2018 IL App (2d) 170239-U
No. 2-17-0239
Order filed June 7, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MICHELLE SUH,	)	Appeal from the Circuit Court
	)	of Du Page County.
Petitioner-Appellant,	)	
	)	
and	)	No. 14-D-228
	)	
JASON SUH,	)	Honorable
	)	Neal W. Cerne,
Respondent-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court's valuation of respondent's equity interest in his professional practice was not against the manifest weight of the evidence as it fell within the range of competent evidence presented at trial; and (2) the trial court did not abuse its discretion in awarding petitioner permanent maintenance of $12,000 per month plus additional maintenance equal to 33% of respondent's annual income between his annual base salary of $442,000 and a cap of $540,000.

¶ 2 Petitioner, Michelle Suh, appeals from the judgment of the circuit court of Du Page County dissolving her marriage to respondent, Jason Suh. On appeal, petitioner raises two principle issues. First, she contends that the trial court erred in its division of the marital estate,

in particular as it relates to the valuation of respondent's equity interest in his professional practice. Second, she challenges the maintenance award set by the trial court. We affirm.[1]

¶ 3 I. BACKGROUND

¶ 4 Petitioner and respondent married on February 26, 1993. Two children were born of the marriage, both of whom were emancipated at the time the judgment of dissolution was entered. The parties physically separated in March 2012, when respondent moved out of the marital residence. At that time, respondent began to voluntarily pay petitioner support of $10,000 per month. Petitioner filed a petition for dissolution of marriage on February 5, 2014. Both parties were 49 years old when the petition was filed. Prior to trial, the court entered an order requiring respondent to pay petitioner $10,800 per month as and for temporary maintenance. The matter proceeded to trial over various dates in December 2016. The following evidence is taken from the transcript of the trial and the common law record.

¶ 5 Petitioner has a bachelor's degree in pharmacy. Petitioner worked as a pharmacist for the first three years of the marriage, mostly part time. After 1996, petitioner devoted her time and efforts principally to raising the parties' children, working outside the home for only two brief periods. Specifically, from August 2012 through March 2013, petitioner was the manager for C2, a college preparatory education center, earning $900 biweekly. The parties' federal tax return for 2013 indicates that petitioner's wages that year were $13,113.[2] In addition, for four

[1] Petitioner has filed a "Motion for Court not to Schedule Oral Argument on Specific Dates." Because we are deciding this appeal on the briefs, we deny the motion as moot.

[2] Copies of petitioner's W-2 forms, if any, are not included in the record. However, the parties' 2013 federal income tax return reflects total wages of $681,101 and respondent's W-2 form for 2013 reports wages of $667,988. The difference between the parties' total wages and

months in 2016, petitioner taught at her church, earning $70 per week. During this time, petitioner maintained her pharmacy license, but placed it on "inactive" status in 2014 or 2015.

¶ 6 At the time of trial, petitioner was unemployed. Petitioner testified that she is unable to work because of health problems, including fibromyalgia, Sjogren's Disease, irritable bowel syndrome, migraine headaches, osteoporosis, a frozen shoulder, and an "upper GI issue."[3] Petitioner's symptoms from these conditions include fatigue, joint and muscle pain, dry eyes, and dry mouth. Petitioner treats with various medical professionals and goes for physical therapy and acupuncture. Petitioner testified that her health issues impact her ability to drive and engage in physical activities, such as exercising, walking, and shopping. Although petitioner has considered herself disabled since at least 2012, she has never applied for disability benefits. Petitioner testified that she contacted the agency that administers disability benefits, but the application process "involves a lot of procedure" and the agency is "picky." Petitioner further indicated that the benefits she would receive would be minimal.

¶ 7 Petitioner testified that her sole source of income is the support she receives from respondent, which, at the time of trial, was $10,800 per month. She testified that her monthly expenses are approximately $17,000 per month. Petitioner makes up for the monthly shortfall using funds from an investment account.

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respondent's wages is $13,113. The amount, if any, of wages petitioner reported on the parties' 2012 federal income tax return is not clear from the record.

[3] Sjogren's Disease is an immune system disorder identified by its two most common symptoms—dry eyes and dry mouth. The condition often accompanies other immune system disorders, such as rheumatoid arthritis and lupus. See www.mayoclinic.org/diseaseas-conditions/sjogrens-syndrome/symptoms-causes/syc-20353216 (last visited May 22, 2018).

¶ 8 Respondent is a medical doctor, specializing in oncology. In 2005, respondent was hired as a staff physician with Joliet Oncology Hematology Associates, Ltd. (Joliet Oncology). When respondent first became employed by Joliet Oncology, his annual salary was $250,000. On January 1, 2009, respondent was elevated to a partner at Joliet Oncology. In conjunction with his promotion, respondent and Joliet Oncology executed a Stock Purchase Agreement (Stock Agreement) and a Senior Physician Medical Employment Agreement (Employment Agreement). In 2016, respondent assumed the role as Principal Investigator of Clinical Trials for Joliet Oncology.

¶ 9 Respondent testified that all of the doctors who work at Joliet Oncology own stock in the practice. At the time of trial, there were nine partners in Joliet Oncology, and respondent's equity interest in the professional practice was 11.11%. Respondent testified that he had to buy in his equity interest at a cost of $1.29 million. Respondent paid the buy-in cost out of his income over a period of five years. Respondent testified that although his yearly earnings increased after he became a partner in 2009, any amounts over $250,000 were used to pay the buy-in fee for the partnership. Respondent testified that his take-home pay did not increase substantially until 2013, when he paid off the buy-in fee and became a full partner.

¶ 10 On December 27, 2011, Joliet Oncology entered into a Professional Services Agreement with Provena Mercy Medical Center (now known as Presence Mercy Medical Center (Presence)). Pursuant to the Professional Services Agreement, medical locations of Joliet Oncology were converted to provider-based locations of Presence so as to provide Presence the professional adult oncology services practitioners it required to meet the needs of the residents in Presence's service area. The Professional Services Agreement contains a "grant of exclusivity" whereby Presence agrees not to contract with or allow any other person or entity to provide any

adult oncology services at any other location operated by Presence within a radius of 20 miles centered on each practice location. The Professional Services Agreement between Joliet Oncology and Presence was set to expire at the end of 2016, but, as of the time of trial, negotiations to extend it were ongoing. Respondent testified that both his Employment Agreement with Joliet Oncology and the Professional Services Agreement with Presence contain covenants not to compete.

¶ 11 Respondent testified that he is paid biweekly and his salary consists of his base wages plus bonus income and checks from other partners for their buy-in costs. Respondent reported gross W-2 income of $283,560 in 2010 and $303,852 in 2011. In 2012, the parties reported wages on their federal tax return in the amount of $1,176,646. Of that amount $760,000 represented respondent's gross W-2 income and the rest represented respondent's share of a one-time sale of assets to Presence. In 2012, respondent also had $40,525 of "miscellaneous income," which respondent attributed to speaking engagements. Respondent reported gross W-2 income of $667,998 in 2013, $551,854 in 2014, and $676,998 in 2015. Additionally, in 2013, 2014, and 2015, respondent reported business profit of $7,313, $8,287, and $9,625, respectively, from speaking engagements. Respondent's November 2016 financial affidavit reflects that his monthly employment earnings at that time were $36,833 per month.

¶ 12 P.J. Sidhu and Erin Hollis testified regarding the value of respondent's equity interest in Joliet Oncology. Sidhu, Joliet Oncology's administrator, testified that the practice was established in 1981 as a freestanding, community-based and physician-owned private clinic. Sidhu began working for Joliet Oncology around 2001. As Joliet Oncology's administrator, he is responsible for the general day-to-day operations of the practice. Sidhu has an MBA from an American university and a "Master of Commerce" degree from a university in India. Sidhu also

has a law degree from an Indian university, but he is not authorized to practice law in the United States.

¶ 13 Sidhu testified that Joliet Oncology has offices in Joliet, Morris, New Lenox, and Bourbonnais and operates pursuant to the Professional Services Agreement with Presence. Under that agreement, Joliet Oncology sold its entire drug inventory to Presence and operates its offices in Joliet and Morris as Presence-identified outpatient facilities. Sidhu further testified that under the Professional Services Agreement, Presence has the right to approve all of Joliet Oncology's physicians, review all of the services provided by Joliet Oncology, and make all decisions regarding operation of the managed sites. Sidhu identified a picture of Joliet Oncology's building in Joliet. He noted that the facility used to bear the Joliet Oncology name, but now displays signage with Presence's name. He acknowledged that a banner displayed above Presence's name congratulates Joliet Oncology for receiving the 2016 Clinical Trials Participation Award.

¶ 14 Sidhu confirmed that respondent was invited to become a partner at Joliet Oncology in January 2009. Sidhu testified that once a physician is invited to join the partnership, a "buy-in" amount must be calculated. The buy-in amount, which Sidhu described as "the value *** put on the practice," is comprised of two components—a pre-tax component and a post-tax component. The pre-tax component consists of accounts receivable and goodwill while the post-tax component consists of inventory and fixed assets. Goodwill consists of 50% of the average compensation of the Joliet Oncology partners for the three years preceding the buy in. As an example of the goodwill computation, Sidhu explained that if a physician joined the practice on January 1, 2016, he would look at the existing partners' compensation for the years 2013, 2014, and 2015. In his example, Sidhu assumed there were five existing partners and their collective

compensation was $5 million in 2013, $6 million in 2014, and $7 million in 2015. This results in an average collective compensation of $6 million over three years. Sidhu then divided the average collective compensation by the number of partners, resulting in an average compensation per partner of $1.2 million. He stated that 50% of the average per-partner compensation reflects the goodwill portion of the pre-tax component of the buy-in amount.

¶ 15 Sidhu further testified that a "buy-out" amount is determined when a physician leaves the practice. The buy-out amount is calculated the same way as the buy-in amount except that goodwill is not repaid. Sidhu further explained that the post-tax component of the buy-out amount represents the value of the physician's stock upon his or her departure from the practice while the pretax component of the buy-out amount represents the departing physician's severance pay, which is provided for in the Employment Agreement.

¶ 16 Sidhu acknowledged that the buy-out formula is not set forth anywhere in the Stock Agreement. He stated, however, that the formula is how a departing physician's buy out has always been calculated and that it is "the practice which is being followed." A two-page document setting forth the buy-in and buy-out formulas was attached to the letter inviting respondent to become a partner at Joliet Oncology. Sidhu stated that since he began working for Joliet Oncology, he has prepared the buy-in and buy-out calculations for each physician, including respondent. Sidhu testified that there has been only one exception to the use of the formula, and that was for a buy in, not a buy out. In that case, Joliet Oncology agreed to deviate downward from the buy-in formula amount because the physician was bringing his own patients to the practice. As a result, he was not required to pay the goodwill component of the buy in.

¶ 17 Sidhu testified that if respondent wanted to leave Joliet Oncology, he would have to sell his interest in the practice pursuant to the buy-out formula. Sidhu calculated respondent's buy-

out amount as of September 30, 2016, the most recent data available. With respect to the post-tax component, Sidhu noted that Joliet Oncology's fixed assets were $137,000, its drug inventory was $241,000, and its retail store inventory was $53,000. Sidhu added these figures ($431,000) and divided the sum by the number of partners (9). Sidhu testified that the result—$47,888—represented the buy-out value of respondent's stock in Joliet Oncology as of September 30, 2016. Sidhu also calculated the pretax component. He noted that Joliet Oncology's accounts receivable less certain adjustments such as bad debt and accounts payable was $3.1 million. He then divided the result by the number of partners (9). Sidhu testified that the result—approximately $345,000—represented the amount of severance pay respondent would receive if he had left the practice on September 30, 2016.

¶ 18 Sidhu testified that all partners are bound by the Stock Agreement once they sign it and that respondent could not sell his interest in Joliet Oncology "outside of the requirements of the stock purchase agreement." Further, under the terms of the Stock Agreement, if respondent wanted to sell his interest in the practice, it would have to be in accordance with the Medical Corporation Act (805 ILCS 15/1 *et seq*. (West 2016)). It was Sidhu's understanding that a non-physician cannot be a member of a physician professional corporation.

¶ 19 Sidhu acknowledged that the Stock Agreement allows a physician to sell his or her shares to a third party. He noted, however, that the practice has a right of first refusal at either the buy-out amount or the terms of the third-party's offer. If the practice does not exercise its option to purchase the physician's shares, then the remaining shareholders have the option to buy the outgoing physician's shares on a *pro rata* basis. Sidhu observed, however, that in the 15 years he has worked for Joliet Oncology, there has never been a *bona-fide* third-party offer to purchase a physician's interest in the practice. Sidhu also noted that any buyer of a physician's interest in

Joliet Oncology would be bound by the Stock Agreement. Moreover, he opined that any incoming partner has to be approved by "100 percent consensus of the partners," although he was unable to point to any such language in the Stock Agreement.

¶ 20 Sidhu acknowledged that paragraph 2.1 of the Stock Agreement defines the term "fair market value" as used in the Stock Agreement. Sidhu agreed that that provision provides that the fair market value of Joliet Oncology is equal to the sum of the practice's inventory, the practice's fixed assets, and "50% of the sum of the three-year average W-2 compensation received by each of the shareholders who is a company shareholder at the date of computation of the fair market value." According to Sidhu, however, he does not use paragraph 2.1 of the Stock Agreement to determine the buy-in amount.

¶ 21 Hollis testified that she is a director in the Financial Opinions Group at Marshall & Stevens, a full-service appraisal firm. Prior to working for Marshall & Stevens, Hollis worked for Valuation Advisory Services. Hollis provided valuations services for closely-held businesses at both Valuation Advisory Services and Marshall & Stevens. She is an accredited senior appraiser by the American Society of Appraisers. Hollis has two undergraduate degrees—a bachelor's degree in psychology and a bachelor's degree in journalism. Hollis also received a master's degree in accounting in 2005 from the University of Phoenix, but she is not a certified public accountant. Petitioner retained Hollis to value respondent's interest in Joliet Oncology. She prepared a written report of her findings.

¶ 22 Initially, Hollis differentiated between "enterprise" or "practice" goodwill and "personal" goodwill. She noted that characteristics indicative of enterprise goodwill include: (1) the existence of written contracts between the company and major customers; (2) the existence of written contracts between the company and major suppliers; (3) the existence of written

employment and/or non-compete agreements between the company and key employees; (4) advantageous locations; (5) a large business with a formalized organizational structure, systems, and controls; (6) formalized production methods and business operations; (7) lack of heavy dependence on personal service performed by the company's owners; and (8) sales resulting from company name recognition and/or sales force. After analyzing these factors, Hollis determined that Joliet Oncology possesses enterprise goodwill.

¶ 23 In ascertaining the value of respondent's interest in Joliet Oncology, Hollis assessed respondent's interest in the professional practice using the cost approach (also referred to by Hollis as the asset approach or the adjusted book value method) and the income approach (also referred to by Hollis as the discounted cash flow method). The cost approach derives the value of the equity of the entity as the difference between the sums of the adjusted asset values less the adjusted liability values. Using Joliet Oncology's balance sheet as of May 31, 2016, Hollis calculated the fair market value of Joliet Oncology under the cost approach as $4,200,000. Hollis noted that this analysis does not consider the goodwill of the business, but merely the fair market value of the adjusted net assets. The income approach considers an entity's future sales, net cash flow, and growth potential. Based on a projection of Joliet Oncology's income for calendar years 2016 through 2025, Hollis calculated the fair market value of Joliet Oncology under the income approach as $6,370,000.

¶ 24 Due to the fact that the cost approach does not consider enterprise goodwill, Hollis premised her valuation on the income approach. Hollis then discounted the $6,370,000 valuation due to two factors. First, Hollis noted that minority interest positions are generally void of control factors, so she discounted the valuation by 13% for lack of control. Second, noting that the absence of a readily available market for a minority holding of shares in a closely-held

company detracts from its value, Hollis discounted the valuation due to the lack of marketability of Joliet Oncology's stock. She noted studies that indicate that the discount for lack of marketability range from 25% to 45% on average. Based on the foregoing, Hollis calculated the fair market value of respondent's 11.11% interest in Joliet Oncology as $460,000 as of June 30, 2016. Hollis stated that this value represented "all enterprise goodwill."

¶ 25 On cross-examination, Hollis acknowledged that she did not use the buy-in or buy-out formulas in valuing respondent's interest in Joliet Oncology. Hollis was asked whether, in valuing respondent's interest in Joliet Oncology, she considered that the Stock Agreement provides that respondent can only sell his stock under certain conditions. Hollis responded in the negative. Nevertheless, Hollis acknowledged that pursuant to the Stock Agreement, the existing shareholders of Joliet Oncology would have to approve whoever buys respondent's interest in the practice.

¶ 26 Hollis further testified on cross-examination that Presence "cannibalized" or "consumed" Joliet Oncology's goodwill, at least for the term of the Professional Services Agreement. Hollis acknowledged, for instance, that under the Professional Services Agreement, Presence controls several aspects of Joliet Oncology's business, including billing, quality control, approval of doctors, and approval of services. She also agreed that Presence owns the receivables for the patients it refers to Joliet Oncology, that Joliet Oncology is subject to a noncompetition agreement with Presence, that all final decisions relating to Joliet Oncology rest with Presence, and that Joliet Oncology cannot enter into any kind of similar agreement with any other hospital as long as they are a party to the Professional Services Agreement with Presence.

¶ 27 On redirect-examination, Hollis testified that she did not use the buy-in and buy-out formulas because they are not recognized valuation methodologies that she uses to calculate an

entity's fair market value. Hollis described the buy-in and buy-out formulas as "a formula that's made up or something that is contrived with regard to management, but it is not a recognized valuation methodology."

¶ 28 On February 24, 2017, the trial court entered a judgment for dissolution of marriage. The trial court valued the entire marital estate at $3,483,314. This included a value of $47,888 for respondent's 11.11% interest in Joliet Oncology. In settling on this valuation, the court explained that if respondent "sold his stock he would have to sell it to [Joliet Oncology] pursuant to the terms of the [Stock Agreement], and he would receive today $47,888.88." The court acknowledged that Hollis valued respondent's interest in Joliet Oncology at $460,000. The court, however, rejected Hollis's opinion for several reasons. First, the court found that Hollis "intentionally ignored the fact that the 'sale' of the shares is restricted to [Joliet Oncology], and that there is a set method for determining the price determined by an arms-length transaction between the shareholders." The court also noted that Hollis "did not believe that her opinion would be impacted by the fact that a shareholder has to be invited to become a shareholder, and that they [*sic*] have to be a medical doctor, both of which drastically limit[] the size of potential shareholders." The court determined, however, that "[b]oth of these factors seriously limit[] the marketability of the shares."

¶ 29 The court further observed that Hollis found that Joliet Oncology "had enterprise goodwill which is in essence the basis of her entire opinion." The court concluded Hollis's finding was "seriously flawed," explaining:

> "The shareholders of [Joliet Oncology] believe there is no enterprise goodwill as evidenced by the fact that they entered into an agreement with [Presence] *** whereby the name of the hospital is on their building, not [the name of Joliet Oncology]. *** The

> [Professional Services] Agreement provides in paragraph 3.10 that all signage will ensure that patients will know that they are entering a department of [Presence], they are not entering a [Joliet Oncology] facility. The purpose of the agreement was to receive more client referrals, and those referrals are from [Presence], not from the name of [Joliet Oncology] which is no longer on their building. Therefore, there is no enterprise goodwill with [Joliet Oncology], patients are not going to [Joliet Oncology] because of its name (which, if true, would indicate enterprise goodwill)."

Finally, the court noted that the fact that the Professional Services Agreement between Joliet Oncology and Presence had yet to be renewed "may impact [respondent's] future earnings." Ultimately, the court's division of the marital estate provided petitioner with assets valued at $1,604,404 and respondent with assets valued at $1,878,910.

¶ 30 The court found that an award of maintenance was appropriate after considering the guidelines in section 5/504(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/504(a) (West 2016)). In formulating the maintenance award, the court determined that the statutory guidelines set forth in the Act did not apply because the parties' combined income exceeded $250,000. See 750 ILCS 5/504(a), (b-1)(1)(A) (West 2016). As discussed further below, the court awarded petitioner permanent maintenance of $12,000 per month effective March 1, 2017. In addition, the court ordered respondent to pay "33% of the income he receives from [Joliet Oncology] that exceeds $442,000, but not beyond $540,000 of total income from [Joliet Oncology], as additional maintenance." The court stated that the limit of $540,000 represented the average of respondent's income from Joliet Oncology since 2010. This appeal ensued.

¶ 31 II. ANALYSIS

¶ 32 On appeal, petitioner raises two issues. First, she contends that the trial court erred in its division of the marital estate, in particular as it relates to the valuation of respondent's equity interest in his professional practice. Second, she challenges the maintenance award set by the trial court. We address each contention in turn.

¶ 33 A. Valuation of Respondent's Equity Interest in Medical Practice

¶ 34 Petitioner first challenges the trial court's property division. Specifically, petitioner asserts that the trial court erred in valuing respondent's 11.11% equity interest in Joliet Oncology based on the buy-out formula testified to by Sidhu instead of on the income approach utilized by Hollis. According to petitioner this error in valuation resulted in a "grossly disproportionate" division of the marital property in this case.

¶ 35 Section 503(d) of the Act (750 ILCS 5/503(d) (West 2016)) provides that the trial court "shall divide the marital property *** in just proportions considering all relevant factors." Thus, in apportioning marital assets under section 503(d), the court must first establish the value of the property. *In re Marriage of Cutler*, 334 Ill. App. 3d 731, 736 (2002); *In re Marriage of Grunsten*, 304 Ill. App. 3d 12, 16-17 (1999). To properly do so, the court must have before it competent evidence of value. *In re Marriage of Stone*, 155 Ill. App. 3d 62, 70 (1987). It is the obligation of the parties in a dissolution proceeding to present sufficient evidence as to the value of the marital assets. *In re Marriage of Liszka*, 2016 IL App (3d) 150238, ¶ 40. Valuation of marital property is a question of fact. *In re Marriage of Brill*, 2017 IL App (2d) 160604, ¶ 56. It is within the province of the trier of fact to assess the credibility of the witnesses, assign weight to the evidence, and resolve conflicts in the evidence (see *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641 (1997); *In re Marriage of Gunn*, 233 Ill. App. 3d 165, 183 (1992); *In re*

Marriage of Weinberg, 125 Ill. App. 3d 904, 909-10 (1984)), and a valuation within the range of competent evidence presented at trial will ordinarily not be disturbed on review (*In re Marriage of Schlichting*, 2014 IL App (2d) 140158, ¶ 74; *Weinberg*, 125 Ill. App. 3d at 910). We review the trial court's findings of fact under the manifest-weight-of-the-evidence standard. *In re Marriage of Abrell*, 236 Ill. 2d 249, 273 (2010). A decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *In re Marriage of Johnson*, 2014 IL App (5th) 140479, ¶ 75.

¶ 36 In this case, we cannot say that the trial court's valuation of respondent's interest in Joliet Oncology was against the manifest weight of the evidence. The trial court was presented with conflicting testimony regarding the value of respondent's interest in Joliet Oncology. Sidhu, Joliet Oncology's practice administrator, testified that under the buy-out formula, the value of respondent's stock in the medical practice was $47,888. Hollis, petitioner's expert witnesses, employed the income approach and valued respondent's interest in the medical practice at $460,000. Ultimately, the trial court valued respondent's interest in Joliet Oncology at $47,888, reasoning that if respondent "sold his stock he would have to sell it to [Joliet Oncology] pursuant to the terms of the [Stock Agreement], and he would receive today $47,888." This amount, which equals the amount testified to by Sidhu, fell within the range of competent evidence presented at trial.

¶ 37 The court acknowledged Hollis's $460,000 valuation of respondent's interest in Joliet Oncology, but determined that her analysis was flawed for several reasons. Initially, the court found that Hollis's appraisal of respondent's interest in Joliet Oncology was without regard to the restrictions imposed by the Stock Agreement. The court explained that Hollis "intentionally ignored the fact that the 'sale' of the shares is restricted to [Joliet Oncology], and that there is a

set method for determining the price *** by an arms-length transaction between the shareholders" so that "if [respondent] sold his stock he would have to sell it to [Joliet Oncology] pursuant to the terms of the [Stock Agreement]." The court further observed that Hollis "did not believe her opinion would be impacted by the fact that a shareholder has to be invited to become a shareholder, and that they have to be a medical doctor, both of which drastically limit[] the size of potential shareholders." The evidence of record supports the trial court's findings. Significantly, Hollis admitted that, for purposes of her report, she did not take into consideration any restrictions in the Stock Agreement. The trial court found this improper, concluding that the restrictions "seriously impact[] the marketability of the shares."

¶ 38 The court also observed that Hollis's finding that Joliet Oncology had enterprise goodwill "in essence formed the basis of her entire opinion." However, the court found Hollis's finding was "seriously flawed." The court observed that not even the shareholders of Joliet Oncology believed that there was enterprise goodwill "as evidenced by the fact that they entered into [the Professional Services Agreement] with [Presence]." The court noted that pursuant to the terms of the Professional Services Agreement, Presence's name is on Joliet Oncology's building, thereby ensuring that "patients will know that they are entering a department of [Presence]," not Joliet Oncology. Further, the court determined that patients do not go to Joliet Oncology because of its name. Rather, they seek treatment at Joliet Oncology because of its affiliation with Presence pursuant to the Professional Services Agreement, the purpose of which was to boost referrals to the practice. Again, there was evidence to supports these findings, particularly the terms of the Professional Services Agreement and Sidhu's testimony regarding the impact of the Professional Services Agreement on Joliet Oncology's practice.

¶ 39 Based on the trial court's findings that Hollis ignored crucial facts and that her opinion

regarding the existence of enterprise goodwill was "seriously flawed," the trial court determined that Hollis's valuation did not constitute competent evidence of the value of respondent's interest in the professional practice. According deference to the trial court's resolution of the conflict in the valuation testimony, as we must, it was within the discretion of the trial court to disregard Hollis's valuation in favor of a valuation supported by the other evidence presented at trial. As such, we are unable to say that an opposite conclusion is clearly apparent.

¶ 40 Petitioner disputes the trial court's rejection of Hollis's valuation. Petitioner suggests that the trial court should have rejected a valuation based on the buy-out formula and the terms of the Stock Agreement and instead accepted Hollis's valuation testimony because Hollis was the only business valuation "expert" to testify at trial. However, petitioner cites no authority for this proposition. In fact, the case law suggests that a trial court is not required to accept an expert's valuation opinion if it is unsupported by the evidence.

¶ 41 For instance, in *In re Marriage of Bauer*, 138 Ill. App. 3d 379 (1985), the husband's expert valued the husband's business interest at $1000. The wife did not present an expert to testify as to the value of the husband's business. The trial court found the valuation method used by the husband's expert unreasonable in light of the husband's salary, his expense accounts and entertainment costs, and other expenses absorbed by the business. The court valued the husband's business at $66,000, considering factors such as the nature of the business, the history of the business from its inception, the economic outlook and earnings of the business, and the unique nature and value of a personal services business. On appeal, the husband argued that the trial court erred in valuing his business at $66,000 in light of the testimony of his expert and the fact that the wife presented no evidence as to valuation. The *Bauer* court affirmed the trial court's valuation even though it conflicted with the only expert opinion because the valuation

was supported by other evidence of record. *Bauer*, 138 Ill. App. 3d at 386.

¶ 42 In *Cutler*, 334 Ill. App. 3d 731, the husband owned an insurance agency that exclusively sold Geico Insurance under an agency contract with Geico. The evidence established that the agreement with Geico restricted the husband's business in many ways. For example, the husband was limited to selling Geico insurance. Further, the husband could not solicit former customers for up to one year after termination of the agreement. The husband and the wife each presented an expert opinion as to the value of the husband's insurance business. The husband's expert valued the agency at $32,000. The wife's expert valued the agency at $270,000. The trial court valued the agency at $243,000, and the husband appealed. In reversing, the appellate court noted that the wife's expert "valued the business without taking into consideration factors that would significantly affect the sale [of the husband's agency], such as the restrictions in the Geico contract," which "clearly have a significant negative impact on the fair market value of the agency." *Cutler*, 334 Ill. App. 3d at 737. Because the wife's expert failed to take these contractual restrictions into account, the appellate court found that his valuation "was not supported by proper evidence" and rejected it in favor of the valuation of the husband's expert. *Cutler*, 334 Ill. App. 3d at 737-38.

¶ 43 The trial court's valuation in this case is consistent with the rationales set forth in *Bauer* and *Cutler*. As explained above, similar to *Cutler*, the trial court here rejected Hollis's valuation on the basis it was not supported by proper evidence. Moreover, as in *Bauer*, the trial court's valuation, although conflicting with Hollis's valuation opinion, was supported by other evidence of record. For these reasons, we are not persuaded that the trial court was required to accept Hollis's valuation testimony because she was the only business valuation expert to testify at trial.

¶ 44 Petitioner also faults the trial court for rejecting Hollis's opinion that Joliet Oncology

possessed enterprise goodwill. As noted above, the trial court found Hollis's opinion "seriously flawed." According to petitioner, however, Hollis's written report and her testimony support the conclusion that Joliet Oncology has enterprise goodwill which "has a distinct value, separate and apart from the personal efforts of the physician partners." In support of her argument, petitioner cites the eight factors Hollis analyzed in reaching her conclusion that Joliet Oncology possesses enterprise goodwill.

¶ 45 Regarding the first factor, the existence of written contracts between the company and major customers, Hollis cited the Professional Services Agreement between Joliet Oncology and Presence as support for her position. She was unable to identify any other customers that have written contracts with Joliet Oncology, and she acknowledged that she had not seen any written contracts between Joliet Oncology and its patients. The second factor examines the existence of written contracts between the company and major suppliers. Petitioner asserts that during Hollis's in-person visit to Joliet Oncology and her conversations with Sidhu, Hollis "determined that [Joliet Oncology] has contracts for machinery, repairs, prosthetics, and supplies for its boutique." On cross-examination, however, Hollis testified that she had seen only one written contract with a supplier and merely "assum[ed]" that there must be more.

¶ 46 The third factor concerns the existence of written employment and non-compete agreements between the company and key employees. Hollis testified that each partner at Joliet Oncology is subject to an employment agreement that contains a two-year non-competition clause. According to petitioner, by virtue of this non-competition clause, "the physician's personal goodwill is transferred to [Joliet Oncology], the corporation, and becomes an asset of [Joliet Oncology]." However, Hollis admitted that any goodwill possessed by Joliet Oncology was transferred to Presence pursuant to the Professional Services Agreement and no longer

belongs to Joliet Oncology.

¶ 47 Regarding the fourth factor, advantageous locations, Hollis's report states that Joliet Oncology has four locations. The main location is in Joliet and the other locations are in Bourbonnais, Morris, and New Lenox. Hollis testified that the locations "are in very advantageous locations because it [*sic*] serves a population that is lower income to lower middle class, and [Joliet Oncology] provides services that are nationwide known [*sic*] or renowned." Although Sidhu described the New Lenox location as "a freestanding [Joliet Oncology] clinic," Hollis admitted that the main facility in Joliet is identified as a Presence facility and does not bear Joliet Oncology signage. Further, Sidhu testified that Joliet Oncology's office in Morris is a Presence-identified outpatient facility, the Professional Services Agreement lists both the Joliet and Morris locations as "provider-based location[s] of [Presence]," and Hollis's report describes the Bourbonnais location as a "Presence Cancer Center."

¶ 48 Hollis considered the fifth factor (a large business with a formalized organizational structure) and the sixth factor (formalized production methods and business operations) collectively. Hollis opined that Joliet Oncology "is a well run organization with systems and controls in place." Hollis admitted that her information regarding how Joliet Oncology operates came from Sidhu "the guy who runs the well run machine," but added that she also toured Joliet Oncology's facility and "looked through" the practice's financial statements and other unspecified documents. Hollis further represented that she has experience valuing medical facilities and therefore "know[s] a poorly run facility and a well run facility," but admitted that she is "not an expert on how medical facilities are run." Moreover, Hollis admitted that although Joliet Oncology has some input on how things are done, Presence has the final decision making power.

¶ 49 Regarding the seventh factor, Hollis testified that Joliet Oncology is not heavily dependent on the personal services performed by its owners. Although Hollis testified that there are physicians who work at Joliet Oncology who are not owners, respondent disputed this and testified that all of the physicians working at Joliet Oncology are shareholders. The trial court opined, "It seems *** that this practice is heavily dependent upon the owners because they are the doctors." The eighth factor address whether the company's sales result from its name recognition or sales force. Hollis testified that Joliet Oncology does not have a sales force, but their "name recognition definitely brings patients there." Hollis acknowledged, however, that Joliet Oncology's location in Joliet, which used to bear the Joliet Oncology name, is now identified as a Presence facility.

¶ 50 As the foregoing evidence shows, the evidence upon which Hollis relied in finding that Joliet Oncology possessed enterprise goodwill was not definitive. Hollis identified Presence as Joliet Oncology's only "major customer." She had seen only one written contract with a supplier and merely "assum[ed]" that there were additional contracts. Hollis asserted that Joliet Oncology provides services that are known nationwide and that its name recognition brings patients to its practice, yet its facilities now identified by the Presence name. Hollis testified that Joliet Oncology's facilities are well run, but acknowledged that Presence has the final decision-making power regarding these practices. Further, Hollis's testimony that Joliet Oncology is not heavily dependent on the personal services performed by its owners is not grounded in the evidence that most (if not all) of the physicians working at Joliet Oncology are shareholders. Thus, at best, the evidence cited by Hollis in support of these factors, and, in turn, her finding that Joliet Oncology possessed enterprise goodwill was, tenuous. Given this conflicting evidence, we cannot say that the trial court erred in concluding that Hollis's finding that Joliet

Oncology possessed enterprise goodwill was "seriously flawed."

¶ 51 More significantly, even if we were to accept Hollis's testimony that these factors establish that Joliet Oncology possessed enterprise goodwill, her conclusion was contradicted by her admission that Presence has "cannibalized" or "consumed" Joliet Oncology's goodwill, at least for the term of the Professional Services Agreement. In this regard, Hollis acknowledged that under the Professional Services Agreement, Presence controls several aspects of Joliet Oncology's business, including billing, quality control, approval of doctors, and approval of services. She also agreed that Presence owns the receivables for the patients it refers to Joliet Oncology, Joliet Oncology is subject to a noncompetition agreement with Presence, all final decisions relating to Joliet Oncology rest with Presence, Joliet Oncology cannot enter into any kind of similar agreement with any other hospital as long as they are a party to the Professional Services Agreement with Presence, and Presence's name is on Joliet Oncology's practice sites. Hollis's admission that Joliet Oncology's enterprise goodwill was "consumed" by Presence while the Professional Services Agreement was in place (which it was at the time of trial) provides an independent reason to reject Hollis's valuation, especially given her testimony that the valuation represented "all enterprise goodwill."

¶ 52 Next, petitioner argues that the terms of a buy-sell agreement, such as the Stock Agreement and buy-out formula, were not binding on the trial court. Petitioner cites no evidence that the trial court felt that it was bound by the terms of these documents. Moreover, even if these documents were not binding on the trial court, it does not mean that the court could not consider them in valuing respondent's interest in Joliet Oncology. In fact, the cases petitioner cites confirm that a trial court has discretion to consider the terms of a buy-sell agreement in valuing a business. See *In re Marriage of Claydon*, 306 Ill. App. 3d 895, 898-901 (1999)

(affirming trial court's valuation of the husband's business based on terms of buy-sell agreement); *Gunn*, 233 Ill. App. 3d at 182 (noting that a trial court is not required to use a buy-sell agreement in valuing marital property); *In re Marriage of Olsher*, 78 Ill. App. 3d 627, 636 (1979) (finding that value of stock in 1975 under terms of buy-sell agreement was not indicative of the stock's value at time of dissolution in 1978 where the buy-sell agreement required yearly redetermination of stock's value but redetermination was never calculated). The remaining cases petitioner cites are from other jurisdictions, and therefore not binding on this court. *Kostal v. Pinkus Dermatopathology Laboratory, P.C.*, 357 Ill. App. 3d 381, 395 (2005). Nevertheless, none of those cases prohibit a trial court from considering the terms of a buy-sell agreement in valuing an individual's business interest. See, *e.g.*, *Wood v. Wood*, 361 S.W.3d 36, 39 (Mo. Ct. App. 2012) (rejecting valuation based on buy-sell agreement in part because it was based on stale information); *Von Hohn v. Von Hohn*, 260 S.W.3d 631, 640 (Tex. Ct. App. 2008) (holding that trial court did not err in determining that the proper measure of the husband's value in law firm could include methods other than those set forth in the partnership agreement); *Barton v. Barton*, 639 N.E. 2d 481, 482 (Ga. 2007) (holding that trial court is not bound by value set forth in buy-sell agreement, but may consider it in valuing shareholder's interest in closely-held corporation); *Cole v. Cole*, 110 S.W.3d 310, 314 (Ark. Ct. App. 2003) (stating that the value established in a buy-sell agreement is not binding, but is considered with other factors in valuing the interest of a shareholder); *Douglas v. Douglas*, 281 A.D.2d 709, 711 (N.Y. App. Div. 2001) (finding that utilization of a death benefit provision in a partnership agreement is an acceptable method of valuation, but the valuation "must be founded in economic reality"). In this case, the trial court considered the relevant evidence presented before it, including that presented by Sidhu and Hollis. As noted above, the court rejected Hollis's analysis for various reasons and adopted a

valuation based on the buy-out agreement. Nothing in the cases cited by petitioner prohibited the trial court from doing so.

¶ 53 Petitioner also complains that when respondent completed a financial statement in March 2014, he identified the value of his interest in Joliet Oncology at $400,000. According to petitioner, the trial court failed to consider that respondent himself placed a value of $400,000 on his financial affidavit. However, as petitioner readily observes, respondent called into question his estimate by placing a question mark next to the cited value. Moreover, even if respondent opined that his interest in Joliet Oncology was worth $400,000 in 2014, the trial court could have reasonably determined that it was worth a different amount at the time of dissolution.

¶ 54 Petitioner also points out that respondent paid more than $1.2 million for his interest in Joliet Oncology in 2009. She asserts that a buy-out price of less than $50,000 represents only about four percent of the buy-in amount and therefore "makes no sense." The buy-in amount, however, is only evidence of the value of respondent's interest in Joliet Oncology in 2009, not at the time of the judgment of dissolution. Moreover, as Sidhu testified, the calculations of the buy-in amount and the buy-out amount are comprised of different components. Whereas the buy-in amount includes goodwill, the buy-out amount does not. We also observe that in 2011 Joliet Oncology entered into a Professional Services Agreement with Presence. Under this arrangement, Joliet Oncology sold its drug inventory to Presence. Drug inventory is one part of the post-tax component used to calculate the buy-out value of a partner's stock. Thus, when Joliet Oncology sold its drug inventory to Presence, it lost a significant component of its stock value. In light of these differences, we cannot say that the difference in valuation between when respondent bought into the practice in 2009 and the time of the judgment of dissolution was unreasonable.

¶ 55 Petitioner asserts that even if Hollis's methodology and analysis were not convincing, then the value of respondent's interest in Joliet Oncology must be based on a "purchase price" formula set forth in the Stock Agreement. Petitioner calculates this amount as $339,563. In support of her arguments, petitioner references a spreadsheet that she attached to her closing argument in the trial court. However, this theory was not fully developed at trial. Although some evidence was presented as to each of the elements upon which this calculation is based and the actual calculation is set forth in petitioner's closing argument, petitioner does not direct us to any testimony or evidence presented at trial supporting this alternative calculation represented the value of respondent's interest in Joliet Oncology. See *In re Marriage of Moll*, 232 Ill. App. 3d 746, 752 (1992) ("We will not reverse and remand an order of distribution when a party had ample opportunity to present evidence of value and failed to do so."); *In re Marriage of Benz*, 165 Ill. App. 3d 273, 285 (1988) (noting that "[i]t is the obligation of the parties to provide sufficient information to the trial court in marital property valuation matters" and that "[p]arties should not benefit on review from a failure to introduce evidence at the trial level").

¶ 56 Alternatively, petitioner contends that Sidhu miscalculated the value of respondent's interest in Joliet Oncology under the buy-out formula. According to petitioner's calculation, the value of respondent's interest in Joliet Oncology under the buy-out formula is $363,213. However, petitioner's calculation includes accounts receivable. Sidhu testified that accounts receivable is an element of respondent's severance pay under his Employment Agreement, not an element of the value of his stock. There was no evidence of respondent's termination from Joliet Oncology. As such, severance pay is not relevant to the value of respondent's interest in the medical practice. Excluding accounts receivable ($315,290) from petitioner's calculation leaves just inventory and fixed assets and yields a value for respondent's stock at $47,956, which is

nearly identical to the $47,888 value calculated by Sidhu and the trial court.

¶ 57 In short, the trial court was presented with conflicting evidence regarding the value of respondent's interest in Joliet Oncology. The court ultimately valued respondent's interest in the medical practice at $47,888, based on the buy-out formula testified to by Sidhu. The trial court rejected Hollis's valuation opinion, finding that she ignored crucial facts and that her opinion regarding the existence of enterprise goodwill was "seriously flawed." Given these findings and in light of the fact that the trial court's valuation of respondent's interest in Joliet Oncology fell within the range of competent evidence presented at trial, we cannot say that a conclusion opposite that of the trial court is clearly apparent.

¶ 58 B. Maintenance

¶ 59 Petitioner next challenges the trial court's maintenance award. Maintenance is designed to allow the recipient spouse to maintain the standard of living enjoyed during the marriage. *Johnson*, 2016 IL App (5th) 140479, ¶ 93; *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 24. A trial court is afforded discretion to determine the propriety, amount, and duration of a maintenance award. *In re Marriage of Cole*, 2016 IL App (5th) 150224, ¶ 10. As such, the trial court's maintenance determination will not be disturbed on appeal absent an abuse of that discretion. *Cole*, 2016 IL App (5th) 150224, ¶ 10. An abuse of discretion occurs only where the court's ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the court. *Johnson*, 2016 IL App (5th) 140479, ¶ 93. The party seeking reversal of a maintenance award bears the burden of showing the trial court abused its discretion. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010).

¶ 60 The trial court determined maintenance was appropriate in this case after considering the relevant factors in section 504(a) of the Act (750 ILCS 5/504(a) (West 2016)). Among other

things, the court noted that respondent had an established career as a medical doctor whereas petitioner devoted her time and efforts to raising the parties' children and did not participate in the work force for many years of the marriage. The court further found that petitioner did not suffer from any physical or mental impairment that impacted her ability to earn income. In this regard, the court found that petitioner earned $13,000 in 2013 and that she was "capable of earning that or receiving disability in at least that amount if she applied for disability and is found disabled." The court therefore concluded that given respondent's education and history as a medical doctor, he has a greater earning capacity than petitioner. After determining that the statutory guidelines regarding maintenance were inapplicable because the parties' combined income exceeded $250,000 (see 750 ILCS 5/504(b-1)(1) (West 2016)), the trial court awarded petitioner permanent maintenance of $12,000 per month, which represents approximately 33% of respondent's annual base salary of $442,000 as set forth in his November 2016 financial affidavit. In addition, the court ordered respondent to pay to petitioner as additional maintenance "33% of the income he receives from [Joliet Oncology] that exceeds $442,000, but not beyond $540,000 of total income from [Joliet Oncology]." The court stated that the cap of $540,000 represented respondent's average wages received by respondent from Joliet Oncology between 2010 and 2015. Petitioner now challenges the award of maintenance on various grounds.

¶ 61 Initially, petitioner suggests that the trial court erred by placing a cap on respondent's maintenance obligation. We recently addressed a similar issue in *Micheli*, 2014 IL App (2d) 121245. In *Micheli*, the trial court ordered the respondent to pay the petitioner maintenance of $3,700 per month plus 20% of the respondent's future bonuses. On appeal, the respondent did not challenge the fixed award of maintenance, but argued that the trial court erred in including an uncapped amount based on a percentage of his future bonuses. We agreed. *Micheli*, 2014 IL

App (2d) 121245, ¶ 25. Observing that "maintenance is designed to allow the recipient spouse to maintain the standard of living enjoyed during the marriage," we held that the uncapped maintenance award constituted an abuse of discretion because it set up a "potential windfall" for the petitioner and bore "no evidentiary relation to her present needs or the parties' standard of living during the marriage." *Micheli,* 2014 IL App (2d) 121245, ¶¶ 24-26.

¶ 62 In this case, petitioner, citing her financial affidavit, indicates that her "after-tax needs" are $16,820 per month. However, she does not direct us to any evidence of record that these monthly expenses are consistent with the parties' standard of living *during* the marriage. To the contrary, we find the capped maintenance award more appropriately reflects petitioner's lifestyle during the marriage. As the trial court stated in the judgment of dissolution, the parties' standard of living during the marriage was "comfortable and commensurate with [the parties'] income." The parties did not live beyond their income, had little debt, and were able to accumulate a sizeable marital estate. The trial court observed, however, that since the parties' separation in 2012, petitioner's spending "may have been extravagant" and included "an active shopping life" with multiple vacations. It was petitioner's burden to show that the trial court abused its discretion in capping the maintenance award. *Nord,* 402 Ill. App. 3d at 292. Petitioner failed to meet this burden by directing us to evidence that the capped maintenance award was inconsistent with the standard of living enjoyed *during* the marriage. As such, we find the trial court did not abuse its discretion by placing a cap on the additional maintenance petitioner was awarded.

¶ 63 Petitioner next contends that to the extent that it was appropriate to cap respondent's maintenance obligation, it was improper for the trial court to base the cap on an average of respondent's earnings over the six-year period from 2010 to 2015. Petitioner concedes that income-averaging is an "approved method" of determining a party's income when the party's

income fluctuates from year to year. However, she contends that the trial court should have considered only the most recent four years of respondent's income (2012-2015) instead of the most recent six years.

¶ 64 It is well settled that if the payor spouse's income varies from year to year, the trial court may average the payor spouse's income over several years in determining his or her support obligation. *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1025 (2003); *In re Marriage of Freesen*, 275 Ill. App. 3d 97, 103 (1995); *In re Marriage of Carpel*, 232 Ill. App. 3d 806, 819 (1992). Income averaging may be used in any case where it is appropriate, and there does not need to be an extreme fluctuation before averaging may be utilized. *Garrett*, 336 Ill. App. 3d at 1025; *Freesen*, 275 Ill. App. 3d at 103-04. Moreover, as the *Freesen* court explained, the maximum number of years to use when income-averaging is entirely within the discretion of the trial court:

> "[T]here is no iron-clad rule requiring a trial court to consider only the last three years of income in arriving at net income for *** support purposes. At least the three prior years should be used to obtain an accurate income picture. Beyond that, however, it must be left to the discretion of the trial court, as facts will vary in each case." *Freesen*, 275 Ill. App. 3d at 103.

In this case, the record shows that respondent's wages from Joliet Oncology varied significantly from year to year. Respondent's W-2 forms show earnings of $283,650 in 2010, $303,852 in 2011, $760,000 in 2012, $667,988 in 2013, $551,854 in 2014, and $676,998 in 2015. Petitioner suggests that respondent's earnings in 2010 and 2011 are too old to reflect the current circumstances of the parties. However, the trial court could reasonably conclude that respondent's earnings in 2010 and 2011 were relevant to the parties' standard of living during

the marriage because those were the last two full years that the parties lived together. See *Micheli*, 2014 IL App (2d) 121245, ¶ 24 (noting that maintenance is designed to allow the recipient spouse to maintain the standard of living enjoyed during the marriage). Given the foregoing, we cannot say the trial court's decision to average respondent's income over a six-year period constituted an abuse of discretion.

¶ 65 Indeed, although noting that excluding respondent's wages from 2010 and 2011 would significantly increase his average yearly income, petitioner does not cite any cogent reason why the trial court's decision to average respondent's income over a six-year period constituted an abuse of discretion. Instead, she cites to *In re Marriage of Schroeder*, 215 Ill. App. 3d 156, 161 (1991), for the proposition that six-year old income data "cannot reflect the current circumstances of the parties." In *Schroeder* the trial court calculated "net income" for the purpose of ascertaining the respondent's child-support obligation based on the weighted average of his income over a six-year period, using actual income figures for the first five years and a projected income figure for the last year. The *Schroeder* court determined that the trial court's method for calculating net income was improper because the data was too old and the projected income figure was not reliable. *Schroeder*, 215 Ill. App. 3d at 161-62. Accordingly, the *Schroeder* court remanded the matter to the trial court for a redetermination of the respondent's child-support obligation based on the parties' most recent income tax return, which was the "most reliable current income data." *Schroeder*, 215 Ill. App. 3d at 161-62.

¶ 66 Petitioner's reliance on *Schroeder* is misplaced for at least two reasons. First, we observe that cases decided after *Schroeder* have declined to strictly follow it. See, *e.g.*, *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶ 43; *In re Marriage of Elies*, 248 Ill. App. 3d 1052, 1060-61 (1993). More fundamentally, however, petitioner's argument fails to recognize an important

distinction between child support and maintenance. Child support is intended to enable the children to enjoy the standard of living they would have enjoyed if the marriage had not been dissolved. *Micheli*, 2014 IL App (2d) 121245, ¶ 24. Hence, the current circumstances of the parties are relevant in determining a parent's child-support obligation. In contrast, maintenance is designed to allow the recipient spouse to maintain the standard of living enjoyed *during* the marriage. See *Micheli*, 2014 IL App (2d) 121245, ¶ 24. Thus, in calculating a maintenance award, the parties' historical income is relevant as it more accurately reflects the standard of living while the parties were still together.

¶ 67 Petitioner also complains that the trial court erred by excluding from respondent's 2012 income the one-time payment respondent received in connection with the sale of Joliet Oncology's drug inventory. While it is true that one-time payments constitute income for support purposes, the trial court has discretion to determine the effect of non-recurring income on a support calculation. *Mayfield v. Mayfield*, 2013 IL 114655, ¶ 24 (noting that "a one-time payment is income, but its nonrecurring nature may factor into the trial court's decision on how to allocate it"). In this case, the parties reported wages on their 2012 federal tax return in the amount of $1,176,646. Of that amount, $760,000 represented respondent's gross W-2 income and the rest represented respondent's share of a one-time sale of Joliet Oncology's drug inventory to Presence. Respondent testified that he paid "almost $400,000 cash" that year to pay off the buy-in amount for his partnership in Joliet Oncology. The trial court determined that the sale of assets to Presence was a "one-time occurrence" and excluded it from the calculation of respondent's income for the year. In light of the circumstances surrounding this one-time payment, we conclude the trial court's decision was reasonable and its decision to exclude the one-time payment from respondent's income for the year was not an abuse of discretion.

¶ 68 Petitioner next suggests that, in fashioning the maintenance award, the trial court failed to consider her health issues. Petitioner argues that this constituted error, especially since her testimony was unrebutted. Petitioner asserts that the trial court should have awarded her maintenance equal to 50% of respondent's gross income instead of the 33% actually awarded. We disagree. The trial court, who had the opportunity to observe petitioner, expressly found that she "appears in good health," that she does not suffer from any physical or mental impairment that impacts her ability to earn income, and that "[n]either party has special needs that requires extra financial support." In this regard, the court noted that in 2013, petitioner earned $13,000. The court concluded that petitioner is capable of earning that or receiving disability in at least that amount if she applies for disability and is found to be disabled. The court also referenced petitioner's testimony that she "had a myriad of health conditions that supposedly prevent her from working," but noted that there was no professional confirmation of her conditions and that the alleged conditions did not prevent petitioner "from having an active shopping life and taking vacations since the parties separated in 2012." Thus, petitioner's argument that the trial court failed to consider her medical issues in fashioning the maintenance award finds no support in the record.

¶ 69 Further, petitioner cites no authority for the suggestion that, because her testimony was unrebutted, the trial court was required to accept it. To the contrary, case law suggests the opposite. See, *e.g.*, *Kraft Foods, Inc. v. Illinois Property Tax Appeal Board*, 2013 IL App (2d) 121031, ¶ 58 (rejecting proposition that a trier of fact must accept certain testimony because it is unrebutted since doing so would remove some of the discretion from the trier of fact as to how much weight should be afforded various evidence); *Franciscan Communities, Inc. v. Hamer*, 2012 IL App (2d) 110431, ¶ 47 (noting that the trier of fact is free to disbelieve any witness). In

any event, the record contradicts petitioner's claim that her testimony regarding the degree of her health conditions was unrebutted. The record reflects that despite her claims of illness, petitioner never submitted a claim for disability benefits. Moreover, petitioner's own testimony demonstrates that she maintains a very active lifestyle, engaging in various activities, including working out at the gym, shopping, dining out, attending church functions, participating in a book club, taking piano and photography lessons, tutoring, and going on vacations. In fact, detailed calendars were admitted into evidence demonstrating the frequency of petitioner's shopping, dining out, and travel. As our supreme court has stated, "[a] reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight given to the evidence, or the inferences to be drawn." *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006). Based on this record, the trial court could have reasonably rejected petitioner's claim regarding the extent of her health conditions, even if, as petitioner claims, her testimony was unrebutted. In short, it is clear that the trial court considered, but ultimately rejected, petitioner's trial testimony regarding the extent of her health conditions and her need for more maintenance.

¶ 70 Finally, petitioner asserts that, as part of the maintenance award, she should also receive 50% of respondent's severance pay if and when his employment with Joliet Oncology ends. We note, however, that there was no evidence that the termination of respondent's employment with Joliet Oncology is imminent. Accordingly, any reference to severance pay is speculative.

¶ 71 III. CONCLUSION

¶ 72 For the reasons set forth above, we affirm the judgment of the circuit court of Du Page County.

¶ 73 Affirmed.