2018 IL App (2d) 161051-U
No. 2-16-1051
Order filed March 14, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF ANNA SELEZNEVA, Petitioner-Appellee, and IGOR GAVIN, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 13-D-1752 Honorable Neal W. Cerne, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that respondent dissipated $109,743 in marital assets was not against the manifest weight of the evidence; trial court did not abuse its discretion in allowing petitioner to reopen proofs where respondent did not disclose three bank accounts or in precluding respondent from testifying about withdrawals from those accounts; trial court properly applied statutory maintenance guidelines but misstated petitioner's gross income in determining her maintenance award; trial court failed to provide sufficient explanation of deviation from guidelines in awarding permanent maintenance to petitioner; trial court did not abuse its discretion in its unequal division of the marital estate or in its valuation of marital residence and personal property therein; trial court did not err in modifying dissolution judgment to strike reservation of maintenance for respondent. Remanded with directions.

¶ 2 Respondent, Igor Gavin, appeals from the Judgment of Dissolution of Marriage entered by the circuit court. Respondent challenges the court's findings with respect to dissipation, maintenance, and division of the marital estate, as well as the court's post-trial modification of the judgment of dissolution. For the reasons stated below, we remand with directions.

¶ 3 I. BACKGROUND

¶ 4 The parties met while living in Russia and began residing together there in the middle of 1993. A son was born in 1994. The family emigrated from Russia to the United States in 1994, where a daughter was born in 1996. The parties married in February 2000.

¶ 5 Respondent had acquired a doctorate in biology in Russia and, after coming to the United States, was employed in Pennsylvania at Penn State University, in Massachusetts, and in Illinois at the Argonne National Laboratory and the University of Illinois at Chicago (UIC). In January 2013, respondent moved to California, where he currently consults exclusively for or is employed by EpicGenetics. Petitioner had obtained degrees in biochemistry and medicine in Russia. She raised the parties' children and was a homemaker prior to 2001, when she began working as a research specialist at UIC.

¶ 6 On August 21, 2013, petitioner filed for dissolution of the parties' marriage, citing mental cruelty and irreconcilable differences as grounds. On November 15, 2016, following a trial on the merits, the circuit court granted the petition and entered a judgment of dissolution. At that time, petitioner was 55 years old, and respondent was 52. The judgment included a maintenance award for petitioner and language reserving maintenance for respondent until his 65th birthday. Petitioner filed a motion for reconsideration challenging respondent's right to maintenance. The court granted petitioner's motion on January 4, 2017, and entered an order modifying the dissolution judgment to exclude maintenance for respondent.

¶ 7 Respondent filed two notices of appeal, the first from the judgment of dissolution, the second from the modified judgment of dissolution. The appeals were consolidated in this court on respondent's motion.

¶ 8 The issues on appeal, as well as pertinent evidence and trial court rulings, are addressed in the analysis section below.

¶ 9 II. ANALYSIS

¶ 10 Petitioner has not filed an appellee's brief. However, to the extent that we choose to consider the merits of the appeal, there is no impediment to our doing so. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 11 "A reviewing court applies the manifest-weight-of-the-evidence standard to the factual findings of each factor on which a trial court may base its property disposition, but it applies the abuse-of-discretion standard in reviewing the trial court's final property disposition ***." *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 205 (2005). A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or when the court's findings appear to be unreasonable, arbitrary, or not based upon the evidence. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 44. An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010).

¶ 12 Moreover, "[t]he trier of fact is charged with assessing the credibility of testimony at trial. [Citation.] A reviewing court will defer to the trial court's findings because the trial court, by virtue of its ability to actually observe the conduct and demeanor of witnesses, is in the best position to assess their credibility." (Internal quotation marks omitted.) *In re Marriage of Manker*, 375 Ill. App. 3d 465, 477 (2007). "On appeal, a reviewing court will take questions of

witness credibility as resolved in favor of the prevailing party and must draw from the evidence all reasonable inferences that support the judgment." *Flynn v. Henkel*, 369 Ill. App. 3d 328, 333 (2006).

¶ 13 Insofar as this appeal raises questions of law, of course, our review is *de novo*. See *In re Marriage of Dhillon*, 2014 IL App (3d) 130653, ¶ 23.

¶ 14 A. Dissipation

¶ 15 1. Petitioner's Notice of Intent to Claim Dissipation

¶ 16 As respondent acknowledges on appeal, petitioner claimed "specific payments, in the sum of $300,899.66, to credit cards, as dissipation." The trial court awarded petitioner $109,743.00. Respondent argues that the trial court improperly allowed petitioner's dissipation claim to proceed due to petitioner's untimely filing of her notice of intent to claim dissipation; that the trial court's findings of dissipation lacked specificity; and that respondent adequately explained the credit card charges at issue.

¶ 17 Dissipation, as used in section 503(d)(1) of the Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d)(1) (West 2016)) refers to the "use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown." [Internal quotation marks omitted.] *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497 (1990). "Once a *prima facie* case of dissipation is made, the charged spouse has the burden of showing, by clear and convincing evidence, how the marital funds were spent." *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d 761, 779 (2007). "[V]ague and general testimony that the funds were used for marital expenses is inadequate to meet this burden." *In re Marriage of Schneeweis*, 2016 IL App (2d) 140147, ¶ 37, appeal denied, 60 N.E.3d 873 (Ill. 2016). We review the trial court's finding of dissipation deferentially

and will not reverse it unless it is against the manifest weight of the evidence, that is, unless "the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence." [Internal quotation marks omitted.] *Id.* at ¶ 35.

¶ 18 Respondent first claims that the trial court erred in permitting the petition for dissolution to go forward because petitioner filed her notice of intent to claim dissipation on December 3, 2015, one day before the trial was scheduled to begin and outside the statutory requirement that such notice be filed sixty days before trial. See 750 ILCS 5/503(d)(2)(i) (West 2016) ("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"). According to respondent, the statutory notice requirement is provided to "avoid surprise and *** adequately allow the recipient of such a notice to prepare an adequate defense to a claim of dissipation." Our review of this legal issue is *de novo*.

¶ 19 Since discovery was never officially closed, only the 60-days-prior-to-trial provision of section 503(d)(2)(i) applies. However, in making his argument that petitioner failed to observe this provision, respondent ignores pertinent evidence and misstates the trial court's ruling. The record shows that respondent did not produce the documentation of credit card charges upon which petitioner based her claims of dissipation until mid-November 2015, making it impossible for petitioner to file her notice of intent to claim dissipation 60 days before trial. Moreover, the trial court did not simply deny respondent's motion to strike the claim of dissipation, as respondent asserts, but also ordered a continuation of the trial until the end of January precisely to "give [respondent] sufficient time to review his documents and prepare his defense relative to the payments on those charge cards as identified in the *** notice of dissipation." Under these circumstances, we cannot say the trial court erred in its treatment of petitioner's notice of intent to claim dissipation.

¶ 20 Next, respondent argues that the trial court "arbitrarily assigned a value of dissipation against [respondent], providing minimal rational [*sic*] for reaching its decision." It is well settled, however, that the trial court is not required to list what conduct constituted dissipation and/or explain how it arrived at a particular dollar amount. See, *e.g.*, *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 831 (1994); *In re Marriage of Tabassum and Younis*, 377 Ill.App.3d 761, 779 (2007).

¶ 21 Respondent then argues that he offered credible testimony to explain the subject credit card charges. In support of his claim, respondent appended a table to his brief that contains a list of approximately 300 charges, with columns entitled "Location," "Amount," "What," "Spent On," "Purpose," "[Report of Proceedings Page] Numbers," "Exhibit #," "Bates #," and "Reimbursed." Respondent then argues that he "testified credibility [*sic*] regarding numerous charges on his Bank of America, Citibank, and Chase Credit Cards *** and explained each and every charge at or near $200, the purpose of each charge, and whether he was reimbursed for each charge." In support, respondent offers only a footnote, directing the court's attention to the chart in the appendix.

¶ 22 Respondent does not summarize the testimony he gave at trial that he now claims credibly explained the charges. He simply refers this court to over 300 pages of the record to make his point. Even a cursory examination of his actual testimony, however, reveals it to be unhelpfully vague and general; for example, respondent repeatedly states that expenses were "for business" but is unable or unwilling to elaborate. See *In re Marriage of Petrovich*, 154 Ill. App. 3d 881, 886 (1987) ("General and vague statements that the funds were spent on marital expenses or to pay bills are inadequate to avoid a finding of dissipation.").

¶ 23 Similarly, respondent's explanation of his credit card payments for airfare for his landlady, Svetlana, and her daughter, Kristina, to travel with him to Hawaii (twice), Russia and Reno was unsatisfactory. Respondent did not plausibly explain why they were traveling together or what he did with Svetlana's alleged cash reimbursements. The trial court found respondent's position that Svetlana was not his girlfriend "incredible." The court also did not believe respondent's testimony that Svetlana repaid him in cash for the airfare, noting that the cash "was not deposited anywhere nor any record maintained."

¶ 24 Respondent was required to prove, by clear and convincing evidence, how the marital funds were spent. *In re Marriage of Schneeweis*, 2016 IL App (2d) 140147 at ¶ 37. We decline to make that proof for respondent. See *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38 ("The appellate court is not a depository into which the appellant may dump the burden of argument and research." (Internal quotation marks omitted.)). Based on the evidence presented, we find that the court's finding of dissipation is not against the manifest weight of the evidence because the opposite conclusion is not clearly evident, nor is "the finding arbitrary, unreasonable, or not based in evidence." *Schneeweis*, 2016 IL App (2d) 140147 at ¶ 35.

¶ 25 Finally, respondent argues that the trial court's finding that the parties' marriage was undergoing an irreconcilable breakdown by May 1, 2013, was "arbitrary, unreasonable, and not based on the evidence adduced at trial." Respondent contends that the "irretrievable breakdown date" of the marriage should be the date he was served with the dissolution papers, "and absent that date being established[,] the date [respondent] entered an appearance in this action, October 15, 2013."

¶ 26 This court has long held that "dissipation is to be calculated from the time the parties' marriage begins to undergo an irreconcilable breakdown, not from a date after which it is

irreconcilably broken." *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 375 (2008) (citing *In re Marriage of Olson*, 223 Ill.App.3d 636, 647 (1992)). As the *Holthaus* court explained: "the supreme court held [in *In re Marriage of O'Neill*, 138 Ill. 2d 487, 497 (1990)] that dissipation is the 'use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is *undergoing* an irreconcilable breakdown *** ', not after the marriage is irreconcilably broken." [Emphasis in original.] *Holthaus*, 387 Ill. App. 3d at 374. See also *Olson*, 223 Ill. App. 3d at 647 ("Dissipation occurs if one spouse uses marital property for his or her own benefit during a period when the marriage was in the process of irrevocable degeneration.").

¶ 27 Respondent asserts that at trial he "outlined numerous encounters between himself and [petitioner], evidencing that he believed the health of his marriage was still strong *** up to the point of [petitioner's] filing of dissolution." By way of example, he lists "vacations together"; two trips by petitioner to California after May 1, 2013, to spend time with respondent, on one of which she brought the parties' children; and his testimony that on those trips "he was intimate with [petitioner], they patronized restaurants together, and they went shopping together." He also lists his three trips back to "the marital residence," during which he "performed household chores, he was intimate with [petitioner], they patronized restaurants together, and went shopping together." According to respondent's testimony, when petitioner and the children visited him in California they had to stay in a hotel because his landlord did not allow him to have guests.

¶ 28 Contrary to respondent's claim on appeal, petitioner's testimony contradicted his. Notably, she stated that they separated on January 7, 2013, when he went to California, and they did not reside together since then. The last time they were "intimate" was before January 2013.

Although she asked him multiple times what his plans were with respect to her and the family, he said he did not know; he also refused her requests to undergo counseling. She traveled to California in May because she wanted to find out why he was never available on the phone. Respondent and their son went shopping on this trip because respondent wanted to buy the boy a birthday present. When she visited respondent in June, he said he did not want to live with her anymore and wanted a divorce. When petitioner met respondent's landlord, respondent told her to say she was his ex-wife.

¶ 29 The trial court found that the "marriage had broken down as of May 1, 2013," based on petitioner's testimony and the fact that when she visited respondent in California in June 2013 she was "not allowed to see where he lived and had to stay in [a hotel with respondent] instead of his residence." According to the court, she thought the marriage was over in May, and the June visit confirmed it.

¶ 30 Respondent asserts that *In re Marriage of Romano*, 2012 IL App (2d 0913339, is analogous because the *Romano* court affirmed the circuit court's determination as to when the marriage was undergoing an irreconcilable breakdown after hearing testimony from both parties regarding the health of the marriage. *Romano* is unhelpful to respondent, however, as appellate affirmance was based entirely on the circuit court's finding that the wife's testimony was less credible than the husband's testimony. *Id*. at ¶ 95. Here, the circuit court found respondent's testimony less credible than petitioner's.

¶ 31 We defer to the trial court's credibility findings and hold that the marriage was undergoing an irreconcilable breakdown as of May 1, 2013.

¶ 32 2. Petitioner's Motion to Reopen Proofs

¶ 33 After the trial had concluded, petitioner moved to reopen the proofs based upon new information acquired by subpoena regarding three undisclosed bank accounts belonging to respondent, from which withdrawals in the amounts of $11,700, $59,173, and $2,562 had been made after May 1, 2013. In support of her motion, petitioner argued that respondent had been questioned repeatedly during trial as to whether there were any accounts in his name other than those identified in petitioner's claim of dissipation and each time had responded "no." Petitioner requested not only that the proofs be reopened and the new account information be admitted, but also that, as a sanction for nondisclosure, respondent not be permitted to testify as to how the withdrawals had been used. Respondent argued that he would be severely prejudiced if denied his right to attempt to explain the withdrawals and asserted that some of the funds were used for payments to credit cards that the court had already determined were dissipation.

¶ 34 The trial court granted the motion to reopen proofs and, as a sanction for the "obvious nondisclosure," precluded respondent from presenting evidence as to the use of the withdrawn funds. The court found that by denying the existence of the accounts, respondent had "effectively destroyed his credibility and any explanation would not be credible."

¶ 35 The imposition of sanctions is within the discretion of the trial court and it will not be disturbed on appeal absent an abuse of that discretion. *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 620-21 (2007). We cannot say that barring respondent from testifying about his use of funds withdrawn from accounts he had previously testified did not exist was an abuse of discretion. See *Boatmen's Nat. Bank of Belleville v. Martin*, 155 Ill. 2d 305, 314 (1993) (among the factors courts consider in determining the propriety of a sanction barring testimony are the surprise to the adverse party and the good faith of the party seeking to offer the testimony). Respondent argues that petitioner was not diligent in seeking the US Bank and Wells Fargo records. In light

of respondent's conduct in hiding the existence of the accounts, the trial court's finding that there was no lack of diligence in discovering them was plainly not an abuse of discretion.

¶ 36 The court ruled that the withdrawals would be treated as advances against respondent's share of the marital estate. Respondent acknowledges this ruling but asserts only that the "finding of advancement" was an abuse of discretion because respondent was prohibited "from meeting his obligation to establish by clear evidence how the funds were spent." In the absence of supporting authority, however, we decline to consider respondent's suggestion that the standard for countering claims of dissipation also applies to a court's findings of advances against the marital estate. See Supreme Court Rule 341(h)(7) (an appellant's brief must contain the reasons for the appellant's contentions with citation of the authorities relied on). Ill. S.Ct. R. 341(h)(7) (eff.Feb.6, 2013). Accordingly, we affirm the court's treatment of the withdrawals as advances and its decision not to allow respondent to testify regarding the withdrawals.

¶ 37 Finally, we note that, in response to respondent's own motion to reopen proofs, the trial court treated a $20,000 withdrawal by respondent from a home equity line of credit as an advance against respondent's share of the marital estate. Respondent does not contest this ruling on appeal.

¶ 38 B. Maintenance

¶ 39 Respondent does not challenge the trial court's decision to award maintenance to petitioner. Rather, respondent argues that, under the guidelines provided in section 504(b-1)(1) of the Act (750 ILCS 5/504(b-1)(1) (West 2016)), the trial court miscalculated the amount of maintenance to be awarded to petitioner and further erred in awarding her permanent maintenance.

¶ 40 Section 504(b-1)(1) provides:

"(b-1) Amount and duration of maintenance. If the court determines that a maintenance award is appropriate, the court shall order maintenance in accordance with either paragraph (1) or (2) of this subsection (b-1):

(1) Maintenance award in accordance with guidelines. In situations when the combined gross income of the parties is less than $250,000 and the payor has no obligation to pay child support or maintenance or both from a prior relationship, maintenance payable after the date the parties' marriage is dissolved shall be in accordance with subparagraphs (A) and (B) of this paragraph (1), unless the court makes a finding that the application of the guidelines would be inappropriate.

(A) The amount of maintenance under this paragraph (1) shall be calculated by taking 30% of the payor's gross income minus 20% of the payee's gross income. The amount calculated as maintenance, however, when added to the gross income of the payee, may not result in the payee receiving an amount that is in excess of 40% of the combined gross income of the parties.

(B) The duration of an award under this paragraph (1) shall be calculated by multiplying the length of the marriage at the time the action was commenced by whichever of the following factors applies: 5 years or less (.20); more than 5 years but less than 10 years (.40); 10 years or more but less than 15 years (.60); or 15 years or more but less than 20 years (.80). For a marriage of 20 or more years, the court, in its discretion, shall

> order either permanent maintenance or maintenance for a period equal to the length of the marriage." 750 ILCS 5/504(b-1)(1) (West 2016).

¶ 41 In calculating respondent's gross income, the trial court relied on subpoenaed documents from EpiGenetics, the company for which respondent did consulting work after leaving UIC in 2014. After subtracting reimbursement payments, the court averaged 37 months of respondent's gross income from EpiGenetics and arrived at a figure of $146.026 yearly gross income.[1] Using a figure of $41,000 for petitioner's gross income, the court applied the guidelines in paragraph 1 of subsection (b-1) and determined the amount of monthly maintenance to be $2,818.

¶ 42 Generally, a trial court's award of maintenance is presumed to be correct. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010). The amount of a maintenance award lies within the sound discretion of the trial court, and this court must not reverse that decision unless it is an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). A court abuses its discretion where its findings are arbitrary or fanciful (*Blum v. Koster*, 235 Ill. 2d 21, 36 (2009)), or where no reasonable person would agree with its position (*Schneider*, 214 Ill. 2d at 173).

¶ 43 Here, the court properly applied the statutory guidelines but arrived at an incorrect maintenance amount due to a misstatement of respondent's yearly gross income. Respondent testified at trial that she receives not only $41,000 in gross salary from UIC, but also $2,000 to $3,000 from her employment with a company called NovaDrugs. Accordingly, we remand with directions to recalculate the amount of monthly maintenance.

¶ 44 Moreover, the trial court deviated from the guidelines in determining that maintenance should be permanent. If a court deviates from the maintenance guidelines, the statute mandates

[1] This calculation is not challenged by appellant, who simply puts forward a different, lower figure, citing his trial testimony and financial disclosure statement.

that it make specific findings of fact of (1) the amount or duration of maintenance that would have been required by the guidelines and (2) the reasoning for the court's variance from the guidelines. 750 ILCS 5/504(b–2)(2) (West Supp. 2016). We are unable to determine from the court's stated reasoning whether its deviation from the guidelines was an abuse of discretion.

¶ 45 After correctly establishing 97 months, or 8.1 years, as the duration of maintenance under the guidelines, the court made the following "finding": "Because the parties are from Russia, it is not clear whether either one would qualify for social security benefits upon retirement or disability. *** Because there may be no federal benefits for either party in the case of retirement or disability, each party should have some level of providing maintenance in that event and there is a need for it." Without further explanation, the court ordered: "[petitioner] is awarded permanent maintenance from [respondent]."[2] The court's speculative "finding" regarding social security benefits insufficiently explains the court's order of permanent maintenance. Because the view adopted by the trial court is unclear, we cannot determine whether a reasonable person would take that view. Accordingly, we remand for further findings with respect to duration of maintenance.

¶ 46 Given our remand order, we do not reach respondent's arguments that the permanent maintenance award was "excessive" in light of the parties' "incomes, needs, and future earning capacity in comparison to the standard of living enjoyed" during the marriage, or that the permanent maintenance award was excessive in light of the court's division of the marital estate.

[2] The court also ordered maintenance for respondent to be reserved until his 65th birthday. At the hearing on petitioner's motion to reconsider, however, any reservation of maintenance for respondent was stricken from the judgment of dissolution based upon the court's finding that respondent had never requested maintenance in his pleadings.

¶ 47 C. Division of Marital Estate

¶ 48 Respondent acknowledges that the division of the marital estate must be equitable, though not necessarily equal. Respondent argues, nevertheless, that the trial court abused its discretion by not dividing the marital estate equally because "both parties contributed to the acquisition of the marital estate through their income." He also argues that the court failed to apply the "correct valuation" of the marital residence and the personal property in the home.

¶ 49 The Act requires the trial court to divide marital property in "just proportions" considering all relevant factors, including a number of statutory factors. 750 ILCS 5/503(d) (West 2016). "Just proportions" mandates an equitable, rather than an equal, division of marital property. *In re Marriage of Orlando*, 218 Ill. App. 3d 312, 319 (1991). In determining such just proportions, the court must take into consideration all relevant factors, including "the value of the property assigned to each spouse" and the economic circumstances of each spouse upon division of the property. 750 ILCS 5/503(d)(3), (5) (West 2016); *Orlando*, 218 Ill. App. 3d at 319. Indeed, the statutory mandate that the property be divided in "just proportions" requires the court "to consider all aspects of the couple's economic circumstances." *In re Marriage of Rosen*, 126 Ill. App. 3d 766, 778 (1984). The circuit court, however, need not make a specific finding as to each relevant factor. *In re Marriage of Davis*, 215 Ill. App. 3d 763, 774 (1991). We will not disturb a circuit court's division of marital assets unless it has clearly abused its discretion. *In re Marriage of Thornley*, 361 Ill. App. 3d 1067, 1071 (2005).

¶ 50 Here, the trial court awarded petitioner the parties' marital residence in Bolingbrook, a vacant condominium unit in Naperville, the personal property contained in those homes, two cars, her retirement and bank accounts, and a $27,000 cash payment. Respondent received a car, a motorcycle, and his retirement and bank accounts.

¶ 51 In arguing that the trial court should have divided the marital estate equally because both parties contributed to the accumulation of the marital estate, respondent ignores the trial court's consideration of other aspects of the couple's economic circumstances. Specifically, the court found that respondent has been building his career since 1993 and earns approximately 3.5 times as much as petitioner, who was a homemaker until 2001, when she became employed as a research specialist. Although both parties are highly educated, respondent has completed his PhD and has been working within the scientific community since 1993. Petitioner, on the other hand, is 55 years old and has only 15 years of work experience. The court doubted whether, "after 25 years from receiving her [medical] degree and having never practiced medicine, *** she could pass the necessary examinations and obtain residency experience to become a licensed doctor in the United States." The court concluded it was unreasonable to believe that she could acquire the skills necessary to support herself "at any level commensurate with the lifestyle she and [respondent] enjoyed." The court's findings and conclusion are firmly grounded in the evidence, and, therefore, we reject respondent's argument that the court should have divided the marital estate equally.

¶ 52 Respondent cites a single case, *In re Marriage of Miller*, 84 Ill. App. 3d 931 (1980), which is factually distinguishable. In *Miller*, the appellate court reversed the award of the entire marital residence to the wife. A cornerstone of its decision is its reasoning that both parties "occupy similar financial positions." *Miller*, 84 Ill. App. 3d at 936. Here, the parties occupy widely disparate financial positions, and, therefore, *Miller* is inapplicable to this case.

¶ 53 Respondent also contends that the court failed to apply the "correct valuation" of the Bolingbrook marital residence and the personal property in the home. The court determined that the fair market value of the marital residence was $230,000 and valued the property at $6,503.

Respondent complains that the court improperly relied on petitioner's real estate appraisal, as opposed to respondent's appraisal, which had placed the fair market value at $250,000. Respondent claims that petitioner "tainted" the appraisal process by being present and, according to her testimony, pointing out areas of the home that she felt were defective. According to respondent, the fact that $230,000 was the same figure for fair market value that petitioner listed on her financial disclosure statement "highly suggests" that petitioner influenced the appraiser as to what she believed was the value of the home.

¶ 54 Respondent cites no authority for his accusation of improper influence. Nor does he address petitioner's additional testimony that she did not select the appraiser, that the appraisals of both the marital residence and the condominium unit were done pursuant to court order and by the same appraiser, and that the appraiser's figure for the value of the condominium was $10,000 higher than the figure listed by petitioner on her financial disclosure statement. Respondent argues only that his appraiser, unlike petitioner's, took into account comparable homes within the same county, Du Page County. Respondent cites to no exhibit or testimony to support this claim, and offers no argument as to why the comparables should be located in the same county. At the same time, a review of petitioner's appraisal report shows that petitioner's appraiser did, in fact, take into account a comparable home in Du Page County and that the remaining comparables were located in Bolingbrook, within a mile of petitioner's home and in petitioner's high school district. Given the dearth of argument and evidence supporting an appraisal figure of $250,000, we cannot say that the court abused its discretion in accepting petitioner's figure of $230,000.

¶ 55 Respondent also challenges the court's valuation of the personal property at $6,503. The court found that the value placed on the property by respondent, $65,025, was "not credible."

The court also heard petitioner's testimony that flooding in the marital residence caused considerable property damage, for example, rendering a piano impossible to tune. Respondent does not argue why $65,025 is a more appropriate figure and directs us to no trial testimony or argument on the subject. Again, we cannot say that the trial court's conclusion as to the value of the personal property was an abuse of discretion.

¶ 56 D. Modification of Judgment

¶ 57 On December 6, 2016, petitioner filed a post-trial motion requesting that the trial court reconsider its order in the judgment of dissolution reserving maintenance for respondent until his 65th birthday. Petitioner argued that respondent had never requested maintenance. The trial court agreed with petitioner, striking the reservation of maintenance order and modifying the judgment accordingly.

¶ 58 Respondent argues on appeal that the court lacked jurisdiction to modify the judgment because respondent filed a notice of appeal on December 6, 2016, the same day that petitioner filed her motion to reconsider. Section 2-1203 of the Code of Civil Procedure, however, allowed petitioner 30 days after the judgment of dissolution was entered, or until December 15, 2016, in which to file a post judgment motion. 735 ILCS 5/2-1203(a) (West 2016). Petitioner's timely filed motion to reconsider rendered respondent's notice of appeal temporarily ineffective. See Ill. S.Ct. R. 303(a)(2) (eff.Jan.1,2015) ("When a timely postjudgment motion has been filed by any party, *** a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion *** becomes effective when the order disposing of said motion *** is entered").

¶ 59 Respondent's citation to *Dunn v. Dunn*, 71 Ill. App. 3d 649 (1979), is inapt. In *Dunn*, the trial court modified the alimony provisions in a divorce decree nearly four months after the

defendant had filed his notice of appeal. There is no indication in the opinion that a timely post judgment motion had been filed. Thus, *Dunn* is distinguishable and has no application to this case.

¶ 60 Finally, respondent argues that the circuit court erred in not liberally construing his pleadings to include a maintenance claim. Respondent cites no authority for his argument that including a request for "any such further and other relief this court deems just" in his prayer of relief was sufficient to enable the court "to protect [petitioner] against prejudice by reason of surprise." 735 ILCS 5/2-604 (West 2016). The court expressly found otherwise, stating that had petitioner known that respondent sought maintenance, she could have argued that respondent's cohabitation with a third party in California should preclude him from receiving maintenance. See 750 ILCS 5/510(c) (West 2016) ("the obligation to pay future maintenance is terminated *** if the party receiving maintenance cohabits with another person on a resident, continuing conjugal basis"); *In re Marriage of Susan*, 367 Ill. App. 3d 926, 929-30 (2016). We see no error in the court's rejection of respondent's pleading argument.

¶ 61 III. CONCLUSION

¶ 62 For the reasons stated, we remand to the circuit court with directions to recalculate the amount of monthly maintenance to be paid to petitioner and for further findings with respect to the duration of same.

¶ 63 Remanded with directions.