2018 IL App (4th) 170932-U

NO. 4-17-0932

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 5, 2018
Carla Bender
4th District Appellate
Court, IL

In re MARRIAGE OF JENNIFER MILLER,	)	Appeal from the
Petitioner-Appellant,	)	Circuit Court of
and	)	Morgan County
ALAN MILLER,	)	No. 14D20
Respondent-Appellee.	)	
	)	Honorable
	)	David R. Cherry,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed in part, reversed in part, and remanded to the trial court for the award of maintenance to petitioner.

¶ 2 In December 2017, the trial court entered a judgment for dissolution of marriage between petitioner, Jennifer Miller, and respondent, Alan Miller, and distributed certain marital and nonmarital property.

¶ 3 On appeal, Jennifer argues the trial court (1) abused its discretion in denying her maintenance and erred in (2) its disposition of property and debts, (3) not ordering Alan to provide life insurance, (4) not allocating medical expenses, and (5) not ordering Alan to contribute to her attorney fees. We affirm in part, reverse in part, and remand the cause to the trial court for consideration of an appropriate maintenance award.

¶ 4 I. BACKGROUND

¶ 5 In February 1993, Jennifer and Alan were married in Jacksonville, Illinois. Two children were born during the marriage, namely J.M., born in 1993, and G.M., born in 1999. In April 2014, Jennifer filed a petition for dissolution of marriage. At that time, Jennifer was 41 years old and not employed outside the home. Alan was 52 years old and employed by Ameren Corporation (Ameren) as an electrical supervisor of construction services. In her petition, Jennifer asked that Alan be ordered to maintain a life-insurance policy with her as beneficiary and pay maintenance, attorney fees, and child support.

¶ 6 In October 2016, the trial court conducted a hearing on the dissolution petition. The parties stipulated to the values of certain properties, including the Gardendale apartment complex ($181,500), 16 acres in Morgan county ($48,000), and Jennifer's residence (the Finley residence) ($130,000).

¶ 7 Along with J.M. and G.M., Alan testified he has two children from a previous marriage. At the time of the hearing, Alan lived in Jacksonville at the Gardendale apartments, which he and Jennifer owned. He also rented an apartment in Peoria, where he worked. In 1985, Alan began working in a union position as a meter reader for Illinois Power (which later became Ameren) in and around the Jacksonville area. He later served in a gas apprenticeship and then a line apprenticeship. Between 1994 and 2012, Alan worked in the power line department. In 2012, Alan began a management position with Ameren in Washington, Illinois. Although the family originally intended to move to Washington, Jennifer decided not to move, so Alan rented an apartment. In 2016, he became the construction services supervisor in Peoria. During the marriage, Alan would undergo training in Decatur and oftentimes be gone one to two weeks.

¶ 8 Alan's base salary at the time of trial was $98,700, and he received a "management incentive" of $11,228.16 in 2016. When he started with Illinois Power, Alan

made contributions to a 401k plan by contributing 3% of his income, and the company matched the 3%. He continued the contributions until December 2005, at which time the money was rolled over and invested with Berthel Fisher & Company (Berthel Fisher) in an individual retirement account (IRA). Alan also had a pension funded by Illinois Power, which was converted to a cash-savings pension plan in January 2015. As of October 31, 2016, Alan's cash-savings pension plan had a value of $220,558.26. Alan also has an Ameren savings and investment plan with a balance of $177,000, which was funded during the marriage.

¶ 9 Alan claimed a portion of his Ameren cash-savings pension plan and a portion of the Berthel Fisher IRA constituted nonmarital property. Alan stated he made repeated attempts to secure information from Ameren as to the value of the 401k plan and his pension at the time of his marriage to Jennifer. However, Ameren did not maintain such records. Alan stated he retained the necessary records during the marriage and kept them in a filing cabinet. After the parties separated, Jennifer moved the filing cabinet to the garage. Alan's search of the cabinet failed to turn up the records.

¶ 10 In June 2015, Alan engaged the services of a psychiatrist due to depression. One of the treatment recommendations involved him doing "something positive" in his life. To that end, Alan took flying lessons, totaling $657.16.

¶ 11 Jennifer testified she works part-time as a licensed practical nurse (LPN) making $16.50 per hour. Through October 14, 2016, her year-to-date earnings totaled $14,812.62. Her earnings totaled $11,161.28 in 2015 and $3882.23 in 2014. When the parties got married, Jennifer worked part-time for Illinois Express Eye Care and part-time for a dentist. When J.M. was born, Jennifer stayed home before returning to work at a hospital. In 1996, she worked 28 to 32 hours per week at the Southern Illinois University division of ophthalmology and one night a

week as a hostess at the Holiday Inn. After G.M. was born in 1999, Jennifer worked for an ophthalmologist. During the marriage, she was offered additional employment but did not take the jobs because of the hours and her need to take care of the children. When G.M. started kindergarten, Jennifer babysat and then worked for six months at a travel agency. When G.M. was in second or third grade, Jennifer went back to school to become a certified nursing assistant (CNA). The parties agreed Jennifer would go back to school "as long as it didn't interfere with everything else that was going on." She attended classes "one at a time" and became an LPN in 2010 or 2011. At the time of the hearing, she was taking classes to become a registered nurse (RN) and hoped to find a full-time job.

¶ 12 Jennifer testified Alan took trips to Decatur during the marriage for work training. While he was away, she would take care of her stepchildren. The parties would take weekend trips to St. Louis and had taken vacations to Hawaii, Jamaica, and Riviera Maya.

¶ 13 Jennifer testified she was diagnosed with depression in 1994 after the birth of J.M. and continues to see a doctor twice a year, sees a therapist "off and on," and takes medication. In 1995, she was diagnosed with interstitial cystitis, which is a scarring of the lining of the bladder that mimics a urinary tract infection. While it is "very painful," she does not take any medication unless she has a flare-up. In 2004, Jennifer donated her kidney to Alan's brother. In 2015, she was diagnosed with breast cancer and then had a lumpectomy on her right breast. After taking medication, her "kidney function dropped very low." She discontinued the medication but was "very anemic." She took iron supplements and then had iron injections. In 2015, she had "trouble" with her left arm and shoulder and her upper neck and back. She received steroid injections. Jennifer also stated she has had psoriasis "for years" and was eventually diagnosed with psoriatic arthritis. "Years ago," she was diagnosed with idiopathic

pruritus, which is "basically hives," and she puts ice on her herself every day and takes antihistamines. She stated nothing related to her physical health prevented her from working full-time.

¶ 14 Jennifer stated the Berthel Fisher account had approximately $250,000. She stated the money in the account had been rolled over from money in Alan's Illinois Power retirement account. She denied removing the records from the filing cabinet.

¶ 15 Jennifer stated the breakdown in the marriage occurred in 2010 or 2011. The parties met with an attorney in April 2013 to talk about a divorce. The parties sold their house, and Jennifer and G.M. moved into the Finley residence in March 2014. Prior to the breakdown, the parties had an Edward Jones account that totaled "$47,000 and something." Jennifer testified to four occasions where money ($10,000, $7522, $19,904.25, and $4500) was taken out of the Edward Jones account and deposited into Alan's account. Jennifer deposited $15,440.64 from a joint account into her own account, and she used a large portion to pay down her credit card debt. Jennifer stated Alan had not reimbursed her for G.M.'s medical expenses from April 2014 to January 2016. He eventually paid $360.

¶ 16 In December 2017, the trial court issued the judgment for dissolution of marriage. The court found a maintenance award to Jennifer was not appropriate. The court noted there had been "a great disparity in incomes of the parties," but the division of assets "makes an equal and equitable distribution of the marital estate accumulated by the parties during the marriage." Moreover, Alan's income will decrease upon his retirement and Jennifer's income "may increase as she takes advantage of her training and education to this point." The court noted "[b]oth parties will have substantial assets to sustain each of them, as well as the incomes which each of them will provide for themselves." While there did not "appear to be an extravagant life[]style

to which Alan and Jennifer have become accustomed," the court found Jennifer's "testimony was less than credible and not clear or convincing as to her 'needs.' " Nothing indicated Jennifer could not be employed full-time, and "she did not present any medical evidence which could support a claim of unemployability."

¶ 17 In regard to the Berthel Fisher IRA, the trial court found the value to be $250,031.71 for purposes of the distribution calculation. Of that amount, $90,920.62 (88 nonmarital months out of 242 total months, or 36.36%) constituted nonmarital property and was awarded to Alan. The marital portion of the IRA account, amounting to $159,111.09, was distributed in the amount of $79,555.55 to Alan and $79,555.54 to Jennifer.

¶ 18 As to the Ameren cash-savings pension plan, the trial court found the value to be $220,558.26 for purposes of the distribution calculation. Of that amount, $51,757.66 (88 nonmarital months out of 375 total months, or 23.47%) constituted nonmarital property and was awarded to Alan. The marital portion of the pension account, amounting to $168,800.58, was distributed equally to each party in the amount of $84,400.29. The court found the Ameren savings investment plan amounted to $177,821.38, and it was distributed equally to each party in the amount of $88,910.69.

¶ 19 In regard to the allegations of dissipation by both parties, the trial court noted "much time was spent in defending the claims of dissipation, only to result in the failure of both parties to provide 'clear and convincing evidence' as to the nature, amount and purpose of each alleged act of dissipation." The court found the evidence "clearly shows that there were not any extraordinary expenditures made by either party which could be defined as 'other than ordinary living expenses.' " This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 A. Maintenance

¶ 22 Jennifer argues the trial court abused its discretion in denying her maintenance. We agree.

¶ 23 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/504(a) (West 2016)) provides that in a dissolution proceeding, the trial court "may grant" maintenance in an amount and for a period of time "as the court deems just." When considering whether a maintenance award is appropriate, section 504(a) sets forth 14 factors for the trial court to consider, including:

> "(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance as well as all financial obligations imposed on the parties as a result of the dissolution of marriage;
>
> (2) the needs of each party;
>
> (3) the realistic present and future earning capacity of each party;
>
> (4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;
>
> (5) any impairment of the realistic present or future earning capacity of the party against whom maintenance is sought;

(6) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or any parental responsibility arrangements and its effect on the party seeking employment;

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

(8) the duration of the marriage;

(9) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties;

(10) all sources of public and private income including, without limitation, disability and retirement income;

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

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

(13) any valid agreement of the parties; and

(14) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a) (West 2016).

¶ 24 When determining whether a maintenance award is appropriate, the trial court shall state its reasoning and make specific findings of fact referencing each relevant factor from

section 504(a). 750 ILCS 5/504(b-2)(1) (West 2016). No one factor is dispositive as to whether the court should award maintenance. *In re Marriage of Harlow*, 251 Ill. App. 3d 152, 157, 621 N.E.2d 929, 934 (1993). "A spouse seeking maintenance should not be required to sell assets or impair capital to maintain herself in a manner commensurate with the standard of living established in the marriage as long as the payor spouse has sufficient assets to meet both his needs and the needs of his former spouse." *In re Marriage of Drury*, 317 Ill. App. 3d 201, 207, 740 N.E.2d 365, 369 (2000).

¶ 25 If the court concludes maintenance is appropriate, the court shall then determine the duration and amount of maintenance according to section 504(b-1) of the Dissolution Act. 750 ILCS 5/504(b-1) (West 2016). In doing so, " 'the trial court must balance the ability of the spouse to support himself [or herself] in some approximation to the standard of living he [or she] enjoyed during the marriage.' " *In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10, 967 N.E.2d 358 (quoting *In re Marriage of Shinn*, 313 Ill. App. 3d 317, 322, 729 N.E.2d 546, 550 (2000)). That said, the Dissolution Act "creates an affirmative duty on a spouse requesting maintenance to seek and accept appropriate employment." *In re Marriage of Liszka*, 2016 IL App (3d) 150238, ¶ 73, 77 N.E.3d 1000.

¶ 26 The trial court has the discretion to determine the amount and duration of an award of maintenance. *In re Marriage of Donovan*, 361 Ill. App. 3d 1059, 1062, 838 N.E.2d 310, 314 (2005). The court's decision in awarding maintenance will not be reversed on appeal absent an abuse of discretion. *Donovan*, 361 Ill. App. 3d at 1062, 838 N.E.2d at 314. "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 189 (2005). The party seeking reversal of a maintenance decision has the burden to establish the court abused its

discretion. *Schneider*, 214 Ill. 2d at 173, 824 N.E.2d at 189.

¶ 27 This case involved a 21-year marriage. When the parties were first married in 1993, Alan was in an apprenticeship position with Illinois Power, while Jennifer worked part-time. After J.M. was born, Jennifer stayed home before returning to work at a hospital. While Alan worked his way up to a management position with Ameren, Jennifer went back to school to become a CNA and then an LPN in 2010 or 2011. At the time of the dissolution trial, she was taking classes to become an RN.

¶ 28 Alan earned approximately $100,000 per year, while Jennifer earned approximately $20,000 per year. Nothing indicates the parties lived a lavish or extravagant lifestyle. Jennifer has a lower earning potential than Alan. While Alan should be commended for working his way up the corporate ladder, it appears Jennifer took on the responsibility of maintaining the household and caring for the parties' children, and at times Alan's two children from a previous marriage, while putting off her education until time allowed. By deferring her education and her own rise up the nursing ladder, her earning potential is substantially less than Alan's.

¶ 29 In *In re Marriage of Selinger*, 351 Ill. App. 3d 611, 617, 814 N.E.2d 152, 159 (2004), this court considered facts similar to the case at bar and stated as follows:

> " 'Marriage is a partnership, not only morally, but financially. Spouses are coequals, and homemaker services must be recognized as significant when the economic incidents of divorce are determined. Petitioner should not be penalized for having performed her assignment under the agreed-upon division of labor within the family. It is inequitable upon dissolution to saddle

> petitioner with the burden of her reduced earning potential and to allow respondent to continue in the advantageous position he reached through their joint efforts.' *In re Marriage of Hart*, 194 Ill. App. 3d 839, 853, 551 N.E.2d 737, 745 (1990) (Steigmann, J., specially concurring)."

¶ 30 The evidence in this case indicates a wide disparity in the parties' income and earning potential. Jennifer contributed greatly to the marriage by "tend[ing] to the domestic duties" while Alan "climbed the corporate ladder." She has a strong desire to further her education and intimated she could achieve her goal of becoming an RN in a relatively short period of time. While the evidence indicated she had a myriad of health problems, she stated her infirmities did not prevent her from working full-time. However, until such time as she can achieve a full-time job as an RN at a higher income, it appears her current monthly expenses exceed her current monthly income. We note the trial court found Jennifer less than credible as to her financial needs, but even taking that into consideration, her current income would not provide the approximate standard of living during the marriage. Given the evidence, the parties' arguments, and the court's credibility determinations, we find Jennifer is in need of maintenance and Alan has the ability to pay it. Thus, we find the court abused its discretion in denying Jennifer an award of maintenance. We note Alan indicated his willingness "to pay periodic, rehabilitative maintenance to Jennifer in the amount of $1,000 per month for a period of [five] years." That was not an unreasonable offer, and, after considering the facts and circumstances of this case, we find it would have been within the court's discretion to deviate down to the amount offered. To that end, we remand the cause for a calculation of a just award based on the above facts and the factors set forth in section 504 of the Dissolution Act.

¶ 31 B. Property Distribution

¶ 32 Jennifer argues the trial court erred in its distribution of property and debts. We disagree.

¶ 33 1. *Marital and Nonmarital Property*

¶ 34 "All the property of the parties to a marriage belongs to one of three estates, namely, the estate of the husband, the estate of the wife, or the marital estate." *In re Marriage of Johns*, 311 Ill. App. 3d 699, 702, 724 N.E.2d 1045, 1048 (2000). Prior to making a property distribution, the trial court must classify property as marital or nonmarital. *In re Marriage of Henke*, 313 Ill. App. 3d 159, 166, 728 N.E.2d 1137, 1143 (2000). The court's classification of property will not be overturned on appeal unless it is against the manifest weight of the evidence. *Johns*, 311 Ill. App. 3d at 702, 724 N.E.2d at 1048.

¶ 35 Section 503(a) of the Dissolution Act establishes a rebuttable presumption that "all property, including debts and other obligations, acquired by either spouse subsequent to the marriage" is marital property. 750 ILCS 5/503(a) (West 2016). "A party can overcome this presumption only by a showing of clear and convincing evidence that the property falls within one of the exceptions listed in section 503(a)." *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017, 909 N.E.2d 221, 228 (2009). Property acquired before the marriage constitutes one of those exceptions. 750 ILCS 5/503(a)(6) (West 2016). Section 503(b)(2) of the Dissolution Act states all pension benefits "acquired by *** either spouse after the marriage and before a judgment of dissolution of marriage *** are presumed to be marital property," regardless of which spouse participates in the pension plan. 750 ILCS 5/503(b)(2) (West 2016). This presumption can be overcome by showing the pension benefits were acquired by a method listed in section 503(a). 750 ILCS 5/503(b)(2) (West 2016). "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.

¶ 36 Transmutation occurs when "marital and non-marital property are commingled into newly acquired property resulting in a loss of identity of the contributing estates." 750 ILCS 5/503(c)(1)(B) (West 2016). "The principle of transmutation is based on the presumption that the owner of the nonmarital property intended to make a gift of the property to the marital estate." *In re Marriage of Olson*, 96 Ill. 2d 432, 439, 451 N.E.2d 825, (1983). "This presumption may be rebutted by the donor spouse with clear and convincing evidence." *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 74, 17 N.E.3d 781. However, "there is no presumption that commingled property is always transmuted into marital property." *Foster*, 2014 IL App (1st) 123078, ¶ 75, 17 N.E.3d 781.

¶ 37 In this case, Jennifer argues the trial court erred in its classification of the Berthel Fisher IRA and the Ameren cash-savings pension plan. Alan began to participate in a 401k plan and a union pension when he began working for Illinois Power in 1985. He continued to contribute to the 401k plan up to and after his marriage in 1993.

¶ 38 The trial court found the Berthel Fisher IRA had a value at trial of $250,031.71. Of that amount, the court found $90,920.62 to be nonmarital property, based on a calculation of 88 nonmarital months out of 242 total months, or 36.36%. Thus, the marital portion amounted to $159,111.09, which the court distributed in the amount of $79,555.55 to Alan and $79,555.54 to Jennifer.

¶ 39 The court found the Ameren cash-savings pension plan had a value at trial of $220,558.26. Of that amount, the court determined $51,757.66 to be nonmarital property, based

on a calculation of 88 nonmarital months out of 375 total months, or 23.47%. Thus, the martial portion amounted to $168,800.58, which the court distributed equally between the parties.

¶ 40 Jennifer argues Alan did not produce any evidence as to the value of the accounts prior to the marriage. Thus, she contends the trial court had no evidence before it to determine the nonmarital portion of the accounts and that the fractional approach was improper. "When a marriage is dissolved, the marital portion of a pension is calculated by the ratio of years the pension accumulated during the marriage to the total years the pension accumulated and should be divided between the spouses." *In re Marriage of Parker*, 252 Ill. App. 3d 1015, 1021, 625 N.E.2d 237, 242 (1993) (citing *In re Marriage of Davis*, 215 Ill. App. 3d 763, 576 N.E.2d 44 (1991)). Here, Alan contributed to both the Berthel Fisher IRA and the Ameren cash-savings pension plan prior to the marriage, and the court could employ the ratio methodology to determine the nonmarital and marital portions of each account. We find the court's decision was not against the manifest weight of the evidence.

¶ 41 2. *Dissipation*

¶ 42 "Dissipation is the use of marital property for one spouse's sole benefit or for a purpose unrelated to the marriage at a time when the marriage is undergoing irreconcilable breakdown." *In re Marriage of Miller*, 342 Ill. App. 3d 988, 994, 796 N.E.2d 135, 141 (2003).

> "Dissipation involves the diminution in the marital estate's value due to a spouse's actions. [Citation.] 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. [Citation.] A court can find dissipation of assets where a spouse's use of marital funds for [his

> or] her own living expenses is so selfish, excessive, and improper as to constitute an outright waste of marital funds." *In re Marriage of Brown*, 2015 IL App (5th) 140062, ¶ 67, 35 N.E.3d 134.

¶ 43 "The party charging dissipation should make a preliminary showing of dissipation before the burden shifts to the party charged with dissipation to refute the accusations." *Brown*, 2015 IL App (5th) 140062, ¶ 66, 35 N.E.3d 134. Thereafter, the spouse charged with dissipating marital funds has the burden of showing "by clear and specific evidence how the funds were spent." *Brown*, 2015 IL App (5th) 140062, ¶ 66, 35 N.E.3d 134. "Vague and general testimony that marital funds were used for marital expenses is inadequate to meet that burden, and the trial court is required to find dissipation when the spouse charged with dissipation fails to meet that burden." *In re Marriage of Carter*, 317 Ill. App. 3d 546, 552, 740 N.E.2d 82, 86 (2000).

¶ 44 Whether a party has engaged in conduct constituting dissipation is a question of fact, and a trial court's determination on the issue of dissipation will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 204, 825 N.E.2d 345, 350 (2005). "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 or if the finding itself is arbitrary, unreasonable, or not based upon the evidence presented." *In re Marriage of Dhillon*, 2014 IL App (3d) 130653, ¶ 29, 20 N.E.3d 1272.

¶ 45 Jennifer argues the trial court erred in finding Alan did not dissipate marital assets. Specifically, Jennifer argues Alan should have been charged with $657.16 in dissipation for flight lessons, $29,330 in cash withdrawals from his Jacksonville Savings Bank account, and $21,850 in rental proceeds.

¶ 46 Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) provides that an appellant's brief shall contain "[a]rgument, 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." The "failure to comply with the rule's requirements results in forfeiture." *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56, 4 N.E.3d 1. Jennifer offers only a conclusory two-sentence argument that Alan's flight lessons constituted dissipation. As to the cash withdrawals, Jennifer sets forth 34 instances of alleged withdrawals but fails to cite where in the 2200-page record they, or testimony regarding them, can be found. While she cites six pages in the record regarding Alan's credit-card expenditures at gas stations, Jennifer supports her claim with little more than belief that "it is highly unlikely that he was using the cash for gas." In regard to undeposited rent payments from tenants, Jennifer again fails to cite the record where her claim can be substantiated and offers nothing more than her conclusory belief that Alan should be charged with dissipation. This court will not comb through the record to find the evidence supporting an appellant's argument. See *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719, 495 N.E.2d 1132, 1137 (1986) (finding "[t]he appellate court is not a depository in which the appellant may dump the burden of argument and research"). Thus, we find this issue forfeited.

¶ 47 C. Life Insurance

¶ 48 Jennifer argues the trial court erred in not ordering Alan to provide life insurance for the benefit of G.M. We disagree.

¶ 49 The Third District has stated "life insurance benefitting a child is intended to secure that child's support in the event of the death of the insured." *In re Marriage of Tieman*, 237 Ill. App. 3d 847, 851, 604 N.E.2d 1098, 1102 (1992). "A trial court is vested with the

authority to order a parent to provide life insurance for the benefit of his [or her] children." *In re Marriage of Osborn*, 206 Ill. App. 3d 588, 606, 564 N.E.2d 1325, 1336 (1990).

¶ 50 In her closing argument, Jennifer asked the trial court to order Alan to obtain and pay for life insurance in the amount of $500,000 for the benefit of G.M. In his closing argument, Alan stated he has a term-life policy with a death benefit of $150,000. He was willing to name Jennifer as custodial beneficiary for the sole benefit of G.M. so long as he is obligated to pay child support. He questioned the legal authority to require him to secure new life or disability insurance. The court did not address life insurance in the dissolution judgment.

¶ 51 We note, in a civil bench trial, "a litigant may forego filing a post-trial motion and may assert as error grounds raised for the first time on appeal." *In re Marriage of Steadman*, 283 Ill. App. 3d 703, 712, 670 N.E.2d 1146, 1153 (1996); Ill. S. Ct. R. 366(b)(3)(ii) (eff. Feb. 1, 1994) ("Neither the filing of nor the failure to file a post-judgment motion limits the scope of review."). However, "the preferable practice would be to raise possible errors for the trial court's consideration." *In re Marriage of Wright*, 212 Ill. App. 3d 392, 398, 571 N.E.2d 197, 201 (1991).

¶ 52 Here, the failure to raise the issue in the trial court leaves it unclear whether the court failed to consider Jennifer's insurance request or rejected it without comment. On appeal, Jennifer simply states she asked for Alan to pay for life insurance, claims he was willing to name Jennifer as the custodial beneficiary of his life insurance policy, and asks this court to order him to secure life insurance. Without more, we find Jennifer has failed to show Alan should have been required to obtain life insurance for G.M.'s benefit.

¶ 53 D. Medical Expenses

¶ 54 Like the life insurance issue, Jennifer claims the trial court failed to address which

party should pay for G.M.'s medical expenses. In her two-paragraph argument, which failed to cite the page in the record where she allegedly discussed the issue in her closing argument and failed to cite any authority to support her claim, Jennifer simply states she "has paid for [G.M.'s] medical expenses for the last several years" and Alan should now be required to pay them. Alternatively, she argues, at a minimum, the parties should be ordered to each pay half of the medical expenses.

¶ 55 Again, the better practice would have been for Jennifer to raise the trial court's alleged failure to address the issue in the trial court itself. That way, the court could reconsider the issue and, if need be, make alterations to the distribution of property, child support, the equalization calculation, or other areas of the dissolution judgment. Without more, we find no error.

¶ 56 E. Attorney Fees

¶ 57 Jennifer argues the trial court erred in not ordering Alan to contribute to her attorney fees. We disagree.

¶ 58 Generally, attorney fees are the primary responsibility of the person for whom the services are rendered. *In re Marriage of Bolte*, 2012 IL App (3d) 110791, ¶ 28, 975 N.E.2d 1257. Pursuant to section 508(a) of the Dissolution Act, the trial court has the discretion based on the financial resources of the parties to order one party to pay all or part of the other's attorney fees. See 750 ILCS 5/508(a) (West 2016).

¶ 59 Our supreme court has noted a party seeking an award of attorney fees must establish he or she is unable to pay the fees and the other party is able to pay them. *Schneider*, 214 Ill. 2d at 174, 824 N.E.2d at 190. More recently, the court addressed whether the inability to pay remained a consideration in awarding attorney fees. *In re Marriage of Heroy*, 2017 IL

120205, 89 N.E.3d 296. There, the court held a party's inability to pay remains a factor, but this factor was "never intended to limit awards of attorney fees to those situations in which a party could show a $0 bank balance. [Citations.] Rather, a party is unable to pay if, after consideration of all the relevant statutory factors, the court finds that requiring the party to pay the entirety of the fees would undermine his or her financial stability." *Heroy*, 2017 IL 120205, ¶ 19, 89 N.E.3d 296.

¶ 60 Thus, in awarding attorney fees under section 508 of the Dissolution Act, the trial court must "(1) 'consider[] the financial resources of the parties' and (2) make its decision on a petition for contribution 'in accordance with subsection (j) of Section 503.' " *Heroy*, 2017 IL 120205, ¶ 19, 89 N.E.3d 296 (quoting 750 ILCS 5/508(a) (West 2014)). Section 503(j)(2) of the Dissolution Act (750 ILCS 5/503(j)(2) (West 2016)) provides the following: "Any award of contribution to one party from the other party shall be based on the criteria for division of marital property under this Section 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under Section 504."

¶ 61 "A trial court's decision to award or deny attorney fees under section 5/508(a)(4) will only be reversed if the trial court abused its discretion." *In re Marriage of Benjamin*, 2017 IL App (1st) 161862, ¶ 30, 82 N.E.3d 867. "A trial court abuses its discretion when it acts arbitrarily, without conscientious judgment, or, in view of all of the circumstances, exceeds the bounds of reason and ignores recognized principles of law, resulting in substantial injustice." *In re Marriage of Bradley*, 2011 IL App (4th) 110392, ¶ 26, 961 N.E.2d 980.

¶ 62 In the case *sub judice*, Jennifer filed a motion for contribution of attorney fees and costs. She stated she owed $3183.14 to her prior attorney, and she owed $11,375 to her current attorney after having already paid $2645. At the time of his closing argument, Alan had paid

$12,611.85 in attorney fees and still owed $16,687.50.

¶ 63 In her brief, Jennifer states the trial court is to review a request for attorney fees in accordance with the factors of section 503 of the Dissolution Act, which are similar to the factors addressed for the determination of maintenance in section 504, and simply contends the "factors favor an award of contribution of attorney fees from Alan." In the dissolution order, the court made extensive findings when it considered the maintenance factors and decided an award of maintenance was not appropriate. Thus, applying the findings to this issue, we find the court did not abuse its discretion in refusing to award attorney fees.

¶ 64 III. CONCLUSION

¶ 65 For the reasons stated, we affirm in part, reverse in part, and remand the cause to the trial court for consideration of an appropriate maintenance award.

¶ 66 Affirmed in part and reversed in part; cause remanded.