2018 IL App (2d) 170473-U
Nos. 2-17-0473 & 2-17-0644
Order filed April 13, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF LISA JONES, OF ILLINOIS,	)	Appeal from the Circuit Court of Carroll County.
Petitioner-Appellant,	)	
and	)	No. 13-D-11
MATTHEW JONES,	)	Honorable Kevin J. Ward,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Hudson and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: We deny respondent's motion to strike and dismiss this appeal; petitioner's appeal is not barred by the doctrines of release of errors, estoppel, or ratification. On the merits, the trial court did not err in: (1) classifying respondent's initial shares in his family funeral business as nonmarital; (2) classifying a corporate redemption that resulted in respondent becoming sole shareholder as nonmarital; and (3) dividing the marital estate in near-equal proportions. Affirmed.

¶ 2 Petitioner, Lisa Jones, appeals from the trial court's dissolution of her marriage to respondent, Matthew Jones. She argues that the trial court erred in finding that respondent's family funeral-home business was nonmarital property and erred in dividing the marital estate in near-equal proportions. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties married on July 18, 1992. They had two biological children and adopted three children. Petitioner also had a three-year-old son from a prior marriage. On February 11, 2013, petitioner, age 49, petitioned to dissolve her marriage to respondent, age 48. She alleged that: she was a homemaker and an owner of the Law-Jones Funeral Homes; respondent was an owner/mortician of Law-Jones; and irreconcilable differences had caused the irretrievable breakdown of the marriage. Petitioner sought maintenance and child support.

¶ 5 On April 8, 2013, respondent filed his answer, denying that petitioner was an owner of Law-Jones and asserting that the entity was incorporated as Law-Jones Funeral Homes, Inc., and that petitioner is employed by Law-Jones. He sought joint custody of the parties' minor children, asked that the court enter an order awarding property in lieu of maintenance, and admitted that he is well able to provide support for the children.

¶ 6 In an agreed temporary order entered on August 22, 2014, respondent was directed to pay household and related expenses set out in the June 10, 2014, order and to pay $6,600 in monthly unallocated maintenance and child support. He was also directed to transfer certain social security payments (for one of the children) to petitioner and to pay the parties' two oldest children's college tuition and fees. Further, the parties were directed to divide all future health care expenses for the children for the remainder of the case. In another agreed order, entered on December 17, 2014, the parties agreed that the 18-month limit for allocation of parental responsibilities in Illinois Supreme Court Rule 922 (eff. Mar. 8, 2016) would not apply to this case. A January 26, 2015, agreed order required the parties to participate in mediation, with New Horizon Counseling Center of Freeport appointed as mediator and each party to be responsible for 50% of the costs.

¶ 7 On May 4, 2015, the trial court entered a custody order, awarding the parties joint custody of the children, with petitioner having physical custody, subject to respondent's visitation rights as set forth in their joint parenting agreement, which was incorporated therein. On March 6, 2017, the court approved a parenting plan.

¶ 8 Subsequently, the parties filed a joint exhibit list of over 200 exhibits, respondent filed a list of 80 exhibits, and petitioner filed a witness and exhibit list consisting of more than 100 exhibits.

¶ 9 A. Hearing

¶ 10 1. Petitioner

¶ 11 The hearing commenced on March 6, 2017.[1] Petitioner, age 53, testified that the parties married in 1992 and that they currently have two children who are still minors. Petitioner graduated college in 1985 and has a degree in elementary and early-childhood education. After college, she worked as a teacher, car salesperson, and in real estate.

¶ 12 In 1990 or 1991, petitioner, who was working as a teacher, began dating respondent, who was in mortuary school. In April 4, 1992, the parties became engaged. After they became engaged, they had a joint account and moved in together (in about April or May 1992). At this time, respondent had graduated from mortuary school and became an intern at Law-Jones. The parties were married when he completed his internship (in August).

¶ 13 According to petitioner, prior to the marriage, respondent never stated that he had acquired shares in Law-Jones. They had discussed that the goal was to buy his mother's half of the business, but respondent never told petitioner that he had actually purchased the stock six months before their marriage.

[1] By agreement of the parties, the case was heard in Jo Daviess County.

¶ 14 In 1992, while petitioner dated respondent, 50% of Law-Jones was owned by Marilyn Jones, respondent's mother (who inherited her shares when respondent's father died), and 50% by Michael, respondent's brother. At this time, Law-Jones operated about seven funeral homes, including in Savanna, Thomson, Elizabeth, Hanover, and Sabula.

¶ 15 Law-Jones board of directors' meeting minutes reflected that the sale of 1,000 shares of Law-Jones stock from respondent's mother to respondent was approved on December 30, 1991, at 8 a.m., with the sale to occur on January 1, 1992. The price was to be arrived at by an appraisal by Federated Funeral Directors of America. The document did not indicate a price per share or when or how the price would be paid.

¶ 16 Sometime in 1992, shortly after the parties' marriage, petitioner and respondent had a conversation about respondent becoming a shareholder in Law-Jones. Petitioner recalled a meeting with an accountant, where she learned that she and respondent were going to be half-owners of Law-Jones, with Marilyn selling her interest in the entity and real estate.

¶ 17 Petitioner's exhibit No. 3D consists of a deed, dated January 1, 1992, conveying the Savanna property from Marilyn to Law-Jones. It was notarized on December 4, 1992, and not recorded until March 1993.

¶ 18 Addressing respondent's claim that about $19,000 of Law-Jones stock was paid for *prior* to the parties' marriage, petitioner testified that respondent purchased the shares at the same time the real estate was purchased, *i.e.*, the fall of 1992, about five months *after* their marriage. Petitioner's exhibit No. 40 shows that real estate payments began on January 5, 1992, although the deed was executed in December 1992, five months after the marriage. The real estate was paid for by Law-Jones, but the parties paid for the stock acquired from Marilyn. Since their marriage, every payment for the stock (total price: $328,995.31) has been made from the joint

marital bank account. (Respondent alleges that four payments were made prior to the marriage.) In April 1992, Federated Funeral Directors of America valued the Law-Jones stock at $303.01 per share. Exhibit No. P-40, an amortization schedule for the real estate, reflects that payments began on January 5, 1992, though the deed was signed in December 1992.

¶ 19 According the petitioner, the parties kept a notebook with tabs separating important documents. All documents are still in the notebook, except for the alleged purchase agreement with Marilyn.

¶ 20 Turning to 2004, petitioner testified that Law-Jones' stock was redistributed that year. Several redemption agreements reflect that, at one point, 24% of the entity was owned by partners, 38% by a corporation Michael controlled, and 38% by petitioner and respondent. However, after the redemption, the partners and Michael subsequently sold their shares, and, according to petitioner, respondent and petitioner purchased all of the shares.

¶ 21 Several years after the parties married, petitioner became a full-time homemaker. In petitioner's view, everything the family did together benefited the funeral home because all of Law-Jones' properties are in small communities and they had to have a presence at community functions. Petitioner brought the children to church pancake breakfasts, Christmas events, Elks Club events, etc. She also served on the regional board of education, worked for a domestic violence coalition, served as director of a women's shelter, was involved with an education foundation, and served as education director at her church. Petitioner also started her own business, called Flatboat Pink, selling vintage merchandise. It did not thrive.

¶ 22 Addressing exhibit No. 9A, petitioner testified that the document was a March 3, 2004, mortgage for $775,000, listing Law-Jones as mortgagor and Savanna-Thompson State Bank as the lender. Respondent signed the mortgage as president of Law-Jones, and petitioner signed it

as vice president. Its purpose was to buy the funeral homes from the parties' partners. Petitioner also signed a personal guaranty. At the time, respondent told petitioner that she was half owner of Law-Jones.

¶ 23 From 2005 to 2013, petitioner was on Law-Jones' payroll, but she could not recall ever receiving paychecks and she did not know that she was a W-2 employee. She helped out at Law-Jones as the need arose.

¶ 24 Next, petitioner addressed her health, stating that she had a heart issue about eight years ago where she had an irregular heartbeat and blackouts. She sought medical care and discovered that her blood pressure and heart rate were dangerously low. She was placed in intensive care and subsequently, last March, underwent heart ablation surgery because her heart was operating at 40%. After that, she felt much better, but she still experiences periodic symptoms. Petitioner also has back pain.

¶ 25 Respondent's 2014 W-2 earnings from Law-Jones were $166,158.48, and he earned $14,820.80 that year as the coroner of Carroll County. He also took $340,580 in distributions from Law-Jones that year. Thus, respondent's gross income in 2014 was $536,059.28. Respondent's average gross income for the years 2014 through 2016 was $521,431.17, and his average net income was $324,434.20.

¶ 26 Petitioner believes that she should be awarded maintenance because of her health issues; she was married for 25 years; and, pursuant to the parties' informal agreement, she was a homemaker for 20 to 23 of those years. Petitioner estimated that, if she worked as a substitute teacher, she could earn $80 per day. She cannot maintain the lifestyle that she had during the marriage without maintenance.

¶ 27 2. Tom Howe

¶ 28 Tom Howe, petitioner's real estate appraiser, appraised the marital residence at $270,000.

¶ 29 3. Shannon Shaw

¶ 30 Shannon Shaw, petitioner's business-valuation expert, valued Law-Jones at $3,841,000.

¶ 31 4. Shannon Mayfield

¶ 32 Shannon Mayfield, respondent's business-valuation expert, valued Law-Jones at $1,237,000.

¶ 33 5. Michael Jones

¶ 34 Michael Jones, respondent's brother, testified that he is a pastor at Bethel United Methodist Church in Shannon. In 1987, Michael began working for Law-Jones. He bought into the business and became a partner with his father until his father's death in April of 1989. At that time, Marilyn received his father's shares. Michael then purchased the additional shares he needed to become a 50% partner in the business (not the property). Michael also became coroner of Carroll County in mid-1989 (succeeding his father). Also that year, the business became an S-corporation (on January 1, 1990). In 1990, Law-Jones did not own any real estate.

¶ 35 Respondent was working in sales for another company at this time. Afterwards, he went to mortuary school and completed a one-year apprenticeship with Law-Jones. During his apprenticeship, he married petitioner.

¶ 36 Michael further testified that, on January 1, 1992, respondent purchased the 1,000 shares of Law-Jones that Marilyn owned. He also paid her for her shares of the casket inventory. Marilyn owned real estate that was used by Law-Jones, and it was conveyed back to the business prior to petitioner and respondent's marriage.

¶ 37 In August 2003, Michael left Law-Jones and went to seminary. On March 3, 2004, there was a corporate redemption, where Law-Jones purchased Michael's (and two other shareholders') shares in the business. Afterwards, Michael had no role in Law-Jones.

¶ 38 Next, Michael addressed joint exhibit No. 19, a deed reflecting the conveyance of certain real property to Law-Jones from Michael, his wife, and respondent. The document is dated as of January 1, 1992, and refers to respondent as a married man in the primary recital; it was notarized in December 1992 and refers to respondent as a married man in the notary's certification; and was recorded on March 8, 1993. Michael agreed that the deed refers to respondent as a married man and was notarized after the marriage. This is the only deed that describes respondent as a married man.

¶ 39 He further testified that none of the Law-Jones board meeting minutes reflected that the corporation acquired any real estate from Marilyn in 1992 or that the corporation took on $300,000 debt to acquire the real estate. However, certain documents were recorded in 1993 that reflected the transfer of real estate, which was *after* the parties married.

¶ 40 Respondent purchased his shares before completing his internship and before anyone knew if he would be a licensed mortician. Michael was comfortable with him buying an interest in the business even if he was not a funeral director because it is not very difficult to become a director; "it was just a matter of time" before respondent would obtain his license. Also, the stock certificate was issued to him before anyone knew what he would have to pay for his shares. (The stock valuation was done in April 1992).

¶ 41 6. Marilyn Jones

¶ 42 Marilyn Jones, respondent's and Michael's mother, testified that, in late 1991, she was in town on December 30. Her companion checked his date book for that year and verified this information.

¶ 43 Referencing joint exhibit No. 105, Marilyn testified that she had a contract with respondent for his purchase of her shares in Law-Jones. This is the only document that shows what respondent owes for the stock. She is unsure of the date of the transfer. Currently, respondent is paying Marilyn $2,000 per month on the note. Law-Jones also still owes her money for the real estate.

¶ 44 After she sold her shares to respondent, Marilyn worked at Law-Jones, paying bills, obtaining death certificates, etc.; she did not make big decisions. Some weeks she worked full-time, and other weeks less so. She did not see petitioner at the funeral home other than when they were decorating. Petitioner never worked there on a daily basis.

¶ 45 7. Dennis Green

¶ 46 Dennis Green, a construction contractor, testified about certain work he did at Law-Jones properties over the years.

¶ 47 8. Respondent

¶ 48 Respondent, age 52, testified that he began working at the funeral home at age 14. He began helping in the preparation room at age 15 and 16, including during autopsies, as his father was the county coroner. Respondent attended the University of Illinois, majoring in computer science engineering, and, afterwards, worked for Terradyne as a sales engineer.

¶ 49 After his father died, respondent decided, around Christmas 1989, to join the family business. In 1990 and 1991, respondent, Michael, and other partners purchased real estate

(outside the corporation) and remodeled various properties to be funeral homes. These were opportunities for respondent to "get more skin in the game" that was the family business.

¶ 50 In July 1991, toward the end of mortuary school, respondent met petitioner. They started dating.

¶ 51 Respondent testified that, on January 1, 1992, he became a shareholder in Law-Jones, purchasing 1,000 shares from Marilyn. He identified a stock certificate dated January 5, 1992, that bears his signature, as do the shareholders minutes and the minutes of the annual meeting of the board of directors, both dated January 2, 1992. Respondent stated that all of the documents were signed on the noted date. He also identified a December 31, 1991, appraisal from Federal Funeral Directors that was used to determine the value of the shares respondent purchased from Marilyn. In an April 2, 1992, letter from Federated consists of the final appraisal (as of December 31, 1991), which had to be done after the close of the 1991 books for the business. The purchase price was $328,995.31, which includes 50% of the value of the casket inventory and money respondent has spent renovating an apartment building that he returned to his mother.

¶ 52 Respondent made his first payment on the loan from Marilyn on May 17, 1992, ($15,535.60), with additional payments on June 10, 1992, ($3,455) and July 3, 1992, ($4,000). For 25 years, respondent has continued to make payments on this debt. There have been some months, though, where no payments were made. Through December 31, 2016, respondent has paid Marilyn $674,090.60, of which $490,685.30 has been applied to interest and $184,350.91 to principal. Respondent still owes Marilyn $144,644.40.

¶ 53 As of January 1, 1992, respondent owed his mother $378,771.75 for the real estate that Law-Jones acquired. For 25 years, respondent has paid Marilyn $935,875.63 on that indebtedness. The remaining balance as of December 31, 2016, is $12,185.42.

¶ 54 Respondent has paid for his shares from a marital bank account and the real estate payments have been made from a corporate account.

¶ 55 Petitioner and respondent were engaged on April 4, 1992. Shortly before or after their wedding, which was on July 18, 1992, the parties commingled their finances.

¶ 56 Around 2004, petitioner had very little involvement with the funeral home operations. She was a homemaker. There was a corporate redemption in 2004. The board of directors, on March 3, 2004, approved the redemption agreements. There were three agreements for the three shareholders at that time: John Schultz, William Judd, and Michael. Schultz received $346,950 for his shares and $50,000 under a non-compete agreement; Judd received $84,488 for his shares, plus $15,000 under a non-compete agreement; and Michael was paid $693,000, plus $100,000 under a non-compete agreement. The payments were all financed through a bank loan, except for the non-competes, which were paid to the recipients over a five-year period. None of respondent's personal money was used to pay this debt. For the money that was borrowed to pay for the redemption, respondent signed a $775,000 personal guaranty, along with a note and mortgage. Petitioner also signed a personal guaranty, note, and mortgage. The guarantees are marked as "unsecured."

¶ 57 According to respondent, in 2004, petitioner asked him if she was going to be half-owner of Law-Jones, and respondent told her that she would become the owner if he were to pass away, just as Marilyn had become part owner when respondent's father died. After the redemption, the only shareholder of Law-Jones was respondent, who owned 1,000 shares. The redemption agreements refer to respondent as the "REMAINING SHAREHOLDER."

¶ 58 Respondent further testified that he separated the parties' finances in June 2014.

¶ 59 9. Karen Barraza

¶ 60 Karen Barraza, respondent's real estate expert, valued the parties' marital residence at $382,000.

¶ 61 B. Trial Court's Findings and Subsequent Proceedings

¶ 62 On April 25, 2017, the trial court entered its dissolution judgment. In an extensive written order, the court found, as relevant here, that: (1) respondent acquired his interest in Law-Jones before the marriage and, therefore, it is nonmarital property; (2) the marital estate should be reimbursed by respondent's nonmarital estate in the amount of $652,045.61 for payments made from his income during the marriage for his share of acquisition of stock from Marilyn and half of that amount be awarded to petitioner; (3) Law-Jones is assigned to respondent as nonmarital property valued at $3,841,000; (4) the parties' marital property be divided 50.39% to petitioner ($864,821.85) and 49.61% ($851,197) to respondent; (5) petitioner should be awarded $9,000 per month in permanent maintenance and $4,020.94 in monthly child support. In determining that respondent's interest in Law-Jones is nonmarital property, the court specifically found that respondent's, Michael's, and Marilyn's testimony was consistent and credible that, in early 1992, Marilyn and respondent entered into an oral agreement, whereby Marilyn would convey all of her shares to respondent, effective January 1, 1992, in exchange for his promise to pay her fair market value.

¶ 63 On May 18, 2017, petitioner moved to reconsider, arguing that the court's division of the marital property was inequitable and challenging its finding that Law-Jones was nonmarital property. On May 19, 2017, respondent moved to reconsider, asking that the court clarify certain aspects of its ruling. On May 25, 2017, the trial court denied petitioner's motion, and, on June 1, 2017, the court entered an order requiring respondent to pay 50% of petitioner's attorney fees

and costs, totaling $38,326. Petitioner filed a notice of appeal from the April 25, 2017, judgment and the order denying her motion to reconsider (appeal No. 2-17-0473).

¶ 64 On July 19, 2017, the trial court entered an order, amending the dissolution judgment. The court changed the value of the marital estate from $1,716,018.85 to $1,711,135.87. Petitioner's share of the marital estate changed from $864,821.85 to $862,380.36, and respondent's share changed from $851,197 to $848,755.51. Petitioner filed a second notice of appeal, challenging the July 19, 2017, order, the order denying her motion to reconsider, and the dissolution judgment (appeal No. 2-17-0644).

¶ 65 II. ANALYSIS

¶ 66 A. Motion Taken with the Case

¶ 67 On December 1, 2017, respondent moved to strike and dismiss this appeal,[2] and, on December 14, 2017, this court ordered that the motion and petitioner's response be taken with the case. In his motion, respondent asserts that, under the doctrines of release of errors, estoppel, and ratification, petitioner should be precluded from attacking the dissolution judgment.

¶ 68 Under the release-of-errors doctrine, a party to a divorce decree cannot accept those portions of the decree that are beneficial to him or her and later prosecute an appeal to reverse those portions of the decree that are unfavorable to him or her, where to do so would place the opposing party at a distinct disadvantage upon a reversal of the decree. *In re Marriage of Hobbs*, 110 Ill. App. 3d 451, 453 (1982). The existence of a distinct disadvantage is the critical inquiry, and the movant bears the burden of showing its existence. *In re Marriage of Petramale*, 102 Ill. App. 3d 1049, 1054 (1981). The release-of-errors doctrine does not apply, however, where an

[2] Although this case was assigned two appellate case numbers, for simplicity, we refer to the appeal in the singular.

appellant accepts a share of the proceeds of jointly-owned property because, in such a case, the appellant is merely exchanging interests. *Id.* Also, "where the trial court can accommodate the interests of the appellee in distributing marital property, it has been held that the appellant's action in cashing a bond did not disadvantage the opposing party so as to justify invoking the release[-]of[-]errors doctrine." *Id.*

¶ 69 Estoppel and ratification are somewhat similar concepts. As to estoppel, "in dissolution proceedings, a party who accepts the benefits of a divorce decree may be estopped from later challenging the order even if the challenge involves a claim that the order is void because the trial court lacked subject matter jurisdiction to enter it." *In re Marriage of Chrobak*, 349 Ill. App. 3d 894, 898-99 (2004) (further noting that estoppel rule is a combination of estoppel and ratification). "[T]he law in Illinois has prohibited a party from accepting a decree for a money judgment and then seeking to reverse that judgment." *Id.* at 899. See also *Boylan v. Boylan*, 349 Ill. 471, 473 (1932) ("The rule of law is well established that a party to a decree cannot avail himself of those parts of the decree which are beneficial to him and afterward prosecute a writ of error to reverse the part of the decree which is unfavorable to him."). Because the three concepts are similar, we address respondent's arguments in the context of release of errors.

¶ 70 Respondent notes that, to satisfy the $326,022.81 monetary judgment awarded in petitioner's favor, he took out a $250,824 loan, upon which he pays interest and which included $824 in fees, and took a distribution from Law-Jones (in the form of cashing in a life-insurance policy, which resulted in a taxable gain of $39,370.30). He further asserts that, at the time the judgment was entered, he had few liquid assets: a checking account with $4,883 and a Fidelity money market account with $2,226. Respondent notes that petitioner accepted and deposited the check he tendered to satisfy the money judgment and that he has complied with other aspects of

the judgment that concerned the division of the marital assets. He argues that petitioner received significant benefits from the judgment and that he would be distinctly disadvantaged if this court reverses the judgment. He asserts that, had petitioner not accepted the money judgment, the loan and cashing in of the policy would not have been required. Respondent also argues that it is impossible to be placed in the status quo upon reversal because of petitioner's actions in accepting the benefits of the judgment and respondent's reliance on petitioner's actions. He points to certain property that petitioner has sold that was awarded to her in the judgment and argues that a reversal would prejudice his rights in that (sold) property. Respondent also points to the fact that petitioner has encumbered the former marital home with a new mortgage, voluntarily accepted title to vehicles, and signed quitclaim deeds to two of respondent's properties. Thus, he contends, petitioner has accepted portions of the judgment that are favorable to her and should not now be permitted to challenge parts of the decree that are unfavorable to her. We find respondent's arguments unavailing.

¶ 71 In *In re Marriage of Kusper*, 195 Ill. App. 3d 494 (1990), the wife was awarded ½ of the marital estate, some nonmarital assets, and maintenance for 3 years. On appeal, she challenged the amount of the maintenance award, an evidentiary ruling, and an order directing her to pay ½ of her attorney fees. The husband argued on appeal that the wife had forfeited her right to prosecute her appeal because she accepted the benefits of the property-settlement portion of the judgment. Specifically, he asserted that, because the financial elements of the judgment were so "intimately connected," any change in maintenance would affect the property award, with which he had substantially complied. *Id.* at 500-01. The reviewing court rejected this argument, noting that: (1) the wife's appeal concerned maintenance and attorney fees; (2) she did not dispute the property settlement; (3) in awarding property, the trial court had relied on the husband's proposal

for an equitable division; and (4) the husband had not cross-appealed. *Id.* The court explained that, because neither party argued that the wife receive less than the property amount awarded to her, the husband could not be disadvantaged by allowing the wife to prosecute her appeal. *Id.* at 501.

¶ 72 We find *Kusper* sufficiently instructive here. As in that case, respondent has not cross-appealed and, therefore, no party argues that petitioner should receive *less* than what the trial court awarded to her. Petitioner challenges the classification of Law-Jones as nonmarital property, and she claims that the division of marital assets was inequitable. As to the latter, the marital assets were, inherently, jointly owned, and the release-of-errors doctrine does not apply to such property. *Petramale*, 102 Ill. App. 3d at 1054; see also *Pearson v. Pearson*, 42 Ill. App. 3d 522, 525 (1976) (the nonmovant "received nothing under the decree which he did not already have"). As to Law-Jones, petitioner's argument on appeal is that it is marital property. She is not precluded from raising this argument. First, respondent cannot claim surprise that petitioner raised this issue. She argued it in her motion to reconsider. Respondent could have sought relief in the trial court, during the pendency of this appeal, from satisfaction of a portion of the judgment until this court resolved the issue, but he did not do so. Second, respondent chose the manner in which he raised funds to satisfy the money judgment. He cannot complain on appeal that he would be unable to undo or recoup costs associated with his chosen manner of financing. Third, respondent cites no case law sufficiently similar to this case.

¶ 73 We also reject respondent's argument that petitioner's acceptance of maintenance benefits and child support, along with certain actions concerning real and personal property (*e.g.*, obtaining a mortgage on the former marital home, selling certain personal property, etc.) constitute a release of errors. Respondent has not filed a cross appeal and, therefore, these

payments and transfers will not be changed, regardless of the outcome of the issues on appeal. Respondent cannot argue that he has suffered a distinct disadvantage as a result of petitioner's action concerning these payments and transfers.

¶ 74 In summary, we deny respondent's motion.

¶ 75 B. Classification of Law-Jones as Respondent's Nonmarital Property

¶ 76 Turning to the merits, petitioner argues first that the trial court erred in classifying Law-Jones as respondent's nonmarital property. Specifically, she contends that: (1) respondent's acquisition of his initial 1,000 shares from Marilyn was marital property; and (2) the 2004 redemption, which resulted in respondent becoming sole shareholder of Law-Jones, was marital property. For the following reasons, we reject petitioner's arguments.

¶ 77 Before a court may distribute property upon the dissolution of a marriage, the court must first classify the property as either marital or nonmarital. *In re Marriage of Henke*, 313 Ill. App. 3d 159, 166 (2000). A court's classification of property will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 76. The reason for this deferential standard of review is that the characterization of assets typically depends upon weighing witness credibility. *In re Marriage of Joynt*, 375 Ill. App. 3d 817, 819 (2007). A decision is against the manifest weight of the evidence when the court's findings appear to be unreasonable, arbitrary, or not based upon the evidence. See *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 181-82 (2002).

¶ 78 1. Shares Acquired from Marilyn

¶ 79 Petitioner argues first that the trial court erred in finding that respondent's 1,000 shares of Law-Jones that he acquired from Marilyn constituted nonmarital property. For the following reasons, we find no error in the trial court's classification.

¶ 80 All property of the parties to a marriage belongs to one of three estates: (1) the husband's estate; (2) the wife's estate; or (3) the marital estate. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 641-42 (1993). Property brought by each spouse to the marriage belongs to him or her. *Id.* at 642. Further, section 503(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503 (West 2016)) establishes a rebuttable presumption that "all property acquired by either spouse subsequent to the marriage" is marital property, and a party can overcome this presumption only by a showing of clear and convincing evidence that the property falls within one of the nine exceptions listed in section 503(a). 750 ILCS 5/503(b)(1) (West 2016); *In re Marriage of Dann*, 2012 IL App (2d) 100343, ¶ 63. The exceptions are:

> "(1) property acquired by gift, legacy or descent or property acquired in exchange for such property;
>
> (2) property acquired in exchange for property acquired before the marriage;
>
> (3) property acquired by a spouse after a judgment of legal separation;
>
> (4) property excluded by valid agreement of the parties, including a premarital agreement or a postnuptial agreement;
>
> (5) any judgment or property obtained by judgment awarded to a spouse from the other spouse except, however, when a spouse is required to sue the other spouse in order to obtain insurance coverage or otherwise recover from a third party and the recovery is directly related to amounts advanced by the marital estate, the judgment shall be considered marital property;
>
> (6) *property acquired before the marriage*, except as it relates to retirement plans that may have both marital and non-marital characteristics;

> (6.5) all property acquired by a spouse by the sole use of non-marital property as collateral for a loan that then is used to acquire property during the marriage; to the extent that the marital estate repays any portion of the loan, it shall be considered a contribution from the marital estate to the non-marital estate subject to reimbursement;
>
> (7) the increase in value of non-marital property, irrespective of whether the increase results from a contribution of marital property, non-marital property, the personal effort of a spouse, or otherwise, subject to the right of reimbursement provided in subsection (c) of this Section; and
>
> (8) income from property acquired by a method listed in paragraphs (1) through (7) of this subsection if the income is not attributable to the personal effort of a spouse.
>
> Property acquired prior to a marriage that would otherwise be non-marital property shall not be deemed to be marital property solely because the property was acquired in contemplation of marriage." 750 ILCS 5/503(a) (West 2016).

¶ 81 The "presumption includes non-marital property transferred into some form of co-ownership between the spouses, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, or community property." 750 ILCS 5/503(b)(1) (West 2016). "[A]ny doubts as to the nature of the property are resolved in favor of finding that the property is marital." *Schmitt*, 391 Ill. App. 3d at 1017.

¶ 82 Here, petitioner contends that the evidence showed that she and respondent commingled their finances shortly before or after they were married (in July) and, therefore, in her view, payments for the purchase of the 1,000 shares were made from *marital* assets *during* the

marriage. Respondent's version of the events, she argues, did not rise to the level of clear and convincing evidence that the purchase occurred prior to the marriage.

¶ 83 We first take issue with petitioner's argument concerning respondent's burden. Again, "property acquired *before* the marriage" constitutes nonmarital property. 750 ILCS 5/503(a)(6) (West 2016). However, the *presumption* of *marital*-property status of property acquired *after* the marriage does not apply to the determination whether property was acquired before or after the marriage. The presumption applies only after the trial court determines that property was acquired during the marriage. 750 ILCS 5/503(b)(1) (West 2016) ("all property acquired by either spouse *after* the marriage *** is *presumed* marital property. *** The presumption of marital property is overcome by showing through clear and convincing evidence that the property was acquired by a method listed in subsection (a) of this Section[.]"). (Emphases added.) Thus, here, respondent did not have to show by clear and convincing evidence when he acquired his initial shares of Law-Jones; rather, his burden was to establish the date of acquisition by a preponderance of the evidence. See *In re Marriage of Nilsson*, 81 Ill. App. 3d 580, 587 (1980) ("The test of the sufficiency of the complaining party's evidence of grounds for dissolution of the marriage is whether that evidence establishes a preponderance in light of the opposing evidence."); see also *Gataric v. Colak*, 2016 IL App (1st) 151281, ¶ 17 (generally, in civil cases, the preponderance-of-the-evidence standard applies). In any event, the trial court used the clear-and-convincing standard, and our conclusion is the same under either standard.

¶ 84 Turning to the merits, the trial court explicitly found consistent and credible respondent's, Michael's, and Marilyn's testimony concerning the sale of Marilyn's shares to respondent. The court determined that, in late 1991, Marilyn decided to sell her shares in Law-Jones, plus several real estate parcels, to the corporation and that, in early 1992, she and respondent orally agreed to

convey her shares to him, effective January 1, 1992, in exchange for his promise to pay her fair market value. The value would be determined by Federated Funeral Directors of America. The trial court further noted that no written note was executed and no security of respondent's debt was sought or given. The court also noted the amortization schedule and a stock certificate, the latter of which was dated January 5, 1992, and showed 1,000 shares of Law-Jones transferred from Marilyn to respondent. The trial court also found that the consideration respondent gave was his promise to pay for the shares. Thus, the contract was valid and respondent took ownership of the shares on January 5, 1992. The parties became engaged in April 1992 and were married in July 1992.

¶ 85 The trial court also found that certain corporate documents corroborated the foregoing evidence. Specifically, the shareholder and board of directors meeting minutes in January 1992 reflected that respondent was listed as a shareholder, Marilyn was not listed as such, respondent was added to the corporate checking accounts, and distributions were authorized to all shareholders, not including Marilyn. The trial court also found that the minutes showed that, as of January 1992, Michael held 1,000 shares and Schultz held 100 shares. Respondent held a 47.6% interest in Law-Jones in January 1992 and made payments of $22,990.60 ($9,373.64 against principal) toward his obligation to Marilyn *before* the marriage. In summary, the trial court determined that the foregoing constituted clear and convincing evidence that respondent acquired 1,000 shares before the marriage and, thus, should be awarded the shares as nonmarital property. (It also ordered that the marital estate be reimbursed by respondent's nonmarital estate in the amount of $652,045.61 for payments made from his income during the marriage for his share of acquisition of stock from Marilyn and that half of that amount be awarded to petitioner.)

¶ 86 Petitioner contends that the evidence suggests the opposite of what the trial court found. She notes that there was no written note evidencing the transaction, no security for it, and no determination of the value of the shares for the date of the alleged transaction—January 1, 1992. Petitioner also points to the amortization schedule that shows $328,995.31 owed with payments made beginning May 17, 1992, through December 25, 2016, arguing that there was no evidence of pre-marital payments, such as checks, bank drafts, or bank account information to support respondent's claim that any payments were made to Marilyn prior to the parties' marriage.

¶ 87 We cannot conclude that the trial court's findings were unreasonable. Petitioner's points concerning the absence of a note, cancelled checks, and contemporaneous valuation were all considered by the trial court, but the court evaluated the witnesses' credibility and ruled against petitioner. The trial court also found that the documentary evidence, most notably the amortization schedule to which respondent and Marilyn agreed, was sufficient under the higher clear-and-convincing burden of proof. The court did not err. Not only did respondent's witnesses consistently testify concerning his share acquisition, but the documentary evidence was also consistent with the witness testimony that respondent acquired his shares in January 1992. Certain potential weaknesses with respondent's case were examined, and the court's resolution was not unreasonable. For example, the evidence reflected that the Law-Jones valuation was not completed until April because Federated required the year-end corporate financial evaluation to calculate the share value. There is nothing inherently incredible about this explanation that required discounting it. As to the lack of cancelled checks for respondent's initial payments on the loan, respondent testified that his bank could not retrieve copies of the 25-year-old documents. The trial court's credibility determination was, again, not unreasonable.

¶ 88 2. 2004 Redemption

¶ 89 Next, petitioner argues that the trial court erred in finding that the 2004 stock redemption that resulted in respondent becoming sole shareholder of Law-Jones was nonmarital property. She contends that the shares were acquired *after* the marriage, with proceeds of a $775,000 loan that she personally guaranteed, and, thus, it constituted the purchase of new property with *marital* property used as security for the loan (as a result of the guaranty the parties signed). Respondent responds that the trial court's analysis of the case law was not erroneous and that petitioner ignores the corporate form, including that shareholders do not hold legal or equitable title to a corporation's property. He also asserts that petitioner conflates the concepts of personal guaranty and collateral. Collateral, he notes, is property subject to a security interest, and the guarantees here were unsecured. For the following reasons, we reject petitioner's argument.

¶ 90 Although, as noted, a court's classification of property generally will not be disturbed on appeal unless it is against the manifest weight of the evidence (*Hluska*, 2011 IL App (1st) 092636, ¶ 76), where the evidence before the trial court was documentary in nature, we review the record *de novo* (*Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 453 (2009)). Here, the evidence before the court concerning the 2004 redemption was primarily documentary. Regardless, we hold that, under either standard of review, the result is the same.

¶ 91 Section 503(a)(7) of the Act provides that the following is nonmarital property:

> "the increase in value of non-marital property, irrespective of whether the increase results from a contribution of marital property, non-marital property, the personal effort of a spouse, or otherwise, subject to the right of reimbursement provided in subsection (c) of this Section[.]" 750 ILCS 5/503(a)(7) (West 2016).

¶ 92 Section 503(c) addresses commingled marital and nonmarital property and provides, in relevant part, that, when marital and nonmarital property are commingled by one estate being

contributed to the other: (1) if the contributed property loses its identity, it transmutes to the receiving estate, subject to reimbursement under 503(c)(2); and (2) if the contributed property retains its identity, it does not transmute and remains property of the contributing estate.

¶ 93 Section 503(c)(2) of the Act provides:

> "(A) When one estate of property makes a contribution to another estate of property, the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation. No such reimbursement shall be made with respect to a contribution that is not traceable by clear and convincing evidence or that was a gift. The court may provide for reimbursement out of the marital property to be divided or by imposing a lien against the non-marital property that received the contribution.
>
> (B) When a spouse contributes personal effort to non-marital property, it shall be deemed a contribution from the marital estate, which shall receive reimbursement for the efforts if the efforts are significant and result in substantial appreciation to the non-marital property except that if the marital estate reasonably has been compensated for his or her efforts, it shall not be deemed a contribution to the marital estate and there shall be no reimbursement to the marital estate. The court may provide for reimbursement out of the marital property to be divided or by imposing a lien against the non-marital property which received the contribution." 750 ILCS 5/503(c)(2) (West 2016).

¶ 94 The trial court found that there was clear and convincing evidence that the redemption resulted in respondent acquiring property by the sole use of nonmarital property, that the increase in value of Law-Jones was nonmarital property, and that there was no reimbursement owed to the marital estate. The court noted that, prior to the redemption, there were four shareholders, and, afterwards, respondent owned 100% of the entity. Law-Jones borrowed the funds to pay the

redeeming shareholders from the Savanna-Thomson Bank, the amounts were paid up front, in full, and respondent and petitioner (as president and vice president, respectively) executed a note, mortgages, and gave their personal guarantees. The collateral for the loan was corporate property. Law-Jones made all loan payments; no personal money was used to pay off the loan. The trial court found that Law-Jones borrowed the money to effect the redemption, and the note shows the corporation as the borrower; respondent and petitioner signed it as corporate officers; and it was collateralized by corporate property, not marital property. "Each party did sign a personal guarantee, but the money was not 'raised substantially on marital credit.' " It also found that "[n]o personal assets of the parties were expended. Here, there is nothing to reimburse."

¶ 95 The trial court relied on *In re Marriage of Blunda*, 299 Ill. App. 3d 855 (1998), and *In re Marriage of Werries*, 247 Ill. App. 3d 639 (1993), and distinguished *In re Marriage of Kennedy*, 94 Ill. App. 3d 537 (1981).

¶ 96 In *Blunda*, the wife received during the marriage 4,200 shares of Universal Heating from her father, the sole shareholder, who also gifted shares to the wife's two brothers. The following month, the family decided that the company would purchase one of the brother's shares. Thus, Universal Heating borrowed money. The wife's father, as president of the company, signed a commercial promissory note, listing the company as the borrower, and the wife also signed the note. She also signed, as treasurer, a check drawn on the company's account and made payable to her brother, who, in turn, surrendered his shares. The stock was retired. On the same day that she signed the note, the wife executed a commercial guaranty as part of the loan transaction. The father died shortly thereafter, and his shares were retired. The loan was repaid by the company.

¶ 97 The trial court classified the wife's interest in Universal Holdings as nonmarital property, but also ordered her to reimburse her husband for ½ the amount of the extension of marital credit via her personal guaranty to obtain loans on the company's behalf. The wife appealed, arguing that the trial court erred in ordering reimbursement and in essentially finding that a portion of her nonmarital business constituted marital property. She asserted that the mere incurring of personal liability on the guaranty did not transmute the property into marital property.

¶ 98 The reviewing court concluded that the gift of the initial shares from the father to the wife was nonmarital property and that the increase in value of that property due to the company's acquisition of one of the brother's shares was also nonmarital property, "irrespective of whether the increase results from a contribution from the marital estate. *Id.* at 862-63 (citing section 503(a)(7)). It also determined that the increase to the nonmarital property was subject to the right of reimbursement to the contributing estate under section 503(c) of the Act, which the husband had the burden to retrace by clear and convincing evidence. *Id.* at 863. However, the reviewing court held that the trial court erred in determining that the husband should be reimbursed for ½ the credit extended to effectuate the purchase of the brother's shares because "there was nothing to reimburse." *Id.* The loan was almost completely repaid by the date of the marriage's dissolution and, therefore, no personal assets of the estate were expended. *Id.* There was no proof of a contribution from the marital estate. *Id.* Discussing the case law, the court also noted that the husband did not sign the personal guaranty and the collateral for the loan did not include marital property. *Id.* at 863-64.

¶ 99 In *Werries*, which the *Blunda* court and the trial court here found persuasive, the husband acquired, prior to the marriage, a 50% interest in a farm partnership, becoming partners with his father. The husband borrowed money to purchase his interest in the partnership, and a

significant portion of the loan was repaid after the marriage and with earnings from the marriage. Subsequently, during the marriage, the husband's brother joined the business and the father gifted to his sons a portion of his interest such that the husband owned 45% as a result of the gift from his father. The trial court assigned to the husband his entire interest in the farm partnership as nonmarital property.

¶ 100 On appeal, the wife argued that the partnership or its assets acquired after the marriage should have been determined to be marital property, or there should have been reimbursement to the marital estate for contributions to the nonmarital farm operation. She asserted that, because the business had experienced significant growth during the marriage, the trial court erred in finding that the partnership or its assets were nonmarital property.

¶ 101 The reviewing court affirmed, concluding that the evidence was uncontroverted that the husband's 45% interest was acquired, in part, prior to the marriage and, in part, as a result of a gift from his father, and, thus, the partnership interest was nonmarital property. *Werries*, 247 Ill. App. 3d at 643. It rejected the wife's argument that the repayment of the loan warranted a determination that the portion of the partnership acquired before the marriage was actually marital property. *Id.* at 644. The court found significant that the husband took out the loan several years prior to the marriage and only a portion, but admittedly a significant portion, was paid back during the marriage. *Id.* The court also stated that reimbursement would be appropriate if there was clear and convincing evidence of a right to such, but the wife never established how much the marital estate contributed to repayment of the loan. *Id.* Next, the reviewing court addressed the wife's claim that certain of the partnership's *assets* were marital property. *Id.* at 644-646. It distinguished *Kennedy*, which we address below, stating that, in the case before it there was only one ongoing business and there were no separable units. *Id.* at 645.

The *Werries* court noted that a partnership is a separate legal entity for purposes of owning property and that a partner does not possess specific partnership property; rather, the partner's interest is personal property and consists of the partners' share of the profits and surplus. *Id.* at 645-46. "Nonmarital, closely held corporations, partnerships, or individually owned businesses, including farm operations, can accumulate income and assets in a variety of ways resulting in a substantial increase to the nonmarital estate which should continue to be treated as nonmarital property." *Id.* at 646. The issue is whether the nonmarital estate is segregated from the marital estate and whether adequate proof of is offered of the separation of business from personal interests. *Id.* The case before it, the court held, showed such separation, and the wife did not prove that the marital estate had a reimbursement right by tracing contributions made from the marital estate. *Id.* Finally, the *Werries* court addressed the parties' use of certain jointly-owned real property as collateral for a loan to make improvements to the farm partnership. The bank required the parties to take the loan personally and use the land as collateral. The court held that use of the land as collateral did not warrant reimbursement to the marital estate (for the wife's contribution) because the partnership, not the marital estate, made payments on the loan. *Id.* at 648.

¶ 102 We turn next to *Kennedy*, upon which petitioner relies and which the trial court and the *Werries* court found distinguishable. In that case, at the time the parties married, the husband owned four music stores as chief stockholder and president with control over the business. At one point during the marriage, the husband obtained financing to open a new store and, pursuant to the bank's requirement, the wife signed a personal guaranty on the loan. The trial court awarded the entire music store business to the husband.

¶ 103 On appeal, the reviewing court first addressed the stores that the husband owned before the marriage and held that they were his nonmarital property. *Kennedy*, 94 Ill. App. 3d at 547. The increase in value in nonmarital property, the court noted, was nonmarital property. *Id.* Acknowledging that some of the increase in value of the business was due to improvements made with marital assets, *i.e.*, the business' earnings, the husband's personal efforts and investments, and small family loans, the court noted that the improvements were not substantial and there was no evidence of an intent to treat the stores as marital property. *Id.* Thus, the court concluded that the stores the husband owned before the marriage remained nonmarital "despite their absorption of some marital resources." *Id.* at 548.

¶ 104 Next, as to the stores acquired *after* the marriage, the *Kennedy* court noted that they were "new and distinguishable property," not improvements to the old stores (or the corporation or the business) and, therefore, the new property was marital property. *Id.* Although they were purchased on credit of the business, the collateral included the new stores and the lender required personal guarantees from both the husband and the wife. *Id.* "The money was raised substantially on marital credit, and the property bought with it is marital property." *Id.* The *Kennedy* court rejected the wife's argument that the new stores were commingled with the old stores, stating that the stores were "sufficiently separable so that there is no practical necessity to treat them as a unit" and the fact that the husband put the new stores into the old corporation did not reflect an intent to donate the old stores to the marriage. *Id.* The court also held that, even though some of the husband's shares, representing his interest in the new stores, were marital property, the trial court correctly awarded all of the stock to him so as to avoid future disputes concerning the business. *Id.* It then noted that the issue was whether the property awarded to the wife represented a just proportion of the marital estate, and it remanded for a hearing concerning

the distribution of the property. *Id.* We further note that, in a subsequent case, a reviewing court noted that it did not appear that the husband in *Kennedy* argued that the new stores were his nonmarital property, and it found the case of little value in assessing whether a party's stock acquisition was a gift, legacy, or descent. See *In re Marriage of Asta*, 2016 IL App (2d) 150160, ¶ 28.

¶ 105 Here, petitioner argues that, like *Kennedy* and unlike *Blunda*, she signed a personal guaranty for the bank loan, agreeing to be responsible to the bank for all or part of the loan if Law-Jones failed to pay. Thus, she argues, the marital property, including her share became collateral for the loan and continues to remain collateral until the loan is fully repaid. Petitioner also argues that *Werries* is distinguishable because, here, the Law-Jones stock acquired after the redemption is new property acquired after the marriage, not before. Also, it was not a gift, but acquired with proceeds of a loan that petitioner personally guaranteed. Petitioner contends that the 2004 redemption was essentially a purchase of new property with marital property used as security for the loan as a result of the personal guaranty signed by the parties.

¶ 106 We conclude that the trial court correctly assessed the case law. *Blunda* is somewhat helpful in analyzing this case because, in *Blunda*, the family business borrowed money during the parties' marriage and the wife signed a guaranty to secure the loan. The *Blunda* court held that the increase in value of the nonmarital property—the shares—due to the company's acquisition of the brother's shares was nonmarital property, subject to a right of reimbursement, which was the husband's burden to establish. It is true that, unlike here, both spouses in *Blunda* did not sign the guaranty, but, like the present circumstances, the collateral for the loan did not include marital property and the company, not the parties, paid back the loan.

¶ 107 The *Werries* case is also instructive. There, the reviewing court held that: (1) the farm partnership interest was nonmarital because a loan to acquire the husband's initial shares was taken out several years before the marriage and because only a portion (albeit a significant portion) of the loan was paid off during the marriage; also no right to reimbursement was shown because the wife never showed how much the marital estate contributed to the loan repayment; and (2) certain partnership assets were nonmarital property because the evidence showed separation of the nonmarital business from the marital assets, the wife failed to show that the marital estate had a reimbursement right by tracing contributions made from the marital estate, and partners do not own any separate part of partnership property. The *Werries* case instructs that use of jointly-owned land as collateral for a loan to make improvements to the husband's farm partnership did not warrant reimbursement to the marital estate (for the wife's contribution) because and the partnership, not the marital estate, made payments on the loan. *Id.* at 648. Here, Law-Jones was the borrower and it, not the parties, paid back the loan.

¶ 108 We agree with the trial court that *Kennedy* is distinguishable from this case. This case does not involve separable businesses or units like the music stores in *Kennedy*. Also, here, the collateral for the redemption was corporate property, whereas, in *Kennedy*, it was the new stores themselves, which, again, were separable from the existing business itself.

¶ 109 Respondent relies on two additional cases, *Drennan v. Drennan*, 93 Ill. App. 3d 903 (1981), and *In re Marriage of Jelinek*, 244 Ill. App. 3d 496 (1993), which petitioner does not address in her reply brief. We find *Drennan* instructive and *Jelinek* distinguishable.

¶ 110 In *Drennan*, the primary issue concerned the classification of the marital residence. Prior to the marriage, the husband borrowed money from his parents to build the home and executed a note in their favor. He commenced making payments on the note after the marriage. Also,

shortly after the marriage, the parties executed a mortgage note and used the proceeds to repay the husband's parents for the previously-borrowed money used to construct the home. During the dissolution proceedings, there remained an unpaid balance on the mortgage loan. The husband maintained that he never transferred title to the house to the wife and never promised that he would. During the marriage, mortgage payments were made from joint marital funds. Further, improvements were made to the home, using joint funds, as was an addition to the land itself. The trial court found that the home was marital property because the husband and wife jointly paid off the preexisting debt on the house, thereby, essentially jointly purchasing it from the husband, "who continued to hold title as trustee for both of them." *Id.* at 905.

¶ 111 On appeal, the wife conceded that the husband acquired the property before marriage, but argued that the nonmarital property was transmuted to marital property by the parties' joint execution of the note and mortgage. The reviewing court held that the trial court erred in finding that the house was marital property. *Id.* at 907. It noted that, although title is not relevant with respect to property acquired after marriage, it is a relevant consideration for property acquired before marriage. *Id.* at 906. The court also noted that the wife had admitted that she was required to sign the note in order for the husband to obtain the loan, but title was never transferred into joint tenancy, and the only evidence of an intent to do so was the wife's testimony, which was contradicted by the husband's testimony. *Id.* at 907. The reviewing court concluded that "the mere execution of a mortgage note is insufficient to constitute a transmutation of nonmarital property into marital property." *Id.*

¶ 112 We believe that the circumstances here share similarities to the facts in *Drennan*. Respondent acquired his original interest in Law-Jones prior to the marriage, and none of the stock certificates contained petitioner's name as a shareholder, nor did any of the other corporate

documents admitted into evidence. The circumstances concerning the financing of the redemption also did not reflect an intent to transmute the nonmarital property into marital property. No corporate documents contain petitioner's name. It is true that, after the redemption, respondent became sole shareholder of Law-Jones, thus, increasing his interest in the company, but the fact that petitioner signed the guaranty that allowed the financing to come to fruition does not reflect any intent to make her a shareholder. The guaranty was, as noted, unsecured, the collateral used to secure financing was Law-Jones property, not petitioner's or respondent's property, and Law-Jones paid back the loan.

¶ 113 In *Jelinek*, the husband, prior to the marriage, founded a company and he held 40,000 shares of the common stock that he purchased with an unsecured loan. During the marriage, he paid off some of the loan with marital funds and the balance of the note was subsequently forgiven. Also during the marriage, the husband received shares of Class B stock that were given to certain key investors and employees, which was reflected as ordinary income to the husband. The shares, according to trial testimony, were not compensation, but reflected the restoration of the husband's original equity in the company. Subsequently, the company was sold and the husband received monies for his initial shares and for some of his Class B stock. He deposited the money into an account in his name. The trial court found that the initial shares and the proceeds from their sale were nonmarital property, but that the Class B shares were marital property.

¶ 114 On appeal, the husband challenged the trial court's finding that the Class B stock was marital property and the reviewing court held that the trial court's finding was erroneous, concluding that the Class B stock was nonmarital property. *Id.* at 504. It disagreed with the wife's suggestion that the Class B shares were acquired during the marriage and, thus, were

marital property. *Id.* The court noted that the husband received the shares in order to preserve his proportionate interest in the company (*i.e.*, "to restore his *premarital* equity"), and this right to receive them "clearly was rooted in his premarital business property interest." (Emphasis in original.) *Id.* at 504-05. This interest, the court noted, retained its nonmarital classification, notwithstanding any increase in value that occurred during the marriage. *Id.* at 504. The Class B shares did not carry dividend rights and did not increase the husband's original percentage ownership in the company. *Id.* at 505. The transaction, in the court's view, was analogous to a stock split or stock dividend, and such events are considered appreciations in value to the premarital holding. *Id.*

¶ 115 We disagree with respondent that *Jelinek* is analogous to the facts here. The transaction in *Jelinek* merely preserved the husband's proportionate interest in the company. *Id.* at 504-05. Here, in contrast, the 2004 redemption increased respondent's interest in Law-Jones from 38% shareholder to sole shareholder.

¶ 116 Petitioner also points to section 503(a)(6.5) of the Act, which became effective on January 1, 2016, and provides that the following constitutes nonmarital property: "all property acquired by a spouse by the sole use of non-marital property as collateral for a loan that then is used to acquire property during the marriage; to the extent that the marital estate repays any portion of the loan, it shall be considered a contribution from the marital estate to the non-marital estate subject to reimbursement[.]" 750 ILCS 5/503(a)(6.5) (West 2016). She argues that this section has no application here. Petitioner contends that nonmarital property was not used solely as the collateral for the 2004 $775,000 loan. Thus, section 503(a)(6.5) does not render those shares nonmarital. Respondent responds that, because the financing for the redemption used only corporate assets as collateral, this section applies and the Law-Jones redeemed stock is

nonmarital. Assuming this section applies, we agree with respondent. The undisputed evidence showed that corporate property was used as collateral for the loan. Again, the guaranty petitioner signed noted that it was unsecured. No marital assets were used to obtain financing, even though petitioner was required to sign the guaranty. Also, Law-Jones paid back the loan, not the parties.

¶ 117 In summary, the trial court did not err in finding that the 2004 redemption resulted in the acquisition by respondent of nonmarital property.

¶ 118 C. Division of Marital Assets

¶ 119 Petitioner's final argument is that the trial court's division of marital property, with 50.39% award to her and 49.61% award to respondent, constitutes an abuse of discretion. She contends that respondent's substantial nonmarital property and his superior earning capacity warrant an award of all or most of the marital assets to her. For the following reasons, we disagree.

¶ 120 In reviewing a trial court's distribution of a marital estate, we apply the manifest-weight-of-the-evidence standard to the court's factual findings and the abuse-of-discretion standard with regard to the distribution. *Romano*, 2012 IL App (2d) 091339, ¶ 121. A finding is against the manifest weight of the evidence if the court's findings appear to be unreasonable, arbitrary, or not based upon the evidence. *Ricketts*, 329 Ill. App. 3d at 181-82. A trial court abuses its discretion only if no reasonable person would have distributed the property in the same manner. *Id.*

¶ 121 As noted, under the Act, before it may dispose of property upon a dissolution of marriage, a court must classify property as either marital or nonmarital. 750 ILCS 5/503(c) (West 2016). After classifying the property, section 503(d) of the Act (750 ILCS 5/503(d) (West

2016)) requires the trial court to divide marital property in "just proportions," considering the 12 relevant factors set forth therein. The statutory factors include:

"(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including *** the contribution of a spouse as a homemaker or to the family unit;

(2) the dissipation by each party of the marital or non-marital property;

(3) the value of the property assigned to each spouse;

(4) the duration of the marriage;

(5) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;

(6) any obligations and rights arising from a prior marriage of either party;

(7) any antenuptial agreement of the parties;

(8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;

(9) the custodial provisions for any children;

(10) whether the apportionment is in lieu of or in addition to maintenance;

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(12) the tax consequences of the property division upon the respective economic circumstances of the parties." 750 ILCS 5/503(d)(1) to (d)(12) (West 2016).

¶ 122 "The touchstone of proper apportionment is whether it is equitable, and each case rests on its own facts." *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 121. Equitable does not necessarily mean equal. *Id.* "One spouse may be awarded a larger share of the assets if the relevant factors warrant such a result." *Id.* "The trial court has broad discretion in applying the factors enumerated and is authorized to award either property or maintenance, both property or maintenance, or property in lieu of maintenance." *In re Marriage of Jones*, 187 Ill. App. 3d 206, 223 (1989).

¶ 123 Here, the trial court valued the marital estate at $1.716 million and awarded petitioner 50.39% of the marital property ($864,821.85) and awarded respondent 49.61% of the marital property ($851,197). Respondent received $3.841 million in nonmarital property, which consisted of Law-Jones, and petitioner was awarded $15,000 in nonmarital property. The court also awarded a $326,022.81 monetary judgment to petitioner to account for the payments during the marriage on the loan from Marilyn. It also ordered that respondent pay petitioner $9,000 per month in permanent maintenance, to be secured by term life insurance policies.[3] Thus, the court awarded petitioner a total of $1,205,844.66, plus $9,000 per month (or $108,000 per year) in maintenance, and it awarded respondent a total of $4,692,197.

¶ 124 Preliminarily, we address respondent's argument that petitioner forfeited her argument that she should have been awarded a greater share of the marital estate. He notes that she first raised this point in her motion to reconsider. See *Caywood v. Gossett*, 382 Ill. App. 3d 124, 134 (2008) (arguments raised for the first time in a motion to reconsider in the trial court are forfeited on appeal). We reject respondent's argument. A party may raise an issue for the first time in a motion to reconsider when the party has a reasonable explanation for why the issue was not

[3] She was also awarded $4,020.94 in monthly child support (through May 15, 2020).

raised earlier in the proceedings. *In re Marriage of Epting*, 2012 IL App (1st) 113727, ¶ 41. Here, as petitioner notes, it was only after the trial court found in the dissolution judgment that Law-Jones was respondent's nonmarital property (and rejecting her argument that the business be divided equally) that she argued in her motion to reconsider that the court's division of marital property was erroneous. Her argument is not forfeited.

¶ 125 1. Substantial Nonmarital Estate

¶ 126 Petitioner argues first that the court's division of property was an abuse of discretion because respondent's substantial nonmarital property warranted an award to her of all or most of the marital assets. She offers no further argument and cites case law where the courts upheld disproportionate awards to one spouse. See *In re Marriage of Gattone*, 317 Ill. App. 3d 346, 355 (2000) (affirming trial court's award to the wife of 74% of the marital estate ($225,000) and 26% to the husband ($80,000) where the husband had $800,000 in nonmarital assets and income of $40,000 to $50,000 per year and the wife had no nonmarital assets; noting that court was justified in awarded one spouse almost all of the marital estate where the other spouse has substantial nonmarital assets; the wife was also awarded $1,000 in monthly maintenance for 72 months); *In re Marriage of Landfield*, 209 Ill. App. 3d 678, 689 (1991) (the husband's "significant amount of nonmarital property justified an award of most of the marital property to" the wife; the lower court had awarded the husband about $500,000 in marital property and $1.6 million in nonmarital property, and the wife received about $800,000 in marital property); *In re Marriage of Holman*, 122 Ill. App 3d 1001, 1011 (1984) (the wife's "significant amount of nonmarital property justified an award of most of the marital property to" the husband, who was healthy and gainfully employed; affirming award of 92% of marital property to the husband, where the wife, a homemaker who was in bad health, received over $224,000 in nonmarital

assets and the husband received $14,000 in such assets; marital estate totaled $121,455; the court had also awarded the wife $625 in permanent monthly maintenance); *In re Marriage of Shriner*, 88 Ill. App. 3d 380, 384-85 (1980) (affirming award of substantially all of marital property ($12,000) to the wife and award of essentially only his nonmarital property ($66,000) to the husband; award "can be justified in light of the husband's substantial non-marital assets"; wife also awarded $15 per week in maintenance; also, the wife had contributed to appreciation in value of the husband's nonmarital property and the husband had used some marital assets for his sole benefit after the parties separated; these two additional factors also supported the trial court's award). Here, as petitioner views it, she received 15.6% of the total property (marital and nonmarital), and respondent received 84.4%, more than five times her award, for a 25-year marriage.

¶ 127 Respondent contends that the evidence supported the trial court's division of assets. He points to additional factors that he believes justified the court's order: (1) the sufficiency of over $862,000 to meet petitioner's needs; (2) the $326,022.81 monetary judgment, which is a liquid asset; (3) respondent's greater contribution to the acquisition of marital assets; (4) a significant maintenance award to petitioner of $9,000 per month that is secured by $1.5 million in life insurance on respondent for petitioner's benefit; (5) respondent's nonmarital property is a corporation and not a liquid asset; (6) most of the parties' children are no longer minors; (7) the court awarded petitioner the marital home; (8) respondent has a large debt burden associated with Law-Jones (*i.e.*, about $1.1 million in 2016, about $400,000 of which was incurred in 2016); and (9) there would be a tax burden to respondent if he sold his Law-Jones shares. Respondent also cites to several cases wherein the reviewing courts upheld disproportionate awards by considering as a factor the greater financial contribution to the marital estate by one

spouse. See *In re Marriage of Marriott*, 264 Ill. App. 3d 23, 33-34 (1994) (affirming trial court's award of 1/3 of marital residence to the wife, and rejecting the wife's arguments that the lower court did not accord sufficient weight to her contributions as a homemaker, where the husband's contributions to the acquisition and preservation of the residence, the court had found, outweighed the wife's contributions, and where the wife worked outside the home at different times during the marriage); *Jones*, 187 Ill. App. 3d at 224-26 (affirming a 60/40 division of $500,000 marital estate in the husband's favor, $400,000 in nonmarital assets to the husband, and no marital assets to the wife and rejecting the wife's argument that the marriage's long duration and her disproportionately-lower skills and experience warranted an award to her of a greater share of the marital estate; noting that, in certain cases, "when one spouse makes a greater contribution to the marital assets, the court may be justified in awarding him or her a larger share of the marital property"; the wife, who received the monetary equivalent of 40% of the business, had little involvement with the business and had contributed little to the marital assets); *In re Marriage of Heller*, 153 Ill. App. 3d 224, 230-33 (1987) (affirming trial court's equal division of marital estate, where the marriage was of long duration, the wife contributed to the marriage as a homemaker, the husband had significantly greater earning capacity, the wife had severe medical issues, and where the available liquid assets were equally divided; allowed payments to wife of her share of marital estate in installments, where the husband had guaranteed certain loans for his business); *In re Marriage of Bentivenga*, 109 Ill. App. 3d 967, 970-72 (1982) (affirming award of 49% of $260,000 marital estate to husband, 46% to the wife[4], and $31,000 in nonmarital assets to the husband, where the husband made a greater contribution to acquisition of the marital

[4] The remaining 5% was set aside for the children's college education. *Id.* at 971 n.1.

estate than the wife, the wife received greater share of property that was immediately capable of producing income, and where she received property of substantial value).

¶ 128 Respondent asserts that, as in *Jones* and *Bentivenga*, the evidence, here, shows that the greater financial contribution to the marital estate is a factor considered in dividing the marital estate. Not only did the marital estate, he maintains, benefit from his salary of about $176,000 per year, but the marriage also benefitted from distributions from his nonmarital business that resulted from the appreciation in value of that business. Respondent notes that he contributed to the marital estate the $316,000 annual distributions he received from Law-Jones.

¶ 129 We conclude that the trial court did not err in dividing the parties' assets. This case is similar to *Jones* and *Bentivenga*, which upheld an equal division of marital assets where one spouse also received a greater nonmarital estate. The case law that petitioner cites does not reverse equal divisions, but merely affirm unequal divisions. Thus, it cannot be read to announce a rule (requiring reversal here) that only unequal divisions are warranted in marriages of long duration, where one spouse is awarded significant nonmarital assets. The trial court, in analyzing whether petitioner was entitled to maintenance, considered the "great disparity" in the apportionment of nonmarital property and that Law-Jones continues to generate significant income to respondent which is far in excess of what petitioner can generate. It also noted that, for the period 2014 to 2016, respondent's average gross earnings were $521,431 and his average net earnings were $324,434. The court set maintenance at 20.7% of respondent's gross income and 31% or his net income. Thus, the court acknowledged the disparity in the nonmarital estates and awarded generous maintenance to offset the disparity. We cannot conclude that its division of assets was unreasonable.

¶ 130 2. Superior Earning Capacity

¶ 131 Finally, petitioner argues that other factors warranted an award of all or most of the $1.7 million in marital assets to her, most significantly respondent's ability to generate substantial income from Law-Jones, whereas petitioner last worked outside the home in 1996 and believes she could earn only $80 per day as a substitute teacher. She, again, cites to case law upholding disproportionate awards in favor of the spouse with disproportionately-lower earning capacity. See *Romano*, 2012 IL App (2d) 091339, ¶¶ 122-24 (affirming award of 23% of marital estate to the husband and 77% to the wife, where the husband had significant nonmarital assets (including a $1.6 million condominium), superior earning capacity, more sources of income, and a greater opportunity for future acquisition of capital assets and income and where the wife was a homemaker and had health issues and would have to return to school to become relicensed as a nurse); *In re Marriage of Henke*, 313 Ill. App. 3d 159, 176-77 (2000) (rejecting the husband's request for an equal division of marital assets and debts; court affirmed award of $700,000 in marital assets to the husband and $500,000 to the wife, where the husband had significant nonmarital assets (including a farm appraised at $600,000 and majority of $400,000 debt consisted of operating expenses of the farm that were paid when it earned money from crop sales), the husband had superior earning capacity, more sources of income and greater opportunity for future acquisition of capital assets and income as compared to the wife, who was a homemaker, had sole custody of the children, and was awarded no maintenance); *In re Marriage of Olson*, 223 Ill. App. 3d 636, 649 (1992) (affirming award to the husband of 39% of marital estate and award to the wife of 61% of the marital estate "based on the disparate ability of the parties to generate future assets and income"); *In re Marriage of Gentry*, 188 Ill. App. 3d 372, 373-76 (1989) (affirming award of 66% of the martial estate to the wife, who had limited education, had been a long-term homemaker for 20 years, and did not have readily-marketable

skills; also upheld maintenance to the wife of $900 per month for eight months and $750 per month thereafter, to be reviewed after two years); *In re Marriage of Agazim*, 176 Ill. App. 3d 225, 232 (1988) (affirmed award of 24% of marital assets and "the 'lion's share' of the hard (liquid) assets" to the husband and an award of 76% of the marital assets to the wife, where the wife's earning capacity was very limited as compared to the husband's and where the marital debts were solely incurred by the husband for his personal purposes; wife awarded no maintenance); *In re Marriage of Hanson*, 170 Ill. App. 3d 298, 302-03 (1988) (affirming the award of 70% of the marital assets and maintenance of $60,000 over five years to the wife, where there was a "vast difference in future earning capacities" between the spouses after their 28-year marriage, where the husband earned over $50,000 per year and the wife, who was in her 50s, had been a homemaker; also upheld $1,000 monthly maintenance award, for five years, to the wife); *In re Marriage of Lord*, 125 Ill. App. 3d 1, 6 (1984) (affirming award of 60% of marital estate to the wife and 32% to the husband, where the wife had been a homemaker and had limited earning capacity (earning $1,000 per month as a secretary) and where the husband was an architect; no maintenance awarded to the wife).

¶ 132 Respondent responds that petitioner has not sustained her burden to show that there was an abuse of discretion, where the case law she cites affirms disproportionate awards. He also contends that the case law is distinguishable because the courts did not allocate $9,000 in monthly maintenance (secured by a life insurance) as the trial court did in this case. Finally, respondent argues, without explaining why it is significant, that the case law petitioner cites did not involve assets of similar size to those in this case.

¶ 133 We conclude that the trial court did not abuse its discretion in dividing the marital assets. As respondent notes, the case law upon which petitioner relies, which merely affirms

disproportionate awards, also involves cases where the homemaker was awarded no maintenance or maintenance for a short period. In contrast, here, the trial court awarded petitioner permanent maintenance in a generous amount, and the award was commensurate with the parties' standard of living. In light of the maintenance award, we cannot conclude that the trial court's equal division of marital assets, even given respondent's sizeable nonmarital estate, constituted an abuse of discretion.

¶ 134 III. CONCLUSION

¶ 135 For the reasons stated, the judgment of the circuit court of Carroll County is affirmed.

¶ 136 Affirmed.