2016 IL App (2d) 160176-U
No. 2-16-0176
Order filed December 6, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF KIMBERLY M. ANDERSON Petitioner-Appellee, and ASHLEY T. ANDERSON, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Jo Daviess County. No. 12-D-71 Honorable Kevin J. Ward, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: In this dissolution action, the trial court did not err in its determinations on child support, maintenance, and property classification/distribution.

¶ 2 Respondent, Ashley Anderson, appeals the judgment of the circuit court following our remand in *In re Marriage of Anderson*, 2015 IL App (2d) 141260-U. Respondent raises issues regarding child support, maintenance, and property classification/distribution. We affirm.

¶ 3 I. APPELLANT'S NONCOMPLIANT OPENING BRIEF

¶ 4 We comment first that the statement of facts in respondent's opening brief is egregiously out of compliance with our supreme court rules. The statement was required to contain "the

facts necessary to an understanding of the case[.]" Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016). Respondent's contentions about child support, maintenance, and property classification/distribution are fact-intensive. To understand and resolve them requires a thorough understanding of the appellate record, which is substantial. The reports of proceedings are 1,083 pages and the common law record is 379 pages. Respondent, however, provides only a two-page statement of facts, which does not begin to provide a suitable context for his contentions. Respondent does weave record citations into his argument section, but these are selectively harvested for their benefit to his case. The brief's factual presentation is woefully one-sided. We will not strike the brief, but counsel for respondent is admonished for future cases before this court.

¶ 5 II. BACKGROUND

¶ 6 Some of the factual background is provided in our prior decision, *Anderson*, 2015 IL App (2d) 141260-U. We begin here with a procedural overview, and will supplement the background as we discuss each issue.

¶ 7 The parties were married in October 2002. The marriage produced two children, A.A., born December 24, 2003, and W.A., born January 16, 2007. The parties separated in September 2012. Petitioner filed her dissolution petition in October 2012, alleging a breakdown of the marriage based on extreme and repeated mental cruelty by respondent. In October 2013, the trial court granted petitioner temporary sole custody of the children and directed respondent to pay $211 per week as child support. The court made no award of maintenance pending trial.

¶ 8 The petition proceeded to trial in May and August 2014. In September 2014, the trial court issued its original dissolution judgment, which (1) granted petitioner sole custody of the two children and set a visitation schedule for respondent; (2) directed respondent to pay $233.84

per week in child support, to terminate in 2025; (3) valuated the marital estate at $271,387.03, which included an equitable interest of $187,444.70 in a 32-acre parcel of property adjoining the marital residence; and (4) awarded petitioner 60% of the marital estate, which included an in-kind award of $16,857.53 and an equalizing payment of $145,974.69, in lieu of maintenance.

¶ 9 Respondent appealed. We affirmed the dissolution judgment in part and vacated it in part. See generally *Anderson*, 2015 IL App (2d) 141260-U. We rejected respondent's claim that the trial court erred by declining to award the parties joint custody of the children. We agreed with him on other issues, however, holding that (1) the evidence showed no equitable interest held by the parties in the 32-acre parcel; (2) the court misclassified as marital property two investment accounts, which were actually respondent's nonmarital property; and (3) the record did not support the court's valuation of the parties' livestock, which it identified as "cattle, sheep, and hogs" in the list of marital property. We therefore remanded for the trial court to justify its valuation of the livestock and to redistribute the marital estate as adjusted. Our holding mooted respondent's challenge to the award of child support, and we directed the trial court to reconsider both child support and maintenance in light of the property redistribution. *Id.* ¶ 113.

¶ 10 On remand, the court received argument from the parties on the matters we directed the court to address on remand. The court did not reopen the proofs. In February 2016, the trial court issued its "Order Upon Remand." As directed, the trial court adjusted the marital estate to reflect that the parties held no equitable interest in the parcel. The court also reclassified the two investments accounts as respondent's nonmarital property. The trial court revisited the valuation of the "cattle, sheep, and hogs." The court valuated the sheep at $400, awarding them to petitioner, and valuated the cattle at $16,500, awarding them to respondent. The court noted that the parties actually owned no hogs at the time of trial.

¶ 11 After adjustments, the trial court valuated the marital estate at $70,842.23 (down dramatically from the original valuation of $271,387.03). Revisiting the issue of maintenance, the court determined that an appropriate amount of rehabilitative maintenance would be $80 per week for a period of five years. Discounted by 5%, the total sum of maintenance would be $18,000 (or $69 per week for five years), which, the court noted, was about equal to one year of petitioner's salary. "[I]n lieu of a maintenance award," the trial court incorporated the $18,000 into the property settlement. The court held that petitioner was entitled to 75% of the marital estate, or $53,131.75, which the court broke down into an in-kind distribution of $17,257.53 plus an equalizing payment of $35,874.22, to effect the award of maintenance.

¶ 12 For child support, the court adhered to its original award of $233.84 per week, to terminate in 2025.

¶ 13 Respondent filed this timely appeal.

¶ 14 II. ANALYSIS

¶ 15 Respondent raises several issues. We address them in the following order.

¶ 16 A. Child Support

¶ 17 Respondent challenges the award to petitioner of $233.84 per week in child support. This is the figure that the trial court derived by applying the computation table in section 505(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505(a)(1) (West 2012)). Respondent asserts that the trial court erred by declining to deviate downward from the computed figure. A deviation is warranted, he claims, because (1) his visitation time with the children decreases petitioner's child care expenses; and (2) petitioner failed to take the opportunity to increase her hours at work and so decrease her financial dependence. We disagree.

¶ 18 Section 505(a)(1) of the Act states that the trial court "shall determine the minimum of [child support]" through a computation table set forth in that section. 750 ILCS 5/505(a)(1) (West 2012). The table assigns as child support a certain percentage of the supporting party's income, the percentage set by the number of children to support. Section 505(a)(2) permits, in appropriate circumstances, a deviation from the computed support figure:

> "(2) The above guidelines shall be applied in each case unless the court finds that a deviation from the guidelines is appropriate after considering the best interest of the child in light of the evidence, including, but not limited to, one or more of the following relevant factors:
>
> (a) the financial resources and needs of the child;
>
> (b) the financial resources and needs of the custodial parent;
>
> (c) the standard of living the child would have enjoyed had the marriage not been dissolved;
>
> (d) the physical, mental, and emotional needs of the child;
>
> (d-5) the educational needs of the child; and
>
> (e) the financial resources and needs of the non-custodial parent.
>
> If the court deviates from the guidelines, the court's finding shall state the amount of support that would have been required under the guidelines, if determinable. The court shall include the reason or reasons for the variance from the guidelines." 750 ILCS 5/505(a)(2) (West 2012).

The trial court's decision whether to depart from the child support guidelines is reviewed for an abuse of discretion. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 395 (2002). A court

abuses its discretion only where no reasonable person would take the view adopted by the trial court. *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 52.

¶ 19 We address first respondent's contention that petitioner, who is currently working an average of 30 hours per week as a veterinary assistant in Galena, should be deemed as working full time (40 hours) for purposes of child support. Respondent claims that, since petitioner is available to work the additional hours, but has not taken the opportunity, the income from the forgone hours should be imputed to her. There is well-settled law on imputation of income. See, *e.g.*, *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶¶ 35-37 (imputing income to spouse receiving maintenance); *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077-78 (2009) (imputing income to spouse paying child support). Respondent cites none of it, and therefore his contention is forfeited. See Ill. S. Ct. R. 347(h)(7) (eff. Jan. 1, 2016) (argument shall be supported by citation to authority).

¶ 20 We turn to respondent's claim that he is entitled to a downward deviation from the support guidelines because of the child care expenses he incurs, and petitioner saves, when he has visitation. Respondent relies on *In re Marriage of Reppen-Sonneson*, 299 Ill. App. 3d 691 (1998), while petitioner relies on *In re Marriage of Sobieski*, 2013 IL App (2d) 111146, and *In re Marriage of Demattia*, 302 Ill. App. 3d 390 (1999). Also relevant to this case is language in a case not cited by the parties, *In re Marriage of Turk*, 2014 IL 116730.

¶ 21 *Reppen-Sonneson* stands for the well-established principle that, where the parties have shared (*i.e.*, 50/50) residential custody, "the court may apportion the [statutory] percentage between the parties [citation], or may disregard the statutory guidelines in [section 505(a)(1)] and instead consider the factors listed in section 505(a)(2)." 299 Ill. App. 3d at 695. In *Reppen-Sonneson*, the petitioner, who shared residential custody with the respondent, challenged as

insufficient the child support award in her favor of $75 per week. The appellate court affirmed the award, noting that the respondent had "just as much responsibility in caring for the children as [the petitioner]." *Id.*

¶ 22 Unlike *Reppen-Sonneson*, this is not a case of shared residential custody. Rather, as in *Sobieski* and *Demattia*, a party with visitation rights is appealing an award of child support in favor of the party with sole residential custody. *Sobieski* and *Demattia* stand for the principle that a party's "extended" or "substantial" visitation time does not automatically entitle the party to a downward deviation from the child support guidelines. *Sobieski*, 2013 IL App (2d) 111146, ¶ 57; *Demattia*, 302 Ill. App. 3d at 395. In *Sobieski*, the respondent spent "at least portions of 216 days in a given year" with the children. 2013 IL App (2d) 111146, ¶ 54. In *Demattia*, the respondent provided "primary care for the children 10 out of 14 days for at least 8 hours per day." 302 Ill. App. 3d at 394. In rejecting a *per se* rule for when a downward deviation should be granted, the Fourth District Appellate Court in *Demattia* commented:

> "We do not suggest a trial court could never deviate downward from the guidelines based on the noncustodial parent's extended provision of care for his or her children. We do not seek to discourage noncustodial parents from having substantial contact with their children. The benefit a noncustodial parent receives from having substantial involvement with his or her children cannot be measured by dollars. There should not be an *automatic* deduction in child support because a noncustodial parent has the opportunity to spend substantial time with the children and fulfill a parental responsibility. Caring for one's own children is not day care nor is it a chore for which to be compensated. Our decision is not a criticism of respondent for asking this interesting question, but we decline the invitation to add a new layer of complexity to custody and

> support decisions. Our decision is limited to the facts in this case." (Emphasis in original.) *Demattia*, 302 Ill. App. 3d at 395-96.

The *Sobieski* and *Demattia* courts held that, in lieu of *per se* rule, a request for a deviation from child support should be decided on the particular facts of the case. *Sobieski*, 2013 IL App (2d) 111146, ¶ 56; *Demattia*, 302 Ill. App. 3d at 395.

¶ 23 In *Demattia*, the respondent was ordered to pay the statutorily computed support figure of $714 per month for the parties' three children. He sought a deviation from that amount due to the liberal visitation he enjoyed. The trial court denied the deviation, and the appellate court affirmed. The court provided two main reasons. First, the parties earned substantially the same income, and the support award was not creating financial hardship for the respondent. The court noted that the petitioner assumed the mortgage on the marital residence and paid the respondent $5,000 for his interest in the residence. *Demattia*, 302 Ill. App. 3d at 394-95. Second, the petitioner was "solely responsible for maintaining the children's standard of living." *Id.* at 394. The expenses borne by petitioner, to which she applied the respondent's support payments, included the mortgage, utilities, car payments, and the children's clothing. *Id.* While the respondent "conceivably incurs some additional costs taking care of the children, these costs are not shown to be excessive or uncommon," but rather "appear to be normal costs associated with a joint custody arrangement [*i.e.*, joint legal custody, but sole residential custody for one spouse and visitation for the other]." *Id.* at 395.

¶ 24 In *Sobieski*, the respondent was ordered to pay support of $4,800 per month for the parties' four children. Like the respondent in *Demattia*, he sought a deviation due to the substantial visitation he enjoyed. The trial court denied the deviation, and this court affirmed, citing *Demattia* with approval. We noted that the petitioner "provide[d] for the physical

residency of the four children" and that her income and earning potential were lower than respondent's. *Sobieski*, 2013 IL App (2d) 111146, ¶ 56. We further noted that the respondent "presented no evidence as to how a deviation downward from the guideline amount of child support would comport with the best interests of the children." *Id.* ¶ 58. In rejecting the respondent's contention, we expressed general skepticism toward requests for an offset of child support due to visitation expenses:

> "Like the court in *Dematti*a, we are unpersuaded that extended time spent with one's children requires a deviation from the statutory guidelines for child support. It is unclear how extended time spent with one's children affects the financial resources and needs of the children, or the financial resources and needs of the noncustodial parent, in a way that warrants deviation from the child support guidelines. [The petitioner] is the physical custodian of all four children; the needs of the children remain the same; and, per *Dematti*a, spending time with one's children is not a chore that requires compensation but rather it is just that: spending time with one's children." *Id.* ¶ 57.

¶ 25 *Turk* dealt with a different fact pattern, but some of the language in the decision is pertinent here. The husband in *Turk* was granted sole custody of the parties' two children. The wife was granted visitation consisting of one evening per week with one of the children. The visitation she was granted with the second child, however, "gave her nearly equal time with him." *Turk*, 2014 IL 116730, ¶ 8. The wife's yearly income was less than $10,000 per year while the husband's was approximately $150,000. The trial court ordered the husband to pay the wife $600 per month in child support. *Id.* ¶ 9. The husband appealed, arguing that section 505 of the Act does not permit an award of child support to the *non*custodial parent. The appellate court disagreed, construing section 505 to permit support awards to the noncustodial parent. The

court found, however, that the particular figure awarded to the husband was not supported by the record. Accordingly, the appellate court reversed and remanded for an evidentiary hearing to determine what, if any, support the husband should pay the wife. *In re Marriage of Turk*, 2013 IL App (1st) 122486, ¶¶ 42, 48.

¶ 26 The supreme court agreed with the appellate court's interpretation of section 505. The court observed that an award of child support to the noncustodial parent would be appropriate where the parent has substantial visitation costs and fewer resources than the custodial parent:

> "Sometimes, as under the agreed custody judgment entered in this case, a parent who is technically noncustodial may have visitation rights which place the child in that parent's care for periods that rival those of the custodial parent and at commensurate cost. If *** status as the custodial parent automatically precluded one from having to make any child support payments to the other parent, the noncustodial parent could end up having to pay a significant portion of the costs of raising the child without any regard to that parent's financial resources and needs or how they compared to the financial resources and needs of the custodial parent. That may not be problematic where the noncustodial parent happens to be the wealthier of the two, but where, as here, the noncustodial parent appears to have significantly fewer resources to meet the substantial support costs which are sure to arise from the extensive visitation schedule, disqualifying the poorer parent from obtaining any financial assistance for child care from the wealthier parent based solely on the poorer parent's classification as noncustodial would not only place an unfair burden on the poorer parent, it could also leave that parent with insufficient resources to care for the child in a manner even minimally comparable to that of the wealthier parent.

> *** If custodial parents were categorically exempt from child support obligations, the wealthier parent's resources would be beyond the court's consideration and reach even though the visitation schedule resulted in the child actually residing with the poorer parent for a substantial period each week." *Id.* ¶¶ 24-25.

The court did not reach the merits of the wife's support award, but left in place the appellate court's reversal of the award and remand for the trial court to take evidence on what, if any, support was appropriate for the wife. *Id.* ¶ 33.

¶ 27 Here, in denying a downward deviation from the statutory support figure, the trial court said:

> "Petitioner is the sole custodian of the children; the needs of the children remain the same, and spending time with one's children is not a chore that requires compensation but rather is just that: spending time with one's children."

The trial court did not abuse its discretion. First, respondent earns substantially more than petitioner. The trial court determined that respondent's gross annual income at John Deere, where he is employed full-time as a mechanic, is $56,000. (Respondent claims his gross annual income from his employment is actually $54,000, but admits the difference is not significant and seeks no relief based on the claimed disparity.) Petitioner's gross income from her part-time employment as a veterinary assistant is $17,000. Petitioner also earns income from a pet-sitting business. In 2013, her net income from the business was $2,000. She claimed at trial that she "barely [does] any pet-sitting anymore" and that she earned only $300 from the business in the six months prior to trial. Respondent asserts that petitioner, at her income level, "should not pay any income taxes and [will] also benefit greatly from the earned income credit each year."

Respondent cites no authority for this assertion, and so the point is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (points not supported by authority are forfeited).

¶ 28 Second, respondent presented no evidence of the impact of his visitation on petitioner's expenses associated with sole custody of the children. As of trial, petitioner was living with her parents and not paying rent or utilities. She was, however, paying monthly expenses of $800 for food, $250 for clothing, and $40 for the children's extracurricular activities such as sports and 4-H events. Respondent's visitation consists of (1) alternate weekends; (2) weekday visitation alternating between one overnight visit and two full days and nights of visitation; (3) 14 days during the summer; and (4) alternate holidays. This is generous, but not atypical, visitation. It is no more liberal than the visitation allowed in *Demattia* and *Sobieski*, where the reviewing courts upheld the denial of a downward deviation. Like the noncustodial parents in those cases, respondent has not shown how his visitation offsets petitioner's regular household expenses. Moreover, while he claims that the visitation is "a significant cost" to him, he does not specify how.

¶ 29 We comment briefly on the differences between this case and the hypothetical that the supreme court discussed in *Turk*. The court there spoke of a situation where a custodial parent would rightly be ordered to pay child support to a noncustodial parent who had "substantial support costs which are sure to arise from [an] extensive visitation schedule[.]" 2014 IL 116730, ¶ 24. However, an important additional component to that hypothetical was that the custodial parent had greater resources than the noncustodial parent and so could afford to bear the costs of custody as well as contribute to the visitation expenses of the noncustodial parent. *Id.* Here, *respondent* is the party with the greater—substantially greater—resources. Therefore, this not the situation envisioned in *Turk*.

¶ 30 Respondent also complains that the trial court "cited no basis" for denying a downward deviation. Respondent misreads the statute. While the trial court must provide reasons when it deviates from the support guidelines (750 ILCS 5/505(a)(2) (West 2012)), the court need not provide findings for denying a deviation.

¶ 31 For these reasons, we hold that the trial court did not abuse its discretion in denying a deviation downward from the statutory support figure.

¶ 32 B. Valuation/Classification of Cows

¶ 33 The trial court included 15 head of cattle among respondent's share of the marital property. The cattle include 14 cows and 1 bull. The court assigned to the bull a value of $1,700 and to the cows a value of $14,800, or roughly $1,100 per cow. Respondent's contention on appeal is restricted to the cows. He claims that the trial court erred in failing to recognize his nonmarital interest in the cows corresponding to the discount that his grandmother, Hylene Anderson, gave him as a gift when he purchased the cows from her.

¶ 34 Before addressing this contention, we note that respondent, in arguing for a nonmarital interest in the cows, makes the passing remark that the "cows should have been [his] separate property." Respondent appears to mean by this that the cows are *entirely* his nonmarital property. Respondent has made this suggestion before, but not consistently. At the dissolution hearing, he submitted a proposed "Marital Asset and Debt Distribution" that listed the cows as marital property but reserved as nonmarital "some cow values." At trial, he testified that when he purchased the cows from Hylene, she discounted the per-head price as a "gift" or "favor" to him. In the first appeal, respondent made the passing remark, as he would later in this second appeal, that the cows were his "separate" property. However, as part of his argument on remand, respondent submitted a "Post-Appeal Marital Property Proposal," which listed the cows as

marital property except for "cow values discounted for the gifted value from his grandparents." Having contended below that the cows are only partly nonmarital, respondent cannot now contradict that position by claiming that the cows are entirely his nonmarital property. See *In re Stephen K.*, 373 Ill. App. 3d 7, 25 (2007) ("A party is estopped from taking a position on appeal that is inconsistent with a position the party took in the trial court."). In any event, the record would support no such claim, for the evidence was not that respondent received the cows for free from Hylene, but that he bought them at a discount. Thus, assuming there was a gift, it comprised only a partial interest in the cows.

¶ 35 We focus, then, on whether respondent has a nonmarital interest in the cows corresponding to the discounted price he paid Hylene for them. We recounted the relevant testimony in our prior disposition (see *Anderson*, 2015 IL App (2d) 141260-U, ¶¶ 99-100), and repeat it here for convenience. Respondent and Hylene testified that, in 2008, they entered into an agreement for respondent to buy cows from Hylene. The agreement was in writing and had price, payment, and interest terms, but it was not produced at trial. The testimony was not clear whether petitioner was also a party to the contract. Hylene referred to the purchaser(s) as respondent and also as "them." Respondent testified that he was the purchaser, while petitioner testified that "we" purchased the cows. Petitioner introduced cancelled checks from the parties' joint account to Hylene that were designated as payment for the cows. Respondent concedes on appeal that the cows were purchased entirely with marital funds.

¶ 36 As for the price of the cows, respondent testified that he purchased them at $600 per head while their actual value was $1,200 per head. He claimed that the discount was a "favor" or "gift" to him. Hylene testified that she charged respondent $560 per head, a discount from their

actual per-head value, because "[respondent] did a lot of things for us when we were on the farm."

¶ 37 Petitioner testified that the cattle were worth $59,170.40 but offered no support for that figure.

¶ 38 In its order on remand, the trial court made extensive findings on the classification and valuation of the cows and other livestock. The findings include uncommonly detailed credibility assessments. The court said in pertinent part:

> "6. Respondent's testimony, generally, was not credible. His manner while testifying would change significantly depending on the subject matter. It appeared that, when asked questions he deemed damaging to his interests, he would claim confusion or lack of recollection, he would look away from the questioner, and the volume of his voice would drop to a barely discernible level. When he was asked questions he deemed helpful, he was assertive, direct, and audible. He was selectively evasive. Respondent maximized values of property he anticipated would be awarded to Petitioner and minimized values he anticipated would be awarded to him. Respondent's testimony as to the extent, nature, and value of the marital interest in livestock, specifically, was not credible for these reasons.
>
> 7. Petitioner's testimony, generally, was credible. However, she also tended to maximize values of property to be awarded Respondent and minimize values to be awarded her. Petitioner's testimony as to the extent, nature, and value of the marital interest in the livestock was vague, uncertain, and speculative.
>
> * * *

9. As to value of cattle ***, Respondent's testimony was not credible and Petitioner's testimony was vague, uncertain, and speculative. The parties essentially failed to carry their burden of presenting the court with sufficient evidence to fairly evaluate the livestock. Nevertheless, the issue still must be resolved by this court [citation].

10. The testimony of the parties should be afforded no weight as to the value of cattle ***. However, because Respondent also presented the testimony of [Hylene], who generally, through indirectly, corroborated his valuations, the cattle should be awarded to Respondent at a value of $16,500. Respondent failed to show, by clear and convincing evidence, any gift of value to him alone. ***."

¶ 39 Respondent's theory is that the discount Hylene granted him on the cows was a gift, and therefore he has a nonmarital interest in the cows equivalent to the difference between their actual value and the price he paid for them. Section 503 of the Act (750 ILCS 5/503 (West 2012)) provides a framework for classifying property as marital or nonmarital. Section 503(b)(1) (750 ILCS 5/503(b)(1) (West 2012)) provides that all property acquired by either spouse during the marriage is presumed to be marital property. The party claiming that property so acquired is instead nonmarital has the burden of presenting evidence that the property meets one of the exceptions enumerated in section 503(a) (750 ILCS 5/503(a) (West 2012)). As relevant here, section 503(a)(1) provides that "property acquired by gift" is nonmarital. 750 ILCS 5/503(a)(1) (West 2012). The presumption that property is marital is overcome only by clear and convincing evidence. *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2009).

¶ 40 The cows were purchased during the marriage, and therefore are presumptively marital property. However, the purchase was also a transfer from parent to grandchild, and such

transfers between family members are presumptively gifts. See *Hugh v. Amalgamated Trust & Savings Bank*, 235 Ill. App. 3d 268, 273 (1992) *Grandon v. Amcore Trust Co.*, 225 Ill. App. 3d 630, 634 (1992). The presumption of a gift can, likewise, only be overcome by clear and convincing evidence. *In re Marriage of Patel & Sines-Patel*, 2013 IL App (1st) 112571, ¶ 76. Where, as here, there are two conflicting presumptions in play, they cancel each other out. *Id.* The trial court's classification of property as marital or nonmarital will be upheld on appeal unless it is against the manifest weight of the evidence. *Schmitt*, 391 Ill. App. 3d at 1017. A decision is against the manifest weight of the evidence if the opposite conclusion is clearly evident. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 41 The trial court found that that the discount was not a "gift of value to [respondent] *alone*" (emphasis added), but was a joint gift, which would constitute marital property (*In re Marriage of Weinstein*, 128 Ill. App. 3d 234, 248 (1984)). The court did not explain how it reached this conclusion, but we find it supported by evidence that the cows were jointly purchased by the parties and that Hylene intended the discount as a joint gift.

¶ 42 In reviewing the evidence, we note that the trial court disregarded the entirety of respondent's testimony about the cows, finding him not credible. The court had the opportunity, which we lack, to observe respondent's demeanor while testifying. See *In re Abel C.*, 2013 IL App (2d) 130263, ¶ 19 ("A trier of fact, by virtue of its ability to actually observe the demeanor and conduct of witnesses, is in the best position to assess their credibility; thus, we defer to the trial court's findings regarding credibility."). We are in no position to upset its assessment. Respondent, though, attacks the court's credibility findings as inconsistent, as the court only found respondent not credible while observing that both parties exaggerated their testimony. The findings are not inconsistent, however, because the trial court noted additional suspicious aspects

of respondent's demeanor (e.g. his "selective evasiveness") that it did not observe in petitioner. We uphold the court's assessment, and therefore place no weight on respondent's testimony regarding the cows.

¶ 43 This leaves the testimony of Hylene and petitioner. (The court disregarded, as vague, petitioner's testimony on the value of the cows, but the court made no such critique of her testimony pertaining to the classification of the cows.) The purchase agreement was not produced at trial, but petitioner testified that "we" (she and respondent) purchased the cows, while Hylene's testimony referred variously to respondent and "them" (both parties) as the purchasers. As respondent concedes, the cows were purchased entirely with marital funds. The trial court could have reasonably concluded from this evidence that the cows were jointly purchased by the parties. Moreover, while Hylene testified that she gave the discount because of respondent's past help, and she did not mention petitioner, the court could still have found that Hylene intended to gift both parties, as she knew the discounted price would benefit them both as joint purchasers. See *In re Marriage of Landfield*, 209 Ill. App. 3d 678, 696-97 (1991) (where the respondent's mother gave conflicting testimony on whether the marital home was a gift to the respondent alone or a joint gift, the trial court did not err in resolving the conflict and concluding that the transfer was a joint gift).

¶ 44 Accordingly, the trial court's conclusion that respondent did not obtain a nonmarital interest in the cows was not against the manifest weight of the evidence.

¶ 45 C. Maintenance and Property Distribution

¶ 46 Respondent challenges the award of maintenance and the distribution of marital property. As interrelated issues, maintenance and property distribution should be considered together. *In re Marriage of Underwood*, 314 Ill. App. 3d 325, 328 (2000). Here, the trial court determined

that an appropriate amount of maintenance was $18,000, or approximately one year of petitioner's salary. The trial court incorporated the $18,000 into the property settlement by way of an equalizing payment.

¶ 47 In its original dissolution judgment, the trial court did not explain the reasons for its award of maintenance. In its order on remand, the court set forth the following findings:

> "This was a 12 year marriage, most of which Petitioner spent as homemaker and mother. Her efforts, including farm work at the marital residence, contributed to the career and career potential of Respondent. Respondent has, and has historically had, the larger income. Respondent grosses approximately three times what Petitioner grosses. He also has the superior earning ability as between the parties. He was awarded the marital residence and, as of trial, has the ability to generate additional income through farming, particularly in light of the longstanding and ongoing largesse of his grandmother."

¶ 48 Before addressing respondent's contentions, we set forth the law governing maintenance and property division. Section 504(a) of the Act (750 ILCS 5/504(a) (West 2012)) authorizes "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, *** after consideration of all relevant factors[.]" The factors specified in the section include: (1) the income and property (marital or nonmarital) of each party; (2) the needs of each party; (3) the present and future earning capacity of each party; (4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone opportunities due to the marriage; (5) the time and support necessary to enable the party seeking maintenance to acquire appropriate education, training, and

employment; (6) the standard of living established during the marriage; (7) the duration of the marriage; (8) the age and the physical and emotional condition of both parties; (9) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse; and (10) any other factor the court finds just and equitable. *Id.* No one factor is determinative. *Patel & Sines-Patel*, 2013 IL App (1st) 112571, ¶ 84. The trial court is not required to give equal weight to each factor so long as the court's balancing of the factors is reasonable. *Id.* The trial court's decision on maintenance will be disturbed only for an abuse of discretion. *Id.* ¶ 67.

¶ 49 Section 503(d) of the Act (750 ILCS 5/503(d) (West 2012)) requires the trial court to distribute marital property in "just proportions considering all relevant factors[.]" Section 503(d) specifies factors to consider including: (1) the contribution of each party to the acquisition or value of marital or nonmarital property, including the contribution of a spouse as a homemaker to the family unit; (2) the value of the property assigned to each spouse; (3) the duration of the marriage; (4) the relevant economic circumstances of each spouse; (5) the age, health, station, and occupation of each spouse; (6) the custodial provisions for any children; (7) whether the apportionment is in lieu of or in addition to maintenance; and (8) the reasonable opportunity of each spouse for future acquisition of capital assets and income. *Id.* "Just proportions" does not mean mathematical equality but a division according to equity (*In re Marriage of Joynt*, 375 Ill. App. 3d 817, 821 (2007)), and the circumstances may warrant that one spouse receive a greater share of the marital estate (*In re Marriage of Agazim*, 176 Ill. App. 3d 225, 231 (1988)). The trial court's property allocation will not be disturbed on appeal absent an abuse of discretion. *Joynt*, 375 Ill. App. 3d at 822.

¶ 50 The trial court designated the maintenance award in this case as "rehabilitative," or, as section 504(a)(1) terms it, "temporary." "Temporary maintenance is designed to be rehabilitative and to allow a dependent spouse to become financially independent." *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 18. Rehabilitative or temporary maintenance is appropriate "if evidence shows a potential for future employability at an income that allows approximately the same standard of living established during the marriage." *In re Marriage of Heasley*, 2014 IL App (2d) 130937, ¶ 23. Rehabilitative maintenance has two different forms based on the mode of the award: (1) periodic maintenance, or "payments for an indefinite period in an indefinite amount subject to modification in response to a change in the parties' circumstances"; or (2) maintenance in gross, "a fixed sum of money, payable in installments for a fixed period of time, that is nonmodifiable[.]" *In re Marriage of D'Attomo*, 2012 IL App (1st) 111670, ¶ 24. Periodic maintenance is the judicially preferred mode of temporary maintenance and should be employed absent extraordinary circumstances. *Patel & Sines-Patel*, 2013 IL App (1st) 112571, ¶ 85.

¶ 51 Respondent raises numerous points with respect to the maintenance award and property distribution. We begin with points related to the findings the trial court made in support of the maintenance award.

¶ 52 First, respondent challenges the accuracy of the trial court's finding that petitioner was a "homemaker and mother" for most of the parties' 12-year marriage (from 2002 to 2014). The pertinent evidence is as follows. Petitioner testified that she has a high school diploma and has completed an Internet course in veterinary assistance. When the parties were married, petitioner was employed full-time as a veterinary assistant at Galena Square Veterinary Clinic. When A.A. (the parties' oldest child) was born, respondent suggested that petitioner quit her job and devote

herself to household tasks. Instead, petitioner remained at Galena Square but reduced her hours when A.A. began school, in order to accommodate the children's schedules. When W.A. began preschool in 2011, petitioner quit her job at Galena Square to concentrate on family responsibilities. From that time until the parties' separation in September 2012, petitioner was a full-time homemaker.

¶ 53 Respondent suggests that this evidence shows the converse of the trial court's finding: far from being a homemaker for most of the marriage, petitioner worked *outside* the home for most of the marriage. Petitioner, however, testified that even while working outside the home she was principally responsible for housework and the care of the children. She continued those responsibilities up to and after the parties' September 2012 separation. In our view, the trial court's finding that petitioner was a "homemaker and mother" for most of the marriage was not based on a misapprehension of petitioner's employment history, but was an appropriate recognition of petitioner's contribution as primary homemaker and caregiver even as she was employed outside the home.

¶ 54 Respondent asserts, though, that there is no evidence that petitioner's contributions to the marriage impaired her earning capacity. We agree that there is no indication that petitioner's relatively brief gap in employment disadvantaged her in the job market. Impairment of earning capacity, however, is just one factor in our analysis, and the court appropriately recognized petitioner's contribution to the marriage through household and caregiving responsibilities regardless of whether they impacted her earning power.

¶ 55 Respondent next contends that petitioner has disqualified herself from maintenance because, since the parties' September 2012 separation, she has not "maximiz[ed] her ability to work" but has limited herself to an average of 30 hours per week. During the separation,

petitioner worked at Veterinary Associates in Galena. She testified that she does not work full time because she needs to accommodate the children's schedules. Respondent cites *In re Marriage of Haas*, 215 Ill. App. 3d 959, 964 (1991), for the firmly established principle that a party receiving maintenance has a good-faith effort to become self-sufficient. "[T]he optimal goal of maintenance is for the dependent former spouse to become financially independent." *In re Marriage of Connors*, 303 Ill. App. 3d 219, 229 (1999). "[T]he recipient spouse has a good faith obligation to become self sufficient [citation], with an award of maintenance being used to help the recipient spouse during this transition period." *Haas*, 215 Ill. App. 3d at 964. "[A]n award [of maintenance] places an affirmative duty upon the spouse receiving [it] to seek work." *In re Marriage of Ryman*, 172 Ill. App. 3d 599, 613 (1988). This is true of maintenance awarded in the dissolution decree *or* temporary maintenance awarded during the pendency of the proceeding. See *In re Marriage of Lambdin*, 245 Ill. App. 3d 797, 804-05 (1993) (reviewing spouse's efforts since award of maintenance in dissolution judgment); *Patel & Sines-Patel*, 2013 IL App (1st) 112571, ¶ 92 (reviewing spouse's efforts during pendency of proceeding). Here petitioner received child support, but not maintenance, pending trial. Under the principle expressed in the foregoing authorities, the *recipient* of maintenance has a duty to make good-faith efforts toward financial independence. Consequently, petitioner's duty under those authorities arose only with the September 2014 dissolution judgment, when she first received maintenance. Her failure prior to that time to work toward financial independence did not impair her pending claim for maintenance.

¶ 56 Respondent makes the related point that there is "no evidence that in five years [petitioner] would be better able to support herself with additional education or training." Contrary to respondent's intent, this assertion would appear to support an even longer term of

maintenance than was awarded. Respondent also asserts that there is "no evidence that [petitioner] wanted to do anything other than her current employment as a vet tech in this smaller community." Respondent cites no authority suggesting the relevance of petitioner's failure to lay out more ambitious career plans.

¶ 57 Respondent makes the alternative argument that the availability to petitioner of full time work is at least relevant as showing petitioner's earning capacity. See 750 ILCS 5/504(a) (West 2012) (earning capacities of the parties are relevant to maintenance). Petitioner testified that she currently limits herself to 30 hours per week so that she is available to pick up the children in Scales Mound, which is 11 miles from Galena where petitioner is employed. Respondent disputes petitioner's rationale. He notes the following testimony: (1) petitioner's testimony that she intends to enroll the children next term in the Galena schools, which are on the next block from petitioner's place of employment; (2) the testimony of petitioner and her employer that the children would be allowed to stay at the office before and after school hours; and (3) petitioner's admission that she intends to "pick up *** a few more hours at work" (here, respondent comments, on speculation alone, that petitioner apparently "was waiting for the dissolution trial to end before increasing her pay"). Respondent additionally suggests that petitioner can work additional hours while respondent has his weekday visitation.

¶ 58 Respondent further notes the financial difference if petitioner worked full time. Her current pay is $11.50 per hour, and if she increased her weekly hours to 40 from the current average of 30, her gross annual pay would increase from $17,940 to $23,920. Even as adjusted, however, petitioner's yearly gross income from her veterinary employment would be half of respondent's. Petitioner has another source of income in her pet sitting business, from which she netted $2,000 in 2013. She testified, however, that the business is "barely" active and that it

earned her only $300 in the six months preceding trial. Thus, even if we accepted respondent's proposed figures, we would still defer to the trial court's finding that respondent has, and historically has had, by far the greater income, with a current gross salary of $56,000 per year. We note that, as with the issue of child support, respondent claims that petitioner "will not pay any taxes or pay very little" and will benefit from the earned income tax credit. Respondent cites no authority for this assertion, and therefore the point is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (points not supported by authority are forfeited).

¶ 59 Respondent's next contention regarding maintenance is that the trial court erred in finding that his earning potential exceeds petitioner's because he has the "ability to generate additional income through farming, particularly in light of the longstanding and ongoing largesse of [Hylene]." Evidently, the trial court was referring to testimony that respondent has farmed and raised livestock on a parcel he rents from Hylene. Respondent farmed the land on shares. Respondent points to his testimony that he is not currently farming the parcel because he cannot afford the costs associated with a shares arrangement. Hylene testified that she is willing to continue the shares arrangement when respondent is ready again. Notably, though respondent is not currently farming the land, he is still raising cattle on it (the cattle that were assigned to him as his share of the marital estate). He has an agreement with Hylene to share the proceeds from the calves born from the cows. Respondent testified that, in 2013, he reported income of $31,572 from the sale of livestock. He claimed this amount was unusually high because of the liquidation of some cows, and he did not expect similar income for 2014. Nonetheless, we hold that, because respondent continues to raise livestock for sale, the trial court did not err in finding that his salary is not his only source of income.

¶ 60 Respondent also notes that, though the court mentioned in its maintenance determination that respondent was awarded the marital residence as his nonmarital asset, the equity in the residence actually decreased during the marriage. The trial court valuated the residence at $87,000. Thus, even adjusted for the outstanding mortgage liability of $33,000, the marital residence is by far the most valuable asset in the marital or nonmarital estates. The trial court was correct to consider respondent's nonmarital assets in setting maintenance, particularly an asset of such comparatively high value as the marital residence. See 750 ILCS 5/504(a)(1) (West 2012) (relevant factors for setting maintenance include the income and property, marital or nonmarital, of each party); *In re Marriage of Phillips*, 244 Ill. App. 3d 577, 590 (1993) (value of supporting spouse's nonmarital property relevant in setting maintenance).

¶ 61 Respondent further points to petitioner's testimony that she is currently in a dating relationship. He asserts that the "[t]he likelihood that she will remarry and have someone else to support her is high." Respondent complains that, because the maintenance was awarded in gross, "[petitioner's] cohabitation or remarriage will have no effect on the obligation." As respondent cites no authority here, the point is forfeited. Respondent also forfeits, for failure to cite the record, his point that respondent "supported herself during the parties' separation of almost two years without any maintenance."

¶ 62 Respondent also includes in his argument on maintenance an attack on the credibility findings that the trial court made in ruling on the classification of the cows. Respondent presumes that those findings extended to the parties' testimony on other issues. We are not certain they did, but in any event we upheld those findings above. *Supra* ¶ 42.

¶ 63 Finally, respondent asserts that the awards of child support and maintenance (amortized over five years) will leave him with less yearly income than petitioner. His approach is flawed in

two respects. First, respondent assumes that the maintenance award amounts to $80 per month for five years, when in fact the trial court discounted that amount by 10%, to yield $18,000 over five years (at $69 per week). Second, respondent's attempt to impress with the sheer numbers is ill-conceived, as context is indispensable. Likewise, when respondent asserts that the awards of maintenance and child support together provide petitioner "a substantial increase in income," he begs the question of whether the increase is appropriate in light of the circumstances.

¶ 64 We move to respondent's specific challenges to the property division. The court valuated the marital estate at $70,842.33, exclusive of pensions and retirement accounts. The trial court divided the marital estate 75% to petitioner and 25% to respondent, and intended the division to stand in lieu of maintenance, an appropriate amount of which the trial court deemed to be $18,000, or approximately one year of petitioner's salary. To effectuate these awards, the trial court ordered (1) an in-kind property distribution to petitioner of $17,257.53; (2) an in-kind property distribution to respondent of $53,584.80; and (3) an equalizing payment to petitioner of $35,874.22. Thus, of the $53,131.75 in total value allocated to petitioner, $18,000 was to serve as maintenance and $35,131.75 as a property distribution.

¶ 65 Respondent advocates for an equal division of the marital estate based on the following considerations relating to the economic situations of the parties: (1) petitioner, by working part-time when full-time work is available, has not exercised her full earning potential; (2) petitioner's child care expenses are reduced by respondent's liberal visitation; (3) petitioner pays no income tax; (4) petitioner receives $233.84 per week in child support; (5) the parties were married only 10 years before they separated; (6) the parties lived a conservative lifestyle during the marriage, and petitioner is not entitled to a higher standard of living after the dissolution; (7) the marital estate is relatively small; (8) "[n]either party has any ability to acquire capital assets

and income"; and (9) the marital estate valuated at $70,842.33 does not include pension and retirement accounts, such as (a) respondent's 401(k) plan (balance of $157,000 as of December 31, 2013), of which petitioner was awarded 37.5%, and (b) respondent's pension plan (present value unknown), the marital portion of which petitioner was awarded 50%.

¶ 66 Above, we addressed and rejected points (1), (2), and (3). *Supra* ¶¶ 20-30, 57-58. The remaining points do not, singularly or cumulatively, persuade us of any error in the property distribution. We comment individually on some of them. As to point (4), child support is just that, support for the child, not a resource for the spouse's personal use. See *In re Keon C.*, 344 Ill. App. 3d 1137, 1147 (2003). The award of support here was proportionate to petitioner's childrearing costs. As to point (9), respondent himself admits that the interests in the pension and retirement accounts are "not available to him (or [petitioner]) for many years." The division of the remaining marital assets does not, contrary to point (6), improve petitioner's lifestyle beyond the modest standard the parties had during the marriage. Most significantly, she has no home of her own now, as the marital residence—the most valuable marital or nonmarital asset in this case—was assigned to respondent as his nonmarital property. See *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 160 (2005) (size of a spouse's nonmarital estate can justify apportioning a lesser share of the marital estate to that spouse).

¶ 67 Additionally, respondent's earning capacity far exceeds petitioner's given his greater salary and his potential for income through raising livestock. The property award also gives due recognition to petitioner's contribution as primary homemaker and caretaker of the children. All factors considered, we hold that the trial court did not abuse its discretion in allotting petitioner the greater share of the marital estate.

¶ 68 Respondent further contends that, rather than an equalizing payment, the trial court should have allotted to petitioner the precious metals that were instead apportioned to respondent. The metals, valuated at $25,100, are the most valuable marital asset (the second most valuable marital asset is the cattle, valuated at $16,500). The trial court declined respondent's suggestion, stating:

> "Because of the amount of time which has passed since trial, the possibility of a large fluctuation in value in that time, and the fact that Respondent did not permit Petitioner to have this asset independently valued prior to trial, this request should be denied."

Respondent correctly notes that, while he did refuse to allow petitioner to transport the metals to an appraiser, an appraisal was ultimately done based on photographs and the weight of the metals. The metals were appraised at $25,100, and the parties stipulated to this figure as the value of the metals.

¶ 69 There is merit, however, to the trial court's additional rationale, regarding fluctuation. Respondent acknowledged at trial that the metals fluctuate daily in value, but claimed they should still be "somewhere around" $25,100. Respondent finds it curious that the court was concerned about fluctuation as it might impact petitioner, but not as it might affect respondent. The court's concern clearly lay in the different financial situations of the parties. Petitioner has no significant nonmarital assets and far less earning potential than respondent. She would be less able to absorb a decline in the value of the metals, particularly since their value as of trial would comprise more than two-thirds of the property distribution ($35,131.75) allocated to her.

¶ 70 Finally, respondent claims that, with his various financial obligations (child support, support of himself, and visitation expenses), he is unable to afford the $35,874.22 equalizing payment without selling the metals and the cattle, which would leave him with virtually no

marital assets. Respondent has not excluded, however, the possibility of a loan. The record neither confirms nor refutes his claim that he "does not have an asset that can be used as collateral to get a loan for this substantial judgment." At least, respondent has not shown it to be true of the most likely candidate, the marital home.

¶ 71 III. CONCLUSION

¶ 72 For the foregoing reasons, we affirm the judgment of the circuit court of Jo Daviess County.

¶ 73 Affirmed.