2016 IL App (2d) 160007-U
No. 2-16-0007
Order filed October 20, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF DAVID LEHTMAN,	)	Appeal from the Circuit Court of Lake County.
Petitioner/Counter-Respondent -Appellant,	)	
and	)	No. 14-D-0938
KIMBERLY LEHTMAN,	)	
Respondent/Counter-Petitioner-Appellee.	)	Honorable Joseph V. Salvi, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Schostok and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in denying petitioner and counter-respondent-husband maintenance, making a credibility finding, ordering him responsible for debt in his name, and imputing income to him for child support purposes. Affirmed.

¶ 2 Appellant, David Lehtman, appeals the trial court's December 7, 2015 order, dissolving his marriage to appellee, Kimberly Lehtman. Specifically, David argues that the trial court erred in: (1) denying him maintenance; (2) finding him not credible; (3) ordering him responsible for a

majority of the parties' marital debt; and (4) imputing income to him for purposes of child support. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Pre-Trial

¶ 5 On May 16, 2014, David petitioned for dissolution of the parties' almost nine-year marriage. David asserted that he was self-employed, and he requested, in part, temporary support, joint custody of the two minor children, that Kimberly be barred from receiving any maintenance, and that the court enter any other equitable order.

¶ 6 Also on May 16, 2014, David filed a separate petition for temporary support. He noted that he was self-employed with a startup business, that he was not earning any income, and that he had neither money nor access to funds or credit. David asserted that he and the minor children required financial assistance from Kimberly, who was employed as an attorney earning around $225,000 to $250,000 annually.

¶ 7 On May 22, 2014, David filed an *emergency* petition for temporary support, noting that his earlier petition was set for presentation in July; however, he remained without income and without access to any funds or credit (he alleged that Kimberly had changed the passwords on all accounts and cancelled all joint credit cards) and that he was the children's primary caretaker.

¶ 8 On May 30, 2014, David's counsel petitioned for interim and prospective attorney fees, noting that David had paid his retainer by borrowing money from friends and family.

¶ 9 On June 6, 2014, the court appointed a guardian *ad litem* (GAL) for the children and ordered that Kimberly pay all GAL fees. Further, the court ordered that Kimberly pay David $2,500 monthly in temporary support and a $2,900 security deposit for a rental residence (Kimberly was granted exclusive possession of the parties' Vernon Hills residence). Moreover,

the court ordered that David would spend alternating weekends and Tuesday afternoons with the children, as well as specified vacation time.

¶ 10 On June 27, 2014, Kimberly responded to David's verified dissolution petition. She denied that David required temporary support and requested relief in the form of both denial of David's petition and "such other and further relief as this Honorable Court deems equitable and just."

¶ 11 Kimberly was granted leave to file a counter-petition for dissolution, which she filed on July 10, 2014. In it, she alleged that David was "a well and able-bodied man who is capable of contributing toward the financial support and expenses of the parties' minor children." She requested joint custody, with her as the children's primary caretaker, and that David be ordered to contribute toward the financial support and expenses of the children. She also requested "such other and further relief as this Honorable Court deems equitable and just." The counter-petition made no express reference to maintenance.

¶ 12 David was granted 28 days to respond to the counter-petition (*i.e.*, response due in August). However, no response was filed. Instead, on August 25, 2014, David moved to voluntarily dismiss his dissolution petition.

¶ 13 On September 17, 2014, David's motion was granted via an agreed order. The same agreed order entered *instanter* the parties' attached joint parenting agreement (JPA), which would be incorporated into the final dissolution judgment or marital settlement agreement and provided that the children would live primarily with Kimberly. Finally, the agreed order discharged the GAL and gave her leave to file a fee petition. The GAL's fee petition was granted, and Kimberly was ordered to pay the entire balance of fees.

¶ 14 On November 5, 2014, David's attorney moved to withdraw. On December 3, 2014, the motion was granted, David was given 21 days to obtain new counsel, and the matter was set for "status of attorney" on January 6, 2015.

¶ 15 On January 6, 2015, David appeared without counsel. The court ordered that David would have until February 11, 2015, to retain new counsel or file his *pro se* appearance. The case was set for hearing on that same day for entry of a case management order.

¶ 16 On February 11, 2015, a case management order was entered. On the court form, a box is checked, reflecting that Kimberly appeared by attorney and the form was prepared by Kimberly's counsel. No box is checked reflecting either David's appearance or lack thereof, although the record includes a *pro se* appearance filed by David that same day. Under the "Contested Issues" section of the form, the box for "maintenance" is checked. The order lists dates by which the parties were to exchange discovery information, set a final trial conference date of November 17, 2015, and a trial date of December 7, 2015.

¶ 17 David filed a second *pro se* appearance on April 10, 2015, as well as an emergency motion requesting, among other things, an increase in temporary maintenance. On April 14, 2015, the court determined that the motion was not emergency in nature, and it granted Kimberly leave to file a fee petition pursuant to Lake County Local Rule 11.10(B) with respect to the emergency motion.[1] As a result of the allegations in the motion, the court re-appointed the GAL, ordering that the GAL fees would be equally split between the parties. Ultimately, in June 2015,

[1] Lake County Local Rule 11.10(B) states, in part: "A party and/or his or her counsel who respond to a motion propounded as, but found not to be[,] an emergency may be entitled to reimbursement by the proponent of actual expenses, fees and costs incurred in responding to the said motion."

based upon the GAL findings, David's emergency motion for temporary relief was stricken. On July 24, 2015, David's motion to continue the hearing on Kimberly's Rule 11.10(B) motion was denied and the motion was granted, ordering David to pay Kimberly's counsel $250.

¶ 18 In August, 2015, David acquired counsel for the limited purpose of pursuing his motion concerning his daughter's schooling. That motion was denied.

¶ 19 On November 17, 2015, pursuant to the prior case management order, the court conducted the final trial conference. Kimberly appeared with counsel. David did not appear. The order stated that trial would commence, as scheduled, on December 7, 2015.

¶ 20 B. Trial

¶ 21 On December 7, 2015, David appeared for trial and requested a continuance. He noted that the majority of the case had been heard by a different judge and that he was unrepresented by counsel. David asserted that he had tried to obtain counsel but was told, the Friday before trial commenced, that the firm would not represent him. He noted that Kimberly was an attorney and was also represented by counsel, and he asked for an extension of time to obtain counsel. The court denied the motion for continuance. When David represented that he had not previously seen all of the documents in Kimberly's evidence binder, the court stated that he "should have thought of that before," later noting that the binder had been available at the trial conference. When David asked for a 15-minute break to gets some notes together, the court asked what notes he needed to prepare. David responded, "I just want to, I mean, I have as far as, you know, income and just I don't know." The court replied, "I am not going to play that game *** I don't mean to characterize it as a game, but I am not going to just waste time, so take a seat." At one point, the court asked David if he was under the influence of anything. David responded, "Fear."

¶ 22 Kimberly's counsel explained to the court that only the counter-petition for dissolution remained pending, that David had never answered that petition, and that the parties had entered a JPA. Counsel noted that Kimberly had presented tax returns and a financial affidavit and that she had previously filed for bankruptcy, which was granted, and all of her debts were discharged in February 2015. Kimberly was employed and had income. As for David, counsel noted, he had filed a financial affidavit, but had not produced any exhibits or records in the 18-month duration of the case. "He claims to be employed. He may or may not be, I don't know, but he has never filed a petition for maintenance that is pending right now. There is no underlying petition for anything." Therefore, counsel summarized, Kimberly's claims in her counter-petition should be deemed admitted, there was no formal notice that David was pursuing any relief, there were no assets and, as the court noted, this was "almost like a default trial." Counsel asked the court to impute income to Kimberly for child support purposes and, "if he's making an assertion of maintenance, that is news to me; and he's never pled anything that is of record in the court file." The court stated that it agreed with counsel's statements as they related to property division and the issue of maintenance, but it needed to hear some testimony with respect to child support.

¶ 23 The court then asked David what he believed the evidence would show with respect to his employment. He replied:

> "My employment is I just completed my real estate course, which I was employed for 15 years as a real estate broker.
>
> For the last few years, I have been a caretaker. It flipped. I was making income. We were both making income; and for the last few years, Kimberly has been making most of the income, and I have been dealing with the - - working with the kids.

> I started my own business off on my own *** and subsequent to that, I have been doing any job possible here and there. I have gone above and beyond and spent way more than maintenance that is awarded to me by the court. I have been delivering pizzas two, three days a week until three in the morning to pay for my children's courses – classes. I have been doing everything possible ***."

¶ 24 The court stopped David, noting that "this isn't going to be a rambling testimony." The court asked counsel to call his first witness, and Kimberly took the stand. In relevant part, she testified that her bankruptcy petition accurately reflected the assets and debts she had at that time and that she received a discharge on February 3, 2015, discharging all debt. Her remaining asset is "essentially a checkbook with under $1,000." Kimberly testified that she was the sole source of financial support for the children during the period of dissolution proceedings and that she alone paid for their health insurance (as well as David's, and she asked that he be removed from her plan), medical expenses, and extracurricular activities. Kimberly testified that she updated her financial affidavit for trial purposes and that the exhibit truly and accurately set forth her assets, debts, income and/or expenses. As to present liabilities, Kimberly testified that she had a balance on a Citibank credit card in the amount of almost $11,000, a balance of around $3,000 on a department store card, and then legal fees, student loans, tax liabilities, and accountant fees (for preparing and filing tax returns). Kimberly confirmed that the two line items for tax liabilities were generated from the parties' 2012 and 2013 joint tax returns where the IRS determined there were deficiencies. Kimberly testified that the tax audit was in relation to itemized deductions claimed for David's business operations, noting that she, in contrast, was a "strict W-2 employee." Kimberly also confirmed that the only financial affidavit David had produced was from May 28, 2014. She agreed that, during the course of the marriage, there had

been times when David had worked and contributed to his own expenses, and she further agreed with her counsel's statement that David "indicated that now he's -- in his opening statement that he's got his real estate license and pursuing that[.]" She agreed that real estate was something David had pursued "historically even long before" the marriage.

¶ 25 David asserted that he had "tremendous amounts of information and receipts" relating to the IRS deficiencies and other payments he made with respect to the children, but he did not have any of them with him. At David's request, the court allowed a short recess before he presented his case. When they returned, David reiterated that he was given less than 10 minutes to review Kimberly's trial binder. The court again reminded David that the binder was available at the trial conference, which he did not attend. When David claimed he did not know about that conference, Kimberly's counsel stated, "He was aware because he was present when the case management order was entered. He was with me when it was entered." The court further stated: "Plus you have your own obligation to keep track of your own court dates. I mean it's not as if you are twelve and we need to let you know every ***." David renewed his request for an extension of time to review the binder documents. Counsel responded that there was nothing in the binder that David had not seen or that was not his own document, *i.e.*, the joint tax returns, his own IRS notices, his own financial affidavit. The only document that David had not previewed was Kimberly's updated financial affidavit. The court again denied David's motion to continue.

¶ 26 David took the stand, and the court asked him questions, including where he currently worked. David testified that he had been delivering pizzas for two or three months, around 20 hours per week, and earning an average of $100 to $150 weekly. The court asked David whether he had any other source of income, and David replied only the maintenance he had been

receiving. The court asked if David had any other job, and David said, "I have been taking real estate courses since October and just completed that." David mentioned that he was a certified NFL contract adviser, and the court asked whether David ever earned income in that capacity. David testified that, in 2014, he earned $4,209 and, in 2015, he earned between $3,500 and $5,000. Also in 2015, David worked setting up and taking down equipment for his cousin's entertainment company, earning less than $1,000; he worked for a roofing company and made around $2,000; and he worked at Motor Werks and earned $1,900. David is 43 years old; he has completed an associate's degree. David does not have any mental or physical health issues that prevent his ability to work. He claimed, however, that he needs a JD or MBA to be a contract adviser, noting that he does not even have a bachelor's degree. The court asked, "[b]ut you got licensed, right, by the NFL; you have to be licensed?" David replied, "it's like passing the bar exam. It's very difficult." The court confirmed, however, that David did get licensed. David testified that, with respect to his ability to work:

> "I have been a caretaker to my children. I have been a stay[-]at[-]home Dad in addition to working any job I can. I take them to the doctor. I am at school meetings. I am back and forth constantly. I have done every pick up and every drop off that there has ever been per the JPA. I am constantly at Kim's beck and call for whatever she needs because I understand she gets busy at times; and I have for the most part been a stay[-]at[-]home father with, you know, I want to take care of my children. I want to provide for my family.
>
> Throughout the course of all this, I have done whatever it takes to earn whatever money I could under the circumstances ***."

¶ 27 David claimed that, other than the debt already mentioned, he had federal tax liens from when he sold real estate. He testified that they were judgments, but that he had no proof prepared, which is why he wanted the continuance. David further claimed he owed his uncle $4,000, his mother $5,000, his father $5,000, his brother $3,500, and had a "maxed out" credit card and other credit card balances around $800 and $1,500. David claimed he had a liability "from something that goes back for it was a personal guarantee of mine. It's about $50,000." Finally, he claimed to be one month behind in his rent and that he incurred recent debt for his children's activities. David agreed he did not have any records with him to substantiate his debts and liabilities, again claiming it was because he did not have proper representation.

¶ 28 David returned to the issue of maintenance, noting that he spent above and beyond the amount Kimberly had paid him in maintenance to provide for the children and that he had receipts and correspondence to prove it. The court asked if there was on file an order on maintenance. Kimberly's counsel represented that: "There was a temporary order on maintenance that was filed beginning of the case. It was just temporary in nature. There is no petition on file, even an underlying petition or current petition asking for maintenance. *** If [David] was intending to [ask the court for maintenance], clearly that would have had to have been filed before sitting here at the trial." Counsel confirmed for the court that the temporary order was entered by agreement. David stated to the court: "Well, as far as child support and maintenance, I am aware of the law of the formula and the scale and what has been transpired; and as far as that goes, I mean, I am asking the court to please grant what is proper and fitting as far as the formula goes under the law that came into effect in 2015 based on the discrepancies in income and the years of our marriage."[2]

[2] David notes in his appellate brief that the section he referenced was subsequently

¶ 29 In his closing statement, David expressed that he did not feel he should have to pay child support until he was "back on [his] feet." He stated that he had been the children's caretaker[3] and "the only reason why that I stopped making money in real estate was because it ended in 2008 with the crash ***When I first met Kim, you know, she wasn't making that. Everything kind of, you know, went back and forth, you know. After we got married, she lost her job, and then I started making money, and then it went back the other way. That's just the way that marriage works[.] I feel that as far as right now asking me for child support I think it should be reversed." David again requested maintenance and asked that the children's expenses be split 80-20.

¶ 30 C. Kimberly's Trial Exhibits

¶ 31 The record on appeal contains 14 trial exhibits, including Kimberly's bankruptcy petition and discharge order and the tax deficiency assessments referenced at trial. Further, David's financial affidavit, dated May 28, 2014, states that he is self-employed with "20/20 Athletes, Inc." and lists a business address that is the same as his home address. Gross income for the year 2013 is listed as zero, and gross income from January through May 2014 is listed as $714.70. His total monthly living expenses, at the time, were $9,628, and his monthly debt service payments were $600. Listed in his statement of liabilities is a judgment lien of $100,000, tax liabilities, credit card debts, and a $40,000 debt for his business interest in 20/20 Athletes, Inc. As previously noted, trial commenced almost 18 months after the affidavit was submitted and David did not submit another one.

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amended, effective January 1, 2016, and, therefore, the section in effect as of the time of trial was that effective as of January 1, 2015.

[3] It is not clear how long David was allegedly the children's primary caretaker.

¶ 32 Kimberly's documents confirmed her earnings exceeded $200,000 annually, and her December 2015 financial affidavit estimated her net monthly income as $10,006. However, the affidavit also listed her monthly living expenses as $11,579, monthly debt service as $1,125, and a resulting monthly shortage of $2,698. The affidavit listed no assets, a credit card debt of $14,000, and a debt to her attorneys, but it did not list the $2,500 monthly payments she had been making to David.

¶ 33 D. Trial Court's Decision

¶ 34 The trial court entered the dissolution judgment after the December 7, 2015, hearing. The court opened by noting that it had heard and reviewed evidence on multiple issues, including maintenance, and that Kimberly's counter-petition was the only dissolution petition pending. The court found that Kimberly is employed as an attorney earning approximately $200,000 annually and is able to support herself without maintenance from David. As to David:

> "[David] is employed. It appears that he delivers pizza on a part-time basis. He also has – he has made income as what was described as an NFL contract adviser. He is licensed by the NFL to contract sounds like players. Contracts he has made approximately over $4,000 in 2014; over $3,500 in 2015. He has also worked at other jobs, such as a roofing company, Motor Werks, and has no disability, mental or physical disability, that prevents him from working and has in the past earned income and has in this court's – if the need be to be found, because there is no pending petition before this court with [David] asking for maintenance; but the court finds that he has the ability to support himself."

¶ 35 The court continued that, with respect to maintenance, it had considered the factors set forth by section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act). 750 ILCS 5/504(a) (eff. Jan. 1, 2015). Further:

> "[T]he court recognizes that there is no pending petition whereby [David] is actually asking for maintenance. Beyond that, the court does not find that this is a maintenance case in that [David] has the ability to earn substantial income and has earned substantial income in the past and is able to support himself[.]"

¶ 36 The court imputed income to David in the amount of $10 per hour and a 40-hour work week. It noted "[David] has an easy ability to earn that type of income. I am not so sure he is not already doing that." The court then ordered David to pay child support in the amount of $90 per week, representing 28% of his imputed income. Further, the court ordered David responsible for half of any uncovered medical, dental, or other health related costs for the children, as well as half of any extracurricular fees of the children up to $1,000 per year per child.

¶ 37 The court ordered the parties equally responsible for a pending tax liability, with each party's half totaling $12,386.84. All other debts in David's name would be his sole responsibility, as would his remaining attorney fees. Overall, each party was to retain the personal property he or she had in his or her possession.

¶ 38 The court found that Kimberly was credible, as were her exhibits. The court found David not credible, noting "He seems confused as it relates to the issues before the court and his presentation of the case; and based upon that, the court will grant the petition for dissolution of marriage."

¶ 39 After the court announced its judgment, David asked the court about maintenance, asserting that he did not know that he had to file a petition to seek maintenance. The court stated

that, even if maintenance had been pending, it found no maintenance appropriate, telling David that he was "barred against any maintenance," and explaining "You are on your own. You have to support yourself." David asked the court, "could I ask for any sort of amount of temporary maintenance in the meantime?" The court responded, "No, you are on your own as of today. You have to support yourself." David appeals.

¶ 40 II. ANALYSIS

¶ 41 A. Maintenance

¶ 42 David, who is represented by counsel on appeal, argues first that the trial court erred in finding that, in the absence of a pleading from David requesting maintenance, he was not permitted to pursue maintenance and, accordingly, limiting proofs regarding that claim. Further, David argues that the court abused its discretion in denying him a maintenance award.

¶ 43 We review for an abuse of discretion the trial court's maintenance decision. See *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010). The abuse-of-discretion standard is the most deferential standard of review, next to no review at all. See *In re D.T.*, 212 Ill. 2d 347, 356 (2004). A court abuses its discretion when: (1) its findings are arbitrary or fanciful (*Blum v. Koster*, 235 Ill. 2d 21, 36 (2009)); or where (2) no reasonable person would agree with its position (*In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 646 (2009)). Further, where the trial court's factual findings regarding maintenance are challenged, this court will not reverse those findings unless they are contrary to the manifest weight of the evidence. *Nord*, 402 Ill. App. 3d at 294. Findings are contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident or where they are unreasonable or not based on any of the evidence. *Id.*

¶ 44 In their briefs, the parties first debate whether the court could consider the maintenance claim, in light of David's dismissal of his dissolution petition requesting maintenance and his failure to answer Kimberly's counter-petition, which did not mention maintenance, and whether the counter-petition's request for "such other and further relief as this Honorable Court deems equitable and just" was sufficient to bring before the court the maintenance issue, which the statute permits the court to award as it "deems just." See 750 ILCS 5/504(a) (eff. Jan. 1, 2015).

¶ 45 We note that we find somewhat disingenuous Kimberly's attorney's comment to the court that, to the extent David was seeking maintenance, it was a surprise because nothing to that effect was ever pled in the case. Certainly, although later dismissed, David's original petition requested temporary support. Also, although not technically a "pleading," David moved twice in May 2014 for temporary support, explaining that he lacked any income, while Kimberly was employed, earning a salary around $225,000 to $250,000. After a hearing, David's motion for temporary support was granted, and Kimberly paid David $2,500 monthly for the duration of the case (*i.e.*, around 18 more months). Further, *after* David voluntarily dismissed his petition, Kimberly's counsel prepared a case management order reflecting that maintenance remained a contested issue in the case. Later, in April 2015, David filed a motion requesting, in part, an increase in temporary maintenance. Accordingly, we simply do not find persuasive the contention that, because the issue was not before the court in a formal pleading at the time of trial, Kimberly lacked notice that David would request some form of maintenance.

¶ 46 In any event, we need not decide whether the alleged pleading deficit precluded consideration of maintenance because it is clear that the trial court *did* consider maintenance and determined that, even if maintenance was properly before it, David was not entitled to it. On that point, we cannot find that the court abused its discretion or that its findings were contrary to the

manifest weight of the evidence, largely because there was virtually no evidence to establish David's need at the time of trial. It is true, as David points out, that the court appeared to accept the notion that, in essence, the issues before it were like a "default trial" and evidence was needed only as it pertained to child support. Further, David's entire direct examination was conducted by the court, which did not extensively delve into maintenance. Nevertheless, the court still heard sufficient evidence from which it could reasonably determine that maintenance was unnecessary. David informed the court that he was self-employed as an NFL contract adviser, that he worked odd jobs whenever possible, and that he was employed part time delivering pizzas. Further, although David testified that he did not earn high income in those pursuits, he testified that he had worked more than 15 years as a real estate broker and that he had, in October 2015, "just completed" a real estate course. The court heard evidence that Kimberly earned a significantly higher income, but there was also evidence that she, too, experienced a shortfall each month, and the court was aware that the children would be living primarily with her, allowing for the reasonable presumption that David would have additional time during which he could work more hours or pursue more lucrative employment. Further, the court could have reasonably determined that David had received from Kimberly $2,500 each month for around 18 months, which was sufficient temporary support to allow him time to "get back on [his] feet."

¶ 47 The court stated that it considered the section 504(a) factors, but found maintenance not appropriate. Addressing section 504(b-2) (750 ILCS 5/5-504(b-2) (eff. Jan. 1, 2015)) of the Act, the court listed reasons for not awarding maintenance that comport with section 504(a) factors, including David's present and future earning capacity (see 750 ILCS 5/5-504(a)(3) (eff. Jan. 1, 2015)), that he had no physical or mental disabilities that prevent him from working (see 750

ILCS 5/5-504(a)(9) (eff. Jan. 1, 2015)), and that David was employed and able to support himself (see 750 ILCS 5/5-504(a)(6) (eff. Jan. 1, 2015)). Further, to the extent David claimed otherwise, there was, again, no evidence presented to support his claims. David did not prepare for the hearing or produce any evidence. David does not argue on appeal that the failure to grant his requests for continuance constituted an abuse of the court's discretion. Indeed, he effectively had more than one year to obtain counsel but, instead, failed to appear at the final pretrial conference and appeared at trial without counsel. Representing himself *pro* se, David produced no evidence to support many of his statements, and the only affidavit in the record was dated 18 months prior to trial and did not reflect more recent income, such as from part-time employment. David argues that the court erred by not considering, when it denied him maintenance, the total absence of marital and nonmarital property awarded to him, yet he acknowledges that there was no *evidence* of the existence of any marital or even nonmarital property to be awarded to either party, with the only property even discussed concerning personal property. Further, David argues that the court erred by not making specific findings under the remaining section 504(a) factors; however, no one factor from section 504(a) is dispositive of whether the trial court should order maintenance (*In re Marriage of Brankin*, 2012 IL App (2d) 110203, ¶ 10) and the court is only required to make findings with respect to those factors of section 504(a) it deems relevant. See 750 ILCS 5/504(b-1)(1) (eff. Jan. 1, 2015) ("the court shall state its reasoning for awarding or not awarding maintenance and shall include references to each *relevant* factor set forth in subsection (a) of this Section") (emphasis added.).

¶ 48 We are not unsympathetic to David's financial position. Indeed, Kimberly's income is significantly higher than David's, and he has expressed that he took care of the children when necessary due to Kimberly's employment (although the length of time he served that role is not

clear). However, Kimberly's evidence also showed that she declared bankruptcy and, despite her income, her household spends more each month than it receives in income. This evidence remained uncontradicted. It is worth noting that, in determining whether there has been an abuse of discretion, the appellate court does not substitute its own judgment for that of the trial court, or even determine whether the trial court exercised its discretion wisely. See, *e.g.*, *Marzouki v. Najar-Marzouki*, 2014 IL App (1st) 132841, ¶ 14; see also *Griffith v. Mitsubishi Aircraft Int'l, Inc.*, 136 Ill. 2d 101, 115 (1990) (when applying abuse-of-discretion standard, the court should not substitute its judgment for that of the trial court, determine if it would have weighed the factors differently, or even determine whether the trial court exercised its discretion wisely). As Kimberly points out in her brief, we cannot soundly find that the court abused its discretion or its findings were contrary to the manifest weight of the evidence, where David provided no evidence, pleadings, or support for his maintenance request, and where his testimony established low income, but earning potential.

¶ 49 B. Credibility

¶ 50 David next argues that the court erred in finding him not credible. He notes that the court relied upon his poor performance as a *pro se* litigant, rather than his actual testimony, which was not impeached in any respect by Kimberly, as a basis for finding him not credible. David relies upon *Sweilem v. Illinois Department of Revenue*, 372 Ill. App. 3d 475, 484 (2007), for the proposition that "a fact finder may not discount witness testimony unless it was impeached, contradicted by positive testimony, or by circumstances, or found to be inherently improbable." David argues that he was credible and that Kimberly failed to impeach or contradict any of his testimony, instead only noting the mere absence of further documents corroborating his testimony regarding his debts or any other subject.

¶ 51 We reject this argument. In the end, the issues presented at trial were not close ones that greatly depended on the witness credibility. See *Eychaner v. Gross*, 202 Ill. 2d 228, 251(2002) ("In close cases, where findings of fact depend on the credibility of witnesses, it is particularly true that a reviewing court will defer to the findings of the trial court unless they are against the manifest weight of the evidence"). Further, although the court expressed that it would grant the dissolution "based upon" David's lack of credibility and his presentation of the case, its findings show otherwise. In other words, the court's findings denying maintenance and imputing income for child support purposes inherently found credible portions of David's testimony with respect to his current part-time employment, his licensure as an NFL contract adviser, his former employment in real estate, his completion of a real estate course, and his lack of mental or physical disability that would prevent him from supporting himself. The remaining issues were limited, depending primarily on the figures presented through Kimberly's evidence. In sum, the court did not act contrary to the manifest weight of the evidence.

¶ 52 C. Marital Debt

¶ 53 David argues next that the trial court failed to equitably divide the parties' debts. He acknowledges that the court ordered equally divided the tax debt. However, David alleges that, by ordering each party fully responsible for the debts in his or her respective name, it created a profoundly inequitable result because the liabilities titled in his name were significantly greater than those titled in Kimberly's name. According to David, as a result of her pursuing bankruptcy, Kimberly discharged significant debt (approximately $511,000). Accordingly, by the date of trial, her debts included $23,987.69 (credit cards, student loans, accountant), plus her $12,386.84 share of the tax liability and $7,000 attorney fee debt (*i.e.*, an alleged total of $43,374.53). In contrast, David asserts that his 2014 financial affidavit and testimony

established his debts as $380,328 (credit cards, "federal and state taxes," a "judgment," and loans from family), plus his share of the tax liability and $7,946 owed to his former attorney (*i.e.*, an alleged total of $400,660.84). David argues the result is particularly inequitable given that he received no property in the divorce, was barred from maintenance, his capacity for producing income was not as high as compared with Kimberly's, and that he now is prevented "from receiving a fresh start similar to that which Kimberly received[.]" We find no error with the court's ruling.

¶ 54 Marital debts are to be distributed in "just proportions." See 750 ILCS 5/503(d) (West 2014). "Illinois law vests the trial court with considerable discretion to exercise its judgment in resolving matrimonial financial matters because an equitable division depends on more than merely an analysis of dollars and cents. It also depends, for example, on the court's observations of the parties as they testified and responded at trial and the economic circumstances of each party." *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 22. A trial court abuses its discretion only where its ruling is arbitrary, fanciful, or unreasonable. *Id.*

¶ 55 David complains that he received no property or other assets, but he does not point to any specific property or assets that existed and should have been divided. Indeed, Kimberly's financial affidavit at trial listed her only asset as $500 in a checking account.[4] David's 2014 financial affidavit listed his only asset as a $40,000 interest in the business of 20/20 Athletes, Inc.

¶ 56 David's argument appears to concede that, to the extent Kimberly is at all receiving a "fresh start," that result is because she declared bankruptcy, *not* because of the dissolution.

[4] The marital residence was apparently sold; David does not assert that there was any equity or profit of which he was deprived after the sale.

Indeed, in his reply brief, he notes that "[b]ecause of her bankruptcy, Kimberly walked away from the parties' marriage virtually debt-free while David is responsible for debt in excess of $400,000." We think it is relatively safe to say that declaring bankruptcy is not typically desired and can have significant consquences. In that sense, Kimberly did not exactly walk away unscathed from her former indebtedness and, indeed, she is left with a not insignificant debt after dissolution. With respect to David, the court assigned him only the debt in his name and, to the extent that the court was aware of a joint debt, *i.e.*, the tax liability, it was equitably (in fact equally) divided. David claimed to owe unsubstantiated debts to family members and only vaguely described a $50,000 liability "from something that goes back for it was a personal guarantee of mine." Given the evidence presented, we cannot find an abuse of discretion in the court's debt distribution.

¶ 57 D. Imputing Income

¶ 58 David's final argument is that the court erred in imputing to him income for child support purposes. Citing *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009), David argues that, in order to impute income, a court must find that one of the following factors applies: (1) the payor is voluntarily unemployed; (2) the payor is attempting to evade a support obligation; or (3) the payor has unreasonably failed to take advantage of an employment opportunity. Here, he argues, there was no factual basis for the court to impute income, and the court made none of the aforementioned required findings to do so. David asserts that his testimony reflects that he was working, he worked every job he could to provide for the children, and there was no evidence that he was ever offered a job that he did not take. We reject his argument.

¶ 59 We review for an abuse of discretion a trial court's determination of income for child support purposes. *Gosney*, 394 Ill. App. 3d at 1077. We note that "[a] court may [also] impute

additional income to a noncustodial parent who is voluntarily *under*employed." (emphasis added.) *In re Marriage of Deike*, 381 Ill. App. 3d 620, 627-30 (2008); see also *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 106-07 (2000). "[I]f a court finds that a party is not making a good-faith effort to earn sufficient income, the court may set or continue that party's support obligation at a higher level appropriate to the party's skills and experience." *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 107 (2000); see also *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 26 ("[I]n determining income for child support purposes, the trial court has the authority to compel a party to pay at a level commensurate with his earning potential. [Citation.] If present income is uncertain, the trial court may impute income to the payor.").

¶ 60 Here, although the court did not make explicit findings, the evidence presented and the court's findings reflect that it implicitly found David voluntarily underemployed. In closing argument, Kimberly's counsel noted that, if David worked a minimum wage job for 40 hours per week, he would earn around $20,000 annually and his obligation to pay child support would be $400. Counsel argued that David was capable of more, and had previously earned more. In its ruling, the court recounted David's past and current employment before concluding not only that David could "easily earn that type of income," but that it was not "so sure he is not already doing that." The court ultimately ordered that David pay $90 per week, representing 28% of his imputed income. In essence, the court did not find credible the argument that David should not have to pay child support because of his current earnings and, to the extent that he acted as primary caretaker and was thereby limited in his ability to work, that condition was no longer present. The court's implicit finding that David was voluntarily underemployed was not an abuse of discretion.

¶ 61 We also note that, to the extent that David requested it, the court did not abuse its discretion in declining to completely absolve David from contributing to the support of his children, which is not contingent on the fact that Kimberly can meet their needs. See *In re Marriage of Rai*, 189 Ill. App. 3d 559, 571 (1989) ("We do not believe that because children receive adequate support as a result of one parent's efforts the other parent is excused from all obligations of support"). Indeed, the court in *In re Marriage of Schuster*, 224 Ill. App. 3d 958, 974 (1992), rejected the respondent-husband's argument that, due to the petitioner-wife's income and economic self-sufficiency, he should be relieved from paying child support altogether. There, the court reiterated that the support of children is "the joint and several obligation of both the husband and the wife" and noted that the respondent was neither unemployed nor unemployable. *Id*. at 974-75. Here, David is not unemployable and the support of his children remains his joint obligation.

¶ 62 III. CONCLUSION

¶ 63 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 64 Affirmed.