2014 IL App (4th) 130795-U

NO. 4-13-0795

FILED
August 4, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
ELIZABETH A. MOWEN,	)	Circuit Court of
Petitioner-Appellant,	)	Adams County
and	)	No. 11D76
DEAN J. MOWEN,	)	
Respondent-Appellee.	)	Honorable
	)	Robert K. Adrian,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Appleton and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court erred in its distribution of property by failing to fully consider the amounts and sources of the husband's income, overstating the husband's debt, and including or excluding specific items of property within its determination of marital property.

(2) The trial court's maintenance determination was inextricably linked with its property award and must also be reversed and reconsidered where the court abused its discretion in distributing property.

(3) The record fails to reflect the trial court applied an improper legal standard when ordering that the husband pay $550 in attorney fees as a discovery sanction.

¶ 2 In March 2013, the trial court entered a judgment for dissolution of marriage, dissolving the marriage of petitioner, Elizabeth A. Mowen (Beth), and respondent, Dean J. Mowen. Later, it entered orders with respect to the division of the parties' marital property and maintenance, and it ordered Dean to pay Beth $550 in attorney fees for violating the court's

discovery orders. Beth appeals, arguing the court erred in its (1) distribution of property, (2) maintenance determination, and (3) imposition of sanctions based upon Dean's discovery violations. We affirm in part, reverse in part, and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 The parties were married on March 11, 1983, and have three children, all of whom have reached the age of majority. On March 31, 2011, Beth filed her petition for dissolution of marriage.

¶ 5 In February and March 2013, a trial was held in the matter. Beth, age 47, testified the parties married while she was still in high school. During the course of the marriage, she was the primary caretaker for the parties' three children, Courtney, Carrie, and Mitchell, and took care of the household chores. She stated she also ran a home day care but, in the mid-1990s, she began working outside the home. At the time of trial and for the previous 16 years, Beth worked as a receptionist for Quincy Medical Group. She testified she worked 36 hours per week and received full-time benefits, including health insurance and a 401(k) retirement account. Beth typically worked from 8 a.m. to 5 p.m., except on Thursdays, when she only worked until noon. She acknowledged that in September 2012, she took out a $20,000 loan against her 401(k) account. The record contains Beth's 2012 W-2 form, showing a gross income of $23,462.79.

¶ 6 Dean, age 49 at the time of trial, worked for Prairie Farms Dairy for a number of years until 2008, when the company closed and he lost his job. Thereafter, Dean received unemployment benefits. In approximately May 2012, his unemployment benefits ran out.

¶ 7 During the course of the parties' marriage, Dean also farmed. Initially, he farmed with his father for several years but, in approximately 1993, the parties purchased their own

farm, which consisted of the marital residence and 138 acres of land. Dean began farming his own land and on rented land. He farmed corn, soybeans, wheat, and sometimes oats. Dean also had livestock. He testified at the time of trial, his sole source of support and income was from farming. The record contains the parties' income tax returns from 2006 through 2012. In 2009, Dean reported gross income from farming of $186,595; expenses totaling $195,632, including depreciation deductions of $86,553; and a net farm loss of $9,037. In 2010, Dean reported gross income from farming of $274,922; expenses totaling $268,233, including depreciation deductions of $132,938; and a net farm profit of $6,689. In 2011, Dean reported gross farming income of $228,642; expenses totaling $276,724, including depreciation deductions of $25,361; and a net farm loss of $48,082.

¶ 8 Dean testified 2012 was a bad year for farming due to weather conditions and stated he was unable to pay off his farm operating loan. That year, he reported gross income from farming of $137,412; expenses totaling $306,823, including depreciation deductions of $38,912; and a net farm loss of $169,411. After 2012, he received crop insurance and stated he used the entire amount he received to pay on his operating loan from First Farm Credit. Dean testified he had three operating loans at First Farm credit, two associated with his farm and one associated with DSM Excavating, Inc. (DSM Excavating), a corporation of which he owned a half interest and was president. Dean testified the corporation's only asset was one bulldozer and he estimated there was approximately $4,000 in its bank account. He acknowledged that in 2012, he received some income from his excavating business.

¶ 9 On March 21, 2013, the trial court entered a judgment for dissolution of marriage, dissolving the parties' marriage. On May 20, 2013, it entered an order with respect to the

distribution of property and maintenance. Initially, the court made findings with respect to each party's income. It found Beth had a gross annual income of $23,462.79, a net annual income of $19,754.09, and a net monthly income of $1,646.17. The court concluded Beth's reasonable monthly expenses totaled $2,650, and she was in need of maintenance.

¶ 10 The trial court noted Dean was a farmer and his income varied greatly from year to year. Looking at Dean's tax returns from 2009 through 2012, and adding depreciation deductions back into his farming income, the court found Dean had "effective income" of (1) $77,516 in 2009; (2) $139,627 in 2010; (3) negative $22,721 in 2011; and (4) negative $130,499 in 2012. The court noted those income amounts did not include "the crop insurance check of $95,447," which Dean received in January 2013. Additionally, it stated that, although Dean listed monthly living expenses of $3,704.85, that amount was "questionable as [Dean] deducts a portion of several of the expenses as business expenses on his taxes."

¶ 11 Next, the trial court noted that the "vast majority" of the parties' assets were related to their farming business. The court found the parties owed "no debt on the farm" and determined the value of the farm real estate was $726,000. It stated the value of the farm equipment as $326,940; the cattle as $46,303; corn as $13,377; soybeans as $12,176.40; hay as $3,080; and intangible farm assets as $48,278. The court valued DSM Excavating at $53,287.02, with Dean's half interest totaling $26,643.51. Additionally, it found the parties had a farm operating loan at First Farm Credit in the total amount of $133,661.98 and a loan at John Deere Credit in the amount of $32,930.35. The court determined the First Farm Credit debt was reduced by the $95,447 crop-insurance payment, resulting in a total farm debt of $71,145.35.

¶ 12 With respect to the division of marital property, the trial court stated as follows:

> "The Court finds that the proper division of the marital assets is to award each party 50% of the assets. However, since the vast majority of the assets relate to farming, a 50-50 split of the assets will put [Dean] out of the farming business. Therefore[,] the Court awards [Dean] all of the farming assets including the farm real estate. *** The Court further orders [Dean] to pay [Beth] the amount to equalize the property settlement, enters judgment for that amount, and secures that judgment with a mortgage on the parties' real estate. The real estate has more than enough value to secure the value of the judgment. Further, the interest payments will provide [Beth] with extra income so that she will not need maintenance."

The court determined the total value of all marital property was $1,217,495.10. It awarded Beth specific property, including (1) furniture, personal property, and jewelry ($12,625); (2) her 401(k) retirement account ($46,533.08); (3) a bank account ($11,466.19); and (4) a Pioneer Investments account ($27,662.33). It also ordered her to pay debt, including (1) the loan associated with her 401(k) account ($20,000) and (2) amounts owed on her credit card ($4,217.38). The value of the specific items of property awarded Beth, minus the debts allocated to her, totaled $74,069.22.

¶ 13 The trial court awarded Dean specific property, including (1) the farm real estate ($726,000), (2) farm equipment ($326,940), (3) intangible farm assets ($48,278), (4) cattle ($46,303), (5) corn ($13,377), (6) soybeans ($12,176.40), (7) hay ($3,080), (8) furniture and

personal property ($5,290), (9) a Roth individual retirement account ($3,830.92), (10) a life insurance policy ($1,471.46), (11) a bank account ($2,631.64), and (12) his half interest in DSM Excavating ($26,643.51). It ordered him to pay debt owed (1) to First Farm Credit ($38,214.98), (2) to John Deere Credit ($32,930.35), and (3) on his GM credit card ($1,450.72). The property awarded to Dean, minus the debt allocated to him, totaled $1,143,425.88.

¶ 14 The trial court then ordered Dean to pay Beth $534,678.33 (half the total marital estate minus the $74,069.22 in specific items of property awarded to Beth) and entered judgment on that amount. It also ordered as follows:

> "[Dean] shall pay interest on the judgment at the rate of 3.75% over 15 years. [Dean] shall pay the interest monthly and shall make principle [*sic*] payment semi annually. [Dean] shall grant [Beth] a mortgage on the real estate to secure the debt. [Beth's] attorney shall prepare a commercially accepted mortgage that shall provide for all enforcement remedies upon default including, but not limited to, foreclosure. [Dean] shall be given 30 days grace period to make any payment prior to being in default. First interest payment on the mortgage shall be July 1, 2013. [Dean] shall pay the previously ordered temporary maintenance until his first interest payment."

¶ 15 Finally, in its order, the trial court noted Dean had previously been found in contempt for violating discovery orders and it had reserved awarding attorney fees until the final hearing on the matter. The court ordered Dean to pay Beth $550 for attorney fees for his

contempt.

¶ 16 On June 17, 2013, Dean filed a motion for reconsideration, asserting the trial court "misinterpreted or mis-added the Farm Credit and farming indebtedness" and the amount should have been $243,296.45 minus the $95,000 crop-insurance payment. He maintained the court improperly "subtracted the insurance check essentially twice." Dean also argued the court undervalued the Pioneer Investments account.

¶ 17 On July 18, 2013, the trial court conducted a hearing on Dean's motion. It denied the portion of his motion with respect to the value of the Pioneer Investments account awarded to Beth but granted the motion with respect to the First Farm Credit debt. On July 19, 2013, the court entered an order, amending its previous order to provide that (1) the parties had farm operating loans at First Farm Credit in the amount of $243,296.45 and at John Deere Credit in the amount of $32,930.35; (2) the First Farm Credit debt was reduced by a $95,447 crop-insurance payment, resulting in a total farm debt of $180,779.80; (3) the First Farm Credit debt in the amount of $147,849.45 (rather than the previously ordered $38,214.98) was allocated to Dean; (4) the total of all marital property was $1,107,860.63 (rather than $1,217,495.10); and (5) Dean was ordered to pay Beth $479,861.10 (rather than $534,678.33) to equalize the marital-property award.

¶ 18 On August 2, 2013, Beth filed a motion to vacate or clarify. She questioned the starting point the trial court used in its calculation of the First Farm Credit debt, noting the court had been presented with statements from December 2012 and February 2013, which reflected differing amounts of the total debt owed to First Farm Credit. Beth asked that the court vacate its July 19, 2013, order or clarify its calculation. On August 13, 2013, the court conducted a

hearing on the matter. The following day, it entered an order, stating as follows:

> "The Court having reviewed the Exhibits in evidence hereby finds the [First] Farm Credit operating loan debt to be $133,661.98. The Court uses the Feb. 11, 2013, statement attached to [Dean's] Pre-trial Affidavit as Exhibit W in determining the proper amount of debt. The crop insurance check of $95,447 received in Jan. 2013 had already been applied to the debt to reduce it to the amount above."

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, Beth argues the trial court made a variety of legal and factual errors. Specifically, she contends the court's property distribution and maintenance determination were an abuse of discretion. Additionally, Beth contends the court applied an incorrect legal standard when determining the appropriate sanction for Dean's discovery violations, resulting "in an abusively insufficient sanction that ultimately tainted the proceedings." We consider each claim in turn.

¶ 22 A. The Parties' Briefs

¶ 23 Initially, we address deficiencies in the parties' briefs. In her reply brief, Beth asserts Dean's brief failed to comply with Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013) because he made "factual assertions without citation to the record and statements of law without citation to authority." She also complains that he "builds various straw-man arguments and rebuts those, rather than directly addressing the arguments" she made in her brief.

¶ 24 On appeal, an appellant must provide a statement of facts, "which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). "While the rules do not require the appellee to include a statement of facts, the appellee must follow Supreme Court Rule 341(h)(6) if he or she chooses to do so." *Gaston v. City of Danville*, 393 Ill. App. 3d 591, 600, 912 N.E.2d 771, 779 (2009). Additionally, both parties must provide an "argument" section, "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." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); see also Ill. S. Ct. R. 341(i) (eff. Feb. 6, 2013). A party forfeits points not argued in his or her brief. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Also, "[a] contention that is supported by some argument but no authority does not meet the requirements of Rule 341 and is considered forfeited." *Crull v. Sriratana*, 388 Ill. App. 3d 1036, 1045, 904 N.E.2d 1183, 1190-91 (2009).

¶ 25 "Where violations of supreme court rules are not so flagrant as to hinder or preclude review, the striking of a brief in whole or in part may be unwarranted." *Merrifield v. Illinois State Police Merit Board*, 294 Ill. App. 3d 520, 527, 691 N.E.2d 191, 197 (1997). Instead, a reviewing court may choose to disregard portions of a brief that do not comply with the supreme court rules. *Merrifield*, 294 Ill. App. 3d at 527, 691 N.E.2d at 197.

¶ 26 Here, we agree with Beth's contentions and her characterization of Dean's arguments. In his brief, Dean makes various factual assertions without citation to the record and fails to support some of his contentions on appeal with relevant legal authority. Moreover, he has ignored or failed to meaningfully address many of the specific arguments raised by Beth and,

instead, raises and provides arguments with respect to issues she did not raise and are, therefore, irrelevant. Nevertheless, we find Dean's violations do not preclude review and disregard the offending portions of his brief.

¶ 27 Additionally, we note the rule violations were not confined to Dean. Throughout her appellant's brief, Beth provides citations to support various factual assertions that do not correspond to any page in the appellate record. (For example, in her statement of facts, Beth references the trial court's May 2013 judgment and provides a citation of "A915-21." The court's order actually appears at C386 through C392. The appellate record indicates Beth filed an initial appellant's brief and appendix that were stricken in January 2014. She then filed an amended brief in February 2014. Presumably, the citations to her factual assertions are to that stricken appendix.) Although Beth's improper citations further complicated review, they also are not so flagrant as to hinder or preclude review and we address the merits of her appeal.

¶ 28 B. Property Distribution

¶ 29 Beth argues the trial court's property distribution was an abuse of discretion. She contends the court "made a variety of factual and legal errors" when considering the evidence presented and also failed to adequately consider statutory factors. Specifically, Beth complains that the court (1) incorrectly calculated Dean's income; (2) overstated Dean's debt; (3) undervalued Dean's corporation, DSM Excavating; (4) improperly included jewelry belonging to the parties' daughter within the award of marital property to Beth; (5) erroneously found a 2003 GMC Sierra pickup truck belonged to the parties' son and was not marital property; (6) awarded Beth an insufficient amount of interest on the "rebalancing" payment Dean was ordered to pay; (7) improperly structured its award; and (8) ordered property to be distributed in a manner that

was unjust in its amount.

¶ 30 Pursuant to section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d) (West 2012)) a court "shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors." Such factors include the following:

> "(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including (i) any such decrease attributable to a payment deemed to have been an advance from the parties' marital estate *** and (ii) the contribution of a spouse as a homemaker or to the family unit;
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> (2) the dissipation by each party of the marital or non-marital property;
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> * * *
>
> (3) the value of the property assigned to each spouse;
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> (4) the duration of the marriage;
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> (5) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;
>
> (6) any obligations and rights arising from a prior marriage

of either party;

(7) any antenuptial agreement of the parties;

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

(9) the custodial provisions for any children;

(10) whether the apportionment is in lieu of or in addition to maintenance;

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(12) the tax consequences of the property division upon the respective economic circumstances of the parties." 750 ILCS 5/503(d) (West 2012).

"Although the trial court must consider all relevant statutory factors, it need not make specific findings as to the reasons for its award." *In re Marriage of Swanson*, 275 Ill. App. 3d 519, 528, 656 N.E.2d 215, 222 (1995).

¶ 31 "The goal of apportionment of marital property is to attain an equitable distribution." *In re Marriage of Price*, 2013 IL App (4th) 120155, ¶ 44, 986 N.E.2d 236. "An award of property in just proportions does not mean equal proportions, and a trial court does not abuse its discretion in awarding a larger share of the marital property to one party." *In re Marriage of Walker*, 386 Ill. App. 3d 1034, 1042, 899 N.E.2d 1097, 1104 (2008).

¶ 32 A trial court "has broad discretion in the distribution of marital assets." *Walker*,

386 Ill. App. 3d at 1042, 899 N.E.2d at 1104. On review, the trial court's distribution of marital property will not be disturbed absent an abuse of discretion. *Price*, 2013 IL App (4th) 120155, ¶ 44, 986 N.E.2d 236. "An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court." *Price*, 2013 IL App (4th) 120155, ¶ 30, 986 N.E.2d 236.

¶ 33 1. *Dean's Income*

¶ 34 Beth first argues the trial court erred in calculating Dean's income. She contends he had more income than what the court determined as it failed to account for income Dean received from equipment sales and "ignored the second crop insurance check that Dean received for his 2012 crops." As stated, one factor the trial court must consider when determining the appropriate property distribution is the "amount and sources of income" for each party. 750 ILCS 5/503(d)(8) (West 2012) (A factor for the court to consider in distributing property includes the "age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties.").

¶ 35 Here, when discussing Dean's income, the trial court noted he was a farmer and his income varied greatly from year to year. It determined, according to tax returns, Dean reported farm income of $77,516 in 2009 and $139,627 in 2010; and farm loss of $22,721 in 2011 and $130,499 in 2012. The court stated "those income amounts would not include the crop insurance check of $95,447 that [Dean] received in Jan[uary] 2013." In its order, the court did not attribute any other income to Dean, nor did it provide an explicit figure for Dean's average yearly income.

¶ 36 Initially, Beth argues the trial court erred by not considering income Dean

received from equipment sales each year and capital gains associated with those sales. She contends the evidence regarding that additional income was undisputed and would have resulted in an average income for Dean of approximately $77,000 per year rather than the average yearly income of approximately $39,000 per year implied by court's decision. In response, Dean contends the trial court had evidence before it regarding his equipment sales and that Beth "grossly exaggerate[d]" the extent to which he bought and sold equipment.

¶ 37 At trial, Dean testified it was his practice to buy and sell farming equipment. Although he denied that he bought and sold "a lot" of equipment, he acknowledged buying and selling "a couple" or "a few" pieces each year. Additionally, he attended auctions for farm equipment about once a week during "the auction time of year," which he described as "[f]all through spring and a little bit in the summer." Dean also purchased a laptop computer, which he used to look up markets and auctions.

¶ 38 Although Dean contends Beth exaggerated his equipment sales, the record does show that, in each year from 2006 to 2012, Dean reported income from "sales of business property" on his federal income-tax returns, as well as income in the form of capital gains from the sale of business property in each of those years except 2010. Specifically, from 2009 to 2012, Dean reported business property sales and capital gains from those sales totaling $28,898 ($10,667 in capital gains + $18,231 in business property sales) in 2009; $16,977 (business property sales only) in 2010; $34,290 ($4,168 in capital gains + $30,122 in business property sales) in 2011; and $69,341 ($9,691 in capital gains + $59,650 in business property sales) in 2012. In each year from 2009 to 2012, Dean's reported "business property sales" represented his sale of farming equipment (except 2009, which additionally included amounts he received in

connection with the sale of cows ($11,600) and a bull ($1,094)).

¶ 39 We agree with Beth that evidence relating to Dean's equipment sales was undisputed and her contentions on appeal are supported by the record, including by the parties' income tax returns. Dean consistently received income from equipment sales each year, which the record fails to show the trial court considered when determining his income.

¶ 40 Beth also argues the trial court ignored half of the crop-insurance proceeds Dean received for the 2012 crop year. At trial, Dean testified 2012 was a bad year for farming and, as a result, he received crop insurance, which he used to pay his First Farm Credit operating loans. At trial, Dean identified a handwritten document he provided to his accountant to assist with preparing his 2012 taxes. Dean acknowledged that document showed he received a total of $190,316 in crop insurance. On his 2012 federal income-tax return, Dean reported receiving farm income of $1,991 in the form of crop insurance during the 2012 tax year. Dean testified he received the balance of his crop-insurance money, approximately $188,000 (the difference between $190,316 and $1,991 actually totals $188,325), after 2012, and, therefore, did not report it on his 2012 taxes. He stated, as of the date of his testimony, February 27, 2013, he had received the full remainder of his crop insurance and it all went to pay his First Farm Credit debt.

¶ 41 In its decision, the trial court made findings as to Dean's farming income from 2009 to 2012. It then stated "those income amounts would not include the crop insurance check of $95,447 that [Dean] received in Jan[uary] 2013." As noted, factors for the trial court to consider in distributing property include "the relevant economic circumstances of each spouse" and the amount and sources of their income. See 750 ILCS 5/503(d)(5) (West 2012). The court's order showed it considered the crop-insurance payment to Dean, but in an incorrect

amount. Evidence presented at trial clearly showed Dean received in excess of $188,000 in crop insurance at the beginning of 2013. The trial court abused its discretion in failing to consider the full amount of crop insurance.

¶ 42 2. *Dean's Debt*

¶ 43 On appeal, Beth next argues the trial court overstated the debt it assigned to Dean. She argues the court made a factual error in calculating Dean's farm operating loans through First Farm Credit and made a legal error by valuing that debt at a date several months in the future. See *In re Marriage of Mathis*, 2012 IL 113496, ¶ 21, 986 N.E.2d 1139 ("[I]n any dissolution proceeding the valuation date for marital property is the date of trial or another date near it."). Beth argues that, rather than the $133,661.98 determined by the court, the First Farm Credit debt associated with the parties' farm should have been valued at $105,469.25. Dean does not make any specific arguments with respect to this issue in his brief and we find the record supports Beth's contentions.

¶ 44 As noted by Beth, the trial court ultimately valued the parties' farm-related, First Farm Credit debt at $133,661.98 and assigned that debt to Dean. In its August 2013 order, the court stated it relied on a February 11, 2013, loan statement that was attached as an exhibit to Dean's pretrial affidavit to determine the appropriate debt amount. At trial, Dean testified he had three operating loans through First Farm Credit: two loans associated with the parties' farm and one loan associated with DSM Excavating. The February 2013 loan statement contained three columns of loan information, the third of which, according to Dean's testimony, contained information relating only to DSM Excavating. The first two columns of loan information, pertaining to the farm operating loans, showed loan-payoff amounts (as of the February 11,

2013, statement date) of $5,533.88 and $99,935.37, for a total amount of $105,469.25.

¶ 45 Beth argues the trial court used incorrect figures from the statement to calculate the parties' farm-related, First Farm Credit debt and the record supports her assertion. In its order, the court did not explain its calculations except to say that it used the February 2013 statement to determine the proper amount of debt to be $133,661.98, and that the crop insurance had already been applied to reduce that debt. As argued by Beth, it appears that the court used loan-payoff amounts associated with one of the farm operating loans and the DSM Excavating loan ($103,140.29 from the second column + $30,521.69 from the third column = $133,661.98) to calculate the total farm-related, First Farm Credit debt. Additionally, the court used estimated payoff amounts for November and August 2013 rather than the payoff amount as of the February 11, 2013, statement date.

¶ 46 The record does not support the trial court's findings with respect to the total amount of farm-related debt from First Farm Credit. Not only did the court use figures associated with Dean's corporation rather than the farm operating loans to calculate the debt, it used estimated figures from several months in the future as opposed to the payoff date close in time to the date of trial. The court abused its discretion in valuing the farm-related, First Farm Credit debt at $133,661.98, when the record reflects it should have been valued at $105,469.25.

¶ 47 Finally, as noted, the record supports a finding that Dean received crop insurance totaling $190,316, which he paid toward his farm-related, First Farm Credit debt. The trial court referenced only a crop-insurance check of $95,447 when finding crop insurance had been applied to the First Farm Credit debt reflected in the February 2013 statement. Nevertheless, Dean's testimony supports a finding that he received all crop-insurance proceeds in early 2013 and

applied them to his debt. Contrary to Beth's arguments on appeal, the record supports a finding that the February 2013 loan statement included all of Dean's crop-insurance proceeds.

¶ 48 3. *The Value of DSM Excavating*

¶ 49 Beth next argues Dean's corporation, DSM Excavating, was worth more than the value determined by the trial court. With respect to that asset the court found as follows:

> "[Dean] has a 50% interest in DSM Excavating ***. The assets of the corporation consist of a bulldozer valued at $55,000 and a bank account that has about $4,000 in it. There is a debt of $5,712.98. The Court values the corporation by adding the value of the assets and subtracting the debt. The value of the corporation is $53,287.02. [Dean's half] is $26,643.51. [Dean] is awarded the interest in the corporation."

Beth contends the corporation's actual debt was $522.30, as reflected in the third column of the February 11, 2013, First Farm Credit loan statement, identifying that amount as "Today's Loan Payoff." Dean also fails to address this specific argument on appeal.

¶ 50 At trial, Dean testified DSM Excavating had approximately $4,000 in its bank account and its only asset was a bulldozer. He did not believe the corporation had any debt besides the First Farm Credit loan. Additionally, the following colloquy occurred between Dean and Beth's counsel with respect to DSM Excavating:

> "Q. Okay. And you said there's roughly $4,000 in the account, there's the $500 that's due to Farm Credit, and there's the bulldozer. So you get—you net those out and that's about what

DSM's worth?

A. It's—it's about the bulldozer, it's pretty close.

Q. Okay.

A. Yeah.

Q. And the—your interest is a half interest in that. So whatever that nets out to, you've got half of?

A. Yes."

¶ 51 Again, we find the record supports Beth's position on appeal and not the trial court's findings with respect to the amount of DSM Excavating debt and the overall value of the corporation. Both the February 2013 loan statement and Dean's testimony at trial support a finding that DSM Excavating's First Farm Credit debt totaled $522.30 rather than the $5,712,98 determined by the court. Further, because the court erroneously determined the amount of debt to attribute to the corporation, it also improperly valued that asset. Using the court's method of calculation, the correct total value of DSM Excavating is $58,477.70 (bulldozer valued at $55,000 + bank account of $4,000 – debt totaling $522.30 = $58,477.70). Dean's half interest in the corporation totals $29,238.85, rather than the $26,643.51 determined by the court.

¶ 52 4. *Jewelry*

¶ 53 Beth further argues the trial court improperly determined jewelry owned by the parties' daughter was marital property and assigned the value of that jewelry as an asset to her. The record shows the trial court awarded Beth "[f]urniture, personal property, and jewelry" valued at $12,625. Beth contends the court adopted the value of Beth's personal property in her possession as stated in Dean's pretrial affidavit, which includes jewelry valued at $8,700.

¶ 54 At trial, Beth identified a list of jewelry from a rider on the parties' homeowner's insurance policy. That list showed a value for all covered jewelry, totaling $8,770, and it included a "cathedral-style engagement ring" valued at $3,750. Beth testified the engagement ring belonged to her daughter. She stated she and Dean put the ring on their insurance policy because their daughter and her husband "were in college at the time and purchased the ring" and were "such a young age." Dean's counsel interjected that Beth's testimony was "correct" and that Dean would "stipulate to that."

¶ 55 As set forth in section 503(a) of the Act (750 ILCS 5/503(a) (West 2012)), " 'marital property' means all property acquired by either spouse subsequent to the marriage." Here, Beth testified the "cathedral-style engagement ring" belonged to her daughter and was purchased by her daughter and son-in-law. Dean stipulated to Beth's testimony. As the jewelry at issue was not acquired by either party during the marriage, it constituted nonmarital property of the daughter and the trial court erred by awarding that property and assigning its value to Beth.

¶ 56 On appeal, Dean asserts that "[s]ince the ring was never appraised, it is impossible for the Court to assign any value to it because no value was presented at trial." This statement is incorrect. Although Beth testified she did not know the value of any of the jewelry and had not had it appraised, the values listed in the insurance policy came from appraisals received at the time the jewelry was put on the policy. The record reflects the trial court accepted the values listed in the policy and set forth in Dean's pretrial affidavit. (We note that, inexplicably, the insurance policy lists the total value of all jewelry as $8,770, while Dean's affidavit lists the jewelry's value at $8,700.) The policy states the value of the "cathedral-style engagement ring"

as $3,750 and the record indicates that value was accepted by both the court and Dean.

¶ 57 As stated, the record shows the parties agreed the "cathedral-style engagement ring" belonged to, and was purchased by, their daughter and son-in-law. As a result, it constituted nonmarital property and the trial court erred in awarding that jewelry to Beth and assigning her its value. We find $3,750 should be deducted from the court's award to Beth of "[f]urniture, personal property, and jewelry" valued at $12,625, and that amount be reduced to $8,875 ($12,625 - $3,750 = $8,875).

¶ 58 5. *2003 GMC Sierra Pickup Truck*

¶ 59 On appeal, Beth also challenges the trial court's decision with respect to a 2003 GMC Sierra pickup truck, which she contends was marital property. She argues the court erred in finding the truck belonged to the parties' son, Mitchell, and awarding it to him. In its decision, the court stated: "The 2003 GMC pickup VIN # 1GTHK2963F131583 is Mitchell's truck and is awarded to him. The value of that truck is not included as marital property."

¶ 60 In his pretrial affidavit, Dean identified various vehicles as marital property owned by the parties, including two 2003 GMC 2500 pickup trucks. He asserted one truck was appraised at $10,500 with no debt and was titled in Dean's name. Dean identified the second truck as having an appraised value of $12,000 and stated the "vehicle belong[ed] to the parties['] son, Mitchell." As Beth argues, Dean also claimed depreciation on the truck in his 2011 and 2012 tax returns.

¶ 61 On appeal, Beth also argues Dean testified he owned Mitchell's truck and the truck was titled in Dean's name. However, she provides citations to support those factual assertions that do not correspond to the appellate record. To support his position that the truck

was Mitchell's truck, Dean references portions of an August 20, 2012, hearing on Beth's petition for temporary relief. We note the testimony to which Beth referred also appears to come from the August 2012 hearing. At the hearing, Dean testified one of the two trucks "belong[ed] to [his] son," stating he and Beth bought vehicles for all of their children and kept the vehicles titled and insured under his and Beth's names. Dean testified he bought his son's truck in February 2011.

¶ 62 The record shows that, although Mitchell used the truck at issue, the truck was owned by the parties and used for farm purposes. At least at the time he prepared his pretrial affidavit, Dean considered the truck marital property. On appeal, he asserts "it was not an error [for the trial court] to maintain the status quo from the marriage and leave the truck where it is best served; on and with the farm." However, that was not what the court did. Instead, the court essentially ruled the truck was not a marital asset and excluded its value from its calculations of marital property. The court's determination is not supported by the record and $12,000, representing the value of the truck (as set forth by Beth on appeal and asserted in Dean's pretrial affidavit), should be added to the value of equipment assigned to Dean.

¶ 63 6. *Interest Payments*

¶ 64 On appeal, Beth argues the trial court erred in ordering Dean to pay interest at a rate of 3.75%. She contends that, although the trial court may have had discretion to order interest payments in connection with the "rebalancing" payment it ordered Dean to pay, the court did not have discretion with respect to the amount of the interest awarded. Beth argues, instead, the court was required to set interest at the required statutory rate of 9%. In response, Dean contends the interest rate ordered by the court was appropriate because Beth failed to present the

court with a better alternative and the awarded interest was sufficient to satisfy Beth's financial needs. Dean fails to cite any legal authority to support his position.

¶ 65 Pursuant to section 2-1303 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1303 (West 2012), "[j]udgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied." In *Finley v. Finley*, 81 Ill. 2d 317, 332, 410 N.E.2d 12, 19 (1980), the supreme court held "the allowance of interest on past-due periodic [child-]support payments" was not mandatory and within the discretion of the trial court. The court provided the following rationale for its decision:

> "This court has held that a divorce proceeding partakes so much of the nature of a chancery proceeding that it must be governed to a great extent by the rules that are applicable thereto. [Citation.] In a chancery proceeding, the allowance of interest lies within the sound discretion of the trial judge and is allowed where warranted by equitable considerations and is disallowed if such an award would not comport with justice and equity." *Finley*, 81 Ill. 2d at 332, 410 N.E.2d at 19.

¶ 66 Several years after *Finley*, the legislature amended portions of the Code and the Act, mandating section 2-1303 interest with respect to child-support judgments. *Illinois Department of Healthcare & Family Services ex rel. Wiszowaty v. Wiszowaty*, 239 Ill. 2d 483, 490, 942 N.E.2d 1253, 1257 (2011) ("[I]nterest payments on child[-]support payments became mandatory effective May, 1 1987."); see also *Burwell v. Burwell*, 324 Ill. App. 3d 206, 209-10, 753 N.E.2d 1259, 1261 (2001); 735 ILCS 5/12-109 (West 2012). Nevertheless, courts have

continued to find "the decision to award interest on any dissolution judgment, other than a judgment for child support, is a discretionary matter for the trial court." *In re Marriage of Carrier*, 332 Ill. App. 3d 654, 660, 773 N.E.2d 657, 663 (2d Dist. 2002); see also *In re Marriage of Polsky*, 387 Ill. App. 3d 126, 141, 899 N.E.2d 454, 467 (1st Dist. 2008) ("Interest on dissolution judgments is within the discretion of the trial court.").

¶ 67 In *In re Marriage of Ahlness,* 229 Ill. App. 3d 761, 763-64, 593 N.E.2d 1064, 1066-67 (1992), this court determined *Finley* should be given a "broad application" and upheld the imposition of 8% interest by the trial court in connection with a property-settlement award despite the appellant's contention that she should receive the statutory interest rate of 9%. In that case, the 8% interest ordered by the trial court on late payments was given retroactive treatment and ordered to "accrue[] beginning one year prior to the due date of the payment." *Ahlness*, 229 Ill. App. 3d at 763, 593 N.E.2d at 1066. This court held retroactive treatment was "an incentive for prompt payment and, if it [came] into play, [would] initially result in a rate of return *in excess* of the 9% rate." (Emphasis added.) *Ahlness*, 229 Ill. App. 3d at 763, 593 N.E.2d at 1066.

¶ 68 On appeal, Beth essentially does not dispute that the trial court had discretion to award interest in this case. Instead, as stated, she argues that, where the trial court awards interest, it must set the interest rate at the statutory amount contained in section 2-1303 of the Code.

¶ 69 Beth argues *Ahlness* stands for the proposition "that deviations from the statutory amount must be structured in such a way as to provide for at least as much interest as a statutory rate would provide." We disagree. Following its discussion of the retroactive treatment of the interest, the court in *Ahlness* went on to discuss *Finley*, finding the case before it to be a good

example of why *Finley* "should be given broad application." *Ahlness*, 229 Ill. App. 3d at 763, 593 N.E.2d at 1066. We noted the trial court "was best aware of the economic burdens which would be facing" the parties and had treated "the property settlement issue *** in an equitable manner." *Ahlness*, 229 Ill. App. 3d at 764, 593 N.E.2d at 1067. Thus, *Ahlness* emphasized the importance of equitable considerations in the context of a divorce property settlement rather than strict application of the statutory interest rate.

¶ 70 Beth also cites *In re Marriage of Scafuri*, 203 Ill. App. 3d 385, 561 N.E.2d 402 (1990), to support her position. There, the trial court made a property-distribution award and gave the wife a " 'balancing' cash award of $375,000," which it ordered "paid in quarterly installments over a 10-year period" with "interest at the rate of 1% over prime on the unpaid balance." *Scafuri*, 203 Ill. App. 3d at 389, 561 N.E.2d at 405. On appeal, the husband challenged the interest rate ordered by the court, arguing section 2-1303 mandated an interest rate of 9%. *Scafuri*, 203 Ill. App. 3d at 397, 561 N.E.2d at 410.

¶ 71 The Second District determined it was "clear that if an interest award is entered by the trial court, it should be set at the statutory rate" and noted the party seeking to uphold the interest award failed to provide it with any authority that would allow the trial court "to award interest on a judgment *at a rate higher* than the statute provides." (Emphasis added.) *Scafuri*, 203 Ill. App. 3d at 398, 561 N.E.2d at 410-11. However, in reaching that decision, the court noted "authority exist[ed] for the proposition that the interest provisions of section 2-1303 are mandatory and not within the discretion of the trial court." *Scafuri*, 203 Ill. App. 3d at 398, 561 N.E.2d at 410. Further, in finding it "clear" that interest must be set at the statutory rate, it relied on cases that distinguished *Finley* and held section 2-1303 was mandatory even in the context of

a divorce case. See *In re Marriage of Morris*, 190 Ill. App. 3d 293, 297, 546 N.E.2d 734, 736-37 (1st Dist. 1989) (construing *Finley* narrowly as applying only to cases involving past-due periodic child-support payments and not to a division of marital property pursuant to an agreement between the parties); *In re Marriage of Passiales*, 144 Ill. App. 3d 629, 640, 494 N.E.2d 541, 550 (1986) (First District, finding the trial court "had no authority to alter the statutory accrual of interest on a judgment" for the award of attorney fees, and the court erred in imposing a 7% interest rate).

¶ 72 A clear reading of *Scafuri* shows its holding that the interest rate to be applied to a dissolution judgment must be the rate set forth in section 2-1303 was based on a determination that the imposition of section 2-1303 interest was mandatory in the first place. We find the decision in that case runs contrary to this court's decision in *Ahlness* and other more recent appellate court decisions, which hold the imposition of interest is discretionary in dissolution cases (excepting child-support judgments).

¶ 73 Finally, with respect to interest, Beth argues that even if the trial court had discretion with respect to the imposed rate, it abused its discretion by not awarding a greater amount of interest. In *In re Marriage of Smith*, 122 Ill. App. 3d 213, 216-17, 460 N.E.2d 1201, 1204 (1984), the trial court awarded the majority of the parties' farming assets to the husband and awarded the wife $30,000 in cash in lieu of property, to be paid in installments with interest " 'at the rate applicable to money judgments.' " This court held the interest would compensate the wife for the delayed use of funds and was "an appropriate price for [the husband] to pay for the benefit of an installment rather than lump-sum method of payment." *Smith*, 122 Ill. App. 3d at 217, 460 N.E.2d at 1204. Beth argues that, since the court in this case explicitly stated the

interest payments would obviate the need for maintenance, it implicitly failed to impose any cost upon Dean for the benefit of installment payments and did not compensate her for the delayed use of her share of the marital estate. However, as discussed, we find the imposition of interest in the first place was at the court's discretion. It was not required to order interest as either a cost to Dean or an award to Beth, and the failure of the court to account for those matters in connection with the ordered interest rate was not an abuse of discretion.

¶ 74 Although the trial court had discretion with respect to the interest it ordered in connection with its "rebalancing" payment, as discussed, it erred in several respects when determining the appropriate property distribution. Those errors included considerations related to Dean's income and debts. The trial court should reconsider its property award, including the imposed interest rate it ordered, in light of this court's decision.

¶ 75 7. *Structure of Property Distribution*

¶ 76 With respect to the trial court's property distribution, Beth also challenges the "structure" of the court's award. She contends the trial court abused its discretion when it awarded no maintenance, awarded her a comparatively small portion of the parties' assets, and "forced her to wait longer than in any of the reported cases to receive her full property distribution." Beth also challenges the court's order that Dean grant Beth a mortgage on the farm real estate to secure the "rebalancing" payment.

¶ 77 "When awarding income-producing assets to one spouse becomes necessary, the trial court may achieve an equitable distribution by authorizing off-setting payments to the other spouse or by awarding a greater share of total marital assets to the spouse who does not receive the income-producing assets." *Swanson*, 275 Ill. App. 3d at 528, 656 N.E.2d 222. "[W]here it

has been necessary to award large assets to one spouse, the trial court is in a position to fashion offsetting payments flexibly." *In re Marriage of Rosen*, 126 Ill. App. 3d 766, 778, 467 N.E.2d 962, 970 (1984). Under appropriate circumstances, a court may order an equalization payment to be made in installments. *Price*, 2013 IL App (4th) 120155, ¶ 47, 986 N.E.2d 236 (citing *In re Marriage of Leon*, 80 Ill. App. 3d 383, 387, 399 N.E.2d 1006, 1009 (1980)).

¶ 78 Additionally, "[t]he issue of maintenance is *** 'integrally related' to the trial court's allocation of [a] couple's property," and the Act "explicitly states the court 'shall' consider, in apportioning the couple's marital property, 'whether the apportionment is in lieu of or in addition to maintenance.' " *In re Marriage of Jensen*, 2013 IL App (4th) 120355, ¶ 39, 988 N.E.2d 1102 (quoting 750 ILCS 5/503(d)(10) (West 2010)). The Act also provides as follows:

> "[T]he [trial] court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just, *** in gross or for fixed or indefinite periods of time, and the maintenance may be paid from the income or property of the other spouse after consideration of all relevant factors, including:
>
> > *** the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance[.]" 750 ILCS 5/504(a)(1) (West 2012).

"Where the property available to [a] spouse is sufficient to satisfy that spouse's needs and entitlements, the use of maintenance should be limited," and "if sufficient marital property is

found, an award of maintenance may be unnecessary." *In re Marriage of Aschwanden*, 82 Ill. 2d 31, 38, 411 N.E.2d 238, 242 (1980); see also *Leon*, 80 Ill. App. 3d at 387, 399 N.E.2d at 1009 ("[T]he Act contemplates that the property division will be the primary means of support and that maintenance will be awarded only if the property division is inadequate to provide for a spouse's need."); *Smith*, 122 Ill. App. 3d at 217, 460 N.E.2d at 1204 (holding "[m]aintenance should be awarded only when the spouse requesting it lacks sufficient assets and income to provide for his or her needs," and the wife's full-time employment and five-year cash award made maintenance unnecessary).

¶ 79 Here, we find no error in the manner in which the trial court structured its property-distribution award. As noted by the court, the vast majority of the parties' assets related to farming and farming was Dean's main source of income. Splitting or selling the parties' assets would have put Dean out of the farming business. At trial, Beth agreed it was not practical to sell the marital residence or farmland. In resolving the matter, the court ordered an equalizing payment to Beth, representing 50% of the marital estate; ordered that equalizing payment to be made in installments over 15 years; and ordered that Beth receive monthly interest payments. Although the court initially found Beth "in need of maintenance," it determined the interest payments it ordered would "provide [Beth] with extra income so that she [would] not need maintenance." Clearly, the court had flexibility with respect to the disposition of property, including the discretion to order interest in connection with its award. It was also entitled to consider whether its property distribution rendered maintenance unnecessary.

¶ 80 Beth argues she was forced to wait longer than in any reported case to receive her full property distribution. However, the cases she cites involved substantially less money than

the approximately $500,000 involved in this case. See *Ahlness*, 229 Ill. App. 3d at 761, 593 N.E.2d at 1065 ($70,000 payable in 10 annual installments); *Scafuri*, 203 Ill. App. 3d at 389, 561 N.E.2d at 405 ($375,000 to be paid in quarterly installments over a 10-year period); *Smith*, 122 Ill. App. 3d at 215, 460 N.E.2d at 1203 ($30,000 over 6 years); *In re Marriage of Albrecht*, 266 Ill. App. 3d 399, 403, 639 N.E.2d 953, 956 (1994) ($23,000 paid in monthly installments of $350 (or over approximately 5 and 1/2 years)). We find no error in the 15-year period ordered under the circumstances presented here.

¶ 81 With respect to the structure of the trial court's award, Beth also challenges the portion of the court's order that required Dean to grant Beth a mortgage on the farm real estate to secure the equalization payment. Beth cites *In re Marriage of Stanley*, 133 Ill. App. 3d 963, 981, 479 N.E.2d 1152, 1164 (1985), where the husband challenged the trial court's order requiring him "to execute a note and mortgage on the marital residence in order to secure the payment of attorney fees and arrearages in owelty, maintenance, and child support." This court reversed that portion of the trial court's order, finding it "had no statutory authority to order the execution of a note and mortgage on the marital residence in th[e] dissolution of marriage proceeding." *Stanley*, 133 Ill. App. 3d at 981, 479 N.E.2d at 1164.

¶ 82 However, Beth acknowledges that more recently, this court interpreted section 503(i) of the Act (750 ILCS 5/503(i) (West 1998)) "as according the trial court statutory authority to order parties to mortgage marital property." *In re Marriage of Carter*, 317 Ill. App. 3d 546, 553, 740 N.E.2d 82, 87 (2000). Pursuant to section 503(i) a "court may make such judgments affecting the marital property as may be just." 750 ILCS 5/503(i) (West 2012). Based upon this court's decision in *Carter*, we find the trial court had authority under the Act to

order a mortgage on the parties' marital property to secure the equalizing payment it ordered Dean to pay.

¶ 83 8. *Amount of Property-Distribution Award*

¶ 84 Finally, on appeal, Beth challenges the amount of the trial court's property-distribution award, arguing it was unjust. She contends the amount of property awarded to her was "inequitably small" given the length of the parties' marriage and the disparity in the parties' income.

¶ 85 Initially, to the extent Beth challenges the court's fifty-fifty split of the marital estate, we note this court has held that "[e]qual 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). However, here, the record indicates the trial court failed to consider the full amount of Dean's income, overvalued his debt, and improperly categorized certain property. Thus, the court's property disposition incorporated inaccurate amounts. Under these circumstances, it is necessary to remand the matter to the trial court so that it may reconsider its disposition of property consistent with this decision.

¶ 86 C. Maintenance

¶ 87 On appeal, Beth also challenges the trial court's maintenance decision. "The propriety of a maintenance award is within the discretion of the trial court and the court's decision 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. Also, as discussed, "[t]he issue of maintenance is *** 'integrally related' to the trial court's allocation of [a] couple's property." *Jensen*, 2013 IL App

(4th) 120355, ¶ 39, 988 N.E.2d 1102. Further, factors for the court to consider include "the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance." 750 ILCS 5/504(a)(1) (West 2012). Again, the trial court did not consider the full amount of Dean's income and made factual errors in connection with its property award. Because remand is necessary so that the trial court may reconsider its property disposition, it must also reconsider its decision as to maintenance.

¶ 88 D. Discovery Sanctions

¶ 89 As a final matter, Beth argues the $550 discovery sanction the trial court ordered Dean to pay was "abusively minor." She contends the trial court did not apply the appropriate legal standard and seeks reversal on that basis.

¶ 90 "Illinois Supreme Court Rule 219(c) (eff. July 1, 2002) authorizes a trial court to impose a sanction on a party who unreasonably fails to comply with the court's discovery rules or orders." *In re Marriage of Bradley*, 2011 IL App (4th) 110392, ¶ 19, 961 N.E.2d 980. Where a failure to comply with discovery has occurred, the court may enter the following orders:

> "(i) That further proceedings be stayed until the order or rule is complied with;
>
> (ii) That the offending party be debarred from filing any other pleading relating to any issue to which the refusal or failure relates;
>
> (iii) That the offending party be debarred from maintaining any particular claim, counterclaim, third-party complaint, or defense relating to that issue;

(iv) That a witness be barred from testifying concerning that issue;

(v) That, as to claims or defenses asserted in any pleading to which that issue is material, a judgment by default be entered against the offending party or that the offending party's action be dismissed with or without prejudice; [or]

(vi) That any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to that issue[.]" Ill. S. Ct. R. 219(c) (eff. July 1, 2002).

"In lieu of or in addition to the foregoing, the court *** may impose *** an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee, and when the misconduct is wilful, a monetary penalty." Ill. S. Ct. R. 219(c) (eff. July 1, 2002).

¶ 91 "When imposing sanctions, the court's purpose is to coerce compliance with discovery rules and orders, not to punish the dilatory party." *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 123, 692 N.E.2d 286, 291 (1998). "An order of dismissal with prejudice or a sanction which results in a default judgment is a drastic sanction to be invoked only in those cases where the party's actions show a deliberate, contumacious or unwarranted disregard of the court's authority." *Shimanovsky*, 181 Ill. 2d at 123, 692 N.E.2d at 291. "Being such a drastic sanction, dismissal should only be employed as a last resort and after all the court's other enforcement powers have failed to advance the litigation." *Shimanovsky*, 181 Ill. 2d at 123, 692

N.E.2d at 291.

¶ 92 On review, the trial court's imposition of a particular sanction should be reversed only "when the record establishes a clear abuse of discretion." *Shimanovsky*, 181 Ill. 2d at 123, 692 N.E.2d at 291. "The factors a trial court is to use in determining what sanction, if any, to apply are: (1) the surprise to the adverse party; (2) the prejudicial effect of the proffered testimony or evidence; (3) the nature of the testimony or evidence; (4) the diligence of the adverse party in seeking discovery; (5) the timeliness of the adverse party's objection to the testimony or evidence; and (6) the good faith of the party offering the testimony or evidence." *Shimanovsky*, 181 Ill. 2d at 124, 692 N.E.2d at 291.

¶ 93 The record shows that, prior to trial, Beth filed two motions for discovery sanctions, alleging Dean violated the trial court's discovery orders. On July 20, 2012, the court conducted a hearing, following which it determined Dean willfully violated a discovery order but reserved ruling on sanctions. In connection with her second motion, Beth alleged a variety of discovery misconduct by Dean, including that he submitted forged documents in response to a discovery order. Beth asked that the court "impose the most severe discovery sanctions available: *** that th[e] Court strike [Dean's] pleadings and hold him in default." On February 4, 2013, the court conducted a hearing on the second motion. At the conclusion of the hearing, the court sated Dean had been "intentionally deceptive." It entered a sanction of attorney fees but reserved determination of the amount. In reaching its decision, the court stated as follows:

> "[T]he question becomes, what sanctions are appropriate in this area, and *** divorces shouldn't be different than other proceedings, but, in fact, they are different because in other

> proceedings the court doesn't divide property, the court doesn't award maintenance. The court determines that the outcome—can determine the outcome of a civil suit, but can't really determine the outcome of a divorce where it divides property.
>
> The cases I have read, the court would only—it would only be proper to exclude evidence and default and/or default a party in cases of extreme violations of the court's orders or discovery rules. I don't—unfortunately, I don't find this here because maybe the court's a little jaded, but, unfortunately, the court sees this stuff all the time, and maybe the court shouldn't see it all the time, but it happens all the time.
>
> The court believes that because he's been difficult, because he's made you go through extra work to get this information, the fact is you've got this information. He did finally comply with the orders. Therefore, the court is not going to default him. The court's not going to exclude evidence, but the court finds the proper sanction is to award you and award your client attorney fees for all the extra work you had to go through."

Ultimately, the court ordered Dean to pay $550 in attorney fees.

¶ 94 Here, although the trial court initially commented that dissolution cases were different than other cases, the record fails to reflect it applied an improper legal standard. The court correctly noted that default as a discovery sanction was warranted in only extreme or

drastic circumstances. It then found the circumstances presented did not present such a situation and noted that Dean ultimately complied with the court's orders. We find no error with the court's determination that ordering Dean to pay attorney fees was the appropriate sanction. Additionally, on appeal, Beth does not make any specific arguments with respect to the amount of attorney fees awarded and, again, we find no error in the court's determination.

¶ 95 III. CONCLUSION

¶ 96 For the reasons stated, the trial court erred in its distribution of property by failing to fully consider Dean's income, overstating Dean's debt, and including or excluding specific items of property within its determination of marital property. We reverse the trial court's property-distribution award and decision with respect to maintenance and remand for reconsideration of those issues consistent with this decision. We affirm the $550 discovery sanction imposed by the court against Dean.

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