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FILED
May 7, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 170221-U

NO. 4-17-0221

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
LYNETTE BUHLIG,	)	Circuit Court of
Petitioner-Appellee,	)	Greene County
and	)	No. 11D36
CLARK BUHLIG,	)	
Respondent-Appellant.	)	Honorable
	)	James W. Day,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in ordering direct maintenance to petitioner, setting the valuation date for petitioner's equity interest in the marital home, modifying child support, and requiring respondent to pay a portion of petitioner's attorney fees.

¶ 2 In April 2016, respondent, Clark Buhlig, filed a petition for review and modification and for order to refinance, seeking to terminate his maintenance obligation to petitioner, Lynette Buhlig, and for him to become the sole owner of the marital residence. Petitioner filed a response to the petition and then later an amended response to the petition, in which she requested a modification of child support and for respondent to pay her attorney fees. In October 2016, the Greene County circuit court held a hearing on the pending issues. On December 2, 2016, the court entered a written judgment, (1) ordering respondent to pay petitioner $612.02 per week in maintenance for a period of 2 1/2 years; (2) ordering petitioner to

vacate the marital residence by August 1, 2017; (3) finding petitioner's equity interest in the marital residence would be valued at the time respondent exercises his right of first refusal; (4) modifying child support; and (5) directing respondent to pay petitioner's attorney $4620 for fees and $116.54 for expenses. Both parties filed postjudgment motions. Petitioner noted that, with the direct maintenance payments, the proper amount of weekly child support would be $300.20. The court held a joint hearing on the motions in January 2017. In February 2017, the court denied respondent's motion to reconsider, and in March 2017, the court entered a uniform order for support consistent with petitioner's postjudgment motion ($300 per week).

¶ 3 Respondent appeals, contending (1) the dissolution judgment created a property allocation subject to review when it allowed petitioner to live in the marital residence and ordered respondent to make payments for it, (2) the circuit court could not grant petitioner maintenance for the first time four years after the dissolution judgment, (3) the court lacked jurisdiction to distribute the equity in the marital residence after a lengthy time had passed since the dissolution judgment, (4) the court lacked authority to address child support and attorney fees, (5) the court failed to determine whether a change in circumstances necessitated a modification of child support and the court did not enter a proper support order, and (6) the court did not follow the statutory guidelines and relevant case law for ordering a party to pay another party's attorney fees. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The parties were married in February 2005 and had three children, Elleigh (born in 2005), Addison (born in 2006), and Beau (born in 2007). Addison has autism. The marital residence was a home that had been in respondent's family for 150 years.

¶ 6 In June 2011, petitioner filed her petition for the dissolution of the parties'

marriage. In August 2011, respondent filed a counterpetition for dissolution of marriage. In May 2012, the circuit court entered an order, finding the parties had established grounds for the dissolution of their marriage and incorporating the parties' agreement contained in the mediator's March 20, 2012, report. On October 26, 2012, the court entered a supplemental judgment, giving petitioner the right to live in the marital residence until she found employment or left. Her right to live in the marital home was subject to annual review. Respondent was given the right of first refusal to purchase the marital residence "in the manner suggested in [respondent]'s position paper." In his position paper, respondent had asked to be awarded the marital residence and did not object to paying petitioner $15,000 for her portion of the home's equity. He then requested that, if petitioner was awarded the marital residence, he should be given an option of first refusal should petitioner decide to sell the home. As to maintenance, the order stated the following:

> "MAINTENANCE. The court notes that [petitioner] has agreed to waive maintenance under certain conditions. As long as [petitioner] remains in the marital residence the court directs that [respondent] continue paying the mortgage payment plus water, electric and propane. [Respondent] is to maintain [petitioner] on his health insurance."

Respondent filed a motion to modify the supplemental judgment. At a February 2013 hearing, respondent withdrew his motion.

¶ 7 On August 8, 2013, the circuit court entered its dissolution judgment, incorporating (1) the parties' agreement regarding their tangible personal property and (2) the mediator's report regarding child custody and visitation. The judgment required respondent to pay $370.50 per week in child support. The judgment did not address maintenance but allowed

petitioner to reside in the marital residence until she found employment or voluntarily left. Petitioner's use of the marital residence was to be reviewed on an annual basis. The judgment ordered respondent to pay the mortgage plus water, electrical, and propane bills for the marital residence while petitioner resided there.

¶ 8 In April 2016, respondent filed a petition for review and modification and for an order to refinance. The petition sought to terminate respondent's "spousal support/maintenance" obligation and to allow respondent to refinance the marital residence. Respondent wanted to refinance the home to give petitioner her share in the equity of the home and have petitioner quitclaim her interest in the home to him. In June 2016, petitioner filed a response to respondent's petition. She later amended her response to include a request for an increase in child support and to have respondent pay her attorney fees.

¶ 9 On October 31, 2016, the circuit court held a hearing on respondent's petition. The parties both testified and called each other as adverse witnesses. The testimony relevant to the issues on appeal is set forth below.

¶ 10 Petitioner testified she was 47 years old and a high school graduate. The parties were married for 6 1/2 half years and had been divorced for 4 1/2 years. When petitioner met respondent, she was working at State Farm in Bloomington. She worked there until the birth of their second child, daughter Addison. Petitioner planned to return to work but did not once Addison was diagnosed as being severely autistic. Addison attended school in a specialized classroom and rode the bus to school. Addison had spent the night with petitioner in a hotel on occasion. According to petitioner, Addison has a hard time adjusting to new people and new places. Addison required constant attention. Petitioner also believed moving from the marital home would have a negative effect on Addison's condition.

¶ 11 Since petitioner filed for dissolution of the parties' marriage, petitioner had not paid the mortgage on the marital residence. After the circuit court granted the dissolution, she had not paid the propane, electric, and water expenses. The marital residence had not been modified to accommodate any of the children. Moreover, petitioner had not attempted to voluntarily leave the marital residence since the dissolution judgment.

¶ 12 As to her employment search, petitioner testified she had not (1) gone back to school, (2) attended any job seminars, or (3) applied to work at the children's school. Petitioner completed job applications online. She had only applied for jobs that would pay her enough to afford a babysitter for the children, which would cost around $270 per week, and pay for the gas and maintenance for her car that was 14 years old and had 135,000 miles. Petitioner had not been able to find a job that paid more than minimum wage.

¶ 13 Additionally, petitioner testified about her financial affidavit. Her two sources of income were child support and supplemental social security income for Addison, which was around $423.61 a month. Petitioner testified the affidavit fairly and accurately reflected her monthly income and expenses. At the time, her living expenses exceeded her income. Petitioner made up the difference with credit cards. She also had a $1500 debt for a prior attorney, and a medical debt related to care for her. Petitioner had around $50 in her bank account at the time of the hearing. Her annual income the previous year was $28,290.32. She paid $60 a month to a friend for garbage removal but is not always able to pay it. Petitioner had not investigated other living arrangements after the divorce but had looked at housing prices and how much of a down payment she would need.

¶ 14 Respondent testified he was a high school graduate. He had worked for Prairie Power, Inc., for five years. Additionally, respondent explained the marital residence had been in

his family for 150 years. His grandmother and mother were both born and raised in the home. Currently, both parties' names were on the marital residence, and he wanted it in his name only. He desired to move back into the home and maintain it. The marital residence was the only home the children had known. At the time of the hearing, respondent lived in a garage but stayed with his mother when he had the children.

¶ 15 As to Addison, respondent testified she did fine at his mother's home. Respondent explained she is just like the other children. He took the children on vacation and stayed in a condominium. He did not have to make any modifications to the place for Addison's sake. Addison participated in all of the activities and did not have any challenges with the other family that was present during the vacation. He had found a place that would accept Addison for childcare.

¶ 16 Regarding his financial circumstances, respondent testified he had been paying petitioner maintenance for 4 1/2 years. He had another mortgage and "all the bills pretty much times two." Respondent also bought food, clothes, books, and toys for the children. Respondent's counsel declined to submit respondent's financial affidavit. Petitioner's counsel did question him about the financial affidavit. At the time he completed the affidavit, he had about $16,689 in a checking account, which was his only banking account. When he testified, he had around $11,000 in his banking account. The difference in the amounts was, in part, due to respondent paying around $3900 to his attorney. Last year, respondent made $106,000. Since the dissolution, respondent had been promoted from lineman to foreman. He had worked overtime and testified his increase in pay was due to his work ethic. In 2012, his income was $71,471. Respondent still paid union dues to keep his union card active and currently had retirement benefits. He had an "auto fringe benefit of $83.11" on his biweekly paycheck because

he drives a company truck. His employer paid for the gas, insurance, and maintenance on the truck.

¶ 17 When petitioner was called to testify on her own behalf, respondent's counsel asked what they were proceeding on right now. Petitioner's counsel replied respondent's issues and petitioner's child support issue. Respondent's counsel then asked if petitioner's counsel submitted a counterpetition with the formalities for a modification of child support. In response, petitioner's counsel noted the paragraph in petitioner's response to respondent's modification petition that raised the child support modification. Respondent's counsel asked if that was sufficient to constitute a petition for modification of child support when they were entertaining a modification of maintenance. The circuit court asked respondent's counsel what information she did not have that would prevent her from considering the child support issue now. Respondent's counsel stated she did not know how to factor maintenance into figuring out the amount of child support, and the court indicated it would decide that. The court noted it was going to consider maintenance and child support and everything else that day.

¶ 18 On December 2, 2016, the circuit court entered its written order. The court found that, in light of the parties' disagreement as to the characterization of respondent's payments for the mortgage, utilities, and real estate taxes related to the marital residence, modification of the dissolution judgment was warranted. The court ordered respondent to pay petitioner $612.02 per week in maintenance for a period of 2 1/2 years. Under the order, petitioner was to vacate the marital residence by August 1, 2017. Respondent's right of first refusal remained in effect. While petitioner was still in possession of the marital residence, she was to pay half of the mortgage payment and all of the utilities. The court terminated respondent's obligation to keep petitioner on his health insurance. The order further provided for child support in the amount

calculated by petitioner's attorney, which was $461.31 per week. Last, the court ordered respondent to pay $4620 to petitioner's attorney for attorney fees and $116.54 for expenses.

¶ 19 Petitioner filed a posttrial motion, asking the circuit court to reduce respondent's weekly child support to $300.20 while she received maintenance and then have the amount automatically increase to $461.31 when maintenance terminates. Respondent filed a motion for reconsideration, asserting (1) the court lacked jurisdiction to award maintenance to petitioner because she waived maintenance in the original dissolution judgment, (2) the value of petitioner's equity interest in the marital residence should be determined by the fair market value of the home when the court entered the judgment of dissolution, (3) the amount of child support should be calculated according to the statute, and (4) the court should vacate the order respondent was to pay petitioner attorney fees.

¶ 20 On January 31, 2017, the circuit court held a hearing on the parties' postjudgment motions. On February 24, 2017, the court entered a docket entry, stating "petitioner's motion to reconsider" is denied. In a March 13, 2017, docket entry, the court stated that, in the February 24, 2017, docket entry it intended to refer to respondent.

¶ 21 On March 20, 2017, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). Ten days later, the circuit court entered a uniform order for support, setting child support at $300 per week and maintenance at $612.02 per week with an additional weekly arrearage payment of $122.40. Therefore, the record indicates the circuit court granted petitioner's posttrial motion at the latest on March 30, 2017. Illinois Supreme Court Rule 303(a)(2) (eff. Jan. 1, 2015) provides that, "[w]hen a timely postjudgment motion has been filed by any party, *** a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion *** becomes

effective when the order disposing of said motion or claim is entered." Thus, regardless of when the circuit court granted petitioner's posttrial motion, respondent's notice of appeal was timely filed. Accordingly, this court has jurisdiction under Illinois Supreme Rule 301 (eff. Feb. 1, 1994).

¶ 22 II. ANALYSIS

¶ 23 We begin our analysis by noting our supreme court has declared the two most important tasks of an appellate court panel when beginning the review of a case is to (1) ascertain whether it has jurisdiction of the appeal, and (2) "determine which issue or issues, if any, have been forfeited." *People v. Smith*, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 1059 (2008). "By giving careful attention to each of these tasks, a court can avoid the possibly unnecessary expenditure of judicial resources." *Smith*, 228 Ill. 2d at 106, 885 N.E.2d at 1059. We have already determined we have jurisdiction of respondent's appeal in this case and will not address the merits of respondent's issues that we find forfeited.

¶ 24 A. Payments for the Marital Residence

¶ 25 Respondent asserts that, when the circuit court allowed petitioner to live in the marital residence subject to annual review and ordered him to pay the mortgage and utilities for that residence, it created a reviewable property allocation subject to annual review. However, that position is inconsistent with respondent's stance in the circuit court.

¶ 26 Respondent's April 2016 petition for review and modification sought to terminate respondent's "spousal support/maintenance obligation" to petitioner. At the October 2016 hearing, respondent's counsel expressly asserted petitioner's use of the marital residence was related to maintenance and not part of the property distribution. Respondent's counsel further argued the maintenance payments were subject to court review. During the hearing,

respondent's counsel filed a position statement, which argued petitioner's use of the marital residence was rehabilitative maintenance. Respondent also filed a written closing argument, in which he contended petitioner's use of the marital residence was reviewable rehabilitative maintenance.

¶ 27 Petitioner contended her use of the marital residence was part of the property distribution. However, she argued that, if the court should find respondent's obligations were in the form of maintenance, the evidence justifies continuing the court's order or converting the same to an appropriate amount of direct maintenance. Petitioner also argued that, if the court terminates or modifies paragraphs five or six of the dissolution judgment, she should be awarded direct maintenance because her waiver of maintenance was specifically conditioned upon respondent's paying the expenses related to the marital property. The circuit court simply adopted petitioner's position she be awarded direct maintenance. It did not specify whether it found the payments were maintenance or her waiver of maintenance was conditioned upon respondent's payment of expenses.

¶ 28 Regarding a party's change in position, our supreme court has declared the following:

> "It is fundamental to our adversarial process that a party waives his right to complain of an error where to do so is inconsistent with the position taken by the party in an earlier court proceeding. [Citation.] A party cannot complain of error which he induced the court to make or to which he consented. [Citations.] The rationale of this rule is obvious. It would be manifestly unfair to allow one party a second trial upon the basis of error which he injected into the proceedings. [Citations.]" (Internal quotation marks omitted.) *McMath v. Katholi*, 191 Ill. 2d

251, 255, 730 N.E.2d 1, 3 (2000).

¶ 29 Before the circuit court's December 2016 order, respondent consistently argued petitioner's use of the marital residence and his payments related to the marital residence were reviewable rehabilitative maintenance. Respondent's position on appeal is inconsistent with his position in the circuit court. Respondent's argument the payments were reviewable rehabilitative maintenance played a role in the court modifying the terms related to the marital residence and awarding petitioner direct maintenance. Thus, we find respondent cannot now argue the original dissolution judgment did not provide for maintenance.

¶ 30 B. Circuit Court's Authority to Grant Maintenance

¶ 31 Respondent further argues the circuit court could not grant maintenance to petitioner four years after the final order. However, as stated, respondent's position in the circuit court was petitioner's use of the marital residence and his payments related to her use was reviewable maintenance. Accordingly, respondent cannot now assert those payments were not maintenance and thus the court lacked the authority to grant maintenance for the first time, four years after the dissolution judgment. See *McMath*, 191 Ill. 2d at 255, 730 N.E.2d at 3.

¶ 32 C. Equity in the Marital Residence

¶ 33 Respondent's next contention is the circuit court lacked "jurisdiction" in its December 2016 order to distribute the equity in the marital residence because a lengthy time had passed since the judgment of dissolution. Petitioner contends the circuit court had jurisdiction to interpret and clarify its previous orders. We review *de novo* matters of statutory construction and interpretation of the original dissolution judgment. See *Price v. Philip Morris, Inc.*, 219 Ill. 2d 182, 235, 848 N.E.2d 1, 33 (2005) (statutory construction); *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1017, 949 N.E.2d 716, 720 (2011) (marital settlement agreement).

¶ 34 In support of his argument, respondent cites *In re Marriage of Mathis*, 2012 IL 113496, ¶ 1, 986 N.E.2d 1139, where our supreme court addressed the following certified question: " 'In a bifurcated dissolution [of marriage] proceeding, when a grounds judgment has been entered, and when there is a lengthy delay between the date of the entry of the grounds judgment and the hearing on ancillary issues, is the appropriate date for valuation of marital property the date of dissolution or a date as close as practicable to the date of trial of the ancillary issues?' " There, the supreme court in answering the question interpreted the version of section 503(f) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) in effect at the time of the parties raised the valuation issue. *Mathis*, 2012 IL 113496, ¶ 21. At that time section 503(f) provided that, in determining the value of the marital property for the division of property, a court "shall value the property as of the date of trial or some other date as close to the date of trial as is practicable." 750 ILCS 5/503(f) (West 2010). The supreme court held "that, in a bifurcated dissolution proceeding, the date of valuation for marital property is the date the court enters judgment for dissolution following a trial on grounds for dissolution (see 750 ILCS 5/401(b) (West 2010)) or another date near it." *Mathis*, 2012 IL 113496, ¶ 30. In reaching that conclusion, the supreme court noted that, "once the parties are divorced, the property they acquire is no longer marital property." *Mathis*, 2012 IL 113496, ¶ 26. It further pointed out "one of the complications that could arise from bifurcating dissolution proceedings is 'the loss of marital-property treatment for property accumulated during the intervening period between the entry of the judgment of dissolution and the final disposition of property rights.' " *Mathis*, 2012 IL 113496, ¶ 26 (quoting *In re Marriage of Cohn*, 93 Ill. 2d 190, 199, 443 N.E.2d 541, 545 (1982)).

¶ 35 However, since the *Mathis* decision, our legislature has amended section 503(f) of

the Dissolution Act. It now provides "the court, in determining the value of the marital and non-marital property for purposes of dividing the property, has the discretion to use the date of the trial or such other date as agreed upon by the parties, or ordered by the court within its discretion, for purposes of determining the value of assets or property." 750 ILCS 5/503(f) (West Supp. 2015). Thus, the valuation date is no longer tied to the date of dissolution of marriage, calling into question the continued applicability of the holding and analysis in *Mathis*. Section 503(b)(1) of the Dissolution Act (750 ILCS 5/503(b)(1) (West Supp. 2015)) still provides "all property acquired by either spouse after the marriage and before a judgment of dissolution of marriage *** is presumed marital property." Even though the marital property presumption ends at the dissolution of marriage, the statute does not provide a court cannot continue to characterize marital property as "marital property" after the dissolution judgment.

¶ 36 This case has a unique set of facts. The circuit court entered two orders before it filed its dissolution judgment in August 2013. The May 2012 order granted the parties the dissolution of their marriage, and the October 2012 order addressed the remaining issues. As to the marital residence, the October 2012 order stated the following: "The court agrees with [respondent]'s position that he should be given the right of first refusal to purchase the marital residence in the manner suggested in [respondent]'s position statement." In his position statement, respondent asserted he should be awarded the marital residence and did not object to paying petitioner $15,000 for her equity in the home. Respondent further stated, "[s]hould the Court award the real estate to [petitioner], [respondent] should be given an option of first refusal should [petitioner] decide to sell the property." Respondent filed a motion to modify the judgment challenging, *inter alia*, the court's real estate finding. After a February 2013 hearing, respondent withdrew his motion to modify. The August 2013 dissolution judgment only noted

the May 2012 order dissolved the parties' marriage. Thus, the August 2013 dissolution judgment is the final judgment on the remaining issues, including the marital residence. That judgment simply gave (1) petitioner the right to live in the marital residence subject to annual review and (2) respondent the right of first refusal to purchase the home when petitioner moved out. In doing so, it made no reference to respondent's original position paper. Thus, the dissolution judgment did not distribute the marital residence or the proceeds from the sale of it. Neither party challenged the lack of distribution of the marital residence in the August 2013 judgment.

¶ 37 In his April 2016 petition to modify maintenance, respondent asserted petitioner should have to move out of the marital home, he should receive possession of it, and he should be allowed to refinance the mortgage to pay petitioner's share of the equity accrued during the marriage. In other words, he sought to exercise his right of first refusal and force the distribution of the marital residence. In its December 2016 order, the circuit court ordered petitioner to vacate the marital residence by August 1, 2017, and noted respondent's right of first refusal remained in effect. The court further stated, "the value of [petitioner]'s equity interest to be determined by the fair market value of the premises and mortgage payoff at the time [respondent] exercises his right of first refusal."

¶ 38 The facts of this case are clearly different than those is in *Mathis*, which addressed valuation of marital property before the final judgment on the remaining issues. Moreover, respondent's argument failed to address the new version of section 503(f) on the facts of this case. As we have found, the August 2013 judgment did not distribute the marital residence and did not address valuation of the marital residence. Respondent's April 2016 petition sought to exercise his right of refusal, which when exercised allowed for the distribution of the marital residence. Thus, respondent's petition raised the issue of valuation of the marital

residence. The circuit court determined the value of petitioner's equity interest in the home would be determined by the fair market value of the premises and mortgage payoff when respondent exercised his right of first refusal. Under section 503(f) of the Dissolution Act (750 ILCS 5/503(f) (West 2016)), the circuit court had the discretion to set a valuation date. Thus, we find the circuit court had jurisdiction to distribute the marital residence and set a valuation date.

¶ 39 Respondent does not explicitly argue the circuit court abused its discretion by selecting a valuation date of the exercise of his right of first refusal. However, he does argue petitioner should not be entitled to a share in the equity that has been created since respondent has been the one paying the mortgage since the dissolution judgment. Thus, we will address whether the circuit court abused its discretion. A circuit court abuses its discretion when its award is " 'arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the court.' " *Pister v. Matrix Service Industrial Contractors, Inc.,* 2013 IL App (4th) 120781, ¶ 55, 998 N.E.2d 123 (quoting *Auten v. Franklin*, 404 Ill. App. 3d 1130, 1151, 942 N.E.2d 500, 518 (2010)).

¶ 40 Respondent's position in the circuit court was the mortgage and utility payments were maintenance in kind to petitioner. Thus, one could argue petitioner was the one essentially paying the mortgage since it was her maintenance. Petitioner argues they both bore the risk of a decline in value of the marital residence. Moreover, if respondent had decided not to exercise his right of first refusal and the parties sold the residence to a third party, then clearly the value of the home would have been the sale price offset by the mortgage payoff. The circuit court's valuation date is reasonable. Accordingly, we find respondent has failed to show the circuit court abused its discretion by selecting the valuation date of respondent's exercise of his right of first refusal.

¶ 41 D. Child Support

¶ 42 Respondent next raises several issues challenging the circuit court's modification of child support, including the circuit court did not follow the applicable statutes in increasing the amount of child support. In his paragraph for requested relief, he asks this court to reverse the order "increasing child support." In its December 2016 order, the circuit court adopted the increased amount of child support calculated by petitioner in her closing argument. However, petitioner's calculation did not consider petitioner's maintenance award. Petitioner raised the aforementioned matter in her posttrial trial motion, and the court later entered a uniform support order in March 2017, setting child support at $300 per week. That amount was $70.57 less than the amount of child support respondent was paying. In other words, respondent ultimately is paying less child support after the modification of child support. In his reply brief, respondent contends the March 30, 2017, order does not resolve the infirmities in the December 2016 order. However, he fails to explain how. Despite the ultimate reduction in the amount of child support, respondent's counsel persisted in this argument at oral arguments, and thus we will address it.

¶ 43 1. *Authority to Address Issue*

¶ 44 Respondent contends the circuit court did not have "jurisdiction" to modify his child support payments to petitioner. Petitioner notes she requested the modification in her amended answer to respondent's petition to modify spousal support, and respondent never filed a motion to strike the allegation or pleading. Moreover, while respondent's counsel questioned whether petitioner's request to modification request was properly pled, counsel did not object to the court's proceeding on the issue.

¶ 45 Section 510(a) of the Dissolution Act (750 ILCS 5/510(a) (West 2016) (text of section eff. until July 1, 2017)) indicates child support may be modified by the filing of a motion

for modification. Here, petitioner did raise the issue in her amended answer to respondent's petition to modify maintenance. Even if that procedure was incorrect, respondent cannot challenge the circuit court's addressing the issue in its December 2016 order. "An objection that an issue was not formally raised by the pleadings may be waived by the conduct of the parties or by the introduction of evidence on the issue at trial." *In re Marriage of Hochleutner*, 260 Ill. App. 3d 684, 689, 633 N.E.2d 164, 168 (1994). In this case, respondent never objected to the court hearing the child support issue, and evidence was presented at the October 31, 2016, hearing on the issue. Moreover, in respondent's position statement and closing argument, he addressed the issue of child support by requesting the court to address it after the maintenance issue was resolved. Accordingly, we find respondent has forfeited any argument the child support issue was not properly before the circuit court.

¶ 46 2. *Substantial Change in Circumstance*

¶ 47 Respondent next contends the circuit court abrogated its duty to determine if a substantial change in circumstance occurred before modifying child support and contends the court listed no reasons to increase child support. Petitioner notes she asserted respondent's income had doubled, which constituted a substantial change in circumstances. She contends the circuit court implicitly agreed with her.

¶ 48 Section 510(a)(1) of the Dissolution Act (750 ILCS 5/510(a)(1) (West 2016) (text of section eff. until July 1, 2017)) provides that, to obtain a modification of child support, a parent must prove a substantial change in circumstances has taken place since the entry of the prior support order. See *In re Marriage of Sorokin*, 2017 IL App (2d) 160885, ¶ 28, 83 N.E.3d 556. This court will not disturb a circuit court's finding of a substantial change in circumstances unless it was against the manifest weight of the evidence. *Sorokin*, 2017 IL App (2d) 160885,

¶ 24. "A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." (Internal quotation marks omitted.) *In re Guardianship of Spinnie*, 2016 IL App (5th) 150564, ¶ 18, 65 N.E.3d 541 (quoting *Sheth v. SAB Tool Supply Co.*, 2013 IL App (1st) 110156, ¶ 41, 990 N.E.2d 738).

¶ 49 Respondent contends our review is *de novo* and claims the circuit court failed to apply section 510(a)(1) because it did not list any reasons to support an increase in child support. However, he fails to cite any case law requiring the court to explicitly state its reasoning, and thus we decline to address that contention. See *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23, 962 N.E.2d 1071 (noting argument must be supported by citation to pertinent legal authority and the failure to do so forfeits the argument). In his reply brief, respondent contends the circuit court did not implicitly find a substantial change in circumstances. We disagree. In her written closing argument, petitioner asserted respondent's increase in income was a substantial change in circumstances. She presented evidence at the hearing supporting the aforementioned contention. Moreover, respondent does not dispute his income increased. Illinois case law provides "a substantial change in circumstances justifying a modification increasing child support may be based solely upon an increase in the supporting parent's ability to pay." *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 29, 985 N.E.2d 602. Thus, we find the circuit court implicitly found a substantial change in circumstances as to child support and that finding was not against the manifest weight of the evidence.

¶ 50 3. *Order*

¶ 51 Respondent further argues the circuit court's child support order did not comply with section 505(a)(5) of the Dissolution Act (750 ILCS 5/505(a)(5) (West Supp. 2015)) because

it advanced two figures. We disagree.

¶ 52 The circuit court order imposed child support "to be calculated as proposed by [petitioner's attorney]." In petitioner's closing argument, she first calculated child support based on respondent's net monthly income, which totaled $448.01 per week. Petitioner then addressed issues unique to respondent's income and asserted (1) respondent's net monthly income should not be reduced by respondent's voluntary payment of union dues but (2) net monthly income should be increased by his "auto fringe benefit." Adding in the "auto fringe benefit" brought the calculation to $461.31 per week. Petitioner asserted child support was properly calculated at $461.31 per week. Thus, we find that, when the court found child support to be calculated as proposed by petitioner, the court was referring to the $461.31 per week amount. The $448.01 amount was a preliminary number only. Regardless, the court later reduced the amount to $300 per week in a uniform support order.

¶ 53 E. Attorney Fees

¶ 54 1. *Authority to Address Issue*

¶ 55 Like the child support issue, respondent alleges the circuit court did not have "jurisdiction" to modify to award petitioner attorney fees because she did not request them in a separate petition. Petitioner points out she requested attorney fees in her amended answer to respondent's petition to modify spousal support, and respondent never filed a motion to strike the allegation or pleading.

¶ 56 Section 508(a) of the Dissolution Act (750 ILCS 5/508(a) (West Supp. 2015)) states that, "after due notice and hearing, and after considering the financial resources of the parties," the court may order any party to pay a reasonable amount for his or her own or the other party's costs and attorneys fees. Here, petitioner did raise the issue in her amended answer to

respondent's petition to modify maintenance. Contrary to respondent's assertion, respondent's counsel was aware of the attorney fees issue, as it was addressed in respondent's position statement filed during the October 31, 2016, hearing. Even if that procedure was incorrect, respondent cannot challenge on appeal the circuit court's addressing the attorney fees in its December 2016 order. As stated, "[a]n objection that an issue was not formally raised by the pleadings may be waived by the conduct of the parties or by the introduction of evidence on the issue at trial." *Hochleutner*, 260 Ill. App. 3d at 689, 633 N.E.2d at 168. In this case, respondent never objected to the court hearing the attorney fees issue, and evidence was presented at the October 31, 2016, hearing on the issue. Moreover, in respondent's position statement and closing argument, he asked for the court to order the parties to pay their own attorney fees. Accordingly, we find respondent has forfeited any argument the issue of attorney fees was not properly before the circuit court.

¶ 57 2. *Merits*

¶ 58 Respondent last asserts the circuit court erred by ordering him to pay petitioner's attorney fees because it (1) failed to comply with the requirements of section 508 of the Dissolution Act (750 ILCS 5/508 (West Supp. 2015)) and (2) abused its discretion because the order requires him to drain his savings to pay attorney fees. Petitioner contends the court considered the evidence before it and properly applied the pertinent statutory factors in awarding the attorney fees. This court will not disturb a circuit court's decision to award attorney fees absent an abuse of discretion. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 13, 89 N.E.3d 296. Whether the circuit court applied the correct standard in determining whether to award attorney fees presents a legal question, which the court reviews *de novo*. *Heroy*, 2017 IL 120205, ¶ 13.

¶ 59 To obtain attorney fees under the Dissolution Act, the party seeking attorney fees

must establish his or her inability to pay the fees and the other spouse's ability to do so. *Heroy*, 2017 IL 120205, ¶ 15. A party seeking attorney fees is "unable to pay if, after consideration of all the relevant statutory factors, the court finds that requiring the party to pay the entirety of the fees would undermine his or her financial stability." *Heroy*, 2017 IL 120205, ¶ 19. In awarding attorney fees under section 508 of the Dissolution Act, the circuit court must "(1) 'consider[ ] the financial resources of the parties' and (2) make its decision on a petition for contribution 'in accordance with subsection (j) of Section 503.' " *Heroy*, 2017 IL 120205, ¶ 19 (quoting 750 ILCS 5/508(a) (West 2014)). Section 503(j)(2) of the Dissolution Act (750 ILCS 5/503(j)(2) (West 2016)) provides the following: "Any award of contribution to one party from the other party shall be based on the criteria for division of marital property under this Section 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under Section 504." The criteria for division of marital property are contained in section 503(d) of the Dissolution Act and contains 12 factors. 750 ILCS 5/503(d) (West Supp. 2015). Since maintenance was awarded in this case, the 14 factors contained in section 504(a) of the Dissolution Act (750 ILCS 5/504(a) (West Supp. 2015)) also apply.

¶ 60 Respondent first contends the circuit court did not consider the parties' financial resources and the relevant statutory factors required by section 503(j) because the court's order does not mention them. However, when a circuit court's order does not contain the bases for its ruling, the reviewing court presumes the trial judge knew and applied the law. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984). The presumption is overcome when the record contains "strong affirmative evidence" showing the trial judge did not know or did not apply the law. *People v. Howery*, 178 Ill. 2d 1, 32, 687 N.E.2d 836, 851 (1997). Respondent argues applying the relevant statutory factors to the evidence in this case warrants a

different result, which we do not find is strong affirmative evidence the circuit court did not apply the law. Thus, we find no legal error.

¶ 61 As to whether the circuit court abused its discretion by awarding attorney fees, we review the relevant factors contained in section 503(d) and 504(a). The section 503(d) factors relevant to this case are the following: (1) each party's contribution to the acquisition, preservation, or increase or decrease in value of the marital or nonmarital property, including a party's contribution as a homemaker or to the family unit; (2) the value of the property assigned to each party; (3) the marriage's duration; (4) each party's relevant economic circumstances when the property division became effective; (5) each party's "age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs"; (6) the custodial provisions for the parties' children; (7) "whether the apportionment is in lieu of or in addition to maintenance"; and (8) each party's reasonable opportunity for future acquisition of capital assets and income. 750 ILCS 5/503(d)(1), (3)-(5), (8)-(11) (West Supp. 2015). The criteria for an award of maintenance under section 504 that are relevant to this case and have not already been noted in section 503(d) are the following: (1) each party's income and property; (2) each party's needs; (3) each party's realistic present and future earning capacity; (4) "any impairment to the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage"; (5) "any impairment to the realistic present and future earning capacity of the party against whom maintenance is sought"; (6) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support herself through appropriate employment; (7) "the standard of living established during the marriage"; (8) all sources of

public and private income; (9) "contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse"; and (10) "any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a)(1) to (7), (10), (12), (14) (West Supp. 2015).

¶ 62 Here, the majority of the factors favor an award of attorney fees to petitioner. While respondent has been the only party paying the mortgage on the former marital residence since the dissolution and petitioner has not gained employment since then, her job opportunities are limited by her role as primary caretaker of the children since Addison's birth, the location of the former marital residence where she and the children reside, and her lack of job skills. On the other hand, respondent's income has increased since the dissolution of marriage.

¶ 63 Respondent contends the December 2016 order leaves him only $5 per month on which to live. However, his math is incorrect. According to respondent, his net pay was $6009.33 per month, his weekly maintenance and child support payments totaled $3952.22 per month, and his half of the mortgage and utilities was $445 per month. However, he was only ordered to pay half of the mortgage, which is $285 per month, and none of the utilities. With those figures, respondent is left with $1772.11 per month. He also had $11,000 in his savings account. Accordingly, respondent had an ability to pay $4620 of petitioner's attorney fees.

¶ 64 Petitioner had no savings, around $10,000 in credit card debt, and about $2500 in other debt. Before the December 2016 order her monthly expenses were around $400 more than her income. After the December 2016 order, her monthly expenses were $3824.39, of which respondent paid $285. Thus, they were $3539.39. Her total income was $4375.83. While her income is now greater than her expenses, she still has large amounts of debt and no savings. Thus, requiring petitioner to pay all of her attorney fees would undermine her financial stability.

¶ 65 Accordingly, we find the circuit court did not abuse its discretion by ordering respondent to pay $4620 of petitioner's attorney fees.

¶ 66 III. CONCLUSION

¶ 67 For the reasons stated, we affirm the Greene County circuit court's judgment.

¶ 68 Affirmed.