2017 IL App (4th) 160254-U

NO. 4-16-0254

FILED
February 2, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
PAMELA JEAN DARST,	)	Circuit Court of
Petitioner-Appellee and Cross-Appellant,	)	Macon County
and	)	No. 11D106
ROBERT KENT DARST,	)	
Respondent-Appellant and	)	Honorable
Cross-Appellee.	)	James R. Coryell,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not abuse its discretion by giving petitioner the option to buy out respondent's interest in an asphalting company, which the court found to be marital property.

(2) Because of petitioner's failure to update an interrogatory answer by a court-ordered deadline, it was within the trial court's discretion to bar certain of her claims of dissipation.

(3) The trial court did not make a finding that was against the manifest weight of the evidence when finding it to be unproven that respondent had dissipated marital assets by buying motor vehicles.

¶ 2 In this proceeding for dissolution of marriage, the parties challenge some decisions the trial court made on ancillary issues.

¶ 3 Respondent, Robert Kent Darst, appeals the decision to allow petitioner, Pamela Jean Darst, the option to buy out his interest in Allied Asphalt, Inc. (Allied Asphalt). He

contends that, instead, he should be allowed to buy out her interest in the company.

¶ 4 Petitioner cross-appeals a ruling and decision the trial court made regarding her claim that respondent had dissipated marital assets. Specifically, she challenges (1) a discovery sanction, which barred her claim of dissipation; and (2) the subsequent denial, on the merits, of her claim of dissipation (a denial seemingly at odds with the discovery sanction: a barred claim could not have been evaluated on its merits).

¶ 5 Neither the appeal nor the cross-appeal persuades us to disturb the trial court's judgment. We are unable to say the court abused its discretion by giving petitioner the opportunity to buy out respondent's interest in Allied Asphalt. Nor do we find an abuse of discretion in the discovery sanction, except, perhaps, insofar as it barred the claim that respondent had dissipated marital assets by purchasing motor vehicles, a claim of which respondent had received adequate notice. Ultimately, however, the court corrected that error by evaluating and—justifiably—rejecting that particular claim on its merits. Therefore, we affirm the trial court's judgment.

¶ 6 I. BACKGROUND

¶ 7 A. The Petition for Dissolution of Marriage

¶ 8 On March 9, 2011, petitioner filed a petition for dissolution of marriage. In her petition, she stated that she and respondent married on January 21, 2000, and that no children had been born to them or adopted by them. She requested the trial court to dissolve the marriage, equitably divide the marital property and debts, and award her maintenance.

¶ 9 On September 25, 2012, the trial court dissolved the parties' marriage. The order

noted: "[T]here remains marital debt, obligation[s,] and assets to be equitably divided by this Court."

¶ 10 B. Respondent's Interrogatory No. 24

¶ 11 Respondent served upon petitioner a set of standard marital interrogatories, including interrogatory No. 24, which asked her: "What contribution or distribution has your spouse made to the marital estate, including but not limited to each of the items or property identified in response to Interrogatories No. 22 and No. 23 above, citing specifics, if any, for each item of property?"

¶ 12 Interrogatory No. 22 asked petitioner to list all the nonmarital property she claimed. Interrogatory No. 23 asked her to list all the marital property.

¶ 13 On August 22, 2011, petitioner served upon respondent the following sworn answer to Interrogatory No. 24: "I have serious concerns that the Respondent has dissipated marital assets and depleted our marital and business checking accounts with buying personal items such as the purchase of a Hummer since our separation."

¶ 14 C. Petitioner's Pretrial Motion
To Enjoin the Dissipation of Marital Assets

¶ 15 On January 29, 2012, petitioner filed a "Motion To Enjoin Dissipation of Marital Assets," in which she alleged that respondent had destroyed a computer, which contained business records for Allied Asphalt, and that he had gone on vacations and had bought several motor vehicles.

¶ 16 On February 21, 2012, respondent filed an affidavit, in which he represented that

he "ha[d] not purchased any vehicle since the separation of the parties."

¶ 17 D. The Discovery Order

¶ 18 In a discovery order dated February 26, 2015, the trial court commanded: "All discovery by each party is to be updated and witnesses are to be disclosed, on or before March 16, 2015."

¶ 19 E. The "Forensic Accounting Discovery"

¶ 20 Petitioner hired an accountant, Brian Gordon, of BKD CPAs & Advisors, to review the parties' banking records. On February 23, 2015, petitioner served on respondent a document entitled "Transactions for Cash": a list of over 200 withdrawals, which Gordon had compiled from several years of bank records (January 2010 to July 2013). In a footnote, Gordon wrote:

> "Note: In reviewing the bank statements and enclosures, we noted a significant level of transactions for cash, whether it be through [automatic teller machine (ATM)] or check transactions. We noted ATM transactions for cash were approximately 67% of all transactions for cash. In addition, we noted there were payments directly to vendors for all manner of services related to [respondent's] business. As such, we are not able to understand the need for the level of cash transactions shown in this schedule. BKD would need more information and supporting documentation (such as receipts) to determine whether these transactions appear related to legitimate business activity."

¶ 21 From January 2010 to the dissolution of the marriage, in September 2012, the withdrawals totaled $159,351.08. Year by year, that total breaks down as follows: from January to December 2010, $38,269.05; from January to December 2011, $93,017.28; and from January to September 2012, $28,064.75. All this is according to the "Transactions for Cash," which Gordon compiled.

¶ 22 F. The Supplemental Rule 213(f) Witness Disclosure

¶ 23 On March 16, 2015, petitioner served on respondent a "Supplemental Rule 213(f) Witness Disclosure." Paragraph 2 said that Christopher Thurber would be one of her witnesses and that he would testify to the following:

> "Mr. Thurber is expected to testify as to vehicle purchases by [respondent], purchase and sale of real estate at South Taylorville Road, dissipation of martial [*sic*] assets by [respondent,] including purchases of gifts for other persons and vehicles, cash nature of business, and the circumstances surrounding the sale and purchase of the Jaguar. Mr. Thurber is also expected to testify as to the purchase of company [(Allied Asphalt)] in 2000 and subsequent sale of company to both parties in 2005 and circumstances surrounding those transactions."

¶ 24 G. "Notice for Affirmative Claim of Dissipation"

¶ 25 On April 13, 2015, petitioner served on respondent a "Notice for Affirmative Claim of Dissipation," pursuant to section 503(d)(2) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d)(2) (West 2014)). Paragraph 3 of this document says:

"Attached hereto and previously disclosed to [respondent] is a report issued by [petitioner's] expert, Brian Gordon, CPA, *** of BKD CPAs and Advisors, indicating a substantial amount of transactions for cash and cash withdrawals which support the claim by [petitioner] of a dissipation figure by [respondent] of at least $159,351.08."

¶ 26 H. The Trial on Ancillary Issues

¶ 27 On May 20 and June 6, 2015, there was a trial on ancillary issues. We will recount the relevant parts of the trial under the following subheadings.

¶ 28 1. *The Two Businesses*

¶ 29 At the time of the trial, respondent was 61 and was employed by Allied Asphalt, an Illinois corporation, which, possibly, he had allowed to lapse (he remarked that he was good at asphalting but not so good at paperwork). He had worked for Allied Asphalt for several years, at least since 2000, and he bought the company in late 2005 or early 2006.

¶ 30 Petitioner, who was 53 at the time of the trial, had done all the paperwork and record-keeping for Allied Asphalt. She also had helped at job sites, running the rubber-tire roller and doing the seal-coating (putting a protective sealant on the asphalt after it was laid down as pavement). She testified that working at job sites during the day and doing the paperwork at night was demanding.

¶ 31 In addition, petitioner owned a business of her own, a limited liability partnership, Asphalt Repair and Seal Coating (Asphalt Repair). (The record also refers to her business as "Allied Transportation." It might be that while she was together with respondent, her business

was called "Allied Transportation" but that, after she separated from him, she formed the partnership, Asphalt Repair. The record does not appear to reveal the name of any copartner, although she testified she was in a relationship with Tom Philip, to whom she had lent money.)

¶ 32 It was unknown how much Asphalt Repair was worth, but petitioner testified that, for 2014, the gross income of the business was only $3,453.

¶ 33 Respondent estimated the net worth of Allied Asphalt to be $40,975.

¶ 34 2. *Some Losses That Allied Asphalt Absorbed*

¶ 35 According to the testimony of both parties, petitioner had been in a dispute with her former employer, "Mr. Johns," which was owned by "the Stubblefields." The Stubblefields believed she had embezzled $25,000 from them. Respondent resolved this dispute by paving the Stubblefields' parking lot, free of charge.

¶ 36 Respondent testified that, subsequently, when handling the administrative duties of Allied Asphalt, there was "$62,000 worth of unpaid federal withholdings that [petitioner] did not pay the I.R.S." It was necessary to take out a loan to pay this amount to the federal government.

¶ 37 3. *Marital Disharmony, Followed by the Separation*

¶ 38 Petitioner testified that, in 2010, there were "problems in the marriage": she and respondent were "[e]ither fighting or not talking," even though, that year, she and respondent went on a vacation together to their trailer in Florida. On January 7, 2011, she packed a suitcase and "went into rehab"—the third or fourth time she had done so during the marriage. This time,

she never reunited with respondent.

¶ 39 4. *The Barring of Petitioner's Claim of Dissipation*

¶ 40 On the first day of the trial on ancillary issues, petitioner's attorney, Matthew Spain, called respondent as a witness. In his direct examination of respondent, Spain handed him the "Transactions for Cash," which Gordon had prepared. He asked respondent a question about the withdrawals listed in that document, whereupon Kent Rathbun, respondent's attorney, "object[ed] to any testimony or questions or any assertions about dissipation of assets." One of the grounds of Rathbun's objection was that petitioner "didn't make disclosure within the date of the [trial] court's discovery cut-off." Specifically, petitioner never did update her answer to interrogatory No. 24 by the court-ordered deadline of March 16, 2015. Rathbun argued: "Judge, we would contend that when the standard marital interrogatories have been propounded, which includes any claims of dissipation of assets and—and no information is given through the cut-off of discovery, even if [section 503(d)(2)(i) of the Act (750 ILCS 5/503(d)(2)(i) (West 2014))] applied, they can't use it to circumvent discovery rules or discovery orders." (Section 503(d)(2)(i), which was added by Public Act 97-941, § 5 (eff. Jan. 1, 2013), provided that "a notice of intent to claim dissipation [should] be given no later than 60 days before trial or 30 days after discovery close[d], whichever [was] later.")

¶ 41 The trial court ruled:

> "THE COURT: I'm going to sustain the objection. I mean, it's—you've got an interrogatory. The interrogatory's not updated. The claim was made five weeks before trial [(referring to the "Notice for Affirmative Claim of

Dissipation," which petitioner filed on April 13, 2015)].

MR. SPAIN: Which is in compliance with the statute, Your Honor.

THE COURT: I'm going to sustain the objection. I mean, your—your answers to interrogatories, you know, put down some vague references and they were never updated."

¶ 42 Petitioner then made an offer of proof. In the offer of proof, respondent testified that, in 2010, he "[p]robably" used an ATM to make withdrawals from the Regions Bank account but that he was not the only who did so, since he and petitioner were still together in 2010 and she, too, had access to the account. He admitted, however, that, in 2011 and 2012, he alone made the withdrawals.

¶ 43 Spain asked respondent, in the offer of proof:

"Q. (BY MR. SPAIN) After 2010, did you have any recollection of what you did with the funds that you withdrew from the ATM machine?

A. Sure.

Q. Okay.

A. As always, it was—it's protocol in the business to—got how many truck[s] running back and forth and pieces of equipment. Well, better go to Mount Auburn or Mt. Pulaski or wherever you're going for [*sic*] with a pocket full of money for diesel fuel because you're gonna be there for four days.

And the limit on that card is $200, so if you have to hit it six or seven or eight times to make sure you got enough money for diesel fuel and—and repairs and anything else you might need to execute that job, then you better have it in

your pocket.

Q. And so you're testifying the majority of this money was spent on fuel; is that correct?

A. Yeah. And it was always that way.

Q. *** Did you [use] cash to purchase [a Corvette, Hummer, or Harley-Davidson motorcycle]?

A. No.

Q. Did you make any other large purchases during the time that you and [petitioner] were separated before the marriage was dissolved, such as jewelry—expensive jewelry? Did you make any expensive jewelry purchases?

A. No."

¶ 44 On cross-examination in the offer of proof, Rathbun asked respondent:

"Q. Were there times that [petitioner] would cash a check or take money from an ATM and give it or any of it to you?

A. Oh, yes.

Q. Did you use it any differently than what you've told the judge you did with your—with the money you took out after she was gone?

A. No."

¶ 45 5. *Respondent's Purchases of Motor Vehicles*

¶ 46 After the separation but before the dissolution of the marriage, respondent bought several motor vehicles (contrary to the representation he made in an affidavit): two Harley-

Davidson motorcycles, a Corvette, and a Hummer.

¶ 47 His purchases of the Corvette and the Hummer were financed, and those two vehicles were repossessed. He testified he owed nothing on the Corvette. It is unclear if he still owed anything on the Hummer.

¶ 48 He bought one of the motorcycles for $10,000 and gave it to Jacob Hubbard, the father of petitioner's grandchild. (Earlier, during the marriage, the parties helped out Hubbard by buying a house, at 22 7th Street, in Decatur, for him to live in. Hubbard was to pay them rent, which they would apply toward their contract for deed. Hubbard no longer lived in the house. Other renters had taken his place.)

¶ 49 Respondent bought the second motorcycle for $10,772.14 plus the trade-in value of his old motorcycle, a 2005 Harley-Davidson Deuce. The new motorcycle, a 2012 Harley-Davidson Street Glide, initially was titled in the name of his then-girlfriend, Debbie Peterson (it is unclear why; he testified the reason was "because she wanted it in her name"). Now it was titled in his name. He still had possession of the Street Glide.

¶ 50 6. *The Unsuccessful Real-Estate Investment*

¶ 51 The marital residence was at 2103 South Taylorville Road, in Decatur. Respondent hit upon the idea of buying some land adjacent to the marital residence and developing it for resale. In July 2011, he and his son, Christopher Thurber, entered into a contract to buy the land, "Lot 2 of Allied Estates," from Edward E. Beasley's land trust, for $112,150 in cash. Thirty thousand dollars in earnest money was paid to Beasley, according to the contract, which was signed by respondent and Thurber. Also, in August 2012, respondent and

Thurber borrowed $54,626 from DeWitt Savings Bank.

¶ 52 Thurber testified that respondent laid an asphalt road a quarter of a mile long, to make the property accessible, and that respondent began making payments on the note, as he was supposed to do (evidently, Thurber was supposed to be only a cosigner; respondent's credit history was problematic). A buyer for the property never materialized, and respondent could not keep up the payments, so he deeded the property to Thurber and, as Thurber put it, "walked away."

¶ 53 To appease the bank, Thurber made arrangements to renew the note. Then another complication emerged: the bank had, in its impoundment lot, two motor vehicles that respondent had bought on credit: a Jaguar and a Hummer. The bank was unwilling to renew the note unless the difficulty with these two repossessed vehicles was resolved. In order to get the note renewed, Thurber bought the two vehicles from the bank.

¶ 54 Lot 2 of Allied Estates was still for sale. The asking price was $129,900.

¶ 55 I. The Judgment on Ancillary Issues

¶ 56 On July 29, 2015, the trial court entered a judgment on ancillary issues. The court found Allied Asphalt to be marital property and ordered: "[Petitioner] may acquire [respondent's] interest in Allied Asphalt by paying him $20,487.50 within 60 days of the entry of this order[;] otherwise [respondent] will keep the business and must pay [petitioner] $20,487.50 within 30 days of expiration of her 60 day period repaying."

¶ 57 The trial court awarded Allied Transportation (or Asphalt Repair) to petitioner, "pursuant to [respondent's] request."

¶ 58 All real estate was to be sold, and the proceeds divided equally.

¶ 59 Under the heading of "Dissipation," the order states as follows:

> "[Respondent] purchased numerous vehicles now unaccounted for after separation.
>
> We know a purchase price but not how much [*sic*] nor how much he financed. [Petitioner] claims she should be reimbursed $32,408.12. [Respondent] says he lost funds withheld for taxes that the [petitioner] gambled away. [Respondent] says he paid [petitioner's] credit card debt, lot rent[,] and taxes on Florida property. [Respondent] says he used the cash withdrawals for business purposes and there are no other documents that he paid for supplies in any other way. Claim for Dissipation is denied as to both parties."

¶ 60 II. ANALYSIS

¶ 61 A. The Question of Our Jurisdiction

¶ 62 Neither party questions our jurisdiction over the appeal and the cross-appeal. Nevertheless, we have an independent duty to make sure we have jurisdiction. *Department of Central Management Services v. American Federation of State, County & Municipal Employees*, 182 Ill. 2d 234, 238 (1998). We raise the jurisdictional question because the trial court's order of July 29, 2015, resolved all the remaining issues in the case and neither party filed an appeal or postjudgment motion within 30 days after that date. See Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015).

¶ 63 It might be argued that the order of July 29, 2015, really was not final, since the

petition for dissolution had requested maintenance and the order said nothing, one way or the other, about maintenance. But the order was silent about maintenance because, a month earlier, when reciting for the court the issues that remained to be decided, petitioner herself was silent about maintenance. On June 26, 2015, after the close of evidence on ancillary issues, the trial court asked petitioner's attorney, Matthew Spain: "[W]hat is in dispute in this case, Mr. Spain?" He answered that only three issues were in dispute: (1) whether Allied Asphalt was marital property, and if it was, how much it was worth; (2) whether respondent had dissipated marital assets (the court interjected it already had disposed of that issue); and (3) whether respondent should pay petitioner's attorney fees. The court then asked Spain: "So *** those are the issues that you see then, Mr. Spain?" He answered: "Yes, Your Honor." The court then asked respondent's attorney, Kent Rathbun: "[D]o you agree those are the issues?" He answered: "I would agree those are issues, [J]udge. I would think there's also an issue about the value of [petitioner's] business, which she's chosen to present no evidence, no estimate, no figure whatsoever." Thus, as far as both parties were concerned, maintenance was not on the list of ancillary issues for the court to decide.

¶ 64 It is no wonder, then, that the order of July 29, 2015, was silent about maintenance (although it addressed the issues the parties had identified). Petitioner had effectively abandoned her claim for maintenance. It follows that the order of July 29, 2015, was a final, appealable order. See *In re Marriage of Jensen*, 2013 IL App (4th) 120355, ¶ 35.

¶ 65 Neither party filed a notice of appeal or a postjudgment motion within 30 days after the entry of that order. See Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015). Absent an extension of time granted by the trial court, missing the 30-day deadline in Rule 303(a)(1) normally results in

a lack of appellate jurisdiction. *E.M.E. Enterprises, Inc. v. Anvil Brand Shoe Co.*, 231 Ill. App. 3d 937, 939-40 (1992).

¶ 66 We say "normally" because there is an exception. Even though the 30-day deadline has expired, parties may jointly revest the trial court with jurisdiction. *In re Marriage of Kuyk*, 2015 IL App (2d) 140733, ¶ 14 (citing *People v. Bailey*, 2014 IL 115459, ¶ 25). "[F]or the revestment doctrine to apply, *both* parties must: (1) actively participate in the proceedings; (2) fail to object to the untimeliness of the late filing; *and* (3) assert positions that make the proceedings inconsistent with the merits of the prior judgment and support the setting aside of at least part of that judgment." (Emphases in original.) *Bailey*, 2014 IL 115459, ¶ 25. We find those three conditions to be fulfilled in the present case.

¶ 67 First, after the 30-day deadline expired on August 28, 2015, the parties actively participated in further proceedings. See *id.* They appeared before the trial court on January 6, 2016. At that time, Spain presented to the court a proposed "Supplemental Judgment of Dissolution of Marriage," which "incorporated *** by reference" the order of July 29, 2015, and added a provision forever barring either party from receiving maintenance from the other. Respondent's attorney, James Zachry, who had replaced Rathbun, consented to the entry of the proposed order. Within 30 days afterward, on January 21, 2016, Zachry filed a "Post Judgment Motion" on respondent's behalf. On February 5, 2016, Spain filed a "Motion for Reconsideration" on petitioner's behalf. On March 7, 2016, Zachry and Spain appeared before the court in a hearing on those motions. Thus, we find the first condition to be fulfilled: active participation in further proceedings despite the lapse of the trial court's jurisdiction. See *id.*

¶ 68 The second condition likewise is fulfilled: the lack of any objection to the

untimeliness of the late filing. See *id.* Petitioner never objected to the untimeliness of the "Post Judgment Motion." Nor did respondent object to the untimeliness of the "Motion for Reconsideration."

¶ 69 Finally, the third condition is fulfilled in that both of the motions challenged the order of July 29, 2015, which had been incorporated into the "Supplemental Judgment of Dissolution" of January 6, 2016. Respondent's motion challenged the provision allowing petitioner the opportunity to buy out his interest in Allied Asphalt. He argued that, instead, he should be allowed to buy out her interest in Allied Asphalt. Petitioner's motion challenged the requirement that the parties sell lot 2 of Allied Estates. She argued the parties were unable to sell the land, since Thurber now owned it. In lieu of the requirement that the parties sell the land, petitioner requested the court to order respondent to pay her $16,573.37, half the amount of marital funds allegedly applied toward the purchase of the land. Because both of the motions "attacked the substance" of the prior judgment, we conclude that the final condition of revestment was fulfilled and that the parties revested the trial court with jurisdiction. *People v. Kaeding*, 98 Ill. 2d 237, 241 (1983); see *Bailey*, 2014 IL 115459, ¶ 25.

¶ 70 After revesting the trial court with jurisdiction, did the parties file their notices of appeal on time? Respondent's notice of appeal was timely. On March 7, 2016, the court ruled on the "Post Judgment Motion" and the "Motion for Reconsideration." Respondent filed his notice of appeal 28 days later, on April 4, 2016. That was "within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order." Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015.

¶ 71 Assessing the timeliness of petitioner's notice of cross-appeal is more

complicated because, in violation of Illinois Supreme Court Rule 303(c) (eff. Jan. 1, 2015), respondent failed to file a proof of service with his notice of appeal. Why is that omission problematic? The reason is that, under Rule 303(c), the timeliness of the notice of cross-appeal could depend on when the notice of appeal was served—and we would know when the notice of appeal was served by looking at its (in this case, omitted) proof of service. "If a timely notice of appeal is filed and served by a party, any other party, within 10 days after service upon him or her, or within 30 days from the entry of the judgment or order being appealed, or within 30 days of the entry of the order disposing of the last pending postjudgment motion, whichever is later, may *** cross-appeal by filing a notice of appeal, indicating which type of appeal is being taken." Ill. S. Ct. R. 303(a)(3) (eff. Jan. 1, 2015).

¶ 72 Most likely, the notice of cross-appeal, filed on April 15, 2016, was timely under Rule 303(c). If Zachry mailed the notice of appeal to Spain the same day he filed it, April 4, 2016, the effective date of service would have been four days after the mailing, and thus petitioner would have had until April 18, 2016, to file her notice of cross-appeal. See Ill. S. Ct. R. 12(c) (eff. Jan. 1, 2016); Ill. S. Ct. R. 303(c) (eff. Jan. 1, 2015). Even if Zachry faxed or e-mailed the notice of appeal to Spain the same day Zachry filed it, the effective date of delivery would have been "the first court day following transmission"—Tuesday, April 5, 2016—and therefore the notice of cross-appeal, filed on April 15, 2016, would have met the 10-day deadline in Rule 303(c). Ill. S. Ct. Rs. 12(e), (f) (Jan. 1, 2016).

¶ 73 We conclude, then, that we have jurisdiction over both the appeal and the cross-appeal.

¶ 74 B. The Buy-Out Provision

¶ 75 In his appeal, respondent challenges only one provision of the judgment: the provision giving petitioner the option to buy out his interest in Allied Asphalt. He argues that the trial court instead should have given him the option to buy out *her* interest in the company.

¶ 76 The parties attack or defend the buy-out provision by deploying the factors in section 503(d) of the Act (750 ILCS 5/503(d) (West 2014)). Because those factors, however, bear on the "divi[sion] [of] the marital property *** in just proportions," they are not of much assistance in this context. See *id.* Respondent has no objection to the equal *proportions* into which the trial court divided Allied Asphalt. He does not dispute that, of the net value of the company, $40,975, petitioner should receive half. He merely disagrees with the manner in which the court effected the division of the company.

¶ 77 Respondent does not deny the practical necessity of a buy-out. See *In re Marriage of Banach*, 140 Ill. App. 3d 327, 331 (1986). He merely argues that he, instead of petitioner, should have the buy-out option, because, otherwise, he will be left without the means of making a living, whereas petitioner already has a seal-coating business of her own, Asphalt Repair. He suggests that his own "employability," at age 61, would be "questionable."

¶ 78 The objective is to have both parties "leave the marriage in a self-sufficient status." *In re Marriage of Lee*, 78 Ill. App. 3d 1123, 1133 (1979). Given that objective, we do not see a conclusive argument on one side or the other. Something can be said for giving petitioner the buy-out option, and something can be said for giving respondent the buy-out option.

¶ 79 On the one hand, petitioner not only knows how to do asphalting work, but she

also knows how to perform the administrative and record-keeping duties that are essential to successfully running a business. Respondent has allowed the corporate status of Allied Asphalt to lapse. According to the Illinois Secretary of State's corporate database, Allied Asphalt was involuntarily dissolved on May 9, 2014. As against petitioner's superior administrative skills, one might set the countervailing observation that she already has a business of her own. But this business is in the more narrow niche of seal-coating, and it is not much of a business, considering its gross income of only $3,453 in 2014—not enough to live on. And her employability, at age 53, could be just as questionable as respondent's employability at age 61.

¶ 80 On the other hand, respondent has more experience, and probably more knowledge, than petitioner in asphalting, and he knows how to repair the equipment. Those factors would tend to foster success if the company were left in his hands. With his aversion to paperwork, however, and the unfortunate outcome at lot 2, it is unclear that he has much business acumen. But, then, losing $62,000 in federal withholdings is not business acumen, either.

¶ 81 So, an argument could be made on both sides. All in all, it is hard to say whether the business would be more likely to succeed, and afford a continuing means of making a living, in petitioner's hands or in respondent's hands. We should leave the buy-out provision undisturbed, since reasonable minds could disagree about it. "[W]here property, such as a business, is not susceptible to division in kind or such division would be inequitable, the court may, *in its discretion*, award the property to one spouse, subject to an obligation to pay the non-acquiring spouse for the interest lost." (Emphasis added.) *Banach*, 140 Ill. App. 3d 331. A trial court abuses its discretion only if "no reasonable person would take the view adopted by the trial

court." *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177 (2003). A reasonable person might disagree with the trial court's decision to allow petitioner to buy out respondent instead of allowing him to buy out her. It would be an exaggeration to say, however, that every reasonable person would disagree with the trial court.

¶ 82 C. Dissipation of Marital Assets

¶ 83 Petitioner cross-appeals the barring and (paradoxical) denial of her claim of dissipation. She argues that not only did she give respondent timely notice of this claim, but the evidence conclusively proved he had dissipated marital assets by (1) making excessive withdrawals from marital bank accounts; (2) purchasing unneeded motor vehicles; and (3) transferring to Thurber lot 2, in which the marital estate allegedly had an interest.

¶ 84 Before delving into (1), (2), and (3), we have to take a step back and decide what we are reviewing in this context: a discovery sanction or a decision on the merits.

¶ 85 1. *Which Should We Review: the Discovery Sanction or the Finding of No Dissipation?*

¶ 86 On May 20, 2015, in the trial on ancillary issues, the trial court barred petitioner's claim of dissipation because she had failed to update her answer to interrogatory No. 24, as the discovery order had required her to do. See Ill. S. Ct. R. 213(i) (eff. Jan. 1, 2007); Ill. S. Ct. R. 219(c)(iii) (eff. July 1, 2002).

¶ 87 Evidently, though, after the close of evidence, the trial court changed its mind about barring her claim of dissipation. If the claim remained barred, the court would not have considered the merits of the claim. A barred claim is barred, regardless of its merits. Whether it

is meritorious is superfluous. In its order of July 29, 2015, however, the court *did* consider the merits of petitioner's claim of dissipation, and denied the claim.

¶ 88 This puts us in a dilemma. Should we review the earlier decision to bar petitioner's claim of dissipation? Or should we regard her claim as later unbarred, and, accordingly, review the finding of no dissipation?

¶ 89 Let us say, hypothetically, that we went along with the posttrial unbarring of petitioner's claim of dissipation. Let us further say, hypothetically, that we concluded the trial court had made a finding that was against the manifest weight of the evidence when it found no dissipation of marital assets by respondent. Would not respondent have a legitimate complaint that he had been misled? In the trial, he surely had a right to rely on the ruling that petitioner's claim of dissipation was barred. He had a right to rely on the sustaining of Rathbun's objection. That ruling told him there would be no claim that he had dissipated marital assets. Such a claim would not be recognized. That meant there would be no *prima facie* case of dissipation and, hence, no need for him to prove, by clear and convincing evidence, that he had used the marital assets for purposes related to the marriage. See *In re Marriage of Murphy*, 259 Ill. App. 3d 336, 339 (1994) ("Once a *prima facie* case of dissipation is made, the party charged with dissipation must establish by clear and convincing evidence how the funds were spent; general and vague statements are not enough."). On appeal, we would not be able to fairly penalize respondent for the lack of rebutting evidence, considering that, in the trial, the sustaining of his objection to the claim of dissipation signified that such rebutting evidence was unnecessary.

¶ 90 Maybe, in drafting its order of July 29, 2015, the trial court had second thoughts about barring the claim of dissipation. With respect to the motor vehicles, second thoughts would

be understandable. Despite her failure to update her answer to interrogatory No. 24, petitioner had clearly informed respondent that she regarded his postseparation purchases of motor vehicles as dissipation. We do not see the same clarity or specificity, however, with respect to the withdrawals from bank accounts and the transfer of lot 2 to Thurber (as we soon will explain). Therefore, we will treat the withdrawals and the land transfer as barred—we will stick to the discovery sanction to that extent. For the sake of argument, however, we will assume the court should not have barred the claim of dissipation with respect to respondent's purchases of motor vehicles. Nevertheless, we uphold the court's finding of no dissipation with respect to those purchases, because we are unable to say that this finding is against the manifest weight of the evidence (as we also will soon explain).

¶ 91 Before discussing the trial court's finding of no dissipation in the purchases of motor vehicles, let us take up the threshold issue of procedure: the discovery sanction. We will begin with petitioner's argument that, in the timing of her disclosures, she relied in good faith on the deadline in subsection (d)(2)(i) of section 503 of the Act (750 ILCS 5/503(d)(2)(i) (West 2014)), one of the subsections added to section 503(d)(2) by Public Act 97-941, § 5 (eff. Jan. 1, 2013).

¶ 92 2. *Petitioner's Theory of Good-Faith Reliance on Public Act 97-941*

¶ 93 Effective January 1, 2013, Public Act 97-941 added to section 503(d)(2) the language emphasized below:

> "(d) [The court] shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors, including:

***

(2) the dissipation by each party of the marital *** property, *provided that a party's claim of dissipation is subject to the following conditions:*

(i) a notice of intent to claim dissipation shall be given no later than 60 days before trial or 30 days after discovery closes, whichever is later;

(ii) the notice of intent to claim dissipation shall contain, at a minimum, a date or period of time during which the marriage began undergoing an irretrievable breakdown, an identification of the property dissipated, and a date or period of time during which the dissipation occurred;

(iii) the notice of intent to claim dissipation shall be filed with the clerk of the court and be served pursuant to applicable rules;

(iv) no dissipation shall be deemed to have occurred prior to 3 years after the party claiming dissipation knew or should have known of the dissipation." (Emphasis added.) 750 ILCS 5/503(d)(2) (West 2014).

On April 13, 2015, within "30 days after discovery close[d]" (March 16, 2015), petitioner served upon respondent her "Notice for Affirmative Claim of Dissipation." 750 ILCS 5/503(d)(2)(i) (West 2014).

¶ 94 Petitioner admits that, under subsection (m) of section 503 (750 ILCS 5/503(m) (West Supp. 2015)), the amendments made by Public Act 97-941 are inapplicable to this case, since she filed her petition for dissolution before January 1, 2013. See *id*. ("The changes made to this Section by Public Act 97-941 apply only to petitions for dissolution of marriage filed on or after January 1, 2013 (the effective date of Public Act 97-941)."). But she makes this admission only by hindsight. She argues that, in early 2015, she could not have known of the inapplicability of Public Act 97-941, because the clarifying language in subsection (m) was not added to section 503 until July 20, 2015. Public Act 99-78, § 555 (eff. July 20, 2015).

¶ 95 Even if, in early 2015, petitioner were justified in assuming that Public Act 97-941, § 5, applied to this case, the text of that legislation would not have excused her noncompliance with the trial court's discovery order. Just because, to quote section 503(d)(2)(i), "a notice of intent to claim dissipation shall be given *no later than* 60 days before trial or 30 days after discovery closes, whichever is later," it does not follow that a court is forbidden, in the exercise of its case-management powers (Ill. S. Ct. R. 218(a)(5)(iii) (eff. July 1, 2014)), to order that the disclosures in such a notice be made *sooner*. (Emphasis added.) 750 ILCS 5/503(d)(2)(i) (West 2014). "No later than" means *no later than*, not *no earlier than*.

¶ 96 To illustrate our point, consider the present case. If indeed section 503(d)(2)(i) applied to this case, petitioner would have had to serve the notice "no later than" 30 days after the close of discovery, that is, by Friday, April 15, 2015. *Id.* Let us say there would have been an overlap between the updated interrogatory answer and the notice pursuant to section 503(d)(2)(i), in that both would have included the same information. By providing the information earlier, on or before March 16, 2015, as the discovery order required, petitioner would have provided the

information "no later than" April 15, 2015, as section 503(d)(2)(i) required (assuming its applicability). *Id.* Understood in its plain and ordinary sense, the clause in section 503(d)(2)(i) "no later than" contemplates the possibility of an earlier, court-ordered deadline. See also *People v. Joseph*, 113 Ill. 2d 36, 47 (1986) (statutes and supreme court rules should be interpreted in such a way that they "complement one another."). Thus, the text of section 503(d)(2)(i) afforded no excuse for failing to comply with the discovery order.

¶ 97 3. *Prior Notices to Respondent*

¶ 98 Under Rule 213(i), petitioner had "a duty to seasonably supplement or amend any prior answer or response whenever new or additional information subsequently [became] known to" her. Ill. S. Ct. R. 213(i) (eff. Jan. 1, 2007). Also, as we said, the trial court entered a discovery order on February 27, 2015, which required the parties to update their discovery responses on or before March 16, 2015. Rule 219(c)(iii) provides that one of the remedies a court may award for noncompliance with discovery orders or discovery rules is "debarr[ing]" "the offending party" "from maintaining any particular claim." Ill. S. Ct. R. 219(c)(iii) (eff. July 1, 2002).

¶ 99 When it comes to a discovery sanction, our standard of review is very deferential. "The decision to impose a particular sanction under Rule 219(c) is within the discretion of the trial court[,] and, thus, only a clear abuse of discretion justifies reversal." *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 120 (1998). This is the most deferential standard of review recognized by the law. *Gulino v. Zurawski*, 2015 IL App (1st) 131587, ¶ 64. "[A] ruling will only be deemed an abuse of discretion where it is unreasonable and arbitrary or where no

reasonable person would take the view adopted by the circuit court [citations].” *Id.* As if to add deference on top of deference, the deference is amplified by the requirement that the ruling be *clearly* unreasonable and arbitrary. “[O]nly a *clear* abuse of discretion justifies reversal.” (Emphasis added.) *Shimanovsky*, 181 Ill. 2d at 120.

¶ 100 To decide whether the trial court clearly abused its discretion in its ruling on the motion for a discovery sanction, we consider the same six factors the trial court was to consider: “(1) the surprise to the adverse party; (2) the prejudicial effect of the proffered testimony or evidence; (3) the nature of the testimony or evidence; (4) the diligence of the adverse party in seeking discovery; (5) the timeliness of the adverse party’s objection to the testimony or evidence; and (6) the good faith of the party offering the testimony or evidence.” *Id.* at 124. But, again, we do not weigh these factors *de novo*. Instead, we ask: In the light of all these factors, no single one of which is determinative (*id.*), was it clearly unreasonable and arbitrary to bar petitioner’s claim that respondent had dissipated marital assets? See *id.* at 120.

¶ 101 Petitioner would answer yes. Let us consider her arguments, one by one.

¶ 102 First, she argues that, before Public Act 97-941, trial courts could, *on their own initiative*, find a dissipation of marital assets. She quotes *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 653 (2009): “[The husband’s] claim of a ‘requirement’ that *** notice [of the full extent of the dissipation claim] be provided is overly broad; courts have properly found dissipation *sua sponte*.” *Sanfratello* in turn cites *In re Marriage of Henke*, 313 Ill. App. 3d 159, 178 (2000), which held that questioning and testimony in the trial had given the husband clear notice that he was being accused of dissipating the marital assets in an individual retirement account. *Sanfratello* and *Henke* are distinguishable, however, because in neither of those cases

did the alleged dissipater raise the opposing party's noncompliance with an interrogatory regarding dissipation.

¶ 103 Second, petitioner notes that, on January 29, 2012, she filed a "Motion To Enjoin Dissipation of Marital Assets," in which she alleged that respondent had destroyed a computer, which contained business records for Allied Asphalt, and that he had gone on vacations and had bought several motor vehicles. In her brief, however, petitioner does not appear to make any argument that the vacations were dissipation. No specific bank-account withdrawals are identified. We will address the motor vehicles in a moment.

¶ 104 Third, petitioner argues that her answer to interrogatory No. 24 was "sufficient to put [respondent] on notice at least of dissipation in the form of depletion of various checking accounts and purchasing of vehicles." Again, petitioner's answer to that interrogatory was as follows: "I have serious concerns that the Respondent has dissipated marital assets and depleted our marital and business checking accounts with buying personal items such as the purchase of a Hummer since our separation." Beyond the specification of the Hummer, this answer was, as the trial court said, "vague." It failed to inform respondent what particular withdrawals or expenditures he would have to defend "by clear and convincing evidence" (*Murphy*, 259 Ill. App. 3d at 339). See *Shimanovsky*, 181 Ill. 2d at 124 ("the surprise to the adverse party" and "the prejudicial effect of the proffered testimony or evidence").

¶ 105 Fourth, petitioner represents to us that she "disclosed her expert witness, Brian Gordon, prior to the close of discovery on March 16, 2015[,] along with his report detailing excessive transactions for cash by [respondent]." In support of that representation, petitioner cites a page of the common-law record. The cited page is a "Certificate of Compliance," signed

by Spain, which certifies that on March 4, 2015, he faxed and mailed to Rathbun "Plaintiff's Rule 213(f)(3) Disclosure." Because, however, the record appears to contain no document entitled "Plaintiff's Rule 213(f)(3) Disclosure," this citation fails to substantiate petitioner's representation that, prior to the close of discovery (March 16, 2015), she disclosed Gordon as an expert witness and produced a report detailing the excessive transactions for cash. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) ("Argument, *** with citation of *** the pages of the record relied on.").

¶ 106 We note that the record contains another "Certificate of Compliance," in which Spain certifies that, on February 23, 2015, he faxed and mailed to Rathbun "the forensic accounting discovery in his possession from BKD CPAs & Advisors," Gordon's accounting firm. Apparently, this "forensic accounting discovery" was merely a long list of withdrawals that Gordon had compiled from several years of bank records. It did not specify which of the hundreds of withdrawals petitioner regarded as dissipation. She was supposed to provide that information, under oath, in her answer to interrogatory No. 24. Given "the cash nature of the business" (to quote one of petitioner's own interrogatory answers), respondent would not necessarily have assumed that she regarded each one of those 200-odd withdrawals as a dissipation. If she suspected all of the withdrawals, she should have made clear, by March 16, 2015, that she was claiming each and every one of them to be a dissipation of marital assets. For purposes of trial preparation, respondent needed such clarity because his rebuttal would have had to be by clear and convincing evidence. See *Murphy*, 259 Ill. App. 3d at 339.

¶ 107 On April 13, 2015, nearly a month *after* the close of discovery, Spain served on Rathbun the "Notice for Affirmative Claim of Dissipation," pursuant to section 503(d)(2) (750

ILCS 5/503(d)(2) (West 2014)). Paragraph 3 of this document says: "Attached hereto and previously disclosed to [respondent] is a report issued by [petitioner's] expert, Brian Gordon, CPA, *** of BKD CPAs and Advisors, indicating a substantial amount of transactions for cash and cash withdrawals which support the claim by [petitioner] of a dissipation figure by [respondent] of at least $159,351.08." Again, the attached report does not, in itself, allege any dissipation of marital assets, but is merely a multi-page list of "Transactions for Cash," mostly ATM withdrawals from Regions Bank. Merely by sending respondent this (in itself noncommittal) report on February 23, 2015, petitioner did not inform him which of these withdrawals she claimed to be dissipation. Therefore, as to the withdrawals from bank accounts, we are unconvinced the trial court reached a *clearly unreasonable* conclusion in finding a lack of timely notice to respondent, *i.e.*, notice, served before the discovery cutoff, that was specific enough that he could intelligently prepare his defense in advance of the trial.

¶ 108 Fifth, petitioner notes that, in her "Supplemental Rule 213(f) Witness Disclosure," which she served on respondent on March 16, 2015, she informed him that Thurber "would testify about the circumstances surrounding the purchase of land and vehicles with marital funds and 'dissipation of martial [*sic*] assets by [respondent,] including purchases of gifts for other persons and vehicles.' " This "Supplemental Rule 213(f) Witness Disclosure" is in the record, and, again, paragraph 2 summarizes Thurber's expected testimony as follows:

> "Mr. Thurber is expected to testify as to vehicle purchases by [respondent], purchase and sale of real estate at South Taylorville Road, dissipation of martial [*sic*] assets by [respondent,] including purchases of gifts for other persons and vehicles, cash nature of business, and the circumstances surrounding the sale and

purchase of the Jaguar. Mr. Thurber is also expected to testify as to the purchase of company in 2000 and subsequent sale of company to both parties in 2005 and circumstances surrounding those transactions."

¶ 109 The trial court could reasonably regard this interrogatory answer as likewise vague on the subject of dissipation. It is unclear if the "including" clause continues beyond "vehicles." If it does, how is "the cash nature of the business" a dissipation of marital assets? The way the answer is worded, the "purchase and sale of real estate at South Taylorville Road" is separate from the claim of dissipation ("purchase and sale of real estate at South Taylorville Road, dissipation of martial [*sic*] assets").

¶ 110 Therefore, we uphold the barring of petitioner's claim of dissipation insofar as the claim is premised on bank-account withdrawals and the purchase and transfer of lot 2. We are unable to say the sanction was clearly unreasonable and arbitrary.

¶ 111 The remaining component of petitioner's claim of dissipation is the post-separation and pre-dissolution purchases of motor vehicles.

¶ 112 4. *The Purchases of Motor Vehicles*

¶ 113 a. Harley Davidson No. 1

¶ 114 Around April 15, 2011, after the separation but before the dissolution, respondent bought a Harley-Davidson motorcycle for Jacob Hubbard. The motorcycle cost $10,000.

¶ 115 Petitioner does not explain how this gift meets the definition of dissipation. "Dissipation means the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable

breakdown." *Murphy*, 259 Ill. App. 3d at 338. How was the purchase of this motorcycle for respondent's "sole benefit"? *Id.* He bought the motorcycle for Hubbard, not for himself, and Hubbard was the father of *petitioner's* grandson.

¶ 116 Helping out Hubbard was something the parties did during their marriage. They contracted to buy a house, 22 7th Street, just so that Hubbard would have a place to live in. Granted, he was to pay them rent, which they in turn intended to apply toward the contract for deed, whereas respondent did not expect Hubbard to pay back the $10,000 for the motorcycle. Even so, how does *a relationship to the marriage* depend on whether there will be reimbursement (if indeed that is the distinction petitioner means to draw)? The parties, as husband and wife, helped Hubbard before, and respondent helped him again. By what logic was the assistance, this time, unrelated to the marriage?

¶ 117 Perhaps the problem is not so much the lack of a relationship to the marriage as the excessiveness of the expenditure. We have held that "excessive expenditures, even if for a permissible purpose, may constitute a dissipation of marital assets." *In re Marriage of Lee*, 246 Ill. App. 3d 628, 633 (1993). It cannot be reasonably denied that this gift of $10,000 to Hubbard was excessive.

¶ 118 But that does not mean the trial court *had* to charge the $10,000 against respondent's share of the marital estate. See *Murphy*, 259 Ill. App. 3d at 340. In dividing the marital estate between the parties, the court should consider not only any dissipation of marital assets but also (among other factors) each party's contribution "to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property." 750 ILCS 5/503(d)(1) (West 2014). In its order of July 29, 2015, the trial court noted: "[R]espondent says he lost funds

withheld for taxes that [petitioner] gambled away." He testified that this amount was $62,000 (as he put it, "$62,000 worth of unpaid federal withholdings that [petitioner] did not pay the I.R.S."). Also, both parties testified that, to settle a claim by petitioner's former employers, the Stubblefields, that she had embezzled $25,000 from them, respondent paved their parking lot free of charge. Thus, even if the court made a finding that was against the manifest weight of the evidence by finding no dissipation of the $10,000, declining to charge that amount against respondent's share of the marital estate would not be an abuse of discretion. See *In re Marriage of Tabassum*, 377 Ill. App. 3d 761, 779 (2007) ("We review a trial court's factual findings on dissipation under the manifest weight of the evidence standard, though we review its final property distribution under an abuse of discretion standard.").

¶ 119 b. Harley Davidson No. 2

¶ 120 On July 31, 2012, after the separation but before the dissolution, respondent bought a 2012 Harley-Davidson Street Glide motorcycle for $10,772.24 plus the trade-in value of his 2005 Harley-Davidson Deuce motorcycle. The check from him to Coziahr Harley-Davidson is in the record. The Street Glide was at first titled in the name of his then-girlfriend, Debbie Patterson. In December 2012, the Street Glide was transferred to his own name.

¶ 121 At the time of the trial, he still had this motorcycle, and it was marital property. We understand that petitioner regards this as an unnecessary, self-indulgent purchase. But the remedy for dissipation—a discretionary remedy—is to charge the dissipated amount against the dissipater's share of the marital estate. *Murphy*, 259 Ill. App. 3d at 340. We do not see how $10,772.24 could be charged against respondent's share if the $10,772.24 is still in the marital

estate, in the form of a 2012 Harley-Davidson Street Glide motorcycle. The motorcycle is there, to be distributed in kind or to be sold so that the proceeds can be distributed. (The judgment does not specifically address the Street Glide.)

¶ 122 c. The Chevrolet Corvette

¶ 123 On November 3, 2011, after the separation but before the dissolution, respondent bought a 2000 Chevrolet Corvette for $19,544. Respondent testified that (1) this purchase was financed and (2) the vehicle was no longer in his possession, which probably meant it had been repossessed.

¶ 124 The record does not appear to reveal whether respondent made any payments on this car loan. Thus, it is unclear that any marital funds went toward the purchase of the Corvette.

¶ 125 Respondent would be solely responsible for the loan. See 750 ILCS 65/15(a)(2) (West 2014). It is true that, under section 15(a)(1) of the Rights of Married Persons Act (750 ILCS 65/15(a)(1) (West 2014)), one spouse is liable for the *family expenses* of the other spouse (*id.*), even if the other spouse incurred such expenses after the separation and the divorce was pending (*St. Mary of Nazareth Hospital v. Kuczaj*, 174 Ill. App. 3d 268, 274 (1988)). "Family expenses," however, are "expenses for articles which conduce in a substantial manner to the welfare of the family generally and tend to maintain its integrity." *Carson Pirie Scott & Co. v. Hyde*, 39 Ill. 2d 433, 435-36 (1968). We do not see how the Corvette "conduce[d] in a substantial manner to the welfare of the family generally and tend[ed] to maintain its integrity." *Id.* at 436. Therefore, unless respondent made any payments on the Corvette—and the record does not appear to reveal whether he did—we do not see what the Corvette has to do with the

marital estate. See *In re Bradaric*, 142 B.R. 267, 271-72 (N.D. Ill. 1992). If he bought the Corvette with a loan in his own name and if he thereafter made no payments on the loan, we do not see how the marital estate was affected.

¶ 126 d. The Hummer

¶ 127 On May 27, 2011, after the separation but before the dissolution, respondent bought a 2005 Hummer H2 for $24,500. According to the Thurber's testimony, this vehicle was repossessed.

¶ 128 We assume that, because the Hummer was repossessed, respondent bought it with a loan. Therefore, the same observations we made regarding the Corvette apply likewise to the Hummer. The record does not appear to reveal whether respondent made any payments on the Hummer. Thurber will not be able to collect from petitioner. See *id.* ("The truck was purchased by Debtor shortly before the divorce and was then and now is in his exclusive possession. It only benefitted Debtor and did not on the record here contribute to the welfare of the family. Therefore, the liability arising from the purchase and possession of the truck is not likely a family expense, and [section 15(a)(2) of the Rights of Married Persons Act] would likely bar a creditor from proceeding against [the debtor's spouse] to collect on the truck loan.").

¶ 129 e. The Jaguar

¶ 130 Petitioner's attorney asked respondent:

> "Q. (BY MR. SPAIN) [Y]ou and petitioner also had some other vehicles throughout the course of the marriage, did you not?"

A. Yes, sir.

Q. One of those being a 2002 Jaguar?

A. Yes."

¶ 131 The above-quoted question, to which respondent answered in the affirmative, suggests that the Jaguar was in the possession of *both* petitioner and himself, as a married couple, prior to their separation. We do not know the date the Jaguar was purchased. Because the record appears to lack evidence that respondent bought the Jaguar "while the marriage [was] undergoing an irreconcilable breakdown," a dissipation of marital assets was unproven as to the purchase of the Jaguar. *In re Marriage of O'Neill*, 138 Ill. 2d 487, 496-97 (1990) ("[W]e conclude that the numerous judicial decisions limiting dissipation to the time during which a marriage is undergoing an irreconcilable breakdown properly ascertained the General Assembly's intent.").

¶ 132 f. The Chrysler Crossfire

¶ 133 The record does not appear to reveal when the 2007 Chrysler Crossfire was purchased, either. Spain seemed to be under the impression that this vehicle was titled in his client's name. He asked respondent:

"Q. [The Chrysler Crossfire] was titled in [petitioner's] name, was it not?

A. I don't remember."

He testified this vehicle "may have been sold to pay off the note."

We make the same observation regarding the Crossfire that we made regarding the Jaguar. In the absence of any evidence that respondent bought the Crossfire "while the

marriage [was] undergoing an irreconcilable breakdown," this purchase was not proven to be a dissipation of marital assets. *Id*.

¶ 134 III. CONCLUSION

¶ 135 For the foregoing reasons, we affirm the trial court's judgment.

¶ 136 Affirmed as modified.