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2016 IL App (3d) 150675-U

Order filed September 8, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
JULI A. KENT,)	La Salle County, Illinois,
)	
Petitioner-Appellee,)	
)	Appeal No. 3-15-0675
and)	Circuit No. 12-D-100
)	
STEVEN R. KENT,)	Honorable
)	Karen C. Eiten,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice O'Brien and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err by failing to award respondent maintenance, the entirety of a certain retirement account, a right of first refusal to provide childcare, and equal parenting time during the summer. Additionally, the trial court did not err by failing to further reduce the amount of respondent's retirement accounts to be transferred to petitioner.

¶ 2 Respondent, Steven R. Kent, appeals certain portions of the judgment of dissolution of his marriage to petitioner, Juli A. Kent. Specifically, Steven argues the trial court erred in: (1) failing to award him maintenance; (2) failing to award him a certain retirement account in its

entirety; (3) failing to further reduce the amount it ordered Steven to transfer to Juli from one of his retirement accounts; (4) failing to award Steven a right of first refusal to provide childcare; and (5) failing to award Steven equal parenting time in the summer. We affirm.

¶ 3

FACTS

¶ 4

The parties were married on May 30, 1999. Two children were born during the marriage. Juli filed a petition for dissolution of marriage on March 16, 2012.

¶ 5

A trial was held, commencing February 28, 2014. Steven testified that he currently lived in the marital residence with Juli and their two sons. At the time of trial, the parties' oldest son was in seventh grade and their youngest son was in third grade.

¶ 6

Steven testified he had been employed as a union electrician for 18 years. Steven's local union branch was in Joliet, Illinois. Steven was not currently working and received income from unemployment insurance. Steven testified his only source of income in 2014 had been unemployment insurance benefits in the amount of \$940 every two weeks. Steven also received a total of approximately \$900 from his supplemental unemployment benefit (SUB) fund in 2014. Steven testified his unemployment insurance benefits would cease at the end of June 2014.

¶ 7

Steven testified that he had been looking for employment through his local union. He eventually applied for one maintenance job outside his union. Steven explained that his union had a short call book and a long call book, which were kept separately. A short call lasted 1 to 14 days, and a long call was any call longer than 14 days. When a short or long call job was available, the first person in the book was given first priority to accept the job. When someone accepted a job, their name was removed from the book and everyone remaining in the book moved up on the list. When a union member was laid off from a job, his or her name went to the bottom of the list. Steven testified that it currently took approximately 15 months to obtain

another job through the union once a member was laid off. Steven was number 266 out of 373 in the long call book on the second day of trial—that is, May 27, 2014. He was number 223 out of 360 in the short call book. Steven testified that over the years, he received unemployment insurance benefits whenever he was laid off from a job.

¶ 8 The following exchange occurred between Steven and his attorney, George Mueller:

“Q. You have taken every call that you have had the opportunity to take?

A. Well, no. There’s times when you are on the book for, uhm, say five months.

There might be a call that comes that is three weeks long.

Now, you wouldn’t take a three week call, at that point, when you are sitting at 270 on the book, and then have to go after that three weeks to 400.

So you can’t just take the three week call that comes your way. You want—you are going—right now, you will have a shot, and you want that shot to be six to eight weeks.”

¶ 9 On redirect examination, the following exchange occurred between Steven and Juli’s attorney, Michelle Vescogni:

“Q. Mr. Mueller asked you about how many jobs you have turned down during the pendency of this case.

And you testified there have been times when you have been offered employment on the short call, but did not take it?

A. No, ma’am. Uhm, I believe there was a three week call that I could have taken to work at the Braidwood outage.

Q. When was that?

A. That was five weeks ago. Approximately, five weeks ago.

Q. And you didn't take it?

A. I did not take that because that would have put me at the back of the book. I would be sitting at 360 right now."

¶ 10 Steven testified that the union did not call him when jobs became available. Rather, when a job became available, he had to put in "bids" by calling the union and stating he wanted the job. Steven testified that he called every night to hear the available jobs, but often no jobs were available. Vescogni asked Steven how many times he opted not to leave a recorded message when there were jobs available, and Steven replied: "I couldn't answer that. All I know is I have--what they call placing bids. I have placed bids knowing that it wouldn't get to me, but hoping that it would."

¶ 11 In 2013, Steven worked one job through his union for 2 weeks and another for approximately 2½ months. Steven was laid off from the second job on December 31, 2013.

¶ 12 Steven testified he had a Merrill Lynch 401(k) retirement account through his union. Steven testified his Merrill Lynch account was valued at \$217,442.87 as of February 19, 2014. Steven testified he had two additional retirement accounts through his union. The two other accounts were pension trust funds, which Steven described as Fund 11 and Fund 13. Statements for Steven's accounts were introduced into evidence. The statements showed Steven's Fund 11 account had a balance of \$65,421.61, and his Fund 13 account had a balance of \$22,645.05. The following exchange occurred between Steven and Vescogni regarding the Fund 11 and Fund 13 accounts:

"Q. And what are those trust funds exactly?

A. I couldn't tell you.

Q. Are they accounts that are cash accounts in that you can access them, if you need to withdraw cash?

A. I couldn't tell you."

¶ 13 In January 2012, Steven withdrew approximately \$31,000 from a NuMark Credit Union account he and Juli owned jointly and deposited it into a savings account at First Midwest Bank only he owned. The First Midwest account had a value of approximately \$500 at the time of trial. Steven testified the NuMark account from which he had withdrawn the money was composed primarily of his earnings. Steven saved money in the NuMark account to cover expenses when he was laid off from work.

¶ 14 Steven testified that while the divorce was pending, he took care of the children when Juli was at work. Steven drove the children to school, picked them up, helped with their homework, made dinner, and drove them to practices.

¶ 15 Juli testified that she was employed as a physical therapist. Juli had always worked during the marriage. When the children were young, Juli worked Mondays, Wednesdays, and Fridays. The children went to daycare while Juli was working. Juli stayed home with the children on Tuesdays and Thursdays. At the time of trial, Juli worked from 8 a.m. to 6 p.m. on Mondays, Wednesdays, and Fridays. She worked from 8 a.m. to 12:30 p.m. on Tuesdays, and she did not work on Thursdays. Juli made \$53 per hour and worked 34 hours per week. Juli also worked at a nursing home occasionally on an as-needed basis.

¶ 16 Juli testified that when Steven was not working, he typically watched the children after school. When both parties were working, they used babysitters to care for the children. Juli testified that when the children were out of school in the upcoming summer, her parents and her friend were willing to watch the children if Steven started working.

¶ 17 The parties' joint tax returns for 2007 through 2011 were admitted into evidence. The parties filed separate tax returns in 2012 and 2013, which were also introduced into evidence.

¶ 18 The 2007 tax return showed that Juli earned a gross income in the amount of \$73,128.03. Steven earned a gross income in the amount of \$75,089.39 from employment, received \$1600 from his SUB fund, and \$1992 in unemployment insurance benefits.

¶ 19 The 2008 tax return showed Juli earned a gross income in the amount of \$65,954.49. Steven earned a gross income from employment in the amount of \$56,051. He also received \$3000 from his SUB fund and unemployment insurance benefits in the amount of \$11,753.

¶ 20 The 2009 tax return did not include W-2s. The tax return reported the parties had combined wages and salaries in the amount of \$121,603 and received \$3947 in unemployment insurance benefits.

¶ 21 The 2010 tax return showed Juli had a gross income in the amount of \$68,879.92. Steven had a gross income from employment in the amount of \$53,534.91. Steven received \$4800 from his SUB fund and \$12,213 in unemployment insurance benefits.

¶ 22 The 2011 tax return showed Juli had a gross income in the amount of \$81,682.26. Steven had a gross income from employment in the amount of \$73,364.56. Steven also received \$1,127.39 from his SUB fund and \$5350 in unemployment insurance benefits.

¶ 23 Juli's 2012 tax return showed she had a gross income of \$77,124.79. Steven's 2012 tax return showed he had a gross income of \$75,318. Steven believed he may have been unemployed for one week in 2012, but he did not receive any unemployment insurance benefits that year.

¶ 24 Juli's 2013 tax return showed she had a gross income of \$83,519.66. Steven's tax return showed he had income from employment in the amount of \$18,878.90. He also received \$6,553.67 from his SUB fund and \$21,048 in unemployment insurance benefits.

¶ 25 Juli presented evidence that she had a gross income of \$42,187.27 from January 1 through May 15, 2014.

¶ 26 Both parties provided testimony describing instances where they disagreed with the other party's actions and parenting decisions.

¶ 27 The trial ended June 27, 2014. The parties subsequently agreed to reopen proofs. On September 18, 2014, Steven testified he had worked for three companies for a total of 27 days since the trial. He obtained jobs with two of the companies through the local union branch in Champaign, Illinois. Steven testified that he last worked on September 12. When Steven worked for one of the companies, he left the house at approximately 4:30 a.m. When Steven worked for the other two, he left the house at 6:15 a.m.

¶ 28 Steven testified that although he was a member of the Joliet local, he could sign up for other locals as well. Steven stated he signed up for the Champaign local right after he was laid off on December 31, 2013, but he did not get a call out of the Champaign local until 7½ months later. Unlike the Joliet local, the Champaign local called Steven and told him when a job was available. Steven accepted every job from the Champaign local that was available to him.

¶ 29 Prior to the trial court's ruling, the parties each filed position papers. Regarding custody, Steven argued the parties should be awarded joint legal custody. Steven contended he should be awarded residential custody and Juli should have visitation on alternating weekends during the school year and on Thursdays. Steven recommended the parties alternate having the children for one week at a time during the summer. Juli also believed the parties should be awarded joint custody. Juli argued, however, that she should be the residential parent and Steven should have parenting time on alternating weekends and on Mondays and Wednesdays until 7 p.m. if he was

not working. Juli also recommended that the parties each have two full weeks' parenting time in the summer.

¶ 30 The trial court entered a written order on October 16, 2014. The trial court noted the parties' gross incomes were comparable until 2013. The trial court also noted that Steven spent the approximately \$31,000 in the NuMark account during the dissolution proceedings.

¶ 31 The trial court awarded the parties joint custody. The trial court found the parties had both been instrumental in raising their children. The trial court noted the parties resided together during the dissolution proceedings. The trial court also noted the parties had been critical of one another for certain relatively minor matters and there had been a few instances in which the parties behaved in a way that caused the trial court concern. The trial court concluded, however, that the parties had “ ‘on balance, done remarkably well sharing the household and the children during what is obviously a stressful time.’ ”

¶ 32 The court awarded residential custody to Juli, noting that it had considered the parties' work schedules and the children's need for consistency. In particular, the trial court considered Steven's testimony that he left for work at 4:30 and 6:15 a.m., depending on where he was working, when he worked after the trial. The court found it significant that Juli would be able to get the children ready for school each morning and would be present when the children arrived home from school two days per week.

¶ 33 The court ordered that Steven would have visitation on alternating weekends during the school year and on Mondays and Wednesdays after school until 7:30 p.m. During the summer, Steven would have visitation on Mondays and Wednesdays from 8 a.m. until 7 p.m. The court also ordered that each party would have three one-week periods of summer vacation with the

children. The trial court found Steven's current projected net income to be \$26,537.33 per year and ordered that Steven pay Juli child support in the amount of \$142.89 per week.

¶ 34 The trial court awarded Juli marital property with a total value of approximately \$218,401.48. Juli's award of marital property included, *inter alia*, the marital residence, which had approximately \$61,408 in equity; and a 2008 Ford Expedition, which was valued at \$11,000. The trial court awarded Steven marital property with a total value of approximately \$351,879.62. Steven was awarded, *inter alia*, his Fund 13 account valued at \$22,620.05; his Merrill Lynch account, which was valued at \$222,899.87; and a 2012 Chevrolet Impala, which was valued at \$10,300. The trial court also ordered that the parties enter a qualified domestic relations order (QDRO) transferring \$65,000 to Juli from the Merrill Lynch account it awarded to Steven.

¶ 35 The trial court denied maintenance to both parties, finding that the parties had historically demonstrated an ability to provide for their own support. The trial court also noted: "Even during the pendency of this litigation, they had access to similar funds for support."

¶ 36 On October 23, 2014, Juli filed an emergency petition for exclusive possession of the marital residence. A hearing was held on the emergency petition the next day. Steven testified that Juli told him earlier that week that she wanted to talk to the children about "the situation." Steven told Juli he did not know what "the situation" was and that he planned to appeal the trial court's ruling. Juli became angry and said, "[D]idn't you talk to the boys about what they want?" One of the children, who was in the room during this conversation, said he wanted equal time with his parents.

¶ 37 Steven testified that at some point after the court's order on October 16, he opened all the cans of beer in the garage refrigerator. Steven did this because he believed Juli had a drinking problem. Steven testified: "I opened up those cans so she wouldn't be able to come home from

work, drink a couple cans, and get mean. She has been mean since I told her I planned on appealing the case.” When Juli found the open cans, she made the children help her pour them out and then took a picture with the children next to the empty beer cans. Juli told the children that Steven was being childish and had anger issues. Steven also testified he believed Juli drew a line through a picture he was drawing for one of the children. Steven admitted that he refused to give Juli the keys to the Ford Expedition, which the trial court had awarded to Juli.

¶ 38 Steven testified that he could not afford to leave the marital residence because he was not employed and no longer received unemployment insurance benefits. Steven admitted he had earned approximately \$8400 from short-term jobs since the trial, which ended approximately three months before the hearing on the emergency petition. After paying some bills, Steven had approximately \$4000 left from the money he earned at the short-term jobs. Steven testified that he needed money to purchase a house from his parents, for utilities, and for his car payments. Steven stated that he intended to leave the marital residence when he could afford to, possibly in six months. Steven stated that he recently had his gallbladder removed and his doctor ordered him not to lift anything over 15 pounds until November 11, 2014.

¶ 39 Juli testified that earlier that week she asked Steven what his “exit plan” was for leaving the marital residence. Steven replied that he was going to appeal and was not going to leave the marital residence until the court ordered him. This conversation occurred in front of at least one of the children. Juli did not remember if the second child was there. Steven then asked one of the children whether he wanted equal time with his parents, and the child said yes. Juli testified that Steven’s presence in the house was stressful for her and the children. Juli had trouble sleeping and was having digestive problems.

¶ 40 Juli testified that when she found the open beer cans in the refrigerator, she brought the children out to the garage to make sure they had not done it. The children helped her carry the beer cans into the kitchen to pour them out. She took a photograph afterward “as proof that [she] did not drink them.”

¶ 41 The trial court ordered Steven to move out of the marital residence by 4 p.m. on October 30, 2014. The trial court noted that Steven had access to over \$4000 per month during the dissolution proceedings and, pursuant to Steven’s financial affidavit, he did not need that much money to support himself during the proceedings. The trial court stated it did not believe Steven had no money.

¶ 42 The court entered a judgment for dissolution of marriage on November 16, 2014, reflecting its prior order. On December 1, 2014, Steven filed a motion to reconsider or, in the alternative, reopen proofs, arguing, *inter alia*, that the trial court failed to consider Steven’s premarital contributions to his retirement accounts and the right of first refusal for Steven to care for the children when Juli is unavailable. On January 5, 2015, Juli filed a petition for adjudication of indirect civil contempt, alleging Steven failed to pay child support for certain weeks.

¶ 43 A hearing was held on Steven’s motion to reconsider and Juli’s petition for adjudication of indirect civil contempt. The court heard arguments from the parties regarding Steven’s motion and Steven testified regarding Juli’s petition. Steven testified he had paid Juli child support for every week except for two since the order was entered. Steven assumed his support payments were to commence when he moved out of the marital residence rather than immediately after the court entered its order. Steven made the payments monthly rather than weekly.

¶ 44

The trial court entered a written order on the motion to reconsider and the petition for adjudication of indirect civil contempt on February 4, 2015. The trial court found Steven did not willfully disobey its prior order but ordered Steven to pay the child support he still owed. The trial court allowed both parties to reopen proofs to provide evidence regarding any premarital portions of their retirement funds. The trial court denied Steven's request that he be awarded a right of first refusal to care for the children, reasoning as follows:

“The court, at the request of the parties, awarded joint custody to the parties. In the limited time since the ruling in this matter, it has become apparent that the parties' ability to cooperate with one another may not be as great as was thought. In addition, [Steven] admitted at trial that he turned down some employment. It was the court's impression based on the evidence at trial that [Steven] worked less than he was able during the pendency of these proceedings in order to enhance his time with the children and strengthen his position for obtaining custody of the children. Awarding [Steven] the right of first refusal would in the court's view encourage [Steven] to turn down employment that might otherwise be available to him, thus depriving the children of financial support. In addition, it would cause the parties to have greater contact with each other in order to facilitate visitation which would provide increased opportunity for conflict and additional litigation between the parties.”

¶ 45

Steven presented evidence that he contributed \$4845.49 to his Fund 13 retirement account in 1997, \$7780.50 in 1998, and \$2985.60 in January through May 1999. The parties were married on May 30, 1999. Steven also presented evidence that in 2003, he transferred

\$39,248.43 from his Fund 13 account to his Merrill Lynch account leaving \$14,771.90 in the account.

¶ 46 The trial court held that Steven contributed \$15,611.59 to his Fund 13 account prior to the marriage. The trial court noted: “No information was provided to the court regarding the gains and/or losses attributable to that portion of the funds that may have come from the nonmarital contributions.” The court found that \$14,771.90 in the Fund 13 account and \$839.69 in the Merrill Lynch account were Steven’s nonmarital property and awarded those amounts to Steven as his nonmarital property. The trial court also found Steven’s vehicle, which had been awarded to Steven as his separate property, had an outstanding debt of \$9,192.49. The trial court reduced its valuation of the vehicle by the amount of the outstanding debt. Based on those findings, the trial court modified the award to Juli from Steven’s Merrill Lynch account to \$55,000 rather than \$65,000.

¶ 47 ANALYSIS

¶ 48 I. Maintenance

¶ 49 Steven first argues the trial court abused its discretion in failing to award him maintenance due to his unemployment and health concerns. Specifically, Steven contends the trial court’s denial of maintenance was an abuse of discretion given that the trial court found his annual income was approximately \$26,537.33, while his wife earned substantially more. Steven estimated that his wife’s gross income for 2014, based on her testimony at trial, would be \$93,704.

¶ 50 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) provides that “the court may grant a temporary or permanent maintenance award for either spouse ***

after consideration of all relevant factors.” 750 ILCS 5/504(a) (West 2012). Section 504(a) goes on to list relevant factors to a trial court’s determination as to whether to award maintenance:

“(1) the income and property 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 or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek 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) the tax consequences of the property division upon the respective economic circumstances of the parties;

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

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable.” *Id.*

¶ 51 “The policy underlying maintenance awards is that a spouse who is disadvantaged through marriage be enabled to enjoy a standard of living commensurate with that during the marriage.” *In re Marriage of Schuster*, 224 Ill. App. 3d 958, 970 (1992). “The [Act] creates an affirmative duty on a spouse requesting maintenance to seek and accept appropriate employment.” *Id.* A party capable of earning more income may not use “self-imposed poverty” as grounds to claim maintenance. *Id.*

¶ 52 “[T]he propriety of a maintenance award is within the discretion of the trial court and the court’s decision will not be disturbed absent an abuse of discretion.” *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). “A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court.” *Id.*

¶ 53 Here, the trial court did not abuse its discretion in declining to award maintenance to Steven. The trial court’s finding that the parties historically demonstrated an ability to support themselves was supported by the record. The tax returns introduced into evidence at trial showed that Steven and Juli had comparable incomes until 2013. Specifically, Steven’s gross income from both employment and unemployment insurance benefits ranged from \$70,547.91 to \$79,841.95 in 2007 through 2012. Juli’s gross income ranged from \$65,954.49 to \$81,682.26 in 2007 through 2012.

¶ 54 While Steven testified he had difficulty finding work through his union in 2013 and 2014, the tax returns introduced into evidence show these difficulties were atypical during the marriage. Between 2007 and 2012, Steven’s annual income from wages ranged from a high of \$75,318 in 2012 to a low of \$53,534.91 in 2010. Despite evidence that Steven had trouble finding suitable employment in 2013 and 2014, the record does not establish that Steven’s future earning capacity is permanently impaired.

¶ 55 By upholding the trial court’s maintenance decision, we reject Steven’s contention that the record does not support the trial court’s finding that he “had occasion to turn down jobs.” Steven’s testimony on this matter was vague and inconsistent. Steven’s initial testimony implied that he regularly turned down three-week jobs from the long call book, but he later testified he turned down only one. When asked if he had ever chosen not to leave a message saying he wanted an available job, his answer was somewhat evasive. The trial court was in the best position to judge Steven’s credibility and resolve any inconsistencies in his testimony. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59; see also *In re Marriage of Werries*, 247 Ill. App. 3d 639, 642 (1993). We defer to the trial court’s finding that Steven declined multiple jobs and conclude this finding is supported by the record.

¶ 56 We also reject Steven’s argument that the trial court improperly relied on his past ability to support himself in declining to award maintenance. As Steven correctly asserts, “a trial court is *required* to consider the parties’ health and economic circumstances *as they exist when the court rules on the maintenance award*.” (Emphases in original.) *In re Marriage of Chapman*, 285 Ill. App. 3d 377, 382 (1996). However, it was not improper for the trial court to consider Steven’s past ability to support himself when determining his future earning capacity. Moreover, unlike in *Chapman*, there was no evidence that Steven had a chronic health condition that prevented him from working, was otherwise physically unable to work, or had an impaired future earning capacity. See *id.* at 383-84. While we acknowledge that Steven underwent gallbladder surgery, he testified he would be able to return to work on November 11, 2014. There was no evidence Steven’s surgery impaired his future earning capacity. Additionally, there was no evidence that Steven required additional training or education before he would be able to attain employment.

¶ 57 Lastly, we reject Steven’s contention that an award of maintenance was required to allow him to maintain approximately the same standard of living he and Juli enjoyed during the marriage. Steven notes that he and Juli enjoyed approximately \$140,000 to \$150,000 in combined annual income during the marriage. Steven argues that Juli will be able to maintain her standard of living through her income from employment and child support from Steven, but Steven “will be left with a fraction of the funds he enjoyed while married.” Steven’s argument ignores the fact that the evidence at trial showed that the parties’ combined annual income during the marriage resulted from *both* parties contributing approximately equal amounts of income, at least until 2013. There was no evidence that Juli’s income alone supported the family during the marriage. Although Steven testified he cared for the children during times when he was unemployed, there was no evidence his earning capacity was impaired by a decision to devote time to domestic duties.

¶ 58 II. Fund 13 Retirement Account

¶ 59 Steven next argues the trial court erred by failing to award him the Fund 13 retirement account in its entirety. Specifically, Steven contends that after he transferred \$39,248.43 to his Merrill Lynch account in 2003, the entire amount of \$14,771.90 that remained in the Fund 13 account was comprised of his premarital contributions to the account. The value of the Fund 13 account at the time of trial was \$22,645.05. Steven argues that because he did not make any further contributions to the Fund 13 account after the 2003 transfer, all the gains on the nonmarital amount of \$14,771.90 left in the Fund 13 account in 2003 should have been awarded to Steven as his nonmarital property.

¶ 60 Property acquired prior to a marriage, as well as the increase in value of such property, is nonmarital property. 750 ILCS 5/503(a)(5), (7) (West 2012). “[A]ll property acquired by either

spouse after the marriage and before a judgment of dissolution of marriage *** is presumed to be marital property.” 750 ILCS 5/503(b)(1) (West 2012). “The presumption of marital property is overcome by a showing that the property was acquired by a method [which would classify it as nonmarital property].” *Id.*

¶ 61 Here, the trial court did not err in awarding Steven only \$14,771.90 from the Fund 13 account as nonmarital property. Steven presented evidence that he made premarital contributions to his Fund 13 account in the total amount of \$15,611.59. Steven also presented evidence that he transferred all the money from his Fund 13 account to his Merrill Lynch account in 2003 except \$14,771.90. Based on this evidence, the trial court awarded Steven \$14,771.90 from the Fund 13 account and \$839.69 from the Merrill Lynch account as his nonmarital property.

¶ 62 The trial court expressly found: “No information was provided to the court regarding the gains and/or losses attributable to that portion of the funds that may have come from the nonmarital contributions.” The trial court’s finding is supported by the record. Steven provided no evidence regarding the manner in which his Fund 13 account earned interest. Additionally, Steven offered no evidence tracing the interest earned on his Fund 13 account to his nonmarital contributions. Thus, Steven did not meet his burden of establishing the portion of the gains on the Fund 13 account that were attributable to his nonmarital contributions.

¶ 63 III. Merrill Lynch QDRO

¶ 64 Steven also argues the award to Juli from his Merrill Lynch account—which the trial court lowered from \$65,000 to \$55,000 after reopening proofs—should have been lowered even further. Specifically, Steven argues his car loan in the amount of \$9,192.49, as well as his premarital retirement contributions should be subtracted from the \$65,000 the trial court ordered

him to transfer to Juli pursuant to a QDRO “in order to preserve the 50/50 split” in the trial court’s award of marital property.

¶ 65 When accounting for the balance on the home loan, the trial court awarded Juli marital property with a value of approximately \$218,401.48. After reopening proofs and subtracting Steven’s car loan and premarital Fund 13 account contributions from the marital property awarded to him, the court awarded Steven marital property—including the Merrill Lynch account—that was valued at approximately \$326,981.03. The court’s order that Steven transfer \$55,000 to Juli from the Merrill Lynch account awarded to him made the property division approximately equal. That is, after the \$55,000 transfer, Steven’s award of marital property had a value of approximately \$271,981.03, and Juli’s award of marital property had a value of approximately \$273,401.48. Accordingly, we find the trial court did not abuse its discretion in ordering that Steven transfer \$55,000 from his Merrill Lynch account to Juli. See *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 161 (2005) (“We will reverse a trial court’s division [of marital assets] only where it constitutes an abuse of discretion.”).

¶ 66 IV. Right of First Refusal to Provide Childcare

¶ 67 Steven contends the trial court erred in refusing to grant him a right of first refusal to care for the children. Section 602.3(a) of the Act (750 ILCS 5/602.3(a) (West 2014)) provides:

“(a) If the court awards joint custody under Section 602.1 or visitation rights under Section 607, the court may consider, consistent with the best interest of the child as defined in Section 602, whether to award to one or both of the parties the right of first refusal to provide child care for the minor child or children during the other parent’s normal parenting time, unless the need for child care is attributable to an emergency.”

¶ 68 Section 602.3(b) of the Act provides “ ‘right of first refusal’ means that if a party intends to leave the minor child or children with a substitute child-care provider for a significant period of time, that party must first offer the other party an opportunity to personally care for the minor child or children.” 750 ILCS 5/602.3(b) (West 2014).

¶ 69 “A trial court’s determination as to the best interests of the child will not be reversed on appeal unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred.” *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55. “A judgment is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent.” *Id.*

¶ 70 The trial court’s decision not to grant a right of first refusal for childcare to Steven was not against the manifest weight of the evidence. The trial court found that a right of first refusal “would cause the parties to have greater contact with each other in order to facilitate visitation which would provide increased opportunity for conflict and additional litigation between the parties.” In so finding, the court reasoned that since its ruling, “it ha[d] become apparent that the parties’ ability to cooperate with one another may not be as great as was thought.” The court’s findings are supported by the record. After the trial court’s ruling awarding Juli the house as her separate property, Steven refused to move out until he received a court order to do so. Steven also opened beer cans in the refrigerator so Juli could not drink them. There was evidence the children witnessed these conflicts. The children also helped Juli empty the beer cans. At least one of the children was present during Juli and Steven’s argument about when Steven would move out of the marital residence. Under these circumstances, we do not believe it was improper for the court to consider the potential for conflict between the parties when declining to award Steven a right of first refusal.

¶ 71 In coming to this conclusion, we reject Steven’s reliance on *In re Marriage of Solomon*, 84 Ill. App. 3d 901 (1980) in support of his contention that “visitation should be allowed, even where it could lead to more squabbling between the parties.” The *Solomon* court held that the trial court improperly restricted the father’s visitation time after erroneously applying the best interests of the child standard rather than the serious endangerment standard. *Id.* at 907. In *dicta*, the *Solomon* court reasoned: “It is obvious that the child has been caught between the existing bitterness and animosity of the parties, but visitation privileges should not be used as a lever to punish or reward either parent.” *Id.* at 908. The *Solomon* court also suggested that “perhaps the visitation can be arranged to minimize [the parties’] contact and in that way lessen the confrontations.” *Id.*

¶ 72 At the outset, we do not read *Solomon* to stand for the proposition that a trial court is barred from ever denying a parent the right of first refusal where the parties had demonstrated an inability to resolve issues amicably. We also find *Solomon* to be factually distinguishable. Unlike *Solomon*, this case does not involve a visitation restriction but rather the trial court’s determination that a right of first refusal is not in the best interest of the children. A right of first refusal would require Juli to contact Steven more than she typically would to see if he was available every time she needed a caregiver for the children. It would require the parties to cooperate and discuss their schedules with one another. The record does not illustrate that the parties can do this on a consistently amicable basis. As a result, the record supports the trial court’s inference that the best interest of the children would suffer if Steven was afforded the right of first refusal.

¶ 73 Finally, we note that the court also found that awarding Steven a right of first refusal would “encourage [Steven] to turn down employment that might otherwise be available to him,

thus depriving the children of financial support.” The trial court opined that “[i]t was the court’s impression based on the evidence at trial that [Steven] worked less than he was able during the pendency of these proceedings in order to enhance his time with the children and strengthen his position for obtaining custody of the children.” Steven contends he “is being punished by the Court for being unemployed.” As stated above, the record supports the trial court’s determination that Steven turned down some jobs that were available to him during the pendency of the dissolution proceedings. *Supra* ¶ 54.

¶ 74 Even if we were to accept Steven’s position that his unemployment was an improper basis for denying him a right of first refusal to care for the children—which we do not based on this record—we would still affirm the trial court’s decision based on the potential for increased conflict between the parties that would arise if the trial court granted Steven a right of first refusal. See *In re Marriage of Loomis*, 348 Ill. App. 3d 972, 974 (2004) (“We may affirm the trial court’s ruling for any reason supported by the record regardless of the basis relied upon by the trial court.”).

¶ 75 IV. Equal Parenting Time During Summer

¶ 76 Finally, Steven contends the trial court should have awarded him and Juli equal parenting time during the summer. A trial court’s determination as to parenting time shall be according to the best interest of the child, and will not be reversed unless it is against the manifest weight of the evidence. See *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55. Steven makes no specific argument as to why the trial court’s summer visitation award was against the manifest weight of the evidence but rather adopts his argument with regard to the right of first refusal. The record does not indicate that the court’s reasons for refusing to grant Steven a right of first refusal were the basis of the court’s decision regarding summer parenting time. Steven failed to present a

proper argument regarding the issue of summer parenting time. Thus, we conclude Steven has forfeited this specific argument. See *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 12 (“Mere contentions, without argument or citation to authority, do not merit consideration on appeal.”).

¶ 77

CONCLUSION

¶ 78

The judgment of the circuit court of La Salle County is affirmed.

¶ 79

Affirmed.