919 N.E.2d 480, 488 (2009).

¶ 25 a. Other Farm Assets

¶ 26 Petitioner alleges the trial court erred in valuing the other farm assets at $15,818 because the evidence showed the existing assets should be valued at $185,000 and the 2010 crops divided at their sale. Specifically, petitioner asserts the court (1) failed to value the assets on the date of dissolution as it considered debt incurred after the dissolution date that was prepayment on items for the 2011 crop and (2) should have used the reserved-jurisdiction approach for

dividing the 2010 crop.

¶ 27 First, the trial court's memorandum of findings clearly stated the value of the other farm assets was "the court's best estimate of petitioner's equitable share" of the those assets, not an exact amount. In fact, it was simply the amount needed to equalize the two estates. The court thoroughly explained how it was impossible with the nature of farming and the evidence before it to determine the farm assets' values on any particular date and the exact amount of debt related to the assets. The court expressly recognized the prepayment of expenses was common in farming. The court clearly did not take specific amounts out of the evidence and calculate the $15,818 amount.

¶ 28 Second, as to the date of valuation, the trial court noted the three loans and the amounts provided by respondent at the hearing in December 2010. However, the court did not indicate it specifically considered one or all of the December 2010 amounts in reaching the $15,818 because (1) that amount was not a calculation, (2) the court recognized the prepayment of expenses in farming, and (3) the court noted the difficulty of valuing assets on any given date. Accordingly, we do not read the court's findings as an indication it used a valuation date other than the date of dissolution.

¶ 29 Last, petitioner's reserved-jurisdiction argument fails to consider that respondent is a farmer whose income primarily comes from farming. Thus, the profits from the 2010 crop are part of his income for purposes of determining maintenance and child support. Accordingly, petitioner has already received a portion of the estimated 2010 crop profits by her receipt of temporary child support and maintenance. Thus, this case is distinguishable from *In re Marriage of Peters*, 326 Ill. App. 3d 364, 371, 760 N.E.2d 586, 592 (2001), cited by petitioner that

addressed the reserved-jurisdiction approach with pension rights and stock options.

¶ 30 Accordingly, we find the trial court did not err in valuing the other farm assets.

¶ 31 b. Bowman Family Trust

¶ 32 Respondent asserts the trial court erred by finding the Bowman Family Trust was "not a discernable non-marital asset with value attributable to [petitioner.]" Respondent's specific argument is unclear.

¶ 33 At the time of dissolution, petitioner had a 2.29% income interest in the Bowman Family Trust, a 43% ownership interest in the trust, and a right to occupy and use a condominium. The court found that, based on the language of the trust, the ownership interest was "only a contingent future interest." Respondent appears to assert the ownership interest had present value for purposes of distributing the parties' property. However, in support of his argument, respondent cites *In re Marriage of Schmidt*, 242 Ill. App. 3d 961, 968, 610 N.E.2d 673, 678 (1993), and *In re Marriage of Benz*, 165 Ill. App. 3d 273, 287, 518 N.E.2d 1316, 1324 (1988), both of which dealt with potential inheritances. "Potential inheritances are not property which can be valued and awarded to a spouse, although they can be given some consideration in determining property distribution." *Schmidt*, 242 Ill. App. 3d at 968, 610 N.E.2d at 678. See also *Benz*, 165 Ill. App. 3d at 287, 518 N.E.2d at 1324 (noting no error occurs when a court considers a future inheritance when distributing property). In other words, the potential inheritance is not a present asset with value but may be considered in examining a party's overall financial resources. See *In re Marriage of Marriott*, 264 Ill. App. 3d 23, 42, 636 N.E.2d 1141, 1154 (1994). Accordingly, it is unclear what respondent is arguing since potential inheritances are not to be valued, and he appears to want petitioner's ownership interest valued.

¶ 34 We note the trial court's finding showed it recognized the small amount of income petitioner received from the Bowman Family Trust when discussing petitioner's nonmarital property and noted her expected inheritance in discussing her need for maintenance. It also expressly awarded petitioner the $10,000 marital interest in the boat owned by the Bowman Family Trust. The court's findings indicate it considered petitioner's interests in the Bowman Family Trust but did not place a present value on the ownership interest because it considered the interest a potential inheritance. Such treatment is consistent with *Schmidt*, with which respondent argues for compliance. Accordingly, we find the trial court's failure to place a value on petitioner's ownership interest in the Bowman Family Trust was in compliance with the cases respondent cites, and thus he has not shown any error.

¶ 35 c. Gold and Silver

¶ 36 Respondent also asserts the trial court erred in valuing the gold and silver because (1) the value of gold and silver had increased since the appraisal and (2) the appraisal did not include all of the parties' silver. We find any error that may have occurred with the gold and silver is *de minimis*.

¶ 37 In determining the gold and silver's value, the trial court relied on the August 13, 2010, appraisal submitted by respondent. Neither party presented any evidence about the appreciation of the gold and silver in the month and a half between the appraisal and September 29, 2010, the date of dissolution of the marital bonds. See *Mathis*, 2012 IL 113496, ¶ 30, __ N.E.2d ___ (holding the valuation date in a bifurcated divorce is the date of the dissolution judgment after the trial on grounds). Thus, the court properly relied on the August 2010 appraisal in valuing the gold and silver. Moreover, even if the gold and silver had doubled in

value by September 2010, any error would be *de minimis* as the trial court divided the gold and silver evenly between the parties.

¶ 38 Respondent also asserts the trial court failed to include the value of the two bags of "junk" silver that he purchased for around $9,000. As stated, the court divided the gold and silver evenly between the parties. With the size of the parties' marital estate, the addition of $9,000 in value to both parties' marital assets is insignificant in dividing the property and calculating maintenance. Accordingly, any error that occurred from the court's failure to include the *value* of the junk silver in its chart showing the property division is *de minimis*.

¶ 39 3. *Reimbursement*

¶ 40 Petitioner asserts the trial court erred in determining the marital contributions to the Clayton Farm, which the trial court found was respondent's nonmarital property. Specifically, petitioner argues the trial court erred in valuing the marital contribution to (1) the purchase of the Clayton Farm and (2) the tiling of the Clayton Farm, for which the court denied reimbursement. A reviewing court will not reverse a trial court's determination of the value of an asset or whether one estate of property is entitled to reimbursement from another unless it is against the manifest weight of the evidence. *Lundahl*, 396 Ill. App. 3d at 504-05, 919 N.E.2d at 488; *In re Marriage of Ford*, 377 Ill. App. 3d 181, 185-86, 879 N.E.2d 335, 339 (2007). We note petitioner asserts *de novo* review of her first issue claiming it is a legal question, but the trial court's judgment at issue is actually a factual one.

¶ 41 Section 503(c)(2) of the Dissolution Act (750 ILCS 5/503(c)(2) (West 2008)) provides, in pertinent part, the following:

"When one estate of property makes a contribution to another

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

Moreover, our supreme court has held "no right to reimbursement arises when the marital estate has already been compensated by its use of the nonmarital property during the marriage." *In re Marriage of Crook*, 211 Ill. 2d 437, 454, 813 N.E.2d 198, 206-07 (2004). The party requesting reimbursement bears the burden of proof. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 644, 616 N.E.2d 1379, 1385 (1993).

¶ 42 a. Purchase

¶ 43 Petitioner contends the trial court erred in its valuation of the marital contribution to the farm because the marital estate contributed 44.67% of the equity in the farm by paying the $134,000 mortgage and thus is entitled to reimbursement of 44.67% of the farm's current valuation. However, in its July 2011 memorandum of findings, the trial court expressly found the $134,000 mortgage on the farm was not for purchase money. Thus, the marital estate did not make any equity payments on the Clayton Farm. The court explained the Clayton Farm was paid off before the marriage, and the $134,000 mortgage represented a premarital debt to respondent's father for farm operating expenses. It then found respondent needed to reimburse the marital estate for the payment of the premarital debt. Accordingly, petitioner's argument fails because the $134,000 paid by the marital estate did not go to equity in the Clayton Farm.

¶ 44 b. Tiling

¶ 45 Petitioner contends the evidence showed the marital estate had improved the Clayton Farm's value by $250 per acre with tiling, and thus, the trial court erred by declining to reimburse the marital estate $48,000 for tiling on the farm. Petitioner's argument again overlooks the trial court's findings. While the evidence established the increase in value of the farmland due to tiling, the court found the evidence failed to show when each farm was tiled, how much was spent on tiling on each farm, how long the tiling will remain functional, and the dollar value of the increased productivity resulting from the tiling. The court concluded that lack of evidence made it impossible for the court to determine beyond a guess what the marital estate should be reimbursed for the tiling. In explaining its ruling, the court noted the marital estate had likely enjoyed increased income from the increased productivity and thus was reimbursed, at least in part, for the cost of tiling. That finding is consistent with the supreme court's holding in *Crook*, 211 Ill. 2d at 454, 813 N.E.2d at 206-07, that no right to reimbursement exists if the marital estate has been compensated by the use of the nonmarital property during the marriage. We agree with the trial court the entitlement to reimbursement for tiling required more than just evidence of the increase in the property value since the marital estate had likely benefitted from the tiling during the marriage. Petitioner, as the party requesting reimbursement, had the burden to prove reimbursement by clear and convincing evidence, and she failed to do so. Accordingly, the trial court's denial of reimbursement for tiling was not against the manifest weight of the evidence.

¶ 46 4. *Actual Division*

¶ 47 Both parties challenge the trial court's equal division of the marital estate. Respondent also contends the court's assignment to him of $10,000 cash that was in a safe in the

marital residence in the property division was erroneous, and petitioner alleges the court's equalization payment was incorrect.

¶ 48 Decisions concerning the distribution of marital property lie within the trial court's sound discretion, and a reviewing court will not disturb such a decision absent an abuse of discretion. *In re Marriage of Polsky*, 387 Ill. App. 3d 126, 135, 899 N.E.2d 454, 462 (2008). "An abuse of discretion is found only when no reasonable person would take the view adopted by the trial court." *Polsky*, 387 Ill. App. 3d at 135, 899 N.E.2d at 462. We reject petitioner's assertion the *de novo* review standard applies to the equalization-payment argument because it is still a challenge to the court's distribution.

¶ 49 a. Equal Division

¶ 50 Petitioner asserts she was entitled to more than half of the marital estate because of respondent's significant nonmarital property. Respondent argues he is entitled to a greater share of the marital estate because he was the person primarily responsible for working the farms.

¶ 51 Section 503(d) of the Dissolution Act (750 ILCS 5/503(d) (West 2008)) states the court shall divide marital property in "just proportions." "Equal distribution of marital property is generally favored, unless application of the statutory factors demonstrates an equal division would be inequitable." *In re Marriage of Minear*, 287 Ill. App. 3d 1073, 1083, 679 N.E.2d 856, 864 (1997).

¶ 52 In support of her argument, petitioner cites *In re Marriage of Madoch*, 212 Ill. App. 3d 1007, 1016, 571 N.E.2d 1029, 1034 (1991), where the reviewing court found the trial court abused its discretion by granting the petitioner only 55% of the marital property. There, the respondent had the ability to generate significant future income from his interest in some bakeries

that were his nonmarital property, and the petitioner was totally disabled as the result of an illness, which limited her employability and sources of income. *Madoch*, 212 Ill. App. 3d at 1016, 571 N.E.2d at 1034.

¶ 53 While respondent has income-generating nonmarital property, petitioner is not disabled. In fact, the trial court found she was "well able to engage in full time employment" and was "young enough to seek additional education or job training so as to make herself more marketable and increase her potential for making income." Moreover, under the equalization payment in the property distribution, petitioner was to receive $677,534, leaving her with significant liquid assets. Thus, this case is distinguishable from *Madoch*.

¶ 54 Petitioner also asserts the following statutory factors favor her getting a larger portion of the marital estate: (1) her contribution as a homemaker, (2) the parties' economic circumstances, and (3) the parties' estates. See 750 ILCS 5/503(d)(1), (d)(5), (d)(8) (West 2008). Respondent argues he was the party primarily responsible for the farm operations, and thus his contribution to the parties' property was significant, warranting him getting a greater share of the marital property. See 750 ILCS 5/503(d)(1) (West 2008). The trial court's memorandum of findings shows it thoroughly considered the parties' circumstances. The parties' arguments on appeal show each party had evidence that arguably justified him or her getting a greater share of the marital estate, which supports the trial court's equal division of the marital estate. Moreover, just looking at the value of each party's assets is not a full examination of the parties' economic circumstances. While her estate has less value, petitioner's estate has significant liquid assets unlike respondent, whose estate consists primarily of farm ground. Additionally, under the dissolution judgment, petitioner will receive $2,000 per month in permanent maintenance.

¶ 55 Accordingly, we find the trial court did not abuse its discretion in dividing the marital estate equally.

¶ 56 b. Money in Safe

¶ 57 Respondent also challenges the trial court's assignment to him of $10,000 cash from the safe in the marital residence in dividing the property because the money had all been spent before the parties' separation. This issue comes down to the parties' credibility.

¶ 58 Petitioner testified that, when the parties separated in January 2010, the parties' safe had $10,000 in cash, and it was no longer there. Respondent testified he put $10,000 in the safe in February 2009, and the parties had spent that money by October 2009. The trial court stated in its memorandum of findings it did not recall any evidence from respondent as to the existence or location of the money, and thus the court presumed respondent had the money or spent it on expenditures after the separation. The court's oversight of respondent's testimony is understandable with this complex case. However, the court, as the trier of fact, needed to make a credibility determination on this issue. Accordingly, the cause must be remanded to the trial court to determine whose testimony was more credible as to the existence of the $10,000 cash in the safe and then, if necessary, make any changes to the division of marital property.

¶ 59 c. Equalization Payment

¶ 60 Petitioner argues the trial court's distribution was erroneous because it failed to take into account respondent's portion of the marital estate's contribution to respondent's Clayton Farm. Respondent argues petitioner has forfeited this argument by failing to cite legal authority in support of it. While generally the failure to cite authority results in the argument's forfeiture (see Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006)), petitioner's argument does not raise a legal

question, but rather questions the court's calculation. She is asserting the court forgot a value in its calculation of the equal division of marital property. In such instances, no need for legal authority exists. Accordingly, we find petitioner did not forfeit her argument. As to the merits of petitioner's argument, respondent asserts the trial court's failure to list his half of the marital contribution was not an oversight, and that the court did consider respondent's half in dividing the property.

¶ 61 The trial court had found the marital contribution to the Clayton Farm was $221,500, which was the $134,000 mortgage plus 3% interest for the 17 years the mortgage existed. The court then ordered respondent to pay petitioner half of that total, which was $110,750. The trial court's chart of the property distribution clearly shows the court's intent to divide the marital estate equally. On petitioner's side of the chart, the court listed the $110,750. However, the court did not list respondent's $110,750 on the chart as his marital property in dividing the marital estate. While the Clayton Farm is respondent's nonmarital property, respondent's half of the marital contribution to that farm should have been listed as respondent's portion of the marital property. Respondent contends that failure is not an error because the court did not take into consideration his farm operation loans. While the loans are not listed on the chart showing the equal division, the court's memorandum of findings shows the court considered the loans in determining the value of "other farm assets." A review of the trial court's decision shows the court was thorough as it painstakingly addressed each of the parties' significant assets in its 70-page memorandum of findings. Thus, it appears the failure to include respondent's half of the marital contribution was a simple oversight by the court due to the complexity of this case. Accordingly, we find the trial court erred by failing to take into account

respondent's half of the marital contribution to the Clayton Farm in dividing the marital estate equally and remand on this issue is also warranted.

¶ 62 B. Modification of Support Awards

¶ 63 Petitioner asserts the trial court erred by providing child support and maintenance could be modified as a result of the method of dividing the marital property. Specifically, the court stated, "[The maintenance award] is also subject to modification, along with child support, if Respondent's income decreases on account of the method of dividing marital property." Respondent argues the issue is moot because a motion to modify has not yet been filed. We disagree with both parties' assertions. Whether the court entered a provision contrary to statute presents a question of law that we review *de novo*. See *In re Marriage of Paredes*, 371 Ill. App. 3d 647, 650, 863 N.E.2d 788, 791 (2007) (stating the appellate court reviews questions of law *de novo*).

¶ 64 As the parties note, section 510 of the Dissolution Act (750 ILCS 5/510 (West 2008)) sets forth the requirements for modifying maintenance and child-support awards. Generally, the party seeking the modification has to show a substantial change in circumstances before modification is permissible. See 750 ILCS 5/510(a)(1) (West 2008). The court's statement about modification along with the findings in its memorandum indicate it could not predict how the property distribution would impact respondent's income, which is reasonable based on the complexity of respondent's farm operation and the fact that farming is his primary source of income. Thus, with the statement at issue, the court recognized a substantial change in circumstance could occur as a result of the dissolution judgment. Without citation to authority, petitioner asserts a substantial change in circumstance cannot occur in conjunction with the

dissolution judgment that established maintenance and child support. Petitioner's assertion is likely true in most cases because usually all of the circumstances are known and can be considered in making the support awards. However, the facts of this case present a reasonable exception as some of the circumstances are unknown. It would be unreasonable to require respondent to predict the trial court's findings on all of the issues and present evidence on how all of the possible judgments could affect his income. Moreover, we disagree with petitioner the trial court's statement provides respondent's loan for the equalization payment is a deduction from net income under section 505(a)(3) of the Dissolution Act (750 ILCS 5/505(a)(3) (West 2008)) or that it gives respondent the power to manipulate his support obligations. The statutory provisions related to the modification of maintenance and child support still apply. Accordingly, we find the trial court's statement regarding modification of child support and maintenance is not erroneous.

¶ 65 C. Child Support

¶ 66 Respondent raises several arguments challenging the trial court's child-support order. Petitioner also challenges the court's award of all of the children's tax exemptions to respondent. The proper amount of child support is a matter within the trial court's sound discretion, and this court will not disturb that determination absent an abuse of discretion. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 37, 974 N.E.2d 417.

¶ 67 1. *Respondent's Income*

¶ 68 Respondent asserts the trial court erred in calculating his income because (1) the evidence of petitioner's expert was unreliable and (2) he should have been allowed to deduct depreciation expenses.

¶ 69 a. Evidence Regarding Respondent's Income

¶ 70 Respondent only notes the parties' evidence regarding income and argues why petitioner's evidence was wrong. His analysis fails to address the trial court's specific findings regarding respondent's income. That failure is fatal to his claim of error. Farm income is a complicated analysis, which is even more difficult in this case due to the extra employment benefits provided by the farm business operated by respondent's father. The court expressly laid out how it was determining and calculating respondent's income. However, on appeal, respondent points out alleged flaws in Nesbit's analysis of respondent's income and all of the farm debt he had at the time of his testimony but does not explain how that results in error in the trial court's analysis. The court's findings indicate the majority of the evidence for the court's determination of respondent's income came from the parties' tax returns for 2006-2009 and Gerveler's testimony regarding 2010 income. The tax returns included farm expenses in calculating farm profit. The court did consider Nesbit's testimony in determining the amount of fringe benefits respondent received from his father's business, but the court did not always accept her calculation, *i.e.*, rental value of the home where the parties lived. Moreover, respondent's expert failed to make a fringe-benefit calculation, which left the court on certain fringe benefits with only Nesbit's testimony. Regardless, respondent does not expressly challenge the court's finding to include fringe benefits in respondent's income or the total amount of fringe benefits. Accordingly, we find respondent has failed to show the trial court abused its discretion in determining his income.

¶ 71 b. Depreciation

¶ 72 Regarding depreciation, our supreme court's decision in *In re Marriage of Minear*,

181 Ill. 2d 552, 559-60, 693 N.E.2d 379, 382 (1998), demonstrates the issue of whether depreciation is potentially deductible from income under section 505(a)(3)(h) of the Dissolution Act (750 ILCS 5/505(a)(3)(h) (West 1994)) is a determination that must be based on the facts presented at the evidentiary hearing. Specifically, evidence must be presented that explains the basis for the depreciation expense. See *Minear*, 181 Ill. 2d at 560, 693 N.E.2d at 382. In other words, depreciation is not categorically deductible under section 505(a)(3)(h). Respondent claims to have provided the necessary evidence at trial, but the testimony at trial that respondent cites on appeal is very brief. It does not address every item listed on respondent's 4562 forms for the years at issue and fails to explain the depreciated items necessity to his farming operation. Thus, we disagree with respondent he provided sufficient evidence for the trial court to find depreciation deductible under section 505(a)(3)(h). Accordingly, we find the trial court did not abuse its discretion by adding back in taxable depreciation.

¶ 73 2. *Uninsured Medical Costs*

¶ 74 Respondent also argues the trial court erred in requiring him to pay two-thirds of children's health expenses not covered by insurance. He essentially asserts the dissolution judgment already requires him to pay $54,845 per year in child support and maintenance and petitioner has significant assets. Respondent works as an independent farmer and an employee of his father's farming corporation. Since respondent's employer pays uncovered medical expenses and respondent has significant income-generating property, we do not find the trial court abused its discretion in requiring respondent to pay two-thirds of the children's medical expenses.

¶ 75 3. *Dependency Exemptions*

¶ 76 Petitioner further asserts the trial court erred by assigning all of the dependency

exemptions for the parties' children to respondent. "As in other child support issues, the standard of review is whether the allocation of the tax exemption amounted to an abuse of discretion or the factual predicate for the decision is against the manifest weight of the evidence." *Stockton v. Oldenburg*, 305 Ill. App. 3d 897, 901, 713 N.E.2d 259, 262 (1999).

¶ 77 In support of her argument, petitioner cites *Stockton*, 305 Ill. App. 3d at 902, 713 N.E.2d at 263, where this court affirmed the trial court's order that provided each party the exemption for their sole child in alternate tax years. The father had argued he should receive the exemption in all years because his court-ordered child support provided for more than one-half of the child's expenses. *Stockton*, 305 Ill. App. 3d at 900, 713 N.E.2d at 262. In affirming the split of the exemption, we noted "[m]uch of the custodial parent's contribution to the care of the child is not conveniently reducible to financial figures relating only to the child." *Stockton*, 305 Ill. App. 3d at 901, 713 N.E.2d at 263. This court concluded the trial court apparently found the parties' financial contribution to the child's support was equivalent and that determination was neither against the manifest weight of the evidence nor an abuse of discretion. *Stockton*, 305 Ill. App. 3d at 902, 713 N.E.2d at 263.

¶ 78 As respondent notes, petitioner does not point to any evidence in the record that her financial contributions to the children's support is equivalent to respondent's. She simply emphasizes the children will be residing with her. A review of the record shows that, at the time of dissolution, petitioner was employed at $10.50 per hour and only worked several mornings per week. In 2009, petitioner earned $3,000 from that employment. Respondent was the primary wager earner during the marriage and continues to be the primary source of the children's support.

¶ 79 Accordingly, we find the trial court's award of all of the exemptions to respondent was not against the manifest weight of the evidence or an abuse of discretion.

¶ 80 D. Maintenance

¶ 81 Respondent contends the trial court erred in awarding petitioner maintenance. Specifically, he first asserts the trial court failed to take into account (1) the Bowman Family Trust and (2) petitioner's marital assets. However, the trial court expressly recognized those two facts in its July 2011 memorandum and found petitioner was still entitled to maintenance. Thus, those claims of error are clearly refuted by the appellate record. Respondent also asserts (1) the trial court erred by finding his income was sufficient to pay maintenance and (2) petitioner is not entitled to maintenance under the statutory factors.

¶ 82 The propriety of a maintenance award is within the trial court's discretion, and the court's determination will not be disturbed absent an abuse of discretion. *In re Marriage of Sturm*, 2012 IL App (4th) 110559, ¶ 3, 970 N.E.2d 117. As to the trial court's factual findings regarding a maintenance determination, this court will not reverse the findings unless they are against the manifest weight of the evidence. *Sturm*, 2012 IL App (4th) 110559, ¶ 3, 970 N.E.2d 117.

¶ 83 1. *Respondent's Income*

¶ 84 Respondent claims the trial court's determination he had sufficient income to pay maintenance was erroneous. In doing so, respondent incorporates his arguments related to the trial court's calculation of child support, which we have found failed to address the trial court's specific findings and did not show an abuse of discretion. As stated, the trial court's income determination rested relatively little on Nesbit's testimony, and the court did consider both

respondent's farm income and expenses as shown on the parties' tax returns. Accordingly, we find the trial court did not abuse its discretion in determining respondent's income for maintenance purposes.

¶ 85 2. *Statutory Factors*

¶ 86 Respondent last argues the trial court erred by finding petitioner was entitled to maintenance under the statutory factors. Specifically, respondent notes petitioner had skills as evidenced by her employment during the marriage but had failed to obtain full-time employment after the parties separated. He also points out petitioner's budget suggested a need that was not consistent with her lifestyle. However, those are the two main points the trial court noted and discussed in its memorandum. The court expressly recognized petitioner was able to engage in full-time employment and stated it would consider that in the amount of her maintenance. The court also acknowledged petitioner had exaggerated the amount of money she needs for her support and described a lifestyle that was not the marital lifestyle. It expressly found lifestyle would not "figure too prominently in the amount of maintenance."

¶ 87 In deciding whether to award maintenance, the amount of maintenance, and for what length of time, the trial court considers the 12 relevant factors contained in section 504(a) of the Dissolution Act (750 ILCS 5/504(a) (West 2008)). The trial court's memorandum and supplemental memorandum show the court considered the factors and determined petitioner was in need of maintenance. The court also made factual findings related to maintenance. As noted above, the court expressly considered the factors raised by respondent on appeal and explained they would be considered in setting the amount of maintenance. Respondent fails to explain how the court abused its discretion by finding those factors should be considered in the amount of

maintenance rather than not awarding maintenance on those bases. Moreover, we point out respondent only challenges petitioner's entitlement to maintenance. He does not raise an alternative argument petitioner's maintenance should have been temporary and not permanent.

¶ 88 Accordingly, we find the trial court did not abuse its discretion by finding petitioner was in need of maintenance.

¶ 89 III. CONCLUSION

¶ 90 In closing, we commend the trial court for its thorough and detailed memorandum of findings, which aided our review. The large number of issues raised by the parties does not diminish the quality and extraordinary work done by the trial court in this case.

¶ 91 For the reasons stated, we reverse the Adams County circuit court's property division, remand the cause for it to address respondent's half of the marital contribution to the Clayton Farm and the credibility issue related to the money in the safe, and affirm the court's judgment in all other respects.

¶ 92 Affirmed in part and reversed in part; cause remanded with directions.