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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
MONICA CHIRILA,)	of Du Page County.
)	
Petitioner-Appellee,)	
)	
and)	No. 15-D-1214
)	
CONSTANTIN CHIRILA,)	Honorable
)	Robert E. Douglas,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in granting Monica’s motion to reconsider because it was an error of law or an abuse of discretion to consider the parties’ incomes for only one year under the circumstances of this case. Therefore, the trial court’s original decision to award Constantin maintenance should stand. Although the trial court could consider Monica’s housing expenses in determining the amount of maintenance because the parties agreed that she would reside in the marital home for the benefit of the parties’ children, the trial court erred in subtracting \$78,000 in housing expenses from her income, as she would have significant housing expenses even absent the agreement. We found no error in the trial court’s allocation of marital property or its award of attorney fees to Monica. Therefore, we affirmed in part, reversed in part, and remanded.

¶ 2 The marriage of respondent, Constantin Chirila, and petitioner, Monica Chirila, was dissolved on May 8, 2017. Constantin appeals from the dissolution judgment and the trial court's grant of Monica's motion to reconsider, arguing that the trial court: (1) erred in denying him maintenance; (2) failed to properly allocate marital property; and (3) erred in awarding Monica attorney fees. We affirm in part, reverse in part, and remand the cause.

¶ 3 I. BACKGROUND

¶ 4 The parties were married in 1991. They had two children: E.C., born in February 2003, and N.C., born in December 2004. Monica filed a petition for dissolution of marriage on June 8, 2015. On May 23, 2016, the parties entered into a parenting agreement in which they agreed to equally split parenting time with the children. They further agreed that it was in the children's best interests to continue residing in the marital residence until N.C. graduated from high school. They agreed that Monica would remain in the marital residence during that time and not sell the house absent extenuating circumstances or agreement by the parties. Constantin was to vacate the dwelling by September 3, 2016.

¶ 5 On January 9, 2017, Monica filed a motion *in limine* to bar evidence related to maintenance. She argued that Constantin's response to her petition for dissolution made no reference to maintenance, nor did he file a counter-petition for dissolution. She argued that the first indication that he was requesting maintenance came in his pre-trial memorandum.

¶ 6 The following day, Constantin filed a motion for leave to file an amended response to the dissolution petition, with the amended response including a request for maintenance. On January 11, 2017, he filed a response to Monica's motion *in limine*, arguing that the motion was untimely and that the issue of the allocation of marital funds, including for his living expenses, had been before the court since August 2016. Constantin attached an affidavit from his former attorney

stating that she had informed opposing counsel in several instances that Constantin was seeking maintenance.

¶ 7 A trial took place on various subsequent dates in January 2017. At the beginning of the proceedings, the trial court denied the motion *in limine* insofar as it sought to bar Constantin from seeking maintenance, and it gave him leave to amend his pleadings to include a request for maintenance. However, it ruled that Constantin could not claim dissipation because he never filed an intent to do so, as required by the Code of Civil Procedure. It later allowed Constantin to make an offer of proof on the dissipation issue.

¶ 8 The parties stipulated to the following. There were irreconcilable difference between them, and they had lived separate and apart for over six months. Monica had the following wages: 2012 (\$247,385.68); 2013 (\$253,514.42); 2014 (\$260,553); 2015 (\$206,044); and 2016 (\$180,000). Constantin earned the following wages: 2012 (\$95,616.32); 2013 (\$98,484.40); 2014 (\$102,866); 2015 (\$105,243), and 2016 (\$117,000). The fair market value of the marital home was \$998,000, and it was encumbered by a remaining mortgage of \$380,074 and a home equity line of credit of \$282,036. They had a 2008 Porsche Cayenne worth \$15,316 and a 2009 Infiniti worth \$16,111. They had a joint stock account with a value of \$24,749. Constantin had a checking account with \$6,956; a savings account with \$5,000; a brokerage account with \$29,192; a dependent care account with \$5,000; a health savings account with \$17,094; and retirement assets worth \$569,807. Constantin also had a credit card with a balance of \$2,443.71. Monica had a checking account with \$7,161; a savings account with \$16,753; an interest in Du Page Medical Group worth \$11,000; a 401(k) worth \$730,465; and an IRA worth \$46,892. She also had college accounts for their children worth \$25,000 each. Monica had credit cards with balances totaling \$12,322.

¶ 9 Monica testified as follows. She was 49 years old and employed as a family practice physician with Du Page Medical Group. She had been working there for over 14 years. Her base salary was \$150,000, which she set each prior year based on an estimation of her own productivity, which included patient visits and various other factors. If she did not reach her estimated productivity, she would have to pay back the deficit. If she exceeded her estimated productivity, she had the option of taking out the additional money or rolling it over to the next year.

¶ 10 Monica received a one-time bonus of \$500,000 in 2015. After taxes were withheld by her employer, she received \$329,500. She put the money in her savings account. From the bonus money, she paid about \$56,000 towards the parties' joint taxes and put \$25,000 for each child into college accounts. She sent \$10,000 to her parents to repay a loan that they had given the couple to help with house improvements three years before. The trial court previously ordered that \$30,000 be distributed to each party from that account. She later withdrew \$12,000 for attorney fees. Also, Monica periodically transferred money from her savings account to her checking account. As of December 13, 2016, she had \$60,622 left in her savings account. The parties stipulated that the account had \$16,753 on January 9, 2017.

¶ 11 Monica's 2016 wages were lower than in previous years. She testified that she was working the same number of hours, but did "not know the exact answer" of why her wages were lower because there were "many factors that come into place [*sic*] and many other aspects of medicine and reimbursement that changed."

¶ 12 Monica was currently living in the marital residence. She had monthly expenses of \$1,800 for the mortgage; \$2,518 for the home equity line of credit; and \$2,138 for real estate taxes. Her total monthly expenses for the home were about \$8,600. Monica additionally paid

for lawn care, pest control, and a house cleaning service. She spent about \$1,000 per month for the children's activities, which included private music lessons and tennis lessons. Her total monthly living expenses were about \$14,900, and she was using money from her savings account to cover the expenses.

¶ 13 Monica went on about two vacations per year with family, and she sometimes combined them with medical conferences for work. In 2014, the family went to Europe for two weeks, and Constantin and the children went to Romania for an additional week. In 2015, the family went to Aruba and Colorado, spending a total of between \$9,000 and \$13,000. When the parties were married, they went out to eat as a couple less than once per month.

¶ 14 Constantin testified as follows. He was 49 years old and employed as a senior engineer at Exelon, where he had been working for 18 years. Constantin's base salary was about \$98,000, and in 2016 he earned about \$117,000, with the difference attributed to bonus and overtime, which were not guaranteed.

¶ 15 For the period of 2013 to 2015, he and Monica went out to dinner one to two times per month and to the movies at least once a month. The family had a tradition of going to the Hyatt in Oak Brook for the Easter buffet. In 2013, the family went to Turks and Caicos for about 10 days, and they went to Door County for a long weekend. In 2014, they went to Punta Cana for one week and to Europe for three weeks, as well as Door County for four days. In 2015, prior to the filing of the petition for dissolution, the family went to Aruba and Colorado for one week each. Constantin paid monthly dues of \$204 to the Wheaton Sports Center, where the parties' children played tennis.

¶ 16 Currently, Constantin was living in a two-bedroom, 900-square-foot apartment. When the children were with him, they shared one bedroom. He planned to buy a house in the

children's school district that had three bedrooms and at least two bathrooms. Under the parties' parenting agreement, they spent equal time with the children.

¶ 17 The trial court issued a letter opinion on March 5, 2017. The trial court found the following property to be marital property and distributed it in the ensuing manner. It awarded the marital home to Monica, ordering that she pay Constantin \$167,945, representing 50% of the equity in the home. It also awarded her the \$11,000 equity interest that she had in Du Page Medical Group, directing her to pay Constantine \$5,500 for his share. The parties were solely responsible for their credit card debt, though they were equally responsible for the Costco credit card balance as of January 12, 2017. They were entitled to the checking and savings accounts in their individual names and were to equally divide joint accounts. Regarding retirement accounts, Monica was to pay Constantin \$103,776 to equalize the value, and Monica was entitled to 50% of Constantin's pension. Constantin was awarded the entirety of his health savings and flexible spending accounts. Because they could not agree on a distribution of their vehicles, they were to be sold with the proceeds equally divided.

¶ 18 The trial court had heard testimony regarding the parties' lifestyle while married and their needs. "[O]n balance the Parties were neither frugal nor extravagant. They led a comfortable above average lifestyle." The trial court averaged the stipulated salaries of the parties over the previous five years and found that Monica's average annual income was \$230,000 and that Constantin's average annual income was \$104,000. The parties were therefore over the threshold for statutory guideline maintenance. The trial court also took into account that the parties' agreement required Monica to remain in the marital residence until the younger child emancipated. This required a mandatory annual expenditure on Monica's part of \$78,000. After subtracting this amount, the parties had salaries of \$152,000 and \$104,000 respectively.

¶ 19 The trial court awarded maintenance from Monica to Constantin in the amount of \$2,066 per month for 70 months, commencing March 15, 2017. “This provide[d] for an approximate equalization of the parties’ gross income.” Monica was to additionally pay 20% of any income she received over \$230,000 up to \$265,000, which was approximately the highest income she received during the marriage. The maintenance was taxable to Constantin and deductible to Monica.

¶ 20 On the issue of attorney fees, the trial court found that:

“during the course of the litigation *** Constantin undertook actions for the purpose of causing unnecessary delay. He brought emergency motions that were deemed not be emergencies, and he interfered with the Court appointed GAL causing additional Court appearances. *** In this case Monica has requested \$35,000.00 toward attorney fees. The Court finds this is not reasonable but instead awards the amount of \$10,000.00 from Constantin to Monica as 508(b) fees.”

The trial court found that given its property distribution and award of maintenance, each party was able to pay the remainder of his/her own attorney fees.

¶ 21 Based upon the equal allocation of parenting time and expenses, and the trial court’s consideration of the equalization of income through maintenance and other factors, it reserved the issue of child support for future consideration. The trial court entered the judgment for dissolution of marriage on May 8, 2017.

¶ 22 Monica filed a motion to reconsider on June 7, 2017, contesting the provisions requiring that she pay maintenance. She argued that the trial court: (1) improperly awarded maintenance to Constantin in an amount that exceeded 40% of the parties’ combined gross income; and (2) improperly imputed income to her and improperly averaged the parties’ income. We summarize

her second argument. The trial court found that her average gross income over the past five years was \$230,000, but her actual stipulated income in the year of the divorce, which was 2016, was \$180,000, and her income in 2015 was \$206,044. Additionally, the parties agreed that Monica would maintain the marital home for the benefit of the children, which the trial court correctly recognized resulted in an annual cost of \$78,000 to her. The trial court should have started with her current income of \$180,000 and reduced that by \$78,000 to arrive at an actual income of \$102,000. Instead, the trial court essentially imputed income to Monica without the factual findings necessary to do so. Conversely, the trial court averaged Constantin's income, which resulted in a lower income finding to him than his most recent income of \$117,000. After receiving maintenance awarded by the trial court, Constantin would have an income of about \$141,792, whereas after paying maintenance and housing costs, Monica would have an income of only about \$77,208.

¶ 23 Monica continued as follows. “Neither the case law nor Section 750 ILCS 5/504 contemplate[d] the type of income averaging performed by this Court in this case.” In *In re Marriage of Schroeder*, 215 Ill. App. 3d 156, 161 (1991), which dealt with a child support provision in which courts have even more discretion than in maintenance awards, the appellate court did not believe that income averaging of six years prior was appropriate. It stated that six-year old data could not reflect the parties' current circumstances. According to Monica, “[t]here [was] no case law or statutory authority that allow[ed] this Court to income average in the manner that it did when the parties' actual incomes were readily available, testified to, and stipulated to.”

¶ 24 The trial court granted Monica's motion to reconsider on August 2, 2017, stating:

“[T]he basis for a motion to reconsider is the inappropriate application of the law.

And after having reviewed the case law provided as part of the motion to reconsider, the Court believes that it erred in averaging the income of the parties. The Court should have taken the actual income of the parties and used that in its maintenance calculation.

The Court found that if it takes \$180,000 and \$117,000, the resultant 40 percent cap, I think, on that one was \$107 -- \$107,000 is 40 percent.

Even if the Court were to use the \$230,000, after it subtracts the amount from Mrs. Chirila's -- 78,000 from Mrs. Chirila's income, it's still over the 40 percent cap using Mr. Chirila's stipulated income. The parties did stipulate to the incomes.

As a result the Court feels that it erred in its calculation. Redoing the calculation *** it finds that the combined incomes, 40 percent is over the current income of Mr. Chirila.

Therefore, *** the judgment order is amended to reflect that both parties are barred from maintenance. The rest of the order will stand.”

¶ 25 In its written order, the trial court stated:

“This court finds that it erred in averaging the income of the parties and should have taken actual income as stipulated to at the time of trial. Therefore, the Court finds that an award of maintenance will exceed the 40% cap of the combined income of the parties and therefore maintenance is not appropriate. The Court's ruling and the Judgment shall be modified so that both parties shall be barred from maintenance now and in the future.”

¶ 26

II. ANALYSIS

¶ 27

A. Maintenance

¶ 28 Constantin first argues that the trial court erred in denying him maintenance. Specifically, he argues that the trial court: (1) erred on reconsideration by using only the last year of the parties' stipulated income, as opposed to looking at the parties' pattern of stipulated earnings over the past several years; (2) need not have applied the statutory 40% cap because the parties' combined incomes always exceeded \$250,000; and (3) had no grounds to deduct the cost of maintaining the former marital residence from Monica's income.

¶ 29 The issues raised in Constantin's arguments involve the application of numerous standards of review. An award of maintenance is within the trial court's discretion, and we will not disturb an award absent an abuse of that discretion. *In re Marriage of Juiris*, 2018 IL App (1st) 170545, ¶ 23. An abuse of discretion occurs if the trial court's determination was arbitrary, fanciful, or unreasonable. *In re Marriage of Bernay*, 2017 IL App (2d) 160583, ¶ 13. However, if the issue on appeal is one of statutory construction, our review is *de novo*. *In re Marriage of Juiris*, 2018 IL App (1st) 170545, ¶ 23. Similarly, we review questions of law *de novo*. *In re Marriage of Haleas*, 2017 IL App (2d) 160799, ¶ 22. If a party challenges a trial court's factual findings regarding maintenance, we will not reverse the findings unless they are against the manifest weight of the evidence, which occurs where the opposite conclusion is clearly evidence or the findings are unreasonable, arbitrary, and not based on any of the evidence. *In re Marriage of Brill*, 2017 IL App (2d) 160604, ¶ 30. We review a trial court's ruling on a motion to reconsider for an abuse of discretion (*In re Miroslava P.*, 2016 IL App (2d) 141022, ¶ 7), though we will review its ruling *de novo* if it is based on the application of existing law (*In re Marriage of Watkins*, 2017 IL App (3d) 160645, ¶ 32).

¶ 30 Under Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/504(a) (West 2016)), the trial court "may grant a maintenance

award for either spouse in amounts and for periods of time as the court deems just ***.” In determining whether maintenance is appropriate, the trial court is to consider the following factors: the parties’ incomes and property, and financial obligations resulting from the marriage dissolution; the parties’ needs; the parties’ present and future earning capacities; any impairment in earning capacity for the party seeking maintenance due to devoting time to domestic duties or delaying or foregoing education or career opportunities due to the marriage; the time the party seeking maintenance needs to obtain appropriate education or employment, and whether that party is able to support himself or herself through employment; the standard of living established during the marriage; the marriage’s duration; the parties’ ages, physical conditions, skills, assets, and liabilities; the parties’ sources of income; the tax consequences of the property division; the contributions and services the party seeking maintenance made to the education or career of the other spouse; any valid agreement of the parties; and any other factor the court expressly finds to be just and equitable. 750 ILCS 5/504(a) (West 2016). No single statutory factor is determinative. *In re Marriage of Price*, 2013 IL App (4th) 120155, ¶ 29.

¶ 31 If the trial court determines that maintenance is appropriate, section 504(b-1) of the Dissolution Act (750 ILCS 5/504(b-1) (West 2016)) governs the amount and duration of the award. As applicable here, if the parties’ combined gross income was less than \$250,000, and the payor had no child support or maintenance obligations from a prior relationship, the amount of maintenance was to be calculated by taking 30% of the payor’s gross income minus 20% of the payee’s gross income. 750 ILCS 5/504(b-1)(1) (West 2016).¹ However, the payee’s gross income plus maintenance could not exceed 40% of the combined gross income of the parties.

¹ These provisions were subsequently amended to situations where the parties’ combined gross income is less than \$500,000. See P.A. 100-520, § 15 (eff. Jan. 1, 2018).

750 ILCS 5/504(b-1)(1)(A) (West 2016). If the parties' combined gross income was \$250,000 or more, or if the trial court found that applying the guidelines would not be appropriate, it was to consider the factors set forth in section 504(a). See 750 ILCS 5/504(b-1) (West 2016).

¶ 32

1. Constantin's Arguments

¶ 33 In maintaining that the trial court erred in granting Monica's motion to reconsider and considering the parties' earnings from only the previous year, Constantin argues as follows. Monica's salary went down appreciably once she filed for dissolution in June 2015. Specifically, it went from a range of \$247,000 to \$260,000 during 2012 to 2014 to \$206,000 in 2015, and down further to \$180,000 in 2016. Monica testified that she set her base salary at \$150,000 and that her earnings were tied to her own productivity. She also testified that she could choose to roll over excess money to the following year. The trial court originally averaged the parties' income and determined that Monica earned \$152,000 and that Constantin earned \$104,000. In arriving at these figures, the trial court erroneously excluded Monica's \$500,000 bonus, which would bring her income for that year to over \$700,000, and erroneously reduced her income by \$78,000 for housing expenses. Even then, it awarded Constantin maintenance of \$2,066 per month for 70 months. In granting Monica's motion to reconsider, the trial court barred maintenance, declaring that it could utilize only the parties' incomes for 2016 and that the statutory 40% cap applied.

¶ 34 Constantin argues that *In re Marriage of Schroeder*, 215 Ill. App. 3d 156, which Monica cited and which the trial court also apparently relied on in reconsideration, is an outlier. In that case, which involved child support, the trial court averaged six years' of business profit to determine net income. *Id.* at 159. The appellate court reversed, stating that it was "apparent [that] data six years old [could not] reflect the current circumstances of the parties." *Id.* at 161.

It stated that it would be appropriate to consider prior years' income when future income was uncertain based on a "definitive pattern of economic reversals," which were not present in the case before it. *Id.*

¶ 35 Constantin cites *In re Marriage of Elies*, 248 Ill. App. 3d 1052 (1993). There, the trial court averaged three years of the husband's income to determine maintenance and child support, which the husband subsequently contended was error under *In re Marriage of Schroeder*. *Id.* at 1060. The appellate court disagreed, stating that the trial court used data that extended back only three years; there was no dispute as to the reliability of the data; and the husband's income fluctuated based on the profitability of the family business and his father's decisions regarding his income. *Id.* at 1060-61. The court stated that under the circumstances, the averaging method used by the trial court was a reasonable means to determine the husband's income. *Id.* at 1061. The court "decline[d] to follow the rigid approach to income averaging expressed by the court in *Schroeder*, which would permit income averaging only when a 'definitive pattern of economic reversals' over several years [was] shown." *Id.*

¶ 36 Constantin further cites *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶ 43 (following *In re Marriage of Elies* and finding that the trial court did not err in using income averaging to determine available income for maintenance); *In re Marriage of Freesen*, 275 Ill. App. 3d 97, 104 (1995) (income averaging may be used in any case where appropriate, such as where income fluctuates, and the trial court erred in limiting its consideration to one year of income); *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1025 (2003) (where income fluctuates from year to year, income averaging is an approved method to determine current net income for child support, and there need not be wild fluctuation before averaging is applied); and *In re Marriage of Nelson*, 297 Ill. App. 3d 651, 655 (1998) (citing *In re Marriage of Elies* and *In re*

Marriage of Freesen in holding that where the husband's income fluctuated based on the profitability of the farming industry, it was appropriate for the trial court to average his income over three years to determine child support).

¶ 37 Constantin argues that *In re Marriage of Schroeder* is also otherwise distinguishable because it involved net income and child support as opposed to gross income and maintenance, and because here the parties expressly stipulated to their income for the prior five years, thereby also stipulating to its inherent reliability. Constantin also argues that *In re Marriage of Schroeder* stated that income averaging is appropriate where there is a pattern of economic reversals, and here Monica's income decreased significantly after she petitioned for divorce. Constantin argues that because Monica controlled her income based on her own productivity, she inferentially set her own downturn.

¶ 38 Constantin additionally argues that the trial court incorrectly employed the 40% statutory cap to bar maintenance altogether upon reconsideration. Constantin points out that in its initial ruling, the trial court found that the parties' combined incomes put them over the \$250,000 threshold for statutory guideline maintenance. Constantin argues that even considering just their 2016 earnings, their combined gross incomes still exceeded \$250,000, leaving the 40% cap inapplicable.

¶ 39 Last, Constantin contends that in determining Monica's gross income, the trial court had no basis to deduct the expenses of the former marital residence. He argues that gross income means income from all sources (see 750 ILCS 5/505(a) (West 2016)), without any discount for household expenses. Constantin argues that although the parties agreed that Monica would stay in the marital residence until their younger daughter emancipated, they never agreed that the residential expenses would be excluded from her income. Constantin argues that Monica

received the benefit of staying in the residence while he had to find and pay for his own housing. Constantin maintains that if the trial court wanted to make some concession for marital residence expenses in crafting the maintenance obligation, it could have done so outside of reducing Monica's gross income.

¶ 40

2. Monica's Response

¶ 41 Monica responds as follows. Contrary to Constantin's argument, the trial court did not determine that it could not look at the parties' stipulated incomes over several years, but simply chose to accept their current incomes instead of averaging their incomes. Additionally, the parties stipulated to only their incomes, not the method by which the trial court should determine maintenance. The parties' stipulations to income also means that Constantin cannot now argue that Monica could defer her income by rolling it into the following year. See *In re Marriage of Tantiwongse*, 371 Ill. App. 3d 1161, 1163 (2007) ("A court will not relieve parties from a stipulation in the absence of a clear showing that the matter stipulated to is untrue, and then only when an objections is seasonably made."). During trial, Monica objected to questions about her income, and the trial court sustained the objections. Even without the stipulations, the trial court's findings based on her testimony were not against the manifest weight of the evidence.

¶ 42 Monica continues that the trial court did not err in denying Constantin maintenance. She notes that maintenance is designed to allow the recipient spouse to maintain the standard of living enjoyed during the marriage (see *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 24), and she argues that if a spouse is able to maintain such a standard without maintenance, it should be denied. She argues that maintenance may also be denied if the spouse has sufficient property to provide for himself, is able to support himself through appropriate employment, or otherwise has sufficient income. Monica argues that Constantin is in good health, earned a gross

income of \$117,000 in 2016, and listed in his financial affidavit a net income of \$6,718 per month with household and transportation expenses of less than \$4,000 per month. She argues that although he listed another \$4,000 per month for other personal and children's expenses, they included significant sums for discretionary items. She argues that Constantin also received assets totaling more than \$1 million, so even without the 40% statutory cap, the trial court would have been justified in denying him maintenance. According to Monica, because we may affirm the trial court's judgment on any basis in the record (see *In re Marriage of Heroy*, 2017 IL 120205, ¶ 24), we should affirm here because it was not an abuse of discretion to deny Constantin maintenance.

¶ 43 Monica argues that although Constantin pits various cases against *In re Marriage of Schroeder*, they can be reconciled by the fact that, in each one, the courts simply chose the method of calculating income they deemed most reliable. Monica contends that this type of discretion was illustrated in *In re Marriage of Evanoff*, 2016 IL App (1st) 150017. There, the husband argued that the trial court abused its discretion in failing to take into account the prior three years of the wife's income. *Id.* ¶ 29. The appellate court disagreed, stating that income averaging is within the trial court's discretion and that the parties stipulated to the wife's income. *Id.* ¶¶ 28-29. Monica argues that, similarly, Constantin cannot dispute her 2016 income because he stipulated to the same. She argues that although he disputes the trial court's decision to use only the 2016 income instead of averaging the last several years, the trial court deemed her 2016 income to be more reliable, stating that "the Court believes that it erred in averaging the income of the parties. The Court should have taken the actual income of the parties and used that in its maintenance calculation." Monica maintains that we should reject Constantin's argument because the trial court's ruling was not an abuse of discretion.

¶ 44 Monica maintains that the trial court was correct in reconsidering its initial maintenance award based on the points she raised in her motion to reconsider, which argued that the trial court had originally essentially imputed income to her, and that its award ultimately gave Constantin an income of about \$141,792, compared to her income of about \$77,208 after maintenance and housing costs. See *supra* ¶ 22. She argues that the trial court was correct not to ignore the 40% statutory cap because the parties' combined gross incomes were a mere \$6,000 over the \$250,000 guideline, and disregarding it would ignore the spirit of the law, especially considering that the statute was subsequently amended to apply to combined gross incomes of \$500,000 per year.

¶ 45 Monica further argues that Constantin forfeited his argument as to her 2015 bonus income because it was not included in the trial stipulations or in Constantin's written closing argument's maintenance calculations. Monica argues that, even otherwise, the trial court had the discretion to determine the effect of non-recurring income on a support obligation. She argues that the trial court was well-aware of her 2015 bonus income, and by excluding it for maintenance purposes, it implicitly found it to be non-recurring income.

¶ 46 Finally, Monica argues that the trial court properly deducted expenses for the marital residence from her income because the parties' agreement that she remain in the residence required mandatory expenditures. She argues that while she testified that the mortgage, home equity line of credit, insurance, and taxes totaled about \$6,500 per month (\$78,000 per year), her financial affidavit and testimony indicated that her total household expenses were actually \$8,600 per month (\$103,200 per year), so the trial court could have reduced her annual income by \$25,000 more than it did.

¶ 47

3. Our Resolution

¶ 48 We must first determine whether the trial court, in granting Monica’s motion to reconsider, believed that it was required to use the parties’ 2016 income, as Constantin posits, or if it made a discretionary determination and found that the parties’ current incomes were more indicative of their actual incomes than averaging their historical incomes, as Monica asserts.

¶ 49 In Monica’s motion to reconsider, she argued that “[n]either the case law nor Section 750 ILCS 5/504 contemplate[d] the type of income averaging performed by this Court in this case.” She relied on *In re Marriage of Schroeder*, 215 Ill. App. 3d at 156, which held that averaging income over a period of six years was not appropriate and could not reflect the parties’ current circumstances. Monica stated that “[t]here [was] no case law or statutory authority that *allow[ed]* this Court to income average in the manner that it did when the parties’ actual incomes were readily available, testified to, and stipulated to.” (Emphasis added.) At the hearing on the motion to reconsider, the trial court stated that “the basis for a motion to reconsider is the inappropriate application of the law” and that “after having reviewed the case law provided as part of the motion to reconsider, the Court believes that it erred in averaging the income of the parties.” The trial court stated that it “should have taken the actual income of the parties and used that in its maintenance calculation.” Its written order similarly stated that it found that “that it erred in averaging the income of the parties and should have taken actual income as stipulated to at the time of trial.”

¶ 50 Thus, the record shows that Monica argued in her motion that the trial court was not permitted to average their incomes over six years, and she cited caselaw holding that averaging parties’ income over six years was not reflective of their current circumstances. The trial court stated that after reviewing the caselaw provided, which presumably meant *In re Marriage of*

Schroeder, it had “erred” in averaging the parties’ income. Accordingly, we conclude that the trial court believed that it had made an error of law in its initial judgment.

¶ 51 As stated, we review a trial court’s ruling on a motion to reconsider *de novo* if it is based on the application of existing law (*In re Marriage of Watkins*, 2017 IL App (3d) 160645, ¶ 32), so we apply *de novo* review to the question of whether the trial court was allowed to average the parties’ income. As Constantin points out, cases decided after *In re Marriage of Schroeder* have “decline[d] to follow the rigid approach to income averaging expressed” in that case. *In re Marriage of Elies*, 248 Ill. App. 3d at 1061; see also *In re Marriage of S.D.*, 2012 IL App (1st) 101876, ¶ 43 (following *In re Marriage of Elies*); *In re Marriage of Nelson*, 297 Ill. App. 3d at 655 (same). Additionally, *In re Marriage of Schroeder* dealt with child support rather than maintenance. This distinction is important because maintenance is designed to allow the recipient spouse to maintain the standard of living present during the marriage, where child support is designed to allow children to enjoy the standard of living that would have been present had the marriage not been dissolved. *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 24. Accordingly, historical income is relevant to reflecting the parties’ standard of living during the marriage, whereas current circumstances are emphasized in determining child support obligations.

¶ 52 Therefore, even if, *arguendo*, the trial court believed that it was acting in its discretion when granting the motion to reconsider, it abused its discretion in failing to average Monica’s income. In addition to the significance of historical income in general when determining maintenance, here the parties expressly stipulated to five years’ of income, thereby recognizing its accuracy and relevance. Moreover, Monica’s income changed significantly, increasing to a high of \$260,553 in 2014 and then decreasing to \$206,044 in 2015, which was the year that she

filed for divorce, and decreasing further to \$180,000 the following year. This is especially significant because Monica testified that her income was based on her own productivity, and she did not provide a cogent reason for the decline. For these reasons, the trial court had no basis to alter its original findings that Monica's average annual income was \$230,000, and that Constantin's average annual income was \$104,000. The parties' combined incomes were therefore well over the \$250,000 limit for which the 40% statutory cap was applicable (see *supra* ¶ 30).²

¶ 53 In urging affirmance of the trial court's ruling, Monica argues that we can simply affirm on the basis that it would have been in the trial court's discretion to deny Constantin maintenance. However, we have determined that the trial court should not have deviated from its initial income averaging, for which it previously determined that maintenance was warranted.

¶ 54 We next examine Constantin's argument that the trial court should have considered Monica \$500,000 bonus from 2015 as part of her income for maintenance purposes. We decline to find the issue forfeited, as Constantin discussed the bonus both at trial and in his written closing arguments. However, we conclude that it was not against the manifest weight of the evidence or otherwise error for the trial court to not consider the bonus part of Monica's 2015 income. We agree with Monica that because Constantin stipulated to her 2015 wages, he should not now be able to claim that she earned additional money that year. See *In re Commitment of Walker*, 2014 IL App (2d) 130372, ¶ 36 (stipulations will be enforced unless unreasonable, procured by fraud, or violative of public policy). Additionally, Monica testified that it was a

² Even if we subtracted \$78,000 from Monica's income for housing expenses, as the trial court did, the parties' combined income would be \$276,000, which is still over the \$250,000 limit. We address the issue of housing expenses later in the disposition.

one-time bonus, and there was no evidence that she had received another bonus either before or after 2015. The trial court had the discretion to determine how to treat such non-recurring income (see *In re Marriage of Rogers*, 213 Ill. 2d 129, 139 (2004) (“the non-recurring nature of an income stream is not irrelevant,” and the trial court may consider this in determining whether to deviate from child support guidelines)), so it was not required to include it as part of Monica’s 2015 income.

¶ 55 We now examine whether the trial court erred in subtracting from Monica’s gross income of \$230,000 the \$78,000 she spent annually on the marital residence for the mortgage, home equity line of credit, insurance, and taxes. We note that because the parties’ combined income exceeded the maximum for statutory guideline maintenance, the trial court was to consider the same factors used to determine whether maintenance is warranted, rather than plugging the parties’ incomes into the statutory formula, in setting maintenance. See *supra* ¶¶ 29-30. As the trial court’s weighing of these factors was necessarily discretionary, we review this issue for an abuse of discretion. One of the factors the trial court was to consider was the “income and property of each party, including *** financial obligations imposed on the parties as a result of the dissolution of marriage.” 750 ILCS 5/504(a) (West 2016). Accordingly, it was proper for the trial court to consider that as a result of the parties’ agreement, Monica would remain in the marital residence until their younger child emancipated. However, as Constantin highlights, the parties never agreed that they would split the marital residence’s expenses. Although Monica presumably has higher expenses from continuing to live in the residence, the trial court failed to account for the fact that she would have measurable housing expenses even if she was not living in the marital residence. Accordingly, we conclude that the trial court abused its discretion in how it weighed this factor, and that it should revisit this factor on remand.

¶ 56 In sum, we conclude that the trial court committed an error of law or otherwise abused its discretion in granting Monica's motion to reconsider, because the trial court incorrectly believed that it had erred in averaging the parties' stipulated incomes over a five-year period. As stated, the trial court had no basis to alter its original findings that Monica's average annual income was \$230,000, and that Constantin's average annual income was \$104,000. Therefore, we reverse its grant of the motion to reconsider. Additionally, the trial court abused its discretion in its original judgment in its weighing of Monica's financial obligations as a result of the marriage dissolution, in that it failed to account for the fact that Monica would have had measurable housing expenses even if the parties had not agreed that she would live in the marital residence. We must therefore remand the cause for the trial court to reconsider this factor in setting Constantin's maintenance award.

¶ 57 B. Allocation of Marital Property

¶ 58 Constantin next argues that the trial court failed to properly allocate marital property. He argues that if we affirm the trial court's decision upon reconsideration to bar maintenance, we should remand the cause so that the marital assets can be distributed in a more equitable manner. As we have reversed the trial court's grant of Monica's motion to reconsider, we need not address this argument.

¶ 59 Constantin argues that, independently, the trial court failed to give consideration to Monica's 2015 \$500,000 bonus as a marital asset. He notes that property is presumed to be marital when either spouse acquires it after the marriage and before the dissolution judgment. 750 ILCS 5/503(b)(1) (West 2016). Constantin points out that at trial, he argued that the funds from the bonus should be added back to the marital property for purposes of being divided. He argues that the trial court's judgment failed to make any recognized distribution of the bonus.

He notes that the judgment provided that each party would keep the accounts in their respective names, which would allow Monica to keep her personal savings account in which she had originally deposited the funds from the 2015 bonus. Constantin argues that he never had access to the funds during the marriage other than the \$30,000 distribution from the account ordered by the trial court, so he should receive an equitable distribution of the money.

¶ 60 Monica argues that Constantin has forfeited his argument because, although there was testimony about the bonus at trial and Constantin referenced the issue in his written closing arguments, he did not request that it be allocated as property. Monica also argues that the trial court barred Constantin from claiming dissipation, so he cannot ask this court to allocate the bonus for the first time on appeal. Monica maintains that even if we were to consider the issue, the trial court was well-aware of the issue and divided the parties' marital property accordingly, and Constantin has not shown that it abused its discretion in doing so.

¶ 61 The trial court is to divide marital property in just proportions after considering all relevant factors. 750 ILCS 5/503(d) (West 2016). We apply an abuse of discretion standard in reviewing the trial court's final property distribution. *In re Marriage of Larocque*, 2018 IL App (2d) 160973, ¶ 66.

¶ 62 We decline to find that Constantin has forfeited his argument about the allocation of the bonus income, because he argued the issue both during the trial and in his written closing argument. However, we conclude that his argument is without merit. At trial, Constantin was barred from claiming that Monica dissipated marital funds because he did not file proper notice (see 750 ILCS 5/503(d)(2) (West 2016) (requiring notice of claim of dissipation)), and he has not challenged this ruling on appeal. Therefore, he has no basis to argue that the money Monica

spent from her bonus should be “added back” to the marital estate in order to provide him with a larger share of marital property.³

¶ 63 As for the savings account into which Monica deposited her bonus, the parties stipulated that the account had \$16,753 on January 9, 2017. Even if those funds were considered marital property, we cannot say that the trial court abused its discretion in awarding that account to Monica, when considering the entire distribution of property. Although Constantin emphasizes that the trial court did not specifically discuss the bonus, a trial court is not required to make specific findings as to the reasons for its decisions. See *In re Marriage of Nord*, 402 Ill. App. 3d 288 (2010). We note that Constantin was awarded the health savings account in his name, which had an approximate balance of about \$17,000, very similar to the balance left in Monica’s savings account. Constantin testified that the account was close to depletion a few years prior, and that he and Monica decided that he should contribute to it on an annual basis. He also testified that the account’s funds transferred year-to-year. Therefore, the money in that account could arguably be considered marital property as well, but the trial court awarded it solely to Constantin. As such, and looking at the distribution of the property as a whole, we cannot say that the trial court abused its discretion in awarding Monica the savings account.

¶ 64

C. Attorney Fees

³ We additionally note that Monica specifically described where \$358,500 of the \$500,000 bonus money went, with \$30,000 of that amount going to Constantin pursuant to a prior court order. See *supra* ¶ 10. She also testified that she was using money from the savings account to cover her monthly living expenses, much of which were for the marital home. The record reflects that Constantin was living in the home until mid-2016, so at least part of the expenditures were benefitting him as well.

¶ 65 Finally, Constantin argues that the trial court erred in awarding Monica attorney fees. In its letter opinion, the trial court stated:

“The Court found during the course of the litigation that Constantin undertook actions for the purpose of causing unnecessary delay. He brought emergency motions that were deemed not to be emergencies, and he interfered with the Court appointed GAL causing additional Court appearances. Under 750 ILCS 508(b) the Court shall award reasonable attorney fees to the opposing party. In this case Monica has requested \$35,000.00 toward attorney fees. The Court finds this is not reasonable but instead awards the amount of \$10,000.00 from Constantin to Monica as 508(b) fees.”

Section 508(b) provides in relevant part:

“If at any time a court finds that a hearing under this Act was precipitated or conducted for any improper purpose, the court shall allocate fees and costs of all parties for the hearing to the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation.” 750 ILCS 5/508(b) (West 2016).

We will not disturb a trial court’s decision to award or deny attorney absent an abuse of discretion. *In re Marriage of Harrison*, 388 Ill. App. 3d 115, 120 (2009).

¶ 66 Constantin argues that the trial court did not offer any details regarding its award of attorney fees and their reasonableness, leaving this court little to review for an abuse of discretion. He argues that the only emergency petition that he filed was on December 28, 2016, for injunctive relief. In the petition, Constantin alleged that he had recently learned of the \$500,000 bonus and the deposit of \$329,500 into Monica’s personal savings account. He

detailed various transfers from the account and requested that she be prevented from removing any more funds absent an agreement of the parties or an order by the court.

¶ 67 On December 29, 2016, the trial court found that there had been numerous withdrawals from the savings account over the past year but that there did not appear to be an emergency circumstance as a result. It set a hearing on the petition for a later date, along with a pretrial hearing. The trial court reserved the issue of attorney fees for either party regarding the petition. It subsequently continued the petition to the trial date.

¶ 68 Constantin argues that “[h]aving just learned of a substantial bonus and withdrawals concerning that bonus amount, [he] legitimately sought to prevent further depletion of that account.” He argues that Monica’s conduct in withdrawing money over the course of the year did not make the situation less of an emergency, and even otherwise, his act of filing the petition did not equate with needless delay and an improper purpose sufficient to award attorney fees. He argues that even if it did, \$10,000 is not a demonstrated reasonable amount, as Monica offered no time sheets in support. As to the GAL, Constantin argues that the trial court made no specific findings.

¶ 69 We conclude that the trial court acted within its discretion in awarding the attorney fees to Monica. First, although Constantin asserts that he can find no record of a fee request from Monica, it is his burden, as the appellant, to provide a sufficient complete record of the trial proceedings to support his claims of error, and we must resolve any doubts arising from the lack of a complete record against him. See *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). We note that there does not appear to be a copy of Monica’s written closing argument in the record, and that may have provided additional details regarding the attorney fee request, including billing statements.

¶ 70 Moreover, the record supports the trial court's award of attorney fees for the reasons stated by the trial court. Contrary to Constantin's argument that he had just learned of the bonus when he filed his emergency petition, the parties' 2015 joint tax return listed total wages of \$797,944, which would have included the bonus income. Even looking at just Constantin's emergency petition, he stated that he "first learned of this account when the Plaintiff produced her Financial Disclosure Statement on March 21, 2016," which was about nine months before he filed the emergency petition. Further, Constantin allegedly sought to prevent Monica from depleting her remaining savings account balance of about \$61,000, but the parties had more than sufficient assets from which the trial court could later reallocate funds if it felt that Monica had improperly spent the money.

¶ 71 Additionally, the record clearly supports attorney fees for Constantin's interference with the guardian *ad litem* (GAL). The trial court appointed a GAL on February 9, 2016. On March 14, 2016, the GAL presented a preliminary report to the court. She stated that the report was based primarily on Monica and the children because Constantin "chose not to participate in the process." On March 30, 2016, the GAL filed an emergency petition for a rule to show cause alleging that, contrary to court orders, Constantin would communicate with Monica only through the children, he was discussing divorce issues with them, and he was coaching them into refusing to vacation with Monica during spring break. The trial court subsequently ordered the children to travel with Monica, though it did not ultimately find Constantin in contempt. On April 15, 2016, Constantin filed a motion to appoint an attorney or child representative for the children, arguing that the GAL's preliminary recommendations were based solely on statements from Monica. Constantin filed this motion even though he himself had chosen not to discuss the case with the GAL. The trial court denied the motion on April 19, 2016.

¶ 72 On May 5, 2016, the GAL filed a petition requesting that a psychiatrist evaluate the children and Constantin regarding the children's best interests. She alleged as follows. She had attempted to interview the parties and their children, but Constantin would not cooperate and discuss issues with her. Further, Constantin's "continual efforts to manipulate the children" by speaking to them about the divorce proceedings, even though prohibited by court order, resulted in the minor children now refusing to speak to the GAL. The GAL believed that Constantin was alienating the children from Monica, and as a result, they refused to speak to the GAL even though Monica had instructed them to do so. The trial court granted the GAL's request for an evaluator on May 9, 2016.

¶ 73 In light of the record, the trial court's decision to award Monica \$10,000 in attorney fees under section 508(b) was not an abuse of discretion.

¶ 74

III. CONCLUSION

¶ 75 For the reasons stated, we affirm the Du Page County circuit court's allocation of property to the parties and its award of attorney fees to Monica; reverse the circuit court's grant of Monica's motion to reconsider; and remand for the circuit court to reconsider maintenance in light of our determination that it did not properly weigh Monica's housing expenses.

¶ 76 Affirmed in part and reversed in part.

¶ 77 Cause remanded.