2018 IL App (4th) 170663-U

NO. 4-17-0663

FILED
July 11, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
RUTH A. BOLT,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
and	)	No. 14D256
CLOYD DEAN BOLT,	)	
Respondent-Appellant.	)	Honorable
	)	James R. Coryell,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Harris and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: (1) An equitable division of marital debts is not necessarily an equal division, and, given all the facts in this case, it was not clearly inequitable of the trial court to order respondent to pay the delinquent real estate taxes on the marital property while dividing equally between the parties the rental income.

(2) By finding that respondent had dissipated the rental income and the proceeds from the sale of a 1969 red Chevrolet Camaro, the trial court did not make findings that were against the manifest weight of the evidence.

(3) Under the guidelines in section 504(b-1)(1)(A) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504(b-1)(1) (West Supp. 2015)), the maintenance the court awarded to petitioner is about $38 a month too high.

(4) Even though respondent alone worked hundreds of hours restoring some antique cars and thereby enhancing their value, the court could reasonably divide the value of those cars equally between the parties because petitioner contributed to the marital enterprise by attending to household tasks and taking care of the children while, additionally, like him, holding down a full-time job.

¶ 2 In December 2016, the trial court dissolved the marriage of respondent, Cloyd D. Bolt, and petitioner, Ruth A. Bolt; divided the marital debts and assets; and ordered respondent to pay maintenance. Respondent challenges the following parts of the judgment: (1) the order that he alone pay all the delinquent taxes on the marital real estate but that he share the rental income equally with petitioner, (2) the finding that he dissipated marital assets, (3) the order that he pay petitioner $1272.08 a month in maintenance, and (4) the equal division of three 1960s-era Chevrolet Camaros that he alone had spent hundreds of hours restoring.

¶ 3 We reduce the maintenance by about $38 per month, but we otherwise affirm the judgment as modified.

¶ 4 I. BACKGROUND

¶ 5 A. Petitioner's Decision (Concealed at First) To End the Marriage and the Sale of the 1969 Red Chevrolet Camaro

¶ 6 The parties married on June 16, 1979.

¶ 7 A son and a daughter, both of them now emancipated, were born to the parties during their marriage.

¶ 8 On January 27, 2014, without informing respondent, petitioner hired her present counsel, paying him $1000 to petition for the dissolution of the marriage. But she instructed her counsel to delay filing the petition until the parties' son graduated from high school, in June 2014.

¶ 9 After hiring counsel, petitioner went home and continued living with respondent for six months. She went on a vacation with him to South Carolina. She threw a birthday party for him and bought him gifts. Nevertheless, according to her, they were having "marital difficulties"—even though she never told him, ahead of time, that she intended to leave him and

file for divorce. Nor does there appear to be any testimony that she so much as threatened to do so.

¶ 10 On July 1, 2014, petitioner filed a petition to dissolve the marriage.

¶ 11 Respondent testified that before becoming the maintenance supervisor for the Decatur public schools, he was an auto-body technician and the owner of Bolt's Auto Body. After leaving auto-body work as a profession, he began restoring Chevrolet Camaros as a hobby. He had restored three of them: a 1969 red Camaro, a 1967 Camaro convertible pace car, and a 1969 green Camaro. He had devoted hundreds of hours of labor to each restoration.

¶ 12 When he bought the 1969 red Camaro for $10,000, it was in "[t]otal disrepair," a "bare shell" sitting on blocks in a backyard. He finished restoring it 8 or 10 years ago. It took about 500 to 600 hours of labor. After he restored this car, he stored it in the Chevrolet Hall of Fame Museum, where it was kept on display. A visitor to the museum saw the car, obtained respondent's name and phone number from museum staff, called respondent, and made an offer to buy the car. In February 2014, respondent sold the car to him for $45,000.

¶ 13 Respondent insisted he had no clue that petitioner intended to file for divorce until she so informed him in June 2014. "There were no fights," he testified, and she "never told [him] or intimated in any way" that she was going to leave him. The first time he learned of her intentions was on June 27, 2014, when he was driving their son home from a skeet-shooting competition. Petitioner called him while they were on the road and told him she was leaving and not coming back. Until that day, they slept in the same bedroom, ate together at the same table, went out together to restaurants, vacationed together, went to a relative's wedding together, and lived together as a family.

¶ 14 B. The Real Estate

¶ 15 The parties jointly owned the following real estate, which was free of mortgages and liens.

¶ 16 1. *The Marital Residence*

¶ 17 The marital residence was located in Decatur, Illinois, and its appraised value was $180,000. Respondent had exclusive possession of the marital residence from the time petitioner moved out, in June 2014, until the final evidentiary hearing, in December 2016. The property taxes were three years delinquent.

¶ 18 2. *An Empty Lot Adjacent to the Marital Residence*

¶ 19 Adjacent to the marital residence was an empty lot of 1.4 to 2 acres. Petitioner was of the opinion that this adjacent lot was worth $20,000, although she had no appraisal to support that opinion. Respondent was of the opinion that the lot was worth $2000 to $4000 an acre.

¶ 20 Twenty-two years ago, the parties paid $3000 an acre for the land on which the marital residence stood.

¶ 21 3. *The Single-Family Rental House in Forsyth*

¶ 22 In Forsyth, Illinois, the parties owned a single-family residence, appraised at $25,000, which they had rented out to a longtime tenant. The house had been vacant since the tenant died, in June 2016. The house was run down, its foundation was cracked, and raccoons lived in the attic.

¶ 23 From the filing of the petition for dissolution, in July 2014, to the tenant's death, in June 2016, respondent had received $450 a month in rent from the tenant—and yet the property taxes on this house likewise were three years delinquent.

¶ 24 4. *Commercial Rental Property in Decatur*

¶ 25 The parties owned improved commercial real estate in Decatur. The property was appraised at $107,000 and was rented out to two tenants. On July 1, 2014, when petitioner filed her petition for dissolution, the total rental income from this commercial property was $800 a month. In November 2014, however, respondent raised the total rent from this property to $1750 a month, to offset the $700 per month in temporary maintenance the trial court had ordered him to pay petitioner.

¶ 26 From the time the parties separated, in June 2014, to the date of the final hearing, December 8, 2016, respondent received all the rent from this commercial property, but the property taxes went unpaid. Respondent testified he spent the rents from this property on truck payments, maintenance, repairs to the marital residence, health and car insurance, and supporting the parties' two children.

¶ 27 C. Children Living in the Marital Residence

¶ 28 Respondent testified that the parties' son lived with him in the marital residence until August 2015, when he entered the United States Navy, and that the parties' daughter lived with him in the marital residence until March 2016. They did not contribute toward expenses while living with him.

¶ 29 D. Tools

¶ 30 All the tools in respondent's possession had been acquired during the marriage. Petitioner estimated their value at $30,000. Respondent testified, however, that some of the tools had been given to him as gifts, and he estimated the value of all the tools as $5000 to $8000. He proposed paying petitioner $3000 to $4000 for the tools.

¶ 31 E. Vehicles

¶ 32 Petitioner had possession of a 2007 Chevrolet HHR, which was worth $3954. Nothing was owed on it.

¶ 33 Respondent had possession of a 2011 Chevrolet Silverado, which was worth $25,200, with a payoff of $531.50.

¶ 34 F. The Parties' Respective Employment Incomes

¶ 35 Petitioner is a high-school graduate with no skills other than housekeeping. She works full-time for Akorn, Inc., in Decatur, packaging merchandise. Her projected earnings for 2016 were $25,026.42.

¶ 36 Respondent's projected earnings at the Decatur school district were $74,548.68.

¶ 37 G. The Trial Court's Decision, Entered on December 23, 2016

¶ 38 1. *The Lot Adjacent to the Marital Residence*

¶ 39 The trial court found that the lot adjacent to the marital residence was marital property. The lot was to be sold and the proceeds divided equally between the parties—unless respondent bought out petitioner's share of the marital residence, in which case he was to receive the lot.

¶ 40 2. *Property Taxes*

¶ 41 The property taxes on the real estate were to "come from [respondent's] share of the proceeds or shall be paid by him as a condition of [his] receiving a deed." The court explained in its order: "[Respondent] had the benefit of living in the marital residence and having the rent money from the properties."

¶ 42 3. *Dissipation*

¶ 43 The trial court ruled: "Dissipation claim is allowed as to the sale of the Camaro automobile and subsequent $45,000 in proceeds. Same is true as to the rent received. Rents were

received during the pendency of the dissolution[,] and the vehicle was sold and the money spent after [petitioner] had retained a lawyer in January of 2014."

¶ 44 4. *Vehicles*

¶ 45 The trial court awarded petitioner the 2007 Chevrolet HHR and ordered that respondent was to be credited $2462.50. The court awarded respondent the 2011 Chevrolet truck and ordered him to pay petitioner $9734.25 for her equity in the truck.

¶ 46 The two Chevrolet Camaros that respondent had restored and that were still in his possession were to be sold and the proceeds divided equally.

¶ 47 5. *Tools*

¶ 48 The trial court awarded all the tools to respondent. The court noted that the tools were used and that some of them were gifts to respondent.

¶ 49 6. *Household Goods*

¶ 50 Unless the parties agreed within 30 days to a division of the household goods, the household goods were to be sold at public auction, and the proceeds were to be divided equally.

¶ 51 7. *Maintenance*

¶ 52 The trial court found petitioner's calculation of maintenance to be correct. Respondent was to pay her $1272.08 per month in maintenance.

¶ 53 II. ANALYSIS

¶ 54 A. Property Taxes

¶ 55 Respondent argues the trial court abused its discretion by requiring him to pay all the property taxes while awarding petitioner half the income from the rental properties and half the equity in the real estate. See *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 24 (reviewing the apportionment of marital debt for an abuse of discretion). He quotes us as stating

in *In re Marriage of Davis*, 292 Ill. App. 3d 802, 807 (1997): " 'It is well settled that marital debts as well as marital assets must be distributed equally' [*sic*]."

¶ 56 Actually, that is a misquotation of *Davis*. Instead, we stated in *Davis*: "[I]t is well settled that marital debts as well as marital assets must be distributed *equitably*." (Emphasis added.) (Internal quotation marks omitted.) *Davis*, 292 Ill. App. 3d at 807. An equitable apportionment of marital debts is not necessarily an equal apportionment. *In re Marriage of Awan*, 388 Ill. App. 3d 204, 212-13 (2009). "[A]n equitable division depends on more than merely an analysis of dollars and cents. It also depends, for example, on *** the economic circumstances of each party." (Emphasis omitted.) *Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 22.

¶ 57 For five reasons, a reasonable person could take the view that respondent should pay all the delinquent property taxes. See *Awan*, 388 Ill. App. 3d at 213 ("An abuse occurs when no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted.)). First, respondent's income was approximately three times that of petitioner. Second, although respondent ultimately had to divide the rents between himself and petitioner, he had exclusive use of the rents during the pendency of the proceedings in the trial court. Third, he had the exclusive use of the marital residence during the pendency of the proceedings. Fourth, he received the adjacent lot for free if he bought out petitioner's share of the marital residence. Fifth, he received all the tools.

¶ 58 B. Dissipation of the 1969 Red Camaro

¶ 59 1. *An "Irreconcilable Breakdown" of the Marriage*

¶ 60 Respondent argues the trial court made a finding that was against the manifest weight of the evidence by finding he dissipated the $45,000 from the sale of the 1969 Camaro.

See *In re Marriage of Tabassum*, 377 Ill. App. 3d 761, 779 (2007) ("We review a trial court's factual findings on dissipation under the manifest weight of the evidence standard ***.").

¶ 61 When dividing the marital property, the trial court must consider "the dissipation by each party of the marital property." 750 ILCS 5/503(d)(2) (West 2016). The supreme court has defined "dissipation" of marital property as "the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown." (Internal quotation marks omitted.) *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497 (1990).

¶ 62 Respondent insists that when he sold the Camaro in late February 2014 and thereafter spent the proceeds, he did so without any awareness that his marriage was irreparably broken. He argues that, although petitioner consulted a lawyer in January 2014, she did so without his knowledge and he never suspected she intended to leave him and file for divorce. Until she telephoned him in June 2014 and told him she was leaving and not coming back, they lived together, slept together, traveled together, and attended parties together, just as they always had done throughout their 35 years of marriage. At trial, he denied having any inkling, during the period of January to June 2014, that their long-standing marriage was on the rocks.

¶ 63 Respondent cites no case holding, however, that the alleged dissipater had to be aware, at the time of the dissipation, that the marriage was in jeopardy. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) ("Argument, which shall contain the contentions of the appellant and the reasons therefor, *with citations of authorities* and the pages of the record relied on." (Emphasis added.)). Again, the supreme court has defined "dissipation" of marital property as "the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown." (Internal

quotation marks omitted.) *O'Neill*, 138 Ill. 2d at 497. The definition says nothing about the dissipater's knowing, at the time, that the marriage was undergoing an irreconcilable breakdown. The definition simply requires that, as a matter of objective fact, the marriage was undergoing an irreconcilable breakdown. *Id.* The record appears to contain evidence that in January 2014, a month before respondent sold the Camaro, the marriage was—as a matter of objective fact—undergoing an irreconcilable breakdown: petitioner hired an attorney and instructed him to file, in six months, after the parties' son graduated, a petition to dissolve the marriage. We cannot say it "clearly" was unproved that the marriage undergoing an irreconcilable breakdown in February 2014, when respondent sold the Camaro, if, the month before, petitioner hired an attorney and gave him definite instructions to petition for the dissolution of the marriage. See *In re Marriage of Dhillon*, 2014 IL App (3d) 130653, ¶ 29 ("A finding is against the manifest weight of the evidence only if it is clearly apparent from the record that the trial court should have reached the opposite conclusion ***.").

¶ 64 2. *Use of the $45,000 for the Sole Benefit of the Spouse and for Purposes Unrelated to the Marriage*

¶ 65 To dissipate a marital asset, the spouse must use it "for [his or her] sole benefit [and] for a purpose unrelated to the marriage ***." *O'Neill*, 138 Ill. 2d at 497 (Internal quotation marks omitted.). Respondent argues that this impermissible use of the $45,000 was unproved. He writes in his brief:

> "Evidence was presented that the Camaro was sold for $45,000[,] and [respondent] testified that he spent the money on marital expenditures. Additionally, he listed in his proposal to the court that he spent the money on a Kubota tractor, property taxes, graduation party for their son, purchase of a gun for their son, HVAC [(heating, ventilation, and air conditioning)] equipment, parts

> to rebuild their son's car, gift purchase for [petitioner's] friend at [petitioner's] request, and other household expenses. This shows that the $45,000 was not used for purposes unrelated to the marriage."

The quoted passage lacks any citation to the record. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) ("Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities *and the pages of the record relied on*." (Emphasis added.).). We do not see where in the trial transcript that respondent testified he spent the $45,000 on marital purposes. If we are missing something, that is the risk a party runs by failing to comply with Rule 341(h)(7).

¶ 66 We see that respondent has written in his statement of facts: "[Respondent] testified that he spent the $45,000 that he received from the sale of the Camaro." That sentence is followed by a citation to the record, and at the cited page of the record, we find the following testimony:

> "[PETITIONER'S ATTORNEY]: With respect to the money received from that Camaro, the $45,000.00, do you have any receipts for what you did with that money?
>
> A. Sir, I spent it as cash. I have no receipts.
>
> Q. $45,000.00 you spent in cash?
>
> A. I can show what was bought with it.
>
> Q. I'm just asking a question. You spent $45,000.00 in cash?
>
> A. Yes, sir."

This is testimony merely that he spent the $45,000, not that he spent it on purposes related to the marriage.

¶ 67 It is true that on redirect examination respondent testified that, to repair water damage to the marital residence, he bought a steel door for $157, a fluorescent light for $29, a garage-door opener for $276, a breaker box for $423, and another breaker box for $250. But he never testified he used the $45,000 from the Camaro for those purchases—which, in any event, come to only $1136.

¶ 68 As for the "proposal to the court" that respondent references in the argument section of his brief, he again fails to provide a citation to the record, but the proposal we found is signed by his attorney, not by him. The proposal is merely an argument to the trial court, not evidence. It is not respondent's sworn testimony.

¶ 69 If, while the marriage is in serious jeopardy, a spouse liquidates a marital asset and keeps the proceeds in his or her exclusive control, there is a *prima facie* case of dissipation. A party makes a *prima facie* showing of dissipation by presenting evidence that, while the marriage was undergoing an irreparable breakdown, the other party liquidated a marital asset and "obtained exclusive control over" the liquid asset. *In re Marriage of Jerome & Martinez*, 255 Ill. App. 3d 374, 394-95 (1994). "Once it is established that one party has liquidated marital assets, the party charged with dissipation must establish by clear and specific evidence how the funds were spent." *In re Marriage of Schuster*, 224 Ill. App. 3d 958, 979 (1992); see also *In re Marriage of Partyka*, 158 Ill. App. 3d 545, 549-50 (1987).

¶ 70 Respondent never came forward with clear and specific evidence of what he spent the $45,000 on. Therefore, the finding of dissipation is not against the manifest weight of the evidence. See *Tabassum*, 377 Ill. App. 3d at 779.

¶ 71 C. Dissipation of the Rental Income

¶ 72 As we have explained, a spouse can raise a *prima facie* case of dissipation by presenting evidence that, while the marriage was undergoing an irreparable breakdown, the other spouse took exclusive control of a liquid marital asset. See *Dhillon*, 2014 IL App (3d) 130653, ¶ 39; *Partyka*, 158 Ill. App. 3d at 550. The *prima facie* case obligates the other spouse to prove, by clear and specific evidence, that he or she spent the marital funds for a purpose related to the marriage. *Awan*, 388 Ill. App. 3d at 215; *Partyka*, 158 Ill. App. 3d at 550.

¶ 73 Respondent argues he met this burden by "testif[ying] that he used the rental money to pay for his truck payment, maintain the marital property, paid maintenance, paid health insurance, paid car insurance, and maintained his children." At the page of the record he cites, he testified as follows:

> "Q. Okay. Now you received rental income from the real estate located at Elwood in Forsyth and North 27th Street; is that correct?
>
> A. Yes, sir.
>
> Q. And the total amount of the rental income you received up until May of 2016 was $1,750.00 a month for both properties; is that correct?
>
> A. Between November of 2014 and May of 2016. Yes.
>
> Q. And what did you do—what did you use that money to do?
>
> A. It paid the payment on the truck every month[,] and the rest of it was living and maintaining the marriage property.
>
> Q. Did you pay [petitioner] maintenance with it?
>
> A. I paid [petitioner] maintenance out of my income. Period. Yes.
>
> Q. Were you paying other expenses for [petitioner]?

A. Paying health insurance and also car insurance and maintaining the residence and the children.

Q. Is that where all the money went?

A. Yes.

Q. Do you have any receipts for the money?

A. I mean, I've got Wal-Mart receipts. I've got that kind of thing."

¶ 74 The trial court could reasonably have decided that this testimony failed to meet the standard of "clear and specific evidence." (Internal quotation marks omitted.) *Awan*, 388 Ill. App. 3d at 215. It is unclear, for example, what was entailed in "maintaining the residence and the children." In his brief, respondent does not offer a specific or detailed explanation of why, in addition to his employment income, he needed all the rental income to meet those expenses. Therefore, we are unconvinced the court made a finding that was against the manifest weight of the evidence by finding that respondent had dissipated the rental income.

¶ 75 D. Maintenance

¶ 76 1. *The Correct Amount Under the Statutory Guidelines*

¶ 77 The trial court awarded maintenance to petitioner in the amount of $1272.08 per month from January 1, 2017, onward. This is the amount she had calculated in her position statement, and evidently the court agreed with her calculations. Respondent argues that petitioner's calculations incorrectly assumed he had a gross income of $75,273 a year whereas actually, according to him, his gross income was only $59,446 a year.

¶ 78 Under section 504(b-1)(1)(B) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(b-1)(1)(B) (West Supp. 2015)), the amount of maintenance depends on the payor's gross annual income. Section 504(b-1)(1) provides as follows:

"(b-1) Amount and duration of maintenance. If the court determines that a maintenance award is appropriate, the court shall order maintenance in accordance with either paragraph (1) or (2) of this subsection (b-1):

(1) Maintenance award in accordance with guidelines. In situations when the combined gross annual income of the parties is less than $250,000 and the payor has no obligation to pay child support or maintenance or both from a prior relationship, maintenance payable after the date the parties' marriage is dissolved shall be in accordance with subparagraphs (A) and (B) of this paragraph (1), unless the court makes a finding that the application of the guidelines would be inappropriate.

(A) The amount of maintenance under this paragraph (1) shall be calculated by taking 30% of the payor's gross annual income minus 20% of the payee's gross annual income. The amount calculated as maintenance, however, when added to the gross income of the payee, may not result in the payee receiving an amount that is in excess of 40% of the combined gross income of the parties.

(B) The duration of an award under this paragraph (1) shall be calculated by multiplying the length of the marriage at the time the action was commenced by whichever of the following factors applies: ***. For a marriage of 20 or more years, the court, in its discretion, shall order either permanent maintenance or

maintenance for a period equal to the length of the marriage." 750 ILCS 5/504(b-1)(1) (West Supp. 2015).

Thus, the larger the payor's gross annual income is, the larger the amount of maintenance will be, subject to the 40% cap (see 750 ILCS 5/504(b-1)(1)(A) (West Supp. 2015) ("[t]he amount calculated as maintenance, *** when added to the gross income of the payee, may not result in the payee['s] receiving an amount that is in excess of 40% of the combined gross income of the parties.").

¶ 79 Respondent argues that his gross annual income was only $59,446 a year instead of $75,273 a year as the trial court found. He obtains the amount of $59,446 a year from a direct deposit receipt, dated October 28, 2016, which was issued to him by his employer, Decatur School District No. 61. He submitted this receipt to the trial court as an attachment to a form titled "Additional Information For the Financial Affidavit." Under the heading of "EARNINGS," the receipt states that, as of the "End Date" of October 21, 2016, respondent has received year-to-date ("YTD") earnings totaling $62,123.91, a total that consists of three items: $59,446.00, which is labeled "FOREMAN—MAINTENANCE"; $1084.41, which is labeled "IMRF [(Illinois Municipal Retirement Fund)] ADD-ON"; and $1593.50, which is labeled "Other Accum." Respondent criticizes petitioner's calculations because, in calculating his gross annual income, she "included as income an IMRF add-on[,] which went towards [respondent's] retirement plan, half of which [petitioner] has received" and that if she had excluded this item, she would have calculated his gross annual income as only $59,446, the amount labeled as "FOREMAN—MAINTENANCE." (Respondent does not offer any explanation for excluding the "Other Accum[ulations]" of $1593.50.)

¶ 80 We see two problems with respondent's argument.

¶ 81 First, respondent seems to regard it as self-evident that if petitioner receives half of his retirement plan, any amounts that went into his retirement plan should be excluded from the calculation of his gross income. We are aware of no statutory basis for such an exclusion. Section 504(b-3) of the Act provides: "For purposes of this [s]ection, the term 'gross income' means all income from all sources, within the scope of that phrase in [s]ection 505 of this Act [(750 ILCS 5/505 (West 2016))]." 750 ILCS 5/504(b-3) (West Supp. 2015). Section 505 pertains to child support, and subsection (a)(3) of that section defines "gross income" as follows:

> "(A) As used in this [s]ection, 'gross income' means the total of all income from all sources, except 'gross income' does not include (i) benefits received by the parent from means-tested public assistance programs, including, but not limited to, Temporary Assistance to Needy Families, Supplemental Security Income, and the Supplemental Nutrition Assistance Program or (ii) benefits and income received by the parent for other children in the household, including, but not limited to, child support, survivor benefits, and foster care payments. Social security disability and retirement benefits paid for the benefit of the subject child must be included in the disabled or retired parent's gross income for purposes of calculating the parent's child support obligation, but the parent is entitled to a child support credit for the amount of benefits paid to the other party for the child. Spousal maintenance received pursuant to a court order in the pending proceedings or any other proceedings that must be included in the recipient's gross income for purposes of calculating the parent's child support obligation." 750 ILCS 5/505(a)(3) (West Supp. 2015).

¶ 82 Section 505(a)(3), to which section 504(b-3) refers, expressly states what " 'gross income' " "does not include," and a direct deposit into the payee's retirement plan is not one of the listed exclusions. We assume there are no exclusions from the definition of "gross income" other than those the legislature has listed. "Under the maxim of *expressio unius est exclusio alterius*, the enumeration of an exception in a statute is considered to be an exclusion of all other exceptions." *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 17.

¶ 83 An employer's contribution to the employee's retirement plan is "income" to the employee as that term is commonly understood, and respondent cites no provision of the Act stating otherwise. "[I]ncome" is "something that comes in as an increment or addition ***: a gain or recurrent benefit that is usu[ally] measured in money ***: the value of goods and services received by an individual in a given period of time." (Internal quotation marks omitted.) *In re Marriage of Rogers*, 213 Ill. 2d 129, 136-37 (2004). When an employer makes a deposit into respondent's retirement account, it is a gain or benefit to respondent. We are aware of no authority for excluding such a gain or benefit from his gross income.

¶ 84 Second, another problem with using $59,446 as respondent's gross annual income—a problem in addition to the unjustified exclusion of the "IMRF ADD-ON" and the "Other Accum[ulations]"—is that $59,446 really is not the total amount of basic pay respondent received in 2016 for being the foreman of the school district's maintenance department. The "End Date" of the direct deposit receipt is dated October 21, 2016. The receipt states respondent's "YTD" earnings *as of that date*. More than two months were left in the year. Therefore, it was necessary to calculate respondent's *projected* gross annual income for 2016.

¶ 85 Petitioner did so by dividing respondent's total earnings for 2016 as of October 2016 by 10 (because, as of October 2016, 10 months had elapsed in 2016) and then multiplying

the result by 12 (the number of months in a year). When respondent's total year-to-date earnings of $62,123.91 are divided by 10, the result is $6212.39. When $6212.39 is multiplied by 12, the result is $74,548.68, which is respondent's projected gross annual income for 2016. Far from being against the manifest weight of the evidence, that amount derives from the direct deposit receipt that respondent himself submitted to the trial court as proof of what he earned. See *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1041 (2008) ("A court's factual finding as to the parties' annual incomes will be reviewed under the manifest-weight-of-the-evidence standard.").

¶ 86 Section 504(b-1)(1) says to calculate the amount of maintenance by subtracting 20% of the payee's gross annual income from 30% of the payor's gross annual income. 750 ILCS 405/504(b-1)(1)(A) (West Supp. 2015). Thirty percent of respondent's gross annual income is $22,364.60 ($74,548.68 times 0.3). In her brief, petitioner candidly admits that her projected income for 2016 was $25,026.42 (somewhat more than $20,740, her income for 2015, which is the amount respondent uses in his own calculations). Twenty percent of $25,026.42 is $5005.28 ($25,026.42 times 0.2). When 20% of petitioner's gross annual income is subtracted from 30% of respondent's gross annual income, the difference is $17,359.32—which will be the annual amount of maintenance, *provided* that it does not exceed the cap in section 504(b-1)(1). See *id.*

¶ 87 The cap is as follows: "[t]he amount calculated as maintenance, *** when added to the gross income of the payee, may not result in the payee['s] receiving an amount that is in excess of 40% of the combined gross income of the parties." *Id.* The amount calculated as maintenance plus the gross income of the payee (petitioner) is $42,385.74 ($17,359.32 plus $25,026.42). The combined gross income of the parties is $99,575.10 ($74,548.68 plus $25,026.42). Forty percent of $99,575.10 is $39,830.04 ($99,575.10 times 0.4). Because

$42,385.74 is greater than $39,830.04, the amount we calculated as maintenance must be reduced—it exceeds the cap. The amount by which the maintenance must be reduced is $2555.70, the difference between $42,385.74 and $39,830.04 ($42,385.74 minus $39,830.04). So, $17,359.32 minus $2555.70 is $14,803.62, the annual amount of maintenance under the statutory guidelines. That is $1233.63 per month in maintenance ($14,803.62 divided by 12 months). The trial court ordered $1272.08 in maintenance. The judgment should be amended to impose $1233.63 per month in maintenance.

¶ 88 Because respondent's income was almost three times greater than petitioner's income, we disagree that the trial court was required to deviate downward from the statutory guideline. See 750 ILCS 5/504(b-2)(2) (West Supp. 2015).

¶ 89 2. *The Irrelevance of the Amount of Temporary Maintenance*

¶ 90 Originally, the trial court ordered respondent to pay $700 a month in temporary maintenance. He points out that the amount of temporary maintenance was substantially lower than the new amount of maintenance even though there had been no material change in circumstances.

¶ 91 "A temporary order *** does not prejudice the rights of the parties *** which are to be adjudicated at subsequent hearings in the proceeding ***." 750 ILCS 5/501(d)(1) (West Supp. 2015). The temporary maintenance would prejudice petitioner if respondent could use it to argue for a lower amount of permanent maintenance. Section 501(d)(1) forecloses such an argument.

¶ 92 E. The Apportionment of the Camaros

¶ 93 A caption in respondent's brief argues that the trial court's *valuation* of two of the Camaros he restored was against the manifest weight of the evidence. Under that caption,

however, he challenges not the valuation of the cars but, rather, the apportionment of their value between him and petitioner. He points out that, under section 503(d)(1) of the Act (750 ILCS 5/503(d)(1) (West 2016)), one of the factors a court should consider when dividing the marital property is "each party's contribution to the acquisition, preservation, or increase *** in value of the marital *** property." He argues:

> "In the present case, the parties had two vehicles which [respondent] restored, a 1967 Camaro Convertible Pace Car Replica and a 1969 green Camaro. [Respondent] testified that the 1967 Camaro Convertiable Pace Car Replica was purchased in 2001 or 2002 for approximately $13,000 and that he spent between 600 to 700 hours working on it over a period of three years. He estimated that the value of it now is $44,000. [Citation.] The 1969 green Camaro was purchased in 2010 or 2011 for $6000[,] and [he] worked between 500 to 600 hours restoring it[,] and it is now worth $19,000. [Citation.] The increase in value to the 1967 Camaro Convertible Pace Car Replica caused by [respondent's] hard work was $31,000. The increase in value to the 1969 green Camaro caused by [respondent's] hard work was $13,200. The increase in value to both of the Camaros [is] attributable solely to [respondent] and to his efforts."

¶ 94 "The trial court has broad discretion in determining an equitable apportionment of marital property, and an abuse of discretion will be found only when no reasonable person could take the view adopted by the trial court." *In re Marriage of Adan*, 263 Ill. App. 3d 566, 569 (1994). Not all reasonable persons would necessarily agree with respondent that the increase in value to both of the Camaros is attributable solely to him and his efforts. A reasonable person could take the view that petitioner, by taking care of the children and the household tasks while

holding down a full-time job, helped free up respondent to work on the cars. She rendered valuable services, thereby increasing his own opportunity to render valuable services. At trial, petitioner's attorney asked her:

"Q. Now, in all of these things, [respondent]—in some of these case, the '69 Chevrolet which was sold, the '67 perhaps, has done work on these vehicles.

A. He's done work on these, is that what you're asking?

Q. Yes.

A. Yes.

Q. And during this period of time, was he keeping house?

A. Yes.

Q. Was he maintaining the home in terms of doing laundry, cooking, grocery shopping?

A. Oh, I'm sorry. No.

Q. What were you doing during this period of time?

A. I was doing all that, plus working a full-time job.

Q. And did you have children in the home at that point?

A. Yes.

Q. And that was both your now adult children, who at least one of them was a minor during this period of time?

A. Yes.

Q. And were you primarily responsible for that?

A. Yes, I was."

On the basis of that testimony, we find no abuse of discretion in the trial court's division of the Camaros.

¶ 95 III. CONCLUSION

¶ 96 For the foregoing reasons, we affirm the judgment as modified to award petitioner $1233.63 per month in maintenance instead of $1272.08 per month.

¶ 97 Affirmed as modified.