2019 IL App (2d) 180706-U
No. 2-18-0706
Order filed September 11, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF STACEY A. RIES, Petitioner-Appellee, and MICHAEL J. RIES, Respondent-Appellant.	)))))))))	Appeal from the Circuit Court of Kendall County. No. 16-D-364 Honorable Stephen L. Krentz, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Birkett and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court acted within its discretion in holding respondent responsible for half of the 2016 and 2017 property taxes, and in reducing his share of the equity in the marital residence to account for half of the children's interim expenses. It also did not abuse its discretion in not addressing the subject of petitioner's interim attorney fees, or in requiring respondent to pay half of a credit card debt originating from a tax payment. Regarding the maintenance awarded to respondent, the trial court did not abuse its discretion in imputing income to respondent, deviating downward from statutory maintenance guidelines, or making the maintenance reviewable. However, the trial court erred in failing to consider petitioner's bonus income. Therefore, we affirmed in part, reversed in part, and remanded.

¶ 2 Respondent, Michael J. Ries,[1] and petitioner, Stacey A. Ries, were married in 1994. They had two children, K.A.R., born in 2005, and C.M.R. born in 2008. The parties' marriage was dissolved in 2018. Respondent appeals from the judgment of dissolution, arguing that the trial court erred in: (1) reducing his property award for a "reimbursement" of marital expenses that petitioner paid with marital funds during the pendency of proceedings; (2) its imputation of income to him; and (3) its deviation from maintenance guidelines. We affirm in part, reverse in part, and remand the cause.

¶ 3 I. BACKGROUND

¶ 4 Petitioner filed a petition for dissolution of marriage on November 1, 2016, shortly after obtaining an emergency order of protection against respondent based on allegations of his actions while under the influence of alcohol. On November 9, 2016, the order of protection case was consolidated with the dissolution case. On December 14, 2016, the trial court issued an interim order of protection against respondent giving petitioner possession of the marital residence, and allowing respondent visitation with the children.

¶ 5 On January 24, 2017, the trial court temporarily suspended respondent's visitation due to new allegations of his conduct while intoxicated.

¶ 6 Respondent filed a petition for temporary and permanent maintenance on February 28, 2017. He alleged that he was 51 years old, was a sole practitioner attorney who ran a small patent practice from his home, and earned about $30,000 per year. He alleged that since about 2002, he had stayed at home, fulfilled the majority of the domestic duties, and acted as the children's primary caretaker. Respondent alleged that, in contrast, petitioner was employed full-time as an

[1] The notice of appeal incorrectly list respondent's name as "Michael A. Ries."

attorney and earned at least $170,000 per year, excluding bonuses. The request for temporary maintenance was never adjudicated.

¶ 7 On March 2, 2017, the trial court entered a plenary order of protection against respondent. On June 29, 2017, petitioner filed an emergency motion to terminate parenting time, alleging that respondent had been arrested and charged after a witness saw him attempt to place nails in the tires of petitioner's vehicle during one of the parties' children's dance competitions. Petitioner also sought to amend the order of protection to include the children. The trial court granted the motion, on a temporary basis, on June 30, 2017.

¶ 8 On August 11, 2017, petitioner filed a notice of a dissipation claim, alleging that respondent had withdrawn a total of $48,752.43 from the children's "UTMA"[2] accounts with Fidelity Investments. On August 24, 2017, the trial court enjoined respondent from removing money from the children's college accounts. It further ordered him to close certain accounts and turn the funds over to his attorney to hold in escrow. The trial court also entered a temporary parenting plan that gave all significant decision-making responsibilities and parenting time to petitioner.

¶ 9 Petitioner filed a second notice of a dissipation claim on November 6, 2017, alleging that respondent had withdrawn tens of thousands of additional dollars from other accounts. A few days later, she filed a third notice of a dissipation claim, alleging that respondent withdrew $6,000 from another account.

¶ 10 On December 20, 2017, the trial court entered an order dissolving the parties' marriage but reserving jurisdiction to determine all remaining issues.

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[2] The acronym likely refers to the Illinois Uniform Transfers to Minors Act (760 ILCS 20/1 *et. seq.* (West 2016)).

¶ 11 A trial took place on various days from November 2017 to April 2018.

¶ 12 A. Petitioner's Testimony

¶ 13 Petitioner testified as follows. The parties had a daughter who was born in 2005, and they later had a son. When the parties married in 1994, petitioner was a nurse, and respondent was an engineer. They both decided to go to law school, and they graduated in 1997. Petitioner began working for Rush Copley Medical Center in 2002, making $65,000 per year. She currently earned $173,000 per year there as the Deputy General Counsel and Corporate Integrity Officer. She typically received a bonus as well, and she expected her 2017 bonus to be between $5,000 and $9,000. Petitioner admitted that her gross bonus in 2016 was $15,000, and that the net amount was $10,470. Petitioner stopped contributing to her 401(k) in 2017 because respondent could potentially be awarded a portion of the account.

¶ 14 Respondent was working at a law firm in early 2000, but he was laid off and thereafter did not work outside the home. They never agreed that he would be the stay-at-home parent, but rather it "just happened that way," and respondent never acted in such a role. Rather, when their first child was six or seven months old, respondent hired a nanny, and they had a nanny on and off until the children went to school. Also, petitioner got them ready for school, took them shopping, took them to extracurricular activities, gave them baths, and got them ready for bed. She also took them to the doctor about half the time. Further, they employed help for house cleaning and laundry. From time to time, respondent would fix things around the house and buy groceries.

¶ 15 Respondent did legal work from home. Petitioner did not recall any time during the marriage when he was self-employed and not making an income. She had "no idea" how much he truly earned. Petitioner recalled a time about two years ago where respondent said he was

going to cash a $10,000 check at the issuing bank, rather than deposit the check into his business account. They had many other, similar conversations about checks, and respondent always carried cash. Respondent used QuickBooks for his business, and he would turn over the records to his accountant. Petitioner found information on the family computer in respondent's QuickBooks account showing that as of March 12, 2016, he had total deposits of $258,542.32. The exhibit, which was admitted into evidence, also showed about $200,000 in liabilities and total equity of about $60,000. At the time petitioner found the information, respondent was claiming a $0 income on his comprehensive financial statement. Petitioner believed that respondent was minimizing his income for the purpose of seeking maintenance. Petitioner admitted that she signed tax returns showing large losses for respondent's business income, resulting in money back from the federal government. However, they were typically audited, after which they would owe money back to the government. Many times during the marriage, when respondent complained about money, petitioner would tell him to go out and get a job.

¶ 16 Petitioner testified that since the parties' separation in November 2016 until March 2018, she had incurred $19,108.38 in expenses for the children, largely from uncovered medical expenses, childcare, and extracurricular activities. She also paid $10,000 towards the mortgage on the marital residence. Petitioner requested that respondent be responsible for half of these amounts. She further testified regarding the amounts that she claimed in her notices of dissipation. Petitioner admitted that respondent had been out of the marital home since November 2016 and that she had not contributed anything to his expenses since then. Petitioner testified that she was scared because she was "barely making it" financially, even though she admitted that her individual checking account had a balance of $22,231.71 as of March 23, 2017. Petitioner testified that the total included a one-time deposit from a Fidelity account, and that the

balance was a "snapshot in time" that did not reflect her monthly expenses or her current account balance.

¶ 17 The marital residence was appraised at $318,000, and the parties stipulated to the entry of the appraisal into evidence. The real estate taxes for 2016 had not yet been paid, and petitioner anticipated owing a similar amount for the 2017 tax bill.

¶ 18 B. Respondent's Testimony

¶ 19 Respondent testified that he was 52 years old and had an engineering degree, a law degree, and a master of laws degree. He was a patent attorney and began his own practice in June 2002, after working for a law firm for two years. At that time, he had offers from around the country for other jobs. However, the parties agreed that they would not move so that petitioner could maintain her position, and that he would work at home so that he could take care of the children. Petitioner never asked that he seek different employment, as they did not want the children to go to daycare. Respondent had a small solo practice, so his clients were individual investors searching on the Internet for low prices.

¶ 20 When shown his tax returns and asked if he earned more than $3,400 in 2016, respondent testified, "I wouldn't know." His CPA prepared his tax returns from his bank statements, and "when you run your own company, sometimes it's a very difficult thing to keep track of because you are busy working." Respondent's 2016 tax expenses included $18,314 for commissions and fees to subcontractors who worked on portions of the patent applications for him, and patent filing fees of $15,689. Respondent sometimes had to refund flat fees after a client changed his mind; for example, he refunded $17,700 to a client in May 2016 for that reason.

¶ 21 Respondent reported an income of $4,371 per month on his October 2017 comprehensive financial statement. However, a rental application listed his income as $12,000 per month.

Respondent testified that he talked to the rental manager on the phone and told her that his income was variable. She said that she would fill out the rest of the application for him. Respondent's accountant created a statement for his 2017 income. For the period of January to September 2017, it listed gross income of $33,109 and total expenses of $34,821, resulting in a $1,712 loss.

¶ 22 Respondent denied that the QuickBooks statement was written by him. He testified that he was going to use the program but never did. According to respondent, someone must have signed into his account without authorization and made the statement. Respondent acknowledged that there was a $330 expense for QuickBooks listed on his tax return, but he testified that he had called several times to have the company stop charging him. Respondent could not "remember a time recently" when he had cashed a client's check at the issuing bank. When shown a copy of a 2016 $4,800 cashier's check, respondent agreed that his business IOLTA account and operating account did not show a deposit in that amount. He testified that he would have asked his CPA what to do with the check, and he did not remember what he was told. Respondent testified that he thought he had to send the check back to the client but would have to check his records.

¶ 23 Respondent had about $110,000 in credit card debt, though only $9,000 of that debt existed when the parties separated. He had to pay about $630 per month for health insurance. Respondent admitted that he withdrew $24,378 and $24,373 from the children's Fidelity UTMA accounts. He testified that he did not know what a UTMA account was, and that a banker set up the accounts for him. Respondent testified, "I don't think some money is kids' money when you have a trustee in charge of their money." He withdrew about $9,000 and $7,000 from other UTMA accounts with J.P. Morgan. He testified that he set up the accounts for the children from money that his mother gifted to him every Christmas; he admitted that he did not list the

accounts as non-marital money on his comprehensive financial statement, testifying that he "just remembered." Respondent testified that he withdrew the money because he had "to feed [him]self somehow." Respondent admitted also withdrawing various amounts of money from other accounts. He used the money to pay for a country club membership for the children, for the guardian *ad litem*, "maybe groceries," and rent. He also testified that his aunt gifted him $30,000 in 2016, but he also did not list this amount on his comprehensive financial statement. Respondent had used the money for expenses. In addition to regular expenses, respondent had to pay $13,500 in bail for criminal charges related to this case, and attorney fees for the instant case.

¶ 24 Since the dissolution proceedings began, respondent had attempted to obtain a new job with a higher income, but his arrest record was preventing him from obtaining certain positions, and he was also rejected because he was too old. He had interviewed at patent law firms, but their associate programs required that a person start at a young age. Employers had said they could only pay him "of counsel" fees, which would be part-time work. Respondent denied that he did legal work other than patent law, but he admitted that he entered appearances in several criminal cases. He testified that it was *pro bono* work and that he was doing "favors to hold the case for somebody so they could hire appropriate counsel."

¶ 25 C. Trial Court's Ruling

¶ 26 1. Parties' Income

¶ 27 The trial court issued a 22-page final judgment for dissolution of marriage on May 22, 2018, stating as follows. The parties began living separately on about November 1, 2016, when the case was filed. Petitioner was 50 years old, employed as in-house counsel for Rush Copley Hospital, and, according to her undisputed testimony, earned $14,562 gross per month, or

$174,744 per year. Respondent was 52 years old, self-employed as a patent attorney, and worked out of his residence, serving a largely Internet-based clientele. His income was disputed. The evidence showed that in 2014, he reported taxable earnings of $25,000 and had about $112,000 in expenses. In 2015, "he spent $100,000 to make $31,000." For 2016, his bank records showed deposits of $76,634, but his 2016 tax return showed only $52,452 in receipts and a net loss. The QuickBooks record showed total equity of $58,917. Respondent's 2017 bank records showed deposits of $32,806 in receipts, but his February 2017 financial affidavit claimed earnings of $70,720 the prior year and no current income. His second financial affidavit conversely listed $52,452 for his 2016 gross earnings, and current gross earnings of $4,371 per month. On his rental application, respondent listed his income as $120,000. Further:

> "[petitioner] offered credible evidence that [respondent] would often take payments he received from his clients directly to the client's issuing bank, and that he would cash them there to avoid creating any deposits on his bank records demonstrating he earned this income. In sum, the evidence as to [respondent's] income is so conflicting, uncertain, and lacking in credibility whatsoever that it cannot be reliably determined."

¶ 28 Although respondent argued that his tax returns showed that he operated his business at a net loss, those deductions were not necessarily recognized as appropriate for the purposes of calculating income and support under the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/101 *et seq.* (West 2016)). Also, respondent chose to take significant deductions on his tax returns without sufficient supporting evidence. The trial court heard conflicting evidence as to the existence of, amount of, and appropriateness of claimed deductions. It was relying on section 505(a)(5) of the Marriage Act (750 ILCS 5/505(a)(5)

(West 2016)), which provided that if net income could not be determined, the court should order support in an amount reasonable for the particular case.

¶ 29 Additionally, the law was clear that a party seeking maintenance has a duty to seek suitable employment. Respondent's testimony, that he was too old to be hired by a law firm and that his employment prospects were limited due to pending criminal charges, was unconvincing because he did not identify any of the potential employers and did not specify how many applications he sent or how many interviews he had. The trial court found he had "not engaged in any reasonable effort to find more lucrative employment" and was voluntarily under-employed. That is, respondent was a licensed patent attorney with an advanced degree and could clearly be earning more than his last disclosed net income, which was a loss of $7,249. After attributing "some weight to each of the varying forms of evidence attempting to identify his income, and *** in the absence of any better evidence, *** $52,452 per year" was a reasonable income to impute to respondent.

¶ 30 2. Distribution of Assets and Liabilities

¶ 31 All of the property owned by the parties was found to be marital, as neither party offered sufficient evidence to support the classification of any assets as non-marital. In particular, respondent offered only vague testimony and no supporting documentation that he opened financial accounts with funds received as gifts from his mother. In equitably dividing the marital property under the factors listed in section 503(d) of the Marriage Act (750 ILCS 5/503(d) (West 2016)) (see *infra* ¶ 50), the trial court found the following facts to be "particularly relevant." For the first factor, each party's contribution to the marital property, petitioner was the primary breadwinner, and respondent's assertion that "he sacrificed his career to provide domestic support in the home [was] not credible and not supported by the evidence." Respondent stayed

home for periods of time but only after being laid off, rather than due to a joint decision to have him home for childcare purposes. Indeed, he worked from home for several years before the parties' first child was born, and petitioner credibly testified that they employed a nanny to care for the children from the time they were six months old until they were school age. Thus, analysis of the first factor marginally favored petitioner.

¶ 32 For the second factor, the trial court found that there was substantive evidence as to respondent's alleged dissipation of assets, which favored petitioner. The third and fourth factors supported an equal division of assets. For the fifth factor, petitioner's higher income favored a greater distribution of assets to respondent. Factors six and seven were not applicable. For the eighth factor, which included the parties' liabilities, respondent had incurred approximately $162,000 in attorney fees, which the trial court found to be "extraordinarily high," such that respondent should bear responsibility for all of this debt, despite petitioner's higher income. The ninth factor, pertaining to custodial provisions of the children, favored petitioner because she was providing for the children without any significant financial support from respondent. The tenth and twelfth factors were neutral. The eleventh factor, the opportunity for future assets and income, heavily weighed in favor of respondent receiving a greater percentage of the assets.

¶ 33 Based on these considerations, the trial court allocated the parties' assets and liabilities in the following manner. It awarded the marital residence to petitioner, with respondent to receive 50% of the total net equity of $195,394.58, after subtracting one-half of the real estate taxes for 2016 and 2017 totaling $20,205.12. Respondent was not required to reimburse petitioner for the amount she reduced the principal balance of the loan after respondent moved out, as petitioner made the payment from marital funds. It additionally subtracted other amounts, which we subsequently discuss, resulting in a net amount of $26,881.11 due from petitioner to respondent.

The trial court divided the financial accounts roughly equally. Each party was responsible for his/her own debt, with the exception that respondent had used petitioner's credit card to pay income tax obligations without her knowledge or approval. Therefore, one half of the total charge of $8,146 ($4,073) would be deducted from respondent's share of the net equity in the home. Also to be subtracted from respondent's share were $9,554.18, representing one half of the children's pre-judgment expenses incurred by petitioner, and $5,159.29 for petitioner's attorney fees and costs resulting from respondent's non-compliance with discovery. Each party was responsible for their remaining attorney fees.

¶ 34 On the subject of dissipation, petitioner claimed that respondent dissipated assets totaling $120,615.69. Respondent testified generally that he needed the funds to pay his bills, but he testified credibly and specifically to litigation expenses totaling $112,000, which the trial court found to be an advance of funds to respondent from the marital estate, as opposed to dissipation. After accounting for funds that the court ordered to be deposited into a trust account, the advance distribution totaled $82,854.30, and petitioner was entitled to one-half of this amount ($41,427.15) as credit against respondent's share of the net equity in the residence.

¶ 35 3. Maintenance

¶ 36 Considering the parties' income disparity, respondent's lesser earning capacity, and the duration of the marriage, respondent was entitled to maintenance. Regarding the duration of the maintenance, the parties' age, education, employment, earning potential, and section 504(a) factors "argue[d] for a shorter duration than the statutorily[-]determined term of 269 months," but the trial court would elect such a term because it was also providing for a periodic review of the maintenance award. Based on the parties' gross incomes, application of the statutory formula resulted in an initial determination that petitioner should pay respondent $3,198 per month,

subject to a child support setoff. However, a downward deviation was warranted because of respondent's age, education and work history, lack of effort to maximize his employment prospects, and uncertainty over his present and further earning potential, and because petitioner was providing for essentially all of the children's financial needs without contribution from respondent. Therefore, the trial court ordered that petitioner pay respondent maintenance of $2,000 per month. The evidence showed that it was possible and realistic for respondent to achieve financial independence, so the maintenance award was reviewable after 36 months, after which time respondent would have the burden to demonstrate that he applied appropriate efforts to obtain greater financial self-sufficiency. Respondent was to pay petitioner child support and a health care contribution of $969.64 per month, and based on the offset of these obligations, petitioner was to pay respondent $1,030.36 per month. Respondent was also to pay half of all uncovered medical expenses of the children and half of school and extracurricular expenses, up to $500 per year, per child. The trial court adopted and reinstated a prior parenting allocation order, which greatly restricted respondent's parenting time with the children.

¶ 37 D. Motions to Reconsider

¶ 38 Both parties filed motions to reconsider. Petitioner sought control of the children's College Illinois accounts, which were not addressed in the judgment. She filed separate motions seeking to have respondent held responsible for a Capital One joint credit card debt that was not previously disclosed, and seeking contribution towards future childcare expenses. Respondent filed a motion to reconsider in which he requested statutory maintenance without deviation, and that the award of maintenance be made retroactive to the date of his request for temporary relief. Respondent further sought to have income tax liability from the parties' joint filings be equitably allocated.

¶ 39 On August 20, 2018, the trial court ordered that: respondent contribute one-third the cost of summer daycare; respondent turn over control of the children's College Illinois accounts; respondent be solely responsible for the Capital One credit card debt; and the parties be jointly responsible for the 2011, 2012, and 2015 federal and state tax liabilities. The trial court denied respondent's request to reconsider the maintenance award.

¶ 40 Respondent timely appealed.

¶ 41 II. ANALYSIS

¶ 42 A. Allocation of Marital Estate

¶ 43 1. "Reimbursement" of Marital Expenses

¶ 44 Respondent first argues that the trial court erred as a matter of law by interpreting section 503 as allowing for reimbursement of petitioner's marital expenses paid with marital funds. Specifically, respondent contends that notwithstanding the fact that petitioner paid the children's expenses and real estate taxes with marital property, the trial court discounted respondent's property by ordering reimbursement of half of these expenses out of respondent's "now separate property." Respondent argues that expenses of the parties' children are marital in nature (see *In re Marriage of Snow*, 277 Ill. App. 3d 642, 651 (1996) (no dissipation where marital funds spent on legitimate family expenses)), as are real estate expenses. Respondent highlights that the trial court specifically stated that all of the parties' property was marital. Respondent argues that, as a result, all payments for interim expenses were paid by the marital estate, regardless of who wrote the checks, so there is no basis for reimbursement.

¶ 45 Respondent cites section 503(c)(2)(A), which states: "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." See also *In re Marriage of*

Nelson, 297 Ill. App. 3d 651, 657 (1998) ("The reimbursement is made to the contributing estate, not to the contributing spouse"). Respondent maintains that the judgment's "reimbursement" award is contrary to section 503's plain language, meaning that the trial court erred as a matter of law.

¶ 46 Respondent additionally argues that petitioner's evidence of the children's expenses was merely her testimony and a spreadsheet that she created, without any bank statements or receipts. He maintains that she also never filed a petition for interim child support or contribution, but rather she supported the children with marital funds. Respondent argues that, relatedly, although he filed a petition for interim spousal support and was ultimately found to be entitled to maintenance, he received no interim support or credit for the same. Respondent argues that the amount of interim support he should have received exceeds any interim child support obligation that he could have had.

¶ 47 Petitioner responds that there is no indication in the record that the trial court intended to invoke the meaning of reimbursement under section 503(c), but rather it was simply giving her credit for financially supporting the parties' children without contribution from respondent. Petitioner argues that it is important to remember that the trial court's "reimbursement" decision came in the context of its allocation of the parties' marital estate. Petitioner points out that section 503(d) allows the trial court to consider, when allocating the marital estate, factors such as each party's contribution as a homemaker or to the family unit; the custodial provisions for the children; and each party's age, health, occupation, vocational skills, needs, and ability to acquire assets in the future. Petitioner argues that it is clear that throughout the marriage and the dissolution proceedings, she assumed the roles of both primary breadwinner and primary caregiver for the children, without any child support from respondent. According to petitioner,

the fact that respondent's petition for temporary maintenance was never ruled upon is irrelevant, as the fault lies with him. Petitioner cites *In re Marriage of Marriott*, 264 Ill. App. 3d 23, 37-38 (1994), for the proposition that where a party expends funds for a clear marital purpose, such as caring for the parties' children, a court commits reversible error by forcing that party "to pay expenses entirely from his or her share of the marital property." Petitioner argues that it was within the trial court's discretion to find that, under section 503(d), her expenditure of $20,000 when she was solely responsible for caring for the children entitled her to a marginally greater share of the marital estate.

¶ 48 Citing authority that we may affirm the trial court's ruling on any basis supported by the record (*In re Marriage of Holtorf*, 397 Ill. App. 3d 805, 811 (2010)), petitioner alternatively argues that we should affirm the judgment because the overall allocation of the marital estate was not an abuse of discretion. Petitioner asserts that this is especially true considering her testimony that respondent regularly hid his true income by cashing client checks at the issuing bank, and that the disputed amount is only about 3% of respondent's share of the marital assets.

¶ 49 Petitioner further argues that the trial court did not err in equally dividing the outstanding real estate tax liability. She maintains that respondent fails to acknowledge that the taxes remained due and owing at the time of the judgment. She points to her testimony that the 2016 and 2017 property taxes had not been paid, and respondent's counsel's argument in closing that the taxes were unpaid and that the debt should be allocated to petitioner.

¶ 50 The trial court is to divide marital property in "just proportions" considering all relevant factors, including: (1) each party=s contribution to the acquisition, preservation, or increase or decrease in the value of the property, including the contribution of a spouse as a homemaker and whether the contribution occurred after the commencement of dissolution proceedings; (2)

any dissipation; (3) the value of property assigned to each spouse; (4) the marriage's duration; (5) each spouse's relevant economic circumstances; (6) any obligations and rights arising from a prior marriage; (7) any prenuptial or postnuptial agreement; (8) the parties' age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs; (9) custodial provisions for any children; (10) whether the apportionment is in lieu of or in addition to maintenance; (11) each spouse's reasonable opportunity for the future acquisition of capital assets and income; and (12) any tax consequences. 750 ILCS 5/503(d) (West 2016). The distribution of marital property is within the trial court's discretion and will not be disturbed absent an abuse of discretion. *In re Marriage of Hamilton*, 2019 IL App (5th) 170295, & 34. A trial court abuses its discretion only where no reasonable person would adopt its view. *In re Marriage of Coviello*, 2016 IL App (1st) 141652, ¶ 28. To the extent that the issue involves a question of law, our review is *de novo*. See *In re Marriage of Winter*, 382 Ill. App. 3d 21, 27 (2008) (we review questions of law *de novo*).

¶ 51 The trial court's final judgment of dissolution states that it was awarding the marital residence to petitioner, "free and clear of any claim by [respondent], subject to [respondent's] right to receive 50% of the net equity as calculated below." After subtracting the balances for the mortgage and home equity line of credit, the residence had a net equity of $194,394.58. The trial court divided this amount in half ("Net Equity (50%) awarded to [respondent]"), which equals $97,197.29. From this total it subtracted various amounts, including $10,102.56 for one half of the 2016 and 2017 real estate taxes. Contrary to respondent's argument that petitioner paid the taxes from marital funds, it was undisputed at trial, including in respondent's closing argument, that the taxes had not been paid. On appeal, respondent himself classifies real estate tax obligations as marital in nature. Accordingly, the trial court did not commit an error of law

or abuse its discretion in dividing this marital debt and subtracting respondent's share from his equity in the home.

¶ 52 The trial court also subtracted from the net equity $9,554.18, stating that respondent was ordered to "reimburse" petitioner for one-half of the children's pre-judgment expenses. The trial court stated:

> "Petitioner testified that she incurred $19,108.36 in education, medical, extra-curricular, and clothing expenses on behalf of the minor children ***. Given the fact that [petitioner] paid all of these expenses and all other marital expenses related to the home during the pendency of these proceedings, without contribution from [respondent], *the court finds that it is equitable to obligate [respondent] to reimburse [petitioner] 50% of these funds*, namely, $9,554.18. He shall pay this sum to her from his share of the equity in the marital residence ***." (Emphasis added.)

Petitioner's testimony on this issue, which was subject to cross-examination, along with her exhibit, was sufficient evidence from which to establish the expenses. See *Aich v. City of Chicago*, 2013 IL App (1st) 120987, ¶ 17 (defining "testimony" as evidence that a competent witness under oath or affirmation gives at trial, in an affidavit, or in a deposition). Given the trial court's choice of the word "equitable," it is clear that it was subtracting the sum not because it incorrectly believed that petitioner had paid these sums from non-marital funds, but rather because respondent did not contribute to any of these expenses during the proceedings. Correspondingly, in its discussion of the section 503(d) factor related to custodial provisions for the children, which may be considered in distributing marital assets, the trial court stated that petitioner "was providing care for the children and meeting essentially all of their financial needs without any significant financial support from [respondent]. *This factor agues in favor of a*

greater distribution of assets to [petitioner]." (Emphasis added.) We agree with petitioner that there is no indication that the trial court was considering "reimbursement" under section 503(c) (750 ILCS 5/503(c) (West 2016)), which relates to commingled marital and non-marital property, especially given its direct citation to section 503(d). Rather, the trial court was using the term to represent an offset of that amount to give petitioner a marginally greater share of the marital estate. Considering the trial court's analysis of the relevant factors and circumstances of the case, we conclude that it acted in its discretion in doing so. That respondent may have been able to receiver temporary maintenance in a greater amount is not relevant, as respondent never obtained a ruling on his motion. See *Muirfield Village-Vernon Hills, LLC v. K. Reinke Jr. & Co.*, 349 Ill. App. 3d 178, 187 (2004) (the party filing a motion is responsible for bringing it to the trial court's attention and having it resolved).

¶ 53 2. Attorney Fees

¶ 54 Respondent further argues that the trial court arbitrarily subtracted half the amount of his interim attorney fees from his share of the marital estate, while ignoring the interim attorney fees paid by petitioner. Respondent contends that while the trial court correctly noted that the payment of such fees is presumptively a pre-distribution of the payor's ultimate distributive share of the marital estate (see *In re Marriage of Rosenbaum-Golden & Golden*, 381 Ill. App. 3d 65, 73-74 (2008)), it held only him to this standard, despite finding that petitioner was not entitled to a contribution to attorney fees. Respondent asserts that the trial court was presented with documentary and testimonial evidence from petitioner that she had paid interim fees.

¶ 55 Petitioner argues that respondent failed to adduce any evidence of the interim fees she paid, effectively preventing the trial court from determining what amount, if any, should have been deemed an advance against her share of the marital estate. We agree with petitioner. At

trial, respondent's counsel asked petitioner, "And you paid attorney's fees, G.A.L. fees, correct?," to which petitioner responded "Yes." Counsel did not ask how much in total she had paid in attorney fees. He did elicit testimony that petitioner listed $2,500 per month in legal fees on a financial affidavit, but significantly, respondent did not raise the issue of petitioner's attorney fees in closing argument or in his motion to reconsider. Even on appeal, respondent does not attempt to quantify how much in fees petitioner allegedly paid. Accordingly, the trial court did not abuse its discretion by not addressing the subject of interim attorney fees paid by petitioner. *Cf. In re Marriage of Mouschovias,* 359 Ill. App. 3d 348, 358 (2005) (the trial court did not abuse its discretion in considering the attorney fees paid by the wife as an advance by the marital estate without considering the attorney fees raised by the husband, where the wife first raised the issue in a posttrial motion and did not provide evidence showing the source of the husband's payments).

¶ 56 3. Income Tax Obligation

¶ 57 Respondent further argues that the trial court improperly reduced his property award by one-half of a marital $8,146 income tax obligation paid in July 2016, even though petitioner testified at trial that only about $5,000 of that debt remained, and she produced no documentary evidence that any of the debt remained.

¶ 58 Respondent's argument is without merit. Petitioner was questioned about her credit cards, and she testified that she had Chase, Wells Fargo, Earthmover, and Barclay credit cards. She testified that respondent signed a Barclay credit card check in her name and sent it to the United States Treasury to pay a tax bill. Petitioner identified a photograph of the check, which shows that it was dated July 5, 2016, and written in the amount of $8,146. Petitioner testified that she was requesting that the trial court order respondent to pay the balance of the Barclay card. She

was then asked if she owed about $5,000 on her Chase credit card, to which she replied in the affirmative.

¶ 59 The trial court addressed this subject in detail, stating:

> "[*Petitioner's] Barclay's card*. In July of 2016, four months before this case was filed, [respondent] incurred a $8,146.00 credit card check advance on [petitioner's] Barclay's card to pay income tax obligations. He did so without her advance knowledge or approval. The court orders [respondent] to share responsibility for repayment of this debt not as dissipation, (income tax obligations are legitimate marital expenses) but as an equitable allocation of marital debt existing at the time judgment enters herein. [Respondent] shall pay [petitioner] $4,073.00 from his share of net equity in the home ***, and she shall be solely responsible for the debt on this card thereafter."

¶ 60 Petitioner's testimony about the debt was evidence of its existence (see *Aich*, 2013 IL App (1st) 120987, ¶ 17), and it was not contradicted. Petitioner further provided a photograph of a Barclay credit card check in the amount of $8,146 written to the United States Treasury. Contrary to respondent's argument, she never testified that only $5,000 of this debt remained, but rather referenced a $5,000 debt on a different credit card. As such, the trial court did not abuse its discretion by subtracting one-half of the tax debt from respondent's share of net equity in the home.

¶ 61 B. Maintenance

¶ 62 1. Imputation of Income to Respondent

¶ 63 Respondent next argues that the trial court abused its discretion in its maintenance award. First, he maintains that the trial court erred in imputing income to him of $52,452. Respondent argues that while the trial court may have deemed his employment insufficient, he was employed

in this manner virtually the entire marriage, without objection. Respondent further cites *In re Marriage of Liszka*, 2016 IL App (3d) 150238, ¶¶ 46-47, for the propositions that in imputing income, the court should consider only the evidence presented and not speculate, and that the trial court should not base its income calculation on outdated data that no longer reflects prospective income. Respondent also points to the trial court statement that there was "no evidence [respondent was] attempting to evade his support obligation, or that he has unreasonably failed to take of [*sic*] an employment opportunity ***." Respondent argues that the evidence showed that he had foregone potential employment to advance petitioner's career, yet the trial court found that he "failed to make a good faith effort to earn sufficient income." Respondent maintains that there was never a motion to compel a job diary or any assertion that he was underemployed as compared to what was available to him or did anything other than maintain the status quo with respect to employment. Respondent argues that the trial court discounted his household contribution without basis in law or the evidence presented, as he worked from home to avoid the necessity of full-time daycare, and he performed a variety of household tasks. Respondent contends that the presence of occasional household help "for their multiple children" was no basis to discount his contributions.

¶ 64 Respondent additionally argues that the trial court's imputation of income was based on an arbitrary consideration of deposits in his operating and IOLTA accounts, even though the amounts in these accounts did not represent his earnings. Respondent argues that the trial court's imputation ignored the expenses he incurred to perform his services, which he testified to at trial, including foreign fees, payments to independent contractors for patent writing and drawing, and refunds to clients. Respondent also maintains that the trial court should not have relied on

petitioner's uncorroborated testimony about a $10,000 check he cashed, as she vaguely testified to one occurrence, which does not support a finding of "often" cashing checks at a client's bank.

¶ 65 Petitioner argues that respondent's own sworn admissions establish that his actual income is the same as his implied income, in that his October 13, 2017, sworn financial affidavit states that he earned a gross income of $52,452 in 2016.

¶ 66 Respondent counters that this amount was listed on his Schedule C line 1 as "gross receipts or sales," which was thereafter reduced by his necessary expenditures to carry on his trade of patent law to determine his actual income. Respondent points out that the affidavit lists a negative total monthly net income.

¶ 67 In determining whether to award maintenance and whether to deviate from guideline maintenance, one of the factors the trial court must consider is the "realistic present and future earning capacity of each party." 750 ILCS 5/504(a)(3), (b-1)(2) (West 2016). In order to impute income, the trial court must find that the payor: (1) has become voluntarily unemployed or underemployed, (2) is attempting to evade a support obligation; or (3) has unreasonably failed to take advantage of an employment opportunity. *In re Marriage of Ruvola*, 2017 IL App (2d) 160737, ¶ 39. A trial court's determination of income in a dissolution case is reviewed for an abuse of discretion, which occurs only where no reasonable person could take the view adopted by the trial court. *In re Marriage of Evanoff & Tomasek*, 2016 IL App (1st) 150017, ¶ 23.

¶ 68 We cannot say that the trial court's imputation of an income of $52,452 to respondent was an abuse of discretion. We recognize that respondent listed this amount as gross earnings before subtracting business expenses, but it is clear from the judgment that the trial court did not misinterpret the financial affidavit in determining respondent's income. Rather, the trial court described in detail the contradictory information regarding respondent's actual income (see

supra ¶ 27), ultimately concluding that "the evidence as to [respondent's] income is so conflicting, uncertain, and lacking in credibility whatsoever that it cannot be reliably determined." This finding is supported by the record based on respondent's evasive testimony, such as his response that he "wouldn't know" if he earned more than $3,400 in 2016, and the myriad of conflicting evidence about his actual income. Further, although respondent unequivocally denied using QuickBooks at all, support for considering the QuickBooks statement came from evidence that respondent was deducting expenses for paying for QuickBooks. Also, the trial court found credible petitioner's statement that respondent would often cash client checks, and respondent testified that he could not remember doing so recently, as opposed to not doing so at all.

¶ 69 The trial court additionally found that respondent was voluntarily under-employed. Regardless of the extent to which he previously took care of the children, they had largely been in petitioner's exclusive care for about 1½ years by the time the trial ended. During this time, respondent could have attempted to obtain more lucrative employment. As the trial court pointed out, he was a licensed patent attorney with an advanced degree but was reporting a negative income. "Imputation is appropriate in cases of voluntary unemployment or voluntary *under*employment." (Emphasis in original.) *In re Marriage of Ruvola*, 2017 IL App (2d) 160737 ¶ 39. The trial court found respondent's testimony that employers would not hire him non-specific and unconvincing, and the trial court's credibility determination was not against the manifest weight of the evidence. See *In re Marriage of Blume*, 2016 IL App (3d) 140276, ¶ 31 (the trial court is in the best position to determine a witness's credibility, and a court of review will not disturb its assessment unless the finding is against the manifest weight of the evidence).

We note that the income that the trial court ultimately imputed was within the range of what some evidence suggested that respondent's current income was.

¶ 70 Looking at all of the information considered by the trial court, in light of the record, we conclude that it acted within its discretion in imputing an income of $52,452 to respondent.

¶ 71 2. Downward Deviation from Statutory Maintenance Guidelines

¶ 72 Respondent additionally argues that even assuming that the imputation of income was proper, by both imputing income to him and then reducing his maintenance based on the same considerations, the trial court essentially "double counted" these factors, thereby abusing its discretion.

¶ 73 The trial court found that applying the statutory formula to the parties' gross incomes resulted in an initial maintenance award to $3,198 per month to respondent. However, the trial court found that a downward deviation was appropriate based on respondent's "age, education and work history, his lack of effort to maximize his employment prospects, and the uncertainty over his present and future earning potential," and because petitioner had "a greater financial need at present given the fact that she is providing for essentially all of the children's financial needs without contribution from" respondent. It awarded respondent maintenance of $2,000 per month.

¶ 74 Respondent argues that by "double counting" his imputed income, first as a basis to reduce his maintenance award under the formula, then to deviate downward from the already lowered number, the trial court abused its discretion. He further maintains that the trial court's finding that he was not contributing to the children's financial needs was against the judgment's plain terms, in that the judgment obligates him to pay guideline support based on his imputed income, as well as contribute half the cost of the medical, school, and extra-curricular expenses.

Respondent argues that the trial court also ordered him to pay half of the children's interim expenses, and subsequently ordered that he pay for one-third of their summer daycare expenses.

¶ 75 A trial court's determination of the amount of a maintenance award is within its sound discretion and presumed to be correct, and we will not reverse its decision absent an abuse of discretion. *In re Marriage of Brill*, 2017 IL App (2d) 160604 ¶ 26. A trial court may deviate from statutory maintenance guidelines based on a consideration of the same factors used to determine whether a maintenance award is appropriate in the first place. 750 ILCS 5/504(b-1)(1), (2), (b-2)(2) (West 2016). One of the these factors is the respective present and future earning capacities of the parties (750 ILCS 5/504(a)(3) (West 2016)), which includes imputed income (*In re Marriage of Ruvola*, 2017 IL App (2d) 160737, ¶ 39)). Accordingly, the consideration of respondent's imputed income was not an impermissible double counting. Further, as discussed, the income that the trial court imputed to respondent corresponded to the range of what some evidence suggested that he was already earning. The trial court could also properly consider that given respondent's advanced degrees, he could earn a much greater income in both the short and long term. The trial court never said that respondent would not be paying child support for the children, but rather that petitioner had "a greater financial need *at present* given the fact that she is providing for essentially all of the children's financial needs without contribution from" (emphasis added) respondent. This statement is supported by the record, which indicates that respondent was not paying any interim child support. Accordingly, the trial court's deviation from the amount of statutory maintenance was not an abuse of discretion.

¶ 76 3. Review of Maintenance

¶ 77 Respondent also argues that the trial court abused its discretion by placing a burden on him to demonstrate his entitlement to maintenance after 36 months, following a marriage of

more than 22 years. Respondent contends that pursuant to statutory guidelines, he would be entitled to maintenance for an indefinite period of time or a period of time equal to the length of the marriage. He contends that the length of the marriage, his age, his staying home to care for the children, and the lifestyle enjoyed during the marriage all favor not requiring him to have the burden to demonstrate an entitlement to maintenance after just three years.

¶ 78 Petitioner argues that respondent's argument rests on the flawed and rejected position that he was a stay-at-home parent, rather than a gainfully employed attorney who happened to work out of the house. Petitioner points out that he began working from home years before their first child was born. Petitioner further argues that limited, reviewable maintenance is appropriate in cases involving a spouse whose future ability to become self-supporting remains uncertain at the time of judgment. See *In re Marriage Starn*, 260 Ill. App. 3d 754, 757 (1994). Petitioner asserts that it was also legally permissible for the trial court to place the burden on respondent to demonstrate his continued entitlement to maintenance. She cites *In re Marriage of Culp*, 341 Ill. App. 3d 390, 396-97 (2003), where the court stated that when the trial court sets maintenance review hearings, it is preferable that it advise the parties of who has the burden of going forward. See also *In re Marriage of Rodriguez*, 359 Ill. App. 3d 307, 313 (2005) (agreeing with *Culp*).

¶ 79 A trial court may award maintenance that is fixed-term, indefinite, or reviewable. 750 ILCS 5/504(b-4.5) (West 2016). Both the amount and duration of the maintenance award are within the trial court's discretion. *In re Marriage of Van Hoveln*, 2018 IL App (4th) 180112, ¶ 29). Maintenance subject to a set review date is considered rehabilitative maintenance (see *In re Marriage of Shen*, 2015 IL App (1st) 130733, ¶ 84), which is intended to assist and encourage dependent spouses to become financially independent (*In re Marriage of Van Hoveln*, 2018 IL App (4th) 180112, ¶ 30). Illinois courts commonly reserve jurisdiction to encourage a spouse to

become self-sufficient while providing for review at the end of a defined period to review what efforts the spouse has made and whether the efforts have been successful. *In re Marriage of Heasley*, 2014 IL App (2d) 130937, ¶ 27.

¶ 80 We agree with petitioner that the trial court did not find credible that respondent stayed home primarily to care for the children and take care of the domestic duties, as he began working from home after being laid off and years before the children were born; the parties hired a nanny to care for the children and someone to clean the house; and petitioner was "primarily responsible for meeting the children's day to day needs." Respondent also references the parties' "lifestyle" while married, but the trial court found that neither party offered any evidence to show "a high standard of living during the marriage ***."

¶ 81 The trial court found that considerations of the age, education, employment, and earning potential of the parties made indefinite maintenance inappropriate, and this determination was within its discretion. See *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 652 (2008) (permanent maintenance is appropriate where a spouse is unemployable or employable only at a substantially lower income than the previous standard of living). The trial court stated that these same considerations, among others, justified a duration of maintenance that was shorter than the statutory term of 269 months, but that it would award maintenance in a term not to exceed 269 months because it was providing for periodic review of respondent's maintenance. Given that respondent's current income was obscured, that he was a patent attorney who had the potential to earn a much greater income, and that petitioner was financially supporting the children, it was not an abuse of discretion to make the maintenance reviewable after three years. For these same reasons, and under *Culp*, it was also not improper to place the burden on respondent to show his continued entitlement to maintenance at the review hearing.

¶ 82 4. Petitioner's Bonus Income

¶ 83 Last, respondent argues that the trial court erred by failing to consider petitioner's bonus income when determining maintenance and child support. He argues that petitioner admitted regularly receiving bonuses, and that she received $15,000 in 2016 on top of her base salary.

¶ 84 Petitioner argues that the trial court's determination of her income for purposes of maintenance is consistent with her income throughout the marriage. She cites *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 24, where the court stated that "maintenance is designed to allow the recipient spouse to maintain the standard of living enjoyed *during* the marriage." (Emphasis in original.) The appellate court therefore held that the trial court erred in awarding maintenance that included an uncapped amount based on a percentage of future bonuses. *Id.* ¶ 25. Petitioner argues that looking at the last three years the parties lived together, she earned gross incomes of $156,250 in 2014; $164,460 in 2015, and $172,026 in 2016, including discretionary bonuses, for a three year average of $164,245.33. Petitioner maintains that the trial court based her obligations on her 2017 salary of $174,744, even though the parties did not live together at all that year and notwithstanding the fact that this salary was greater than any of her previous earnings. Petitioner argues that the trial court would have well been within its discretion to use her average income from 2014 to 2016 when setting maintenance, so respondent cannot credibly complain that it erred by using a post-separation salary that was $10,000 higher. She alternatively argues that to the extent that the trial court did err, its error was *de minimis* such that we could either ignore it or correct it on appeal.

¶ 85 Respondent replies that income averaging is inappropriate because it is used when a party's income is variable from year-to-year. He further argues that the error is not *de minimis* as to ignore it, and reversal is warranted on this issue.

¶ 86 We agree with respondent that income averaging is used when current income is uncertain due to past fluctuations. See *In re Marriage of Liszka*, 2016 IL App (3d) 150238, ¶ 95; *In re Marriage of Hubbs*, 363 Ill. App. 3d 696 (2006) ("Using an average income for the previous three years of employment is a reasonable method for determining net income where income has fluctuated widely from year to year."). As petitioner's income was predictable in that it steadily rose each year, it would not generally be subject to income averaging. Correspondingly, the trial court simply used petitioner's 2017 income, without any averaging.

¶ 87 At trial, petitioner admitted that she received a bonus most years. She anticipated a net bonus of between $5,000 and $9,000 for 2017. Her 2016 bonus was $15,000 gross and $10,470 net. Such amounts are not *de minimis* given that they would affect her maintenance payments to respondent for as long as 269 months. The trial court apparently overlooked the issue of petitioner's bonus in its judgment. Given the wide discretion in fashioning a maintenance award, we decline to simply modify the judgment to account for petitioner's bonus, especially considering that the trial court used petitioner's 2017 base salary in fashioning its award, but the precise amount of her 2017 bonus is not contained in the record. Rather, we reverse and remand for a hearing at which the trial court may resolve this issue.

¶ 88 III. CONCLUSION

¶ 89 For the reasons stated, we reverse the judgment of the circuit court of Kendall County insofar as it failed to address the subject of petitioner's bonuses, and remand the cause so that the court may hold a hearing on this issue. We affirm the circuit court's judgment in all other respects.

¶ 90 Affirmed in part and reversed in part; cause remanded.